LAWYERS AND GOVERNANCE IN A GLOBALIZING WORLD:
NARRATIVES OF “PUBLIC INTEREST LAW” ACROSS THE AMERICAS

A dissertation presented

by

Fabio de Sa e Silva

to
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In partial fulfillment of the requirements for the degree of
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ABSTRACT OF THE DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Law, Policy, and Society in the Graduate School of Social Sciences and Humanities of Northeastern University

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The reinvigoration of “rule of law” and “legal reform” campaigns in transitional and developing countries is often shown as compelling evidence that democratic systems of governance will increasingly rely on the mediation of legal professionals. Drawing from several strains of social theory, – with a special emphasis on the sociology of professions and moderate versions of new institutionalism – as well as from a comparative and international research enterprise involving the U.S. and Latin America, this dissertation examines and contrasts specific manifestations of this story of (or aspiration about) lawyers’ participation in structures of governance. The focus is on the institutionalization across the Americas of a style of legal practice that is often seen in the U.S. context as an expression of the alleged potency of law and lawyers in democratizing systems of governance: “public interest law”. Considering “styles”, “kinds” or “sectors” of legal practice as amalgams of “labels”, “practices”, and “meanings”, this research has encountered differences in the ways U.S. and L.A. lawyers have structured “public interest law”, while also unveiling factors driving such differentiation in the rich histories of professional and political development in the studied contexts. The findings speak to a variety of theories about institutional development in times of globalization, such as theories of convergence, institutional isomorphism, and field constitution.
ACKNOWLEDGEMENTS

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

Robert Frost, *The Road Not Taken*

If completing a PhD degree were an easy task at all, there would probably be no blogs or websites (which, in a digital era, are powerful forces of cultural production) devoted only to (comically) exploring the challenges, failures, excuses, and procrastination of PhD students\(^1\). But the challenges along the PhD program can be of many kinds. For several individuals, the PhD program entails a process of reaching *maturity* and *stability*, whether in the personal, academic, or professional dimensions of life. In my particular case, the PhD experience overlapped with (and was an ingredient of) *actual turns* along all of such dimensions of life. The degree came to be, then, just part (even though a quite important part) of a bigger picture, made of many other ventures.

Following 2006, I fell in love and got married with Michelle; came with her to live in the U.S.; moved (definitely?) away from legal practice and the sterile traditions of Brazilian legal scholarship; strived to acquire capabilities that could help me qualify as a would-be social scientist; had a beautiful and funny son; got a permanent and very pleasant job at prominent research institute; and have taken increased responsibilities at work and within my broader family. “You must be cautious,” said Tom Koenig, my advisor, in numerous of our meetings:

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\(^1\) See, for example, [www.phdcomics.com](http://www.phdcomics.com)
“When you have such a busy life, the first thing you are likely to leave aside is your dissertation work”.

Tom was obviously correct in his advice and, as a traditional Brazilian adage states, “caution and chicken soup never do anyone any harm.” However, I am sure caution alone would not be enough for me to survive the PhD experience and become capable, right now, to say that I thankfully took the best of it. Thus, I must acknowledge those individuals and institutions whose assistance was vital for all that I was able to accomplish within or in the context of my experience as a PhD student.

I must start this section mentioning Joan Fitzgerald, Kathie Simmons, and the core faculty of the “Law and Public Policy Program” at Northeastern, who were always disposed to instill me with the necessary information, guidance, and encouragement to chart a new intellectual terrain. If they did not provide me with that welcoming attitude, the PhD program would be a much harder experience. Likewise, the comradeship of the students of my cohort was fundamental in making me discover my (few) strengths and my (several) weaknesses, as I was getting used to being a PhD student, in a foreign country, speaking a different language, and learning to think in different terms than I was used to.

As I moved forward in the program and was faced with the task of designing my actual research, the attention and assistance from my advisor, as well as the insights and criticisms from my committee became of decisive importance. The reader will just need to skim through the first pages of this work to notice how each and all of the committee members (Martha Davis, from Northeastern University School of Law, Susan Silbey, from MIT, Bob Granfield, from SUNY
Buffalo, and Steve Boucher, from UMASS Amherst) left their imprints in it, although, of course, I continue to be the only responsible for the failures and limitations that it displays yet.

I must also express my deep gratefulness to all the participants in this research: much beyond satisfying my sociological curiosity, the stories you told me were incredibly inspirational at the personal level as well. And although I could not avoid being critical when addressing your practices and visions of “public interest law”, I hope I did justice to your everyday efforts to make positive change in society and I wish you can keep up doing this good work: the world really needs it.

Equally decisive to make my PhD experience viable was the financial support from three institutions. Northeastern University paid for my tuition and academic fees in my first year, while also providing me with an important grant for fieldwork research. The Coordination for the Improvement of Higher Education Personnel (CAPES), in Brazil, and the Fulbright Foundation, in the U.S., sponsored my tuition and academic fees, while also providing me with a stipend for the two subsequent years I spent in the U.S. Last, but not least, the International Institute for the Sociology of Law in Oñati (IISL) awarded me with its prestigious “Juan Celaya Grant” for studies on globalization and the law.

For my definitive socialization in the U.S. academy, the welcoming attitude of the organized socio-legal community was inestimable. Throughout the meetings and activities of the Law and Society Association (LSA), I was able to interact with (and learn a lot from) insightful scholars such as Jeff Selbin, Bryant Garth, Carol Seron, Scott Barclay, Tanina Rostain, Salo Coslovsky, and many others.
Also through the LSA meetings and activities I was able to connect with this very stimulating project on “Globalization, Lawyering, and Emerging Economies” (GLEE), which is led by professors David M. Trubek (University of Wisconsin School of Law) and David Wilkins (Harvard University School of Law), and counts on fascinating scholars from the U.S., Brazil, India, and China, including Scott L. Cummings (UCLA School of Law), Louise Trubek, Marc Galanter, John Ohnesorge, Sida Liu, and Arpita Gupta (University of Wisconsin School of Law), Mihaela Papa (Harvard University School of Law), Ji Weidong (Jiao Tong University), Jay Krishnan (Indiana University School of Law), Vic Khanna (University of Michigan School of Law), and many others. Many of the reflections that I channeled to this dissertation grew out of the incredible opportunity for transnational learning and dialogue on the future of the legal profession in an era of globalization, which GLEE has managed to institute.

As life and work brought me back to Brazil, I was fortunate to find an opportunity for fruitful exchanges about the issues discussed in this dissertation and beyond. Besides my longstanding mentors Jose Geraldo de Sousa Junior, Boaventura Santos, and Jose Eduardo Faria, I am particularly thankful for the attention and assistance of the vibrant socio-legal community established at the FGV School of Law in Sao Paulo, the basis of the GLEE project in Brazil, which includes scholars such as Mario Schapiro, Luciana Cunha, Frederico Almeida, Rafael Queiroz, Jose Garcez Ghirardi, Fabiana Luci, Maira Machado, Oscar Vieira, and many others.

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In a more personal note, I am thankful to friends who have intensely participated in our lives in the past few years, specially: Heeten Khalan, Jenny Dalstein, Ravi Khalan, Roham Khalan, Dayanne Leal, and Barbara Ramos (in Boston), as well as Sara Guimaraes and Alysson Feitoza, Livia Sobota and Diogo Santana, Carolina Stuchi and Vinicius Carvalho, Giane and Ademir Figueiredo, Suzana and Jose Guerra, and Renata and Helder Ferreira, and their respective kids (in Brasilia).

Finally, I must express my love and gratitude to my parents and grand-parents (all of the latter now *in memoriam*), and, most specially, to Michelle, Joao Pedro, and Honey: thank you for all the care and support you provided me with, whether under heavy snow or under sunny days. While having made me go through this, you make me sure I can still go through much more.

Brasilia, Spring, 2012
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Chapter 1

The world of “public interest”: the conceptual and empirical domain of this dissertation

1.1. Introduction

The conditions and constraints for the exercise of political power have been central issues in social sciences and social thought. From separation of powers in large-scope political thought (Locke [1690], Hobbes [1651; 2010], Machiavelli [1532; 1985], Montesquieu [1756; 2001], Hamilton, Madison, & Jay [1788; 2008], etc.) to the role of professions and bureaucracies in micro-level, intra-organizational studies (Lipsky, 1980; Maynard-Moody & Musheno, 2003), there seems to be an enduring concern with how, in the modern world, the capacity to make and enforce decisions that bind a given community is constructed and sustained – or, in more plain and contemporary terms, with how governance is exercised.

Several studies in this vein have stressed the role – and, therefore, the power – of lawyers and legal institutions in enabling and constraining the exercise of governance. Among the many functions that are ascribed to lawyers in that capacity, one – and one that is of very strong appeal – relates to the enhancement of democracy. “Political lawyering” literature (Halliday, Karpnik & Feeley, 2007) stresses the role of lawyers in promoting political liberalism, thus pushing entire systems of governance to act in accordance with core liberal values such as “freedom” and

2 As in any other story of field development, the emergence of “governance studies” is subject to much debate among social scientists. Some authors such as Santos & Rodriguez-Garativo (2006) find it too coincident that the term “governance” came along with the rise of neoliberal regimes in the world and – resonating the classic Marxist suggestion that transforming the world is more important than understanding it –, see in its aseptic character a subtraction of the scholarly capacity to criticize the neoliberal order. Others authors such as Dezalay & Garth, however, underline that the success of the term comes precisely from this open-endedness, which “allows all the potential players to contribute to the debates [and] can include formal procedures and rules as well as more informal spaces typically studied by anthropologists.” (2002a:311)
“equality”. “Cause lawyering” literature discusses how some lawyers advocate for “causes”, and not “clients” (Sarat & Scheingold, 1998; 2001, 2004; 2005; 2006; 2008). While blurring the lines between professionalism and politics, these “cause lawyers” also challenge systems of governance to adopt the “higher moral values” that underlie their practices. In all these narratives, lawyers are referred to as agents of change, openness, and “improvement” in systems and processes of decision-making. Almost inevitably, it follows the claim that democratic systems of governance will increasingly rely on the mediation of legal professionals and, consequently, that a U.S.-inspired scheme of governance will likely be disseminated across the globe. The reinvigoration of “rule of law” and “legal reform” campaigns in transitional and developing countries is often shown as a compelling evidence of that (Dezalay & Garth, 2002a).

Drawing from several strains of social theory – with a special emphasis on the sociology of professions and moderate versions of new institutionalism – as well as from a comparative and international empirical research enterprise, this dissertation examines the circumstances and the conditions for the worldwide propagation of this story of (or aspiration about) lawyers’ participation in structures of governance. The focus is on the institutionalization across the Americas of a “style”, “kind” or “sector” of legal practice that is often seen in the U.S. context as an expression of the alleged potency of law and lawyers in democratizing governance systems: “public interest law”. In the following sections, this chapter: (a) discusses the sociological significance of institutionalized “styles”, “kinds” or “sectors” of professional practices; (b) examines the characteristics of “public interest law” that have made it much-noticed as both an institutionalized “style”, “kind” or “sector” of legal practice and a technique of democratic governance in the U.S. context; (c) presents evidence for and discusses the available accounts about the propagation of “public interest law” beyond the U.S. borders; (d) reviews and broadens
the existing frameworks for the study of such propagation; and (e) details the research design and strategy that were mobilized in this specific investigation.

1.2. Investigating “public interest law” (I): prolegomena for a sociology of “styles”, “kinds” or “sectors” of professional practice

Throughout the twentieth century much of the efforts in the sociology of professions were directed towards examining (and to some extent policing) the boundaries between “professional” and “non-professional” occupations. To most analysts, a core question was whether and how some groups of people were able to achieve and sustain this distinctive condition of “professionals” in the society and economy at large, vis-à-vis “non-professional” or “semi-professional” occupations. In this body of literature, four themes were especially salient: (a) expert knowledge; (b) autonomy; (c) normative orientation and community; and (d) status, income, and rewards (Gorman & Sandefur, 2011).

After the 1990s, several empirical changes affected the arrangements and the structure of professional work. Organizations were consolidated as the main employers, while the internal composition of professions became significantly diversified in socio-demographic terms. The market for professional services also changed. Transnational work increased multifold and “non-professional” or “semi-professional” occupations acquired greater economic importance. All of that eroded the appeal of the existing scholarly frameworks on the study of professions, as well as the explanatory power of the theories that were attached to them. The field seemed to experience an époque of “quiescence” (Gorman & Sandefur, 2011). Most of the knowledge about “professional work” that dates from these days was produced by scholars holding widely divergent orientations than their predecessors. More often than not, the primary interest of this
new generation of scholars was not exactly in “professionals” per se, but rather in issues such as social inequality and organizational development as they related to professions and professionals.

Instead of diluting the relevance of professions in sociological research, this actually made it a far more vibrant and intriguing area of inquiry. One of the primary reasons for this was that the traditional distinction between “professional” and “non-professional” occupations had made scholars overlook issues of extreme socio-political significance within the realm of each “profession”. As a process of cognitive opening took place, “professions” came to be seen, for example, as units of social life that were highly stratified along variables such as race, age, gender, and class; or that were highly constrained by the organizational structures in which they were embedded. The four big “themes” from the “golden age” of professional sociology continued to be useful for guiding further inquiry, but only as long as they were reassessed through other theoretical and methodological lenses (Gorman & Sandefur, 2011). For example, research on professional autonomy became the study of how professionals find a balance between an ideal of autonomy and the pressures from their clients or employers.

As both a “classical” and “changing” professional occupation, the practice of law was also a major expression of such history. Heinz & Laumann’s study about the “Chicago lawyers” became legendary in that respect (1994). Authors described and explained the existence of a highly stratified bar, with two strongly divided “hemispheres” – one that focused on representing large organizations, especially corporations; and the other that focused on representing small businesses and individuals. Additionally, the authors found that such hemispherical divide was also correlated to socio-demographic variables, and political and ethical values of lawyers. Twenty years later, an updated version of this study led to very similar observations, with
changes in the socio-demographic composition of the bar or in the organizational forms of legal practice actually reinforcing the distinctions and stratifications previously discovered (Heinz et al, 2005).

A similar turn was discernible in the debates about lawyers’ professional conduct. After every scandal involving lawyers and lawyers’ behavior, or after every organizational or practical novelty observed among the acting lawyers, there was a great deal of scholarly mobilization to assess and account for the “demise” of lawyers’ professionalism. And while some scholars frequently took this opportunity to challenge the bar and law schools to take action and reinforce norms of “good” professional conduct, all of which would pertain to “essential attributes” of the profession (see, for instance, Rhode, 2003); others took a more careful or even skeptical perspective as to whether this was possible at all. Beyond (or even against) the homogeneity assumed in codes of conduct officially enacted by the organized bar or instilled by law school training, these scholars stressed on the “finding” that the legal profession encompassed an incredible diversity.

Variation in the legal profession became, then, a captivating theme in socio-legal studies, and the trajectories of both the “Chicago lawyers” study and the literature on lawyers’ professionalism express the main approaches that researchers have taken into account to describe and explain it. Put shortly, such approaches have stressed: (i) socio-demographic variables – i.e., the role of gender, race, age, class, and religious background; (ii) organizational variables – i.e.,

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3 See, for instance, the articles that grew out of the “After J.D. project”, a longitudinal survey with U.S. legal professionals organized by Harvard Law School’s Program on the Legal Profession (P.L.P) and the American Bar Association (A.B.A). Such literature includes works such as Edwards, 2011; Lehman, 2010; Payne-Pikus, Hagan & Nelson, 2010; Sterling & Reichman, 2010; Dinovitzer, Reichman & Sterling, 2009; Dinovitzer, Ronit & Garth, 2009; Garth & Sterling, 2009; Levin, 2009; Sandefur, 2008; Dinovitzer & Garth, 2007; Sterling, Dinovitzer, & Garth, 2007; Wilkins, Dinovitzer, & Batra, 2007; Nelson et al; 2006. See, also, ABA & NALP, 2009; Wilder, 2008; Gita, 2007a; 2007b.
the role of practice settings; and (iii) of particular relevance to this dissertation, the role of “styles of practices” – such as the “corporate” and “non-corporate” divide discussed in Heinz & Laumann’s seminal work (1994) – in producing variation within the profession.

Based on a review of the literature, the Figure 1 below displays a framework that is helpful for a preliminary clarification of the way “styles”, “kinds” or “sectors” of professional practice are formed and reproduced.
Figure 1: Institutionalization of professional practices: a general framework

Source: author’s elaboration

From a macro-perspective, “styles”, “kinds” or “sectors” of professional practice can be seen as functions of a variety of relationships that take place: (α) within the profession, with other pre-existing styles of practice; (β) with other professions and the styles of practice they encompass; as well as (γ) with forces of all kinds in the market, the state, and society.
Three observations are particularly important about this framework. To begin with, (i) the framework (purposively) does not anticipate what the nature and characteristics of the relationships it refers to will be. In other words, the framework does not seek to provide an “explanatory model” for the formation and reproduction of professional segments, but instead provides an “analytic window” that is suitable to inquiries along virtually all the main theoretical strands available in social sciences.

For example, a scholar who is influenced by Luhmann’s “systems theory” might want to examine whether and how styles of practice would stem from “functional differentiations” within the profession, given the “input” that the profession receives from its external ambiance. After an initial “friction” between the professional “system” and other social systems such as the community or the economy, Luhmann’s “systems theory” suggests that styles of practice (or “sub-systems”) would emerge within the profession as responses to those external inputs. Once these sub-systems become institutionalized, they are sustained in a “self-referential” dynamic and, as long as the broader system works well, sub-systems are likely to reproduce their basic characteristics and codes. While examining roughly the same issue as this dissertation – i.e. the way foreign models impact domestic practices – Teubner conducted similar kind of assessment. Faithful to the “systemic” approach to institutional development and reproduction, which characterizes Luhmann’s theoretical legacy, Teubner argued that “legal transplants” ought to be called “legal irritants”, for:

Transplant makes sense in so far as it describes legal import/export in organismic, not in mechanistic, terms. Legal institutions need careful implementation and cultivation in the new environment. But transplant creates the wrong impression that after a difficult surgical operation the transferred material will remain identical with itself, playing its old role in the new organism. Accordingly, it comes down to the narrow alternative: repulsion or integration. However, when a
foreign rule is imposed on a domestic culture, I submit, something else is happening. It is not transplanted into another organism, rather it works as fundamental irritation which triggers a whole series of new and unexpected events. (Teubner, 2001, 418).

Differing from the “systems theory” scholars, authors who subscribe to what Stone calls the “rational project” (2002) might address the development of “styles”, “kinds”, or “sectors” of legal practice as an outcome of competition among different groups in the profession, all of whom seek to maximize utility. More important than understanding why a given style would emerge, to which they already have the response, these “rational” authors would like to know what particular styles were successful in achieving their rational goals and why – i.e., who are the losers or winners in the contest we all play, and how they had gone about maximizing utility.

Abbot’s classical account about the “system of professions” is a forceful example of this “competitive” perspective. Abbot (1988) argues that professionals structure their work according to a scheme of “diagnosis, inference, and treatment”. Inference links diagnosis and treatment, and relates to a professional’s capacity to master a specialized body of knowledge not widely disseminated in the society. Professional schools and associations are among the main agents controlling the production and circulation of this body of specialized knowledge. Technical knowledge is therefore a tool with which professionals seek to assert their jurisdiction against non-professionals and/or against other professionals and (although this does not seem to be the most concerning issue in Abbot’s work) through which some professionals may also seek to expand their jurisdiction over work to the detriment of the other members of their own profession.
Somewhat in line with Abbot’s account (and with the benefit, for the present analysis, of focusing on the legal sector) was the scholarly project launched by Abel in the 1980s, which Cummings considers as one that “fundamentally [changed] our understanding of lawyers and their social role” (2011:16). Drawing from Weber’s and Larson’s theories about professions and professionalism, Abel argued that as typical “professionals”, lawyers would share a collective project of “social closure” that involves both “controlling the market” and “enhancing group status” (1987; see also Abel & Lewis, 1988a; 1988b; 1989). At the empirical front, Abel’s theory was tested through several studies about the social and political organization of the bar in the U.S. and beyond (1987; see also Abel & Lewis, 1988a; 1988b; 1989). As in Abbot’s work, Abel’s theory has consequences that are both “external” and “internal” to the profession: the “social closure” project had the double effect of enhancing the power of lawyers in society and making “legal services to the poor” a rather marginal sector of a stratified bar.

Departing from the previously addressed traditions, conflict-theory driven scholars would stress the role of broader social hierarchies in shaping the differentiation of a given professional system and determining the relative position that a professional “style”, “kind” or “sector” would enjoy within the system. Studies trying to correlate class, age, gender, race, and occupational prestige are classical expressions of this line of inquiry. Some authors might place emphasis on whether groups that have the closest connections to power systematically trump others (in other words: whether the “haves come out ahead” yet again)? They would like to check, for example,

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4 The quote relates to an expression originally coined by Galanter (1974), as a general critique of the U.S. legal system, instead of the whole legal profession per se. One of the most defining elements in his critique was that “repeat players” in litigation i.e., people and organizations who are used to dealing with courts, would have significant advantages over “one shooters”. Galanter’s essay has become a classic among socio-legal scholars. While prefacing a collection of essays that review and build on his work, Silbey et al note that it has been “cited more often than any other piece of socio-legal research and is listed among the most cited law review articles of all times” (1999 [Kritzer & Silbey, 2003:12]). Likewise, the expression, “the haves come out ahead” became
if white males who go to elite schools would trump their non-white female counterparts, whether in the professional structure as a whole or within particular styles of practice. Other authors might place emphasis on the reactions that those “from below” undertake against domination (see, for example, Seron’s [1996] account of the struggles of solo and small firm lawyers against lawyers from large, corporate law firms, which will be addressed shortly).

A Bourdieu-inspired scholar might speak of the legal profession as a “field” and consider “styles of practice” to be made of people with different predispositions towards the “field”, as well as with different levels of resources to invest in the contest to shape the “field”. The emergence, reproduction, and perhaps change in the arrangements among different styles of practice would be best explained by the successive moves that individuals in each style of practice make in search of more capital and better conditions to shape the “field”.

However, the story of a professional system may not just be one of struggle or competition, but also one of cooperation. Lawyers rooted in particular styles of practice can join lawyers rooted in other styles of practice in order, let us say, to compete against other styles or professions. Likewise, lawyers from several styles of practice might get together in order to do something that would be good for the profession as a whole, while obviously being careful of not harming the interests that relate to their own style of practice. For instance, drawing from Bourdieu’s theory of the law as a “field”, Dezalay & Garth have recently conceptualized the prevalence of lawyers in U.S. structures of governance in terms of a “spillover” between “corporate law” and “public service”. In other words, even if there may be some level of competition between the “subfields” of “public service” and “corporate service” in the U.S.,

representative of the way inequalities persist in modern legal orders, despite the aspiration of equality that they all proclaim.
Dezalay & Garth maintain that at the elite level these two “subfields” combine and contribute to “build the prosperity of the field as a whole”. In this respect, the authors notice that:

Those who have the highest position in corporate law draw in part on stature earned through public service, and public interest law firms (and also the government, for example), correspondingly, gain credibility and stature through the corporate lawyers who typically serve on their boards. Higher status public interest entities have higher status corporate law firms providing pro bono volunteers and higher status corporate lawyers serving on their boards. Similarly, the same elite credentials that qualify law graduates for the top law firms also qualify them for the top public interest organizations. Even within elite legal education, the debates about the choices of careers are framed as if these two elite careers – in contrast, for example, to work in small firms serving primarily individuals – define the set of appropriate options (2011a).

All these theories would also work to explain differentiation at the mezzo-to-micro level i.e., within each style of practice. Such differentiation may be seen as being “functional”, “rationally pursued”, “hierarchical” or embedded in struggles for power and legitimacy – whether in a conflictive or in a cooperative manner; whether in relationship with other subsets of the same professional system or with subsets of other professional systems. In addition, all these theories might find some level of support in “case studies” about specific niches of the profession. The task for grander level theorization is to explain why in some niches some kinds of relationships are more determinative of differentiation than others.

Whatever one can think of the relationships that account more accurately for the formation and reproduction of styles of practice, the literature suggests that (ii) these relationships can be further mediated by three factors: (a) mechanisms of professional socialization – not only professional schools and their regular graduate and post-graduate training programs, but also informal, in-service training experiences or continuing professional
education; (b) professional and nation-state regulations; and (c) organizational structures for professional practice.

For instance, in the case of “a” – mechanisms of professional socialization – the prominence of the corporate sector in the U.S. legal profession is often explained as being not just due to market pressures or due to the elite character of students, but also due to a powerful process of socialization that takes place within U.S. law schools. This process is said to discourage students from pursuing alternative careers, infuse students with a level of moral neutrality that is quite suitable for corporate practice, or both (Stover, 1988; Granfield, 1992; Mertz, 2007). Or, in the case of “b” – professional and nation-state regulations – one can look at the way mandatory, bar-enforceable pro bono requirements among U.S. lawyers and law firms were struggled for and against within the bar. Part of that story was told in Seron’s work about solo and small firm attorneys (see Seron, 1996). Seron’s study was undertaken at a time when those practitioners and their business-like model and advertising practices were acquiring increasing relevance in the U.S. legal market, while concurrently raising several debates about lawyers’ professionalism. One of her themes of inquiry was how those attorneys dealt with the idea of “serving the public” through mandatory pro bono work. Most of the lawyers from her sample were “adamantly against” proposals of mandatory pro bono (Seron, 1996: 134), which they saw as “a product of Wall Street lawyers and their chums” (Seron, 1996: 134), who “[did] not understand or appreciate or respect the work that they [did]” (Seron, 1996: 136).

From a theoretical perspective, one can say that the tension that Seron managed to capture implies an economic and political struggle of the highest significance: her study provides evidence that the U.S. legal field is largely shaped according to a competitive logic, in which
both big firms, on one hand, and solo practitioners and small firms, on the other hand, were trying to shape the content of “public interest law” so as to make it look more like their practices. For it was very unlikely that the smaller firms and solo practitioners could afford fulfilling a mandatory pro bono requirement, the mere possibility of such a regulation could be seen as an attempt to exclude them from the legal market and to enhance the domination of big law firms. What becomes clear, in any event, is that rules and regulations of the bar or the nation-state matter for the dynamic equilibrium that one observes among various styles of practices in a given professional system.

Thanks to the influence that the sociology of organizations has had on socio-legal research as a whole, there are abundant examples of how “c” – organizational structures for professional practice – matter in the constitution and working of professional systems and sub-systems. The second edition of the “Chicago lawyers” study (Heinz et al, 2005) is, again, illustrative of how changes in the structure of big law firms were functional in reproducing and reinforcing inequality in the profession. As compared to 1975, the big law firms in 1995 exhibited more diversity and areas of specialization, but the least significant and prestigious activities in this new division of labor went mostly to women and racial minorities (Heinz et al, 2005).

A recent and quite intriguing stream of studies about the interplay between organizational structures and the shape of the legal profession relates to the phenomena of “unbundling” and “outsourcing” of legal services. In the context of successive economic crises, the U.S. corporate legal sector is increasingly relying on the services of small boutiques, specialized in particular legal tasks such as drafting contracts and reviewing documents (see Papa, 2011). Thanks to
globalization, these boutiques often rely on foreign workforce, whom they reach out through sophisticated technological solutions at considerably lower costs – thus, instituting a global “commodity chain” in the legal sector. Besides shaking the economic foundations, and perhaps sustainability of the U.S. corporate legal profession the way we have come to know it, the emergence of “unbundling” and “outsourcing” in legal services may be generating two unprecedented, yet entirely overlooked “styles of practice”: the providers of such “unbundled” and/or “outsourced” services, on one hand, and the “bundlers”, on the other hand.

That the constitution and reproduction of “styles”, “kinds” or “sectors” of legal practice (i) stem from complex relationships within and beyond the profession, and (ii) are mediated by professional socialization, regulations, and organizational structures for professional practice, it will logically follow that (iii) “styles”, “kinds” or “sectors” of legal practice are contingent units of social life. Of course, this is not to say that they can be easily dismantled. Each and all of them represent “settlements” of forces and interests that they somehow serve as they get reproduced. But no professional “style”, “kind” or “sector” should be taken as a “natural” or an “inextricable” manifestation of what a profession is.

The next section applies the basics of this framework to understand the formation and reproduction of a particular “style” of professional practice in the U.S. context – i.e., “public interest law” – as a first step towards the actual puzzle that this dissertation will be addressing: the worldwide propagation of this very style of practice.

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5 Although this framework may be useful for the actual study about the way professional “styles”, “kinds”, or “sectors” of practice are developed and sustained, the definition of what a “style”, “kind”, or “sector” of professional practice is remains relatively obscure in the literature. Mather, McEwen, & Maiman (2001) differ from the way Heinz & Laumann conceptualize these. In the “Chicago lawyers” study (Heinz & Laumann, 1994; Heinz et al, 2005), each of the hemispheres emerged as a “cluster” after quantitative analysis of data, similar to what would happen in a qualitative grounded-theory research (Strauss, 1987; Glaser, 1992; Charmaz, 2006).
1.3. Investigating “public interest law” (II): the social construction of a “style”, “kind” or “sector” of legal practice in the U.S.

From what is known, the possibility (and perhaps the desirability) for lawyers to work in or for the “public interest” was first claimed by Brandeis about a hundred years ago (Gordon, 2011). In his book, “The opportunity in the Law” (1911), the “people’s attorney” stated that:

The counsel selected to represent important private interests possesses usually ability of a higher order, while the public is often inadequately represented or wholly unrepresented. That presents a condition of great unfairness to the public. As a result, many bills pass in our legislatures which would not have become law if the public interest had been fairly represented… Those of you who feel drawn to that profession may rest assured that you will find in it an opportunity for usefulness probably unequaled. There is a call upon the legal profession to do a great work for this country.

lawyers’ study (Mather, McEwen, & Maiman, 2001), “divorce law practice” was purposively selected by the researchers as a unit of social life that was previously identified as bearing characteristics and puzzles in line with researchers’ analytic interests – i.e., to look at the way rules of professional conduct are constructed in the everyday lives and experiences of practitioners.

Mather, McEwen, & Maiman (2001) are certainly not alone in their choice: years before, Sarat & Felstiner had also looked at “divorce lawyers” as a purposively, previously identified subset of the legal profession that matched their research interests. Given their intent to examine the way the meaning of law was constructed among lawyers and clients and the role that professional power played in this process, Sarat & Felstiner saw divorce law cases as a privileged empirical arena, “where law is touched by, and touches, real pain in the lives of real people […] who, in addition to coping with all the complications that accompany the end of marriage, must cope with the strange world of law” (1995: vi-vii); that can be “as messy a business for most lawyers as getting a divorce stressing for most clients”; and that requires “lawyers to deal with clients in emotional turmoil who can be very difficult to manage and satisfy”; and which generates much frustration and little prestige (1995:03).

Despite the success of both Mather, McEwen & Maiman’s and Sarat & Felstiner’s works, whose main guidelines will be ultimately followed in this dissertation, “styles”, “kinds” or “sectors” of professional practice are difficult to define beforehand in at least three ways. First, they are not the same as “activities”. Not all lawyers working in a “style”, “kind” or “sector” of legal practice may perform unique or even the same activities; yet, their practice can still be structurally different from others in which that same activity is performed. For example, both “criminal lawyers” and “family lawyers” appear regularly before courts, but “criminal lawyers” could be seldom mistaken as being “family lawyers”. Second, “styles”, “kinds” or “sectors” of professional practice are not the same as “areas of practice” either. For instance, “corporate lawyers” may not necessarily act in commercial transactions – they may do tax law, civil law, or even criminal law. The client’s nature seems to be the key factor in defining what a “corporate lawyer” is. Finally, the distinction among “styles”, “kinds” or “sectors” of professional practice may make more sense for professionals themselves than for most of the “ordinary” people, including scholars. Accordingly, studies about particular “styles”, “kinds” or “sectors” of practice may be biased by professionals’ “native categories”, meaning that not only can these studies fail to provide rigorous assessments of their variables of interest, but they can also reproduce or endorse professional segmentations and hierarchies. This is why this dissertation always refers to “public interest law” in quotes.
Amidst the effervescence of the 1960s, a strong feeling of insufficiencies and/or inadequacies in the representation of the “public interest” by the legal profession was again in place. Even in the eyes of scholars and practitioners, the hitherto institutionalized “modes for public service by lawyers” such as “working in the government” or “combining pro bono activities with commercial law firm practice […had] lost much of their effectiveness and allure” *(The new public interest lawyers, in: Yale Law Journal, vol. 79 [1970:1069]).*

Beyond generating just moral claims as in Brandeis’ passage, written half a century before, the decade of the “rights revolution” was the time for a more decisive process of institutionalization of “public interest law” in the U.S. context. New organizational forms were created such as “public interest law firms”; old approaches of legal aid for the poor were reconsidered with the adoption of strategies of broader impact such as through collective representation of those suffering from a common injury; several sources of funding from the government and private foundations were put in place such as the grants from Ford Foundation and Lyndon Johnson’s Office of Economic Opportunity (OEO); and a more collectively shared professional ideology came about (See, generally, Yale L. J. [1969-70]; Berlin; Roisman, & Kessler [1970]; Halpern, & Cunningham [1971]; Harrison, & Jaffe [1973]; Rabin [1975-76]; Sanford [1976]; Council for Public Interest Law [1976; Weisbrod, Handler & Komesar [1978]; Aron [1989]; Cole [1994]; Cummings & Eagly [2005]; Nielsen & Albiston [2006]; Rhode [2008]; Saute [2008]. For literature on the development of particular “branches” of “public interest law”, see Davis [1993, on poverty law], Katz [1982, on legal services], Meltsner [2006, on civil rights]; Graham [2000, partly on Nader’s role in setting up “public interest law” organizations to address consumer safety]; and Bonine [2009, on the history of environmental “public interest law”]).
The literature describing the characteristics and the history of “public interest law”, subsequent to its institutionalization is copious, fine-grained, and for that very reason, difficult to summarize: the field itself is empirically broad and differentiated, and its main issues are, once again, “contingent” upon historical developments in the U.S. legal system, the U.S. legal profession, and the U.S. political atmosphere. Attempts to define “public interest law” are scarce and not likely to produce the same academic excitement that terms such as “cause lawyering” have produced (Sarat & Scheingold 1998; 2001, 2004; 2005; 2006; and 2008).

This dissertation relies on a recent effort in that respect, in which Cummings, Sae Silva & L. Trubek (2011) tried to establish a common ground for comparative and international research about “the ties that bind” “public interest law” and the corporate legal sector in emerging economies. After excavating the debates and images spread along the “public interest law” literature in the U.S., authors find that the core element of “public interest law” turns on a concept of relative disadvantage: “PIL describes legal activities that advance the interests and causes of constituencies that are relatively disadvantaged in the private market or in the political process. Disadvantage, in this sense, relates to the resources (money, expertise, social capital) that a constituency may mobilize to advance individual or collective group interests” (2011:09). In other words, “public interest law” would be a style of legal practice that is geared to address claims or situations of inequality in the society at large.

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6 This emphasis on the relative character of a constituency’s disadvantage is because “disadvantage is, at bottom, deeply situational”. Some may argue that this approach concedes to conservative critiques of “public interest law”, which question the notion of “disadvantaged” itself as being politically contingent. “Who is disadvantaged, after all?” conservatives asked: “criminal defendants or crime victims; environmentalists or small business owners; minorities who benefitted from affirmative action or poor whites who received no preferences?” (Cummings, Sae Silva & L. Trubek, 2011:05). As I will argue later, however, much of the ideology of “public interest law” is one of “procedural justice” – i.e., one in which the more all interests are represented in structures of governance, the closer we are to achieving outcomes that are in the “public interest”. In other words, both parties in these examples may have their disadvantages; the question is whether such disadvantage is precluding them from having high-quality access to the law, if they so desire.
Authors also distinguish between two types of such relative disadvantages. The first is basic market inequality, “in which individuals, despite suffering a legal harm, are blocked from legal redress because they are too poor to pay for a lawyer (and there are no viable contingency or fee-shifting arrangements available)”. Authors argue that “public interest law” responds to this type of disadvantage by providing “no-cost or low-cost services to expand the entry of poor into the legal system on an individual, case-by-case basis”. They call this an “access dimension” of “public interest law” (2011:10). The second type of disadvantage is “that of social groups or constituencies hindered in advancing collective interests through political channels”. Authors contend that there are several and well-rehearsed forms of such disadvantage in the literature, such as disadvantages based on “poverty, minority status, discrimination, and impediments to collective action”. They further notice that “American-style PIL has historically been used by members of [such] disadvantaged groups to leverage policy gains through legal means – primarily court-based litigation – that could not be effectively achieved through majoritarian politics” (2011:10). They call this the “policy dimension” of “public interest law” (2011:10).

Looking back, one can find a considerable line of continuity between Brandeis’ call and the characteristics of the modern “public interest law movement” (Rhode, 2008), as defined by Cummings, Sa e Silva & L. Trubek (2011) a century ahead of Brandeis’ book. Take, for example, the famous Brandeis’ passage reproduced above. The first part of it regards attorneys as especially skilled actors – actors that hold an “ability of a higher order” – who, nonetheless, were not managing to provide adequate, if any “representation to the public interest”. This resonates very well with the access dimension of “public interest law” and its emphasis on inequality in the distribution of highly costly legal resources in society, as it appears in Cummings, Sa e Silva & L. Trubek’s synthesis. The second part of the passage emphasizes the injustices and/or
inefficiencies in governance that stem from the inequality in legal representation. This resonates very well with the *policy dimension* of “public interest law” and its emphasis on increasing and improving public participation in decision-making processes, as it appears in Cummings, Same Silva & L. Trubek’s review. Here and there, simply put,

Public interest lawyers [would] be the gadflies and catalysts for a major reallocation of legal resources, which [would] stimulate the expression of important interests and values in our society and further political, economic, and social equality” (*The new public interest lawyers*, in: Yale Law Journal, vol. 79 [1970:1071]).

This attempt to connect Brandeis’ claim with the final institutionalization of “public interest law” in the 1960s is by no means to suggest linearity in that story, nor to conceal the enormous differences that can be envisioned between Brandeis’ practice and the modern versions of “public interest law”\(^7\). Instead, it just seeks to make it clear, once again, that (a) “public interest law” was never a “natural” manifestation of the U.S. political system, less so of the U.S. legal profession. Rather, “public interest law” is a social construction of relatively *longue durée* (Braudel, 1958; Braudel & Cool, 1987), which has taken place over more than a century of the U.S. history, largely against the wills of an organized bar originally biased to corporate, private interests of those who were able to pay for legal fees. Also, (b) with a few contentious issues aside\(^8\), the practices espoused by both Brandeis and the “new public interest lawyers” who

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\(^7\) As Gordon summarizes, “modern public-interest lawyers assume there is no such thing as an undifferentiated or homogeneous public interest. Mostly, when they use the Brandeisian rhetoric, they use it to mean representation of unrepresented or underrepresented groups. Brandeis’s’s view of public advocacy was very much tied into the common Progressive conviction that a genuinely ‘disinterested’ view could be arrived at by a combination of impartiality—the freedom from bias that comes from not having one’s cognition warped by partisan loyalty and self-interest—and thorough knowledge of “the facts.” (2011:552).

\(^8\) The biggest fracture seems to lie in the “ethical” arena, given Brandeis’ vision of legal representation that was discussed before. In a critical deconstruction of Brandeis’ practices, for example, Spillenger argues that “as a lawyer, [he] had numerous virtues, and he did not literally abandon or coerce clients. But his independence at times diminished client voice in a way that I would hesitate to erect uncritically as a lawyering ideal” (2005:73).
emerged in the 1960s shared very similar assumptions about the relationship between lawyers and governance – assumptions that ultimately lead back to what Tocqueville saw as a unique feature of “American democracy”. In short, these assumptions are: (c) lawyers enjoy a privileged and influential position in structures and schemes of governance; and (d) if legal counsel is made available to marginalized groups, interests, or ideas, there can be substantial change in the operations and outcomes of governance structures.

This succinct analysis of “public interest law” in the U.S. certainly does not do justice to all the debates and struggles that have taken place around it. Four themes seem to be of much interest for a more thorough analysis of “public interest law” both as a set of professional practices and as a technique of governance. First is the differentiation within the “public interest law” sector itself. At the level of organizational structure, one of the key factors yielding the differentiation within the “public interest law” sector is the scarcity of resources in a costly field. For instance, the rise and fall of “public interest law” firms between the 1960s and the 1980s were largely due to fluctuations in federal funding for legal assistance, as much as the heightened importance of pro bono in the “public interest law” sector in more recent times has been due to a requirement of pro bono work introduced by the Legal Services Corporation (LSC) in the process of funding “public interest law” firms and organizations (Cummings, 2004; Cummings & Eagly, 2006, Sanderfur, 2007). Nation-state regulations – especially those regulating access to funding sources by “public interest lawyers” and law firms –, once again, appear as important mediators in the (re)production of “public interest law” as a “style of practice”.

The second theme pertains to the political disputes to shape “public interest law”. Despite its liberal roots in the 1960s and the hostility that the right wing accorded it initially, “public
interest law” has come to attract attention, resources, and engagement within the conservative bar (Cummings, Sa e Silva & Trubek, 2011). This has been both a cause for concern in the political realm and a matter of reflection in the academic realm. Besides de-romanticizing “public interest law” – more or less like it was done by Galanter (1974, discussing structural aspects of the U.S. legal system that help produce inequality), Scheingold (1978, claiming that rights might have a mythical, demobilizing effect over struggles for social change), and Rosenberg (1991, claiming that courts were actually much weaker vehicles of social reform than “public interest law” practitioners and most people had thought) –, the study of the “rise of conservative public interest law firms” (Epstein, 1984) and the “professionalization of the conservative coalition” (Southworth, 2008) have made it clear, as it has been argued in this dissertation, that “public interest law” is not a “natural” or “inextricable” component of the U.S. legal profession and system of governance (nor can it yield precise outcomes in either of these domains).

The third theme, somewhat overlapping with the second one, is the dispute over whether the core of “public interest law” is “procedural”, or it necessarily involves a great deal of lawyers’ “substantive commitment”. In the broader professional arena, the then-emerging modern “public interest law movement” (Rhode, 2008) was strongly oriented to challenge the assumption that lawyers were values-free hired-guns (Shaffer & Cochran Jr., 1994), capable of doing whatever was in the best interest of their paying clients. Accordingly, a core ideal of modern “public interest law” has been one of promoting higher moral values also shared by the lawyer. Another stream of the movement, however, favored a more “procedural” ground. From this perspective, lawyers would help advance the public interest by simply allowing “underrepresented” interests to get “adequate representation”, given that in many “public
interest” cases the morality or the legitimacy of the client’s conduct would be highly debatable – think, for instance, of the defense of Wikileaks founder Julian Assange, which attorneys may disagree in characterizing as a “public interest” enterprise. The political significance of ”public interest law” in this “procedural” vein lies in that it could help “make pluralism work”\textsuperscript{9}, as it lets everyone’s interest be represented and creates a more widely informed process of legal decision-making or, in broader terms, of policy-making\textsuperscript{10}.

So long as a liberal perspective prevailed in the bar, this discussion was more philosophical than practical. Most of the time, the interests of the client and the lawyer were coincident, and their pursuit could be sold as a contribution to the “public interest” both because it was adding “missing” ingredients to an open-ended process of deliberation and because of the very substance of what was being added\textsuperscript{11}. The rise of right wing public interest lawyers and groups challenged this compromise and made the debate about the nature of public interest commitment discursively significant again. Intermediary positions have been raised, such as the claim – common among scholars working on legal ethics and legal education – that, by infusing students with \textit{ethical} values (politics left aside), law schools would be helping to create the next

\textsuperscript{9} THE NEW PUBLIC INTEREST LAWYERS. Yale Law Journal, vol. 79 [1970])

\textsuperscript{10} Here, once again, Brandeis stands out as a unique practitioner. In his understanding, the “public interest” is neither the interest of a particular client nor the outcome of an informed process of legal decision-making, but rather a relatively autonomous construct that lawyers themselves craft as “counsels to the situation”. This is an obviously problematic and perhaps an elitist vision of the role of law and lawyers in governance, but it still makes commentators such as Gordon ask if, for instance, Brandeis’ vision would not be “ethically preferable” when compared to a lawyer (whether in corporate practice or in the public interest sector) who seeks to advance only the clients’ interest at any expense (2011).

\textsuperscript{11} A keen observation of the literature suggests that there has always been a stronger inclination to the “procedural” account both among scholars and practitioners (See, for example Weisbrod, Handler & Komesar [1978], which will be discussed ahead in this dissertation).

generation of “public interest lawyers”, regardless of where/with whom they are going to work. Then again, there seems to be no “settlement” on this issue yet.

Last but not least, it is the question of how “public interest law” has survived the possible competition against alternative techniques of governance, as well as against alternative styles of practice. Whether celebrating or criticizing the relative power of lawyers in U.S. structures of governance, the literature hardly addresses the process by which lawyers were enabled to enjoy such power. Some intuitive claims emphasize structural characteristics of the legal professional, such as the elitist background of lawyers and the way law school socialization trains students to ignore or relativize moral dramas and construct an objective attitude towards social problems as they learn “how to think like a lawyer” (see, again, Stover, 1988; Granfield, 1992; Mertz, 2007). However, the already mentioned changes in the socio-demographic characteristics of the bar and law schools make the U.S. legal profession no longer a purely elite domain. In addition, one can question whether a profession made up of “hired-guns” (Shaffer & Cochran Jr., 1994) could sustain legitimacy to handle public affairs for as long as lawyers have been able to sustain it in the U.S. Thorough analyses on this issue are missing, making it difficult to understand what “comparative advantages” lawyers and the law have shown in the construction of the U.S. system of governance.

All these questions could be discussed indefinitely and readers should not find it surprising if some of them reappear in the subsequent analysis and discussion. But up to this

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12 Here, again, modern debates about how lawyers can contribute to advance the “public interest” impressively resemble Brandeis’s practice.

13 This kind of analysis seems to be particularly interesting when there is some unsettlement in economic or political environments and, therefore, to borrow from Kingdon’s jargon (1995), when windows for change in schemes of governance are open. For example, see the analyses involving struggles between lawyers and accountants (Trubek et al, 1994) that, not coincidentally, took place right amidst the worldwide economic liberalization from the 1980s and the early 1990s.
point, this chapter is still setting the stage for the actual puzzle that will be addressed in this dissertation. Beginning with the next section, I will situate and detail that puzzle. The final objective is to develop an analytic model that enables an examination of the characteristics and circumstances of the propagation of “public interest law” practices beyond the U.S.’s borders\(^{14}\) – i.e., of the formation and reproduction of a professional “style”, “kind” or “sector” in a context of “globalization”.

1.4. From an “exceptional” feature to a “global institution”: the rise of multiple “public interest law” systems around the world as the empirical arena of this research

Over the past years, “public interest law” has become a central feature in the talks on law and policy taking place around the globe. Latin America has seen the advent of a “network of “public interest law clinics”, with the declared mission of “strengthening public interest law programs” that came up in the region in the 1990s and found one of their best niche in law schools\(^{15}\). As Africa, Asia, and Eastern Europe are asserting themselves as the new frontier of international development, they are also coming to attract many investments from organizations such as the Open Society Institute (OSI) and the Ford Foundation (FF), and a substantial part of these resources is helping foster the implementation of “‘public interest law” centers” and the training of “public interest law” practitioners\(^{16}\).

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\(^{14}\) Obviously, this is not to conceal that there will be variation within “public interest law” systems themselves, but just to focus on understanding what ultimately binds together that “style”, “kind” or “sector” of practice, in spite of observable differences within and across the countries of study.

\(^{15}\) About this network, see [http://www.clinicasjuridicas.org/](http://www.clinicasjuridicas.org/)

\(^{16}\) One of the best examples of investments in the institutionalization of PIL in Africa, Asia, and Eastern Europe is the work that has been done by the Public Interest Law Network (PILNET, formerly Public Interest Law Institute or PILI). Originally an initiative at Columbia University School of Law, PILNET became an independent NGO that, relying on FF and OSI grants, provides training and other resources to individuals and organizations that undertake “public interest law” in developing countries, with a special focus, now, on Eastern Europe, Africa, and Asia. In
In contrast to what many would expect, this phenomenon goes way beyond the so-called developing world. For instance, Ireland has seen the establishment of a “Public Interest Law Alliance” (PILA), allegedly “built on the interest and momentum for this area of law” and the “clear need for a reference point or hub for public interest law work” that were noticed after a “public interest law conference” held in Dublin, in October, 2005. Almost the same has happened in Oceania too. Since the 1990s, Australia has reportedly seen the rise of a number of “public interest law” clearing houses, “modeled on similar organizations as in the USA, in particular the New York Lawyers for the Public Interest Pro Bono Clearinghouse”.

This growing manifestation of an institutional script (lawyers advancing the public interest) that so far seemed to be typically so American, beyond the U.S. border, can be also seen in the domains of legal and socio-legal scholarship. Numerous studies are now coming to address “public interest law” practices in non U.S. contexts. By the 2010 annual meeting of the Law and Society Association (LSA), for instance, the titles of eight accepted articles reflected “public interest law” as the primary theme of these articles. Curiously enough, only two of them focused on the U.S. (Thomson [2010] Zaloznaya & Nielsen [2010]): the other six accounted for the doing so, PILNET has both facilitated the establishment of an epistemic community and encouraged the work of NGOs around “public interest law” in non-U.S. contexts. For more information about PILNET and its lines of work, see http://www.pilnet.org

17 For information on the “Public Interest Law Alliance”, Ireland, see http://www.pila.ie PILA is not the only source of “public interest law” in the contemporary Irish landscape. Another recent PIL initiative in the country is the Public Interest Litigation Support (PILS) Project. According to its website, the PILS Project was established in 2009 after “research carried out by Deloitte in 2005 found evidence of a need and demand for a dedicated strategic litigation project in Northern Ireland. On the basis of this... the Committee on the Administration of Justice (CAJ) submitted a funding proposal to Atlantic Philanthropies, and in 2007 funding was granted for a 5 year pilot project”. About PILS, see http://www.pilsni.org

18 About one of these several units, see http://www.pilch.org.au/
“public interest law” practices in parts of Africa, Asia, and Latin America (Garderen [2010], Handmaker [2010]; Tey [2010]; Bhuwania [2010]; Hoyos [2010]; Sa e Silva [2010])

Even so, the mechanics and significance of this remarkable institutional propagation are still to be examined more deeply and systematically. Much has been said about the way “public interest law” is structured in and outside the U.S., but there is an incredible lack of information about the way it is propagating itself along these contexts.

The only piece of literature available in this vein is Cummings & L. Trubek’s article (2008), whose suggestive title is “globalizing public interest law”. Drawing from a series of secondary accounts gathered through an academic symposium, at the empirical level, as well as from moderate versions of institutional theory, at the conceptual level, authors examine the construction of “public interest law” systems in developing and transitional countries and find evidence to suggest that this process has been one of “convergence and adaptation”. Whereas maintaining that “a common set of understandings and practices are spreading around the world”, the authors notice that they are “taking root in distinctive national political and economic environments, thus producing significant diversity across geographic space” (2008:27). U.S.-based forces are driving “convergence”, at the same time as local structures of opportunities and

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19 The simple popularization of the use of the label “public interest law” to name legal practices in the developing world, whether as a lawyers’ “native category” or as a scholarly-crafted concept, is an indicator that a broader process of institutional diffusion is taking place. Epistemic and professional communities of “public interest law” in these countries could be calling their experiences something else, such as “social justice” lawyering or “human rights” lawyering. There must be a reason, rational or not, why all those individuals and organizations are naming their experiences and themselves along the U.S. tradition.

20 For an overview of “public interest law” in the U.S., see, The New Public Interest Lawyers (Comment), Yale L. J. 79, 1069-1072 (1969-70); Berlin; Roisman, & Kessler (1970); Halpern, & Cunningham (1971); Harrison, & Jaffe (1973); Rabin (1975-76); Sanford (1976); Council for Public Interest Law (1976); Weisbrod, Handler & Komesar (1978); Aron (1989); Cole (1994); Cummings & Eagly (2005); Nielsen & Albiston (2006); Rhode (2008); Saute (2008). For information about “public interest law” beyond the U.S., see Abel (2008); Alviar, H. (2008); Atuguba (2008); Buchanan & Chaparro (2008); Cummings & L. Trubek (2008); Ford Foundation (2000); Khair, S. (2008); Lia (2008); Lyon (2008); Mbazira (2009); McClymont & Golub (2000); Patel (2009); Ray (2003); Razzaque (2004); Rekosh (2008); Rekosh (2005); Cummings (2008); Vieira (2008); Yap (2011).
constraints where “public interest law” is being institutionalized are leading to some degree of
“variation”.

Throughout this article, the authors invoke two lines of evidence to support their argument. First, they point out to 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” (2008:19). As part of this process, they argue, Northern donors “turned to public interest law as a tool to counter government power and increase access to justice” and Southern lawyers were encouraged “to invest in constructing and monitoring state institutions from the inside, rather than contesting them from the outside, [in a fashion of legal mobilization that] was more compatible with the public interest law model of internal legal enforcement than the human rights model of international naming and shaming” (2008:19). Under these circumstances, the “provision of resources and the circulation of ideas” (2008:27) that operate through “funding, technical assistance, and U.S.-based legal education” work as crucial factors to secure the “convergence” they claim is happening (2008: 2).

However, as the authors emphasize, such processes “do not take root on a blank slate” (2008:04). Local conditions, such as “strong traditions of legal activism, more expansive constitutional rights, or greater experiences with the system of human rights” matter, and often lead to variation. As it happens with “the formation and development of [other] institutional systems”, Cummings & L. Trubek contend that the institutionalization of “public interest law” is “the product of the interplay between outside influences and internal traditions […] 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” (2008:28).

Cummings & L. Trubek’s account was subject to much critique and reaction. During the academic symposium in which it was first presented and discussed, there was definitely a malaise among international scholars about the idea of convergence. The basis of the reaction was a claim for “authorship”, which highlighted the role of local actors, structures, traditions, and strategies in fostering unique models for public interest law practice. For instance, Vieira located the roots of the Brazilian “public interest law” movement among anti-slavery activists, emphasizing the role of Luiz Gama in using the law to challenge power and insisting that, long before there was any kind of influence flowing from the U.S. to Brazil, Gama was the first “public interest lawyer” in this country (Vieira, 2008). Likewise, Rekosh stressed the role of South Africa’s experience as a constitutional democracy in inspiring “public interest lawyers” in Central and Eastern Europe (Rekosh, 2008), thus ascribing the development of “public interest law systems” in these countries more to a South-South rather than to a North-South flow of influence.

This critique seems to have been properly pondered over by Cummings & L. Trubek as is well reflected in the article that they finally came out with, subsequent to the symposium. While maintaining the narrative of “convergence and adaptation”, the authors were careful enough to distinguish between two lines of inquiry for future research. One addresses questions such as “How 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?”, or “What accounts for the commonalities and
differences between nations?”; the other includes “crucial questions about outside domination and the imposition of legal fixes poorly suited to local context”. At the bottom, they asserted, “these are 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” (2008:42; 53).

Figure 2: Figure: Gap model for the study of the propagation of “public interest law”
Source: author’s elaboration

Implied in Cummings & L. Trubek study is a framework that speaks to the core of what has been traditionally called the socio-legal project, as the Figure 2 above illustrates. In essence,
authors tackle the “gap” between an abstract and compelling narrative in which the use of legal tools helps enhance democratic governance – the U.S.-tradition of “public interest law” –, and the contours that such narrative takes as it is mobilized within specific domains of agency, wherein local structures and interests may lead to variations.

For reasons that are soon to become apparent to readers, Cummings & Trubek’s framework already provides an undeniably useful first-step for good research on the propagation of “public interest law”. However, that framework still presents some shortcomings that invite further elaboration. The next chapter begins that effort by tracing the roots of Cummings & L. Trubek’s study in contemporary social thought and socio-legal research, before laying out a research agenda that will be built on a considerably modified version of their framework.
Chapter 2

Globalization and institutional propagation: the theoretical domain of this research

2.1. Institutionalisms, cognitive schemes, and world society theory: globalization as convergence

Accounts of institutional propagation as a process of convergence – whether towards norms, professional practices, or organizational models – are certainly not novel among contemporary social scientists. On the contrary, they are central to one of the most authoritative strands of social sciences scholarship: new institutionalism.

The so-called new institutionalism took form and place in social sciences as a counterpoint to “realist” approaches to processes of social change and development (Meyer, 2010; Powell & DiMaggio, 1991). In these “realist” approaches, institutional propagation was seen as a function of either “greater effectiveness” or “external imposition” of some models over others. Instead of emphasizing on “effectiveness” or “imposition”, institutional scholars sought to find the reason for institutional propagation in the development of other powerful and enduring social relationships, which would provide the necessary support for the final institutionalization of propagating models in the context of destination, and in which “recipients” themselves were active participants. 21

In the sociology of organizations, for instance, DiMaggio & Powell (1983) saw the diffusion of particular organizational forms and practices as the product not only of market competition but also of institutionalized “organizational fields”, within which some models

21 All the mentions to “institutionalism” in this section relate to the so-called “sociological institutionalism”, which differs from “historical institutionalism” and, more so, from “rational choice institutionalism”. For an account on these various forms of institutionalisms, see Hall & Taylor (1996).
became “normatively endorsed” and, therefore, more likely to be adopted and disseminated. After an extensive review of the literature accumulated in the late 1970s and the early 1980s on this issue, authors suggested that there were three types of such “institutional isomorphism” among organizations, besides the traditionally conceived “market isomorphism”: (a) coercive isomorphism – one “that stems from political influence and the problem of legitimacy”, such as when “neighborhood organizations in urban communities, many of which are committed to participatory democracy, are driven to developing organizational hierarchies in order to gain support from more hierarchically organized donor organizations” (1983: 151); (b) mimetic isomorphism – one in which organizations “model themselves on others” in response to uncertainty, whether unintentionally, such as after employee migration, or explicitly, such as in the case of consultancy firms; and (c) normative isomorphism – one that takes place through the establishment of standard professional regulations within and across organizations, which explains, for example, the similarity in the background of managers employed in a variety of areas. Accordingly, Powell & DiMaggio considered that the state and professions might be far more influential in institutional propagation than market competition and, moreover, that given the lack of strict “rationality” in processes of isomorphism, some organizations might end up adopting models that, for their particular position in the “market”, just do not represent the best relationship between means and ends – as rational choice or functionalist scholars would predict.

As Powell & DiMaggio explained in a subsequent text (1991), such institutional turn was largely influenced by the developments of phenomenology and ethnomethodology. Several works in these areas, published in the 1960s (Garfinkel [1967], Berger & Luckman [1967]), suggested that society is largely structured by common “cognitive guidance systems”, which help individuals both conceive and justify their behavior in everyday life (Powell & DiMaggio,
1991; Ewick & Silbey, 2003). Institutionalized rules would be, after all, cognitive schemes that get to be taken for granted in society and, therefore, that are able to “control human conduct […] prior or apart from any mechanisms or sanctions specifically set up to support them” (Berger & Luckman, 1967:55), making norms and behaviors appear inevitable and fostering convergence among and across organizations in a particular “field”.

Besides revolutionizing sociological inquiry at the micro-level, new institutionalism also raised considerable challenges for macro-level theorization, as well as for the proper reconciliation between micro and macro-sociological theories. A central question in this fashion relates to what generates those powerful cognitive schemes and how they get to be widely and unquestionably shared in society (Powell & DiMaggio, 1983; 1991; Meyer, 2010; Ewick & Silbey, 2003). A particularly influential account was set forth by Meyer and his affiliates at Stanford University. Relying on studies in many areas of social life and across many national contexts (Meyer, Boli & Ramirez, 1997), the authors contend that the development of enduring institutional systems stems from an “overarching world culture”. As per this rationale, individuals and nation-states derive their identities and legitimacy from a broader, worldwide shared cultural framework – or a “world society”. The “content” of this cultural framework, in turn (Meyer, Boli & Ramirez, 1997:162),

...is widely discussed in the literature under the heading of “modernization”: well-known, highly abstract, and stylized theories of the “functional requirements” of the modern society, organization, and individual, and the linkages among them. In these theories, the legitimated goals of properly constructed actors center on collective socioeconomic development and comprehensive individual self-development. Society and individuals are bound together by rationalized systems of (imperfectly) egalitarian justice and participatory representation, in the economy, polity, culture, and social interaction. These are global conceptions, not local, expressed as general
principles to be applied everywhere (e.g., the World Congress of Comparative Education’s [1996] sweeping affirmation of education’s importance for justice and peace in all countries). Many other international professional associations and nongovernmental organizations more generally, express similar goals (Chabbott 1997).

The very way Meyer and his affiliates state the tenets of “world society theory” implies that law and legal institutions would enjoy a central position in so-called “world culture” – and, therefore, would constitute a privileged domain of worldwide institutional propagation. The reason is that, as Boyle and Meyer would explicitly argued years later, all modern legal systems entail an assumption that the law reflects universal principles (2002:74). Accordingly,

Laws diffuse much more rapidly [across nation-states] than theories emphasizing local interests and culture would predict… The content of the international ideals that diffuse has been discussed elsewhere (Meyer et al. 1997). In general, these ideals are consistent with Western notions of individual rights and progress. […] Underlying assumptions of universalism make for the easy flow of legal rules across the boundaries of nominal sovereignty… Fundamental principles, contrary to much theory, may flow more easily than less fundamental adaptations. This characterizes a world in which local structures are envisioned in terms of universal rules. It probably describes much better the world of the high culture of the law (Risse and Sikkink 1999), than that of practical or mundane organizations dealing with local issues based on local principles” (Boyle & Meyer, 2002:75-6)

Even if unintentionally, in the context of “globalization” – where the circulation of people, ideas, and resources has been incredibly speeded up –, Meyer’s world-society theory implies a rather linear image of institutional propagation. Throughout the works of Meyer and his affiliates, there have been strong suggestions of a process of homogenization around Western “universals”, one that reminds of Fukuyama’s narrative about the “end of history” (1992). When Schofer et al. summarize the scholarly reactions to world-society theory (or the “misunderstandings” about it, as they say) that critique is very clear: “1. World-society theory
ignores actors, interests, and power…; 2. World-society theory cannot explain the origins of cultural forms or cultural changes…; 3. World-society theory is equivalent to the INGO [international non-governmental organizations] effect…; 4. World-society theory is equivalent to ceremony without substance; 5. World-society theory predicts that everything will diffuse…; 6. *World-society theory is a normative and/or teleological perspective similar to modernization theory*…; and 7. World-society theory fails to attend to mechanisms.”

But while acknowledging that critique, Schofer et al. indicate that research along world-society theory has been able to progress without abandoning its most fundamental tenets. For instance, they argue that world-society scholars now show more concern with the “role of individual actors” in creating meaning and interpretation that is essential for institutional diffusion. At the same time, in order to exemplify this theoretical progress, authors cite studies in which “individual actors”, though quite important for the process of diffusion, still appear as modest conduits of powerful, almost inevitable global forces, such as social movement leaders who seek to enhance the legitimacy of their local struggles by mobilizing “global cultural frames”.

With a few exceptions, however, this general resilience of Meyer’s approach has been much lower in socio-legal studies. The next section provides the reasons why this realm of scholarship found the tenets of world-society theory particularly troubling and, therefore, the reasons why socio-legal scholars who analyze cross-national institutional propagation ended up lending to *moderate* theories of convergence much more credibility than to the classical accounts of world-society theory.
2.2. Power, interests, and moderation: the institutionalization of new institutionalism in socio-legal studies

Unlike other academic fields such as public policy and education, a pure-breed Meyer-type of analysis rarely enjoyed full endorsement among socio-legal scholars. Two main reasons seem to account for this caveat\textsuperscript{22}. First, socio-legal scholars have been not only used to keenly scrutinize the “gap” between “law on the books” and “law in action”, instead of seeing that gap as a “natural” instance of decoupling\textsuperscript{23}, as their counterparts from world-society theory would do, but also to explain such gap in terms of serious struggles for power. Hence, as a reaction to the previously mentioned article by Boyle & Meyer (2002) at the 1997 ABA-sponsored conference “New Challenges for the Rule of Law”, Silbey said in very direct terms that: “This story of law as a universal, rational, and natural good is too easy.” It does not “acknowledge the pain, sacrifice, struggle with power that comes with any normative order” (cited by Dezalay & Garth, 2002a:321).

In other words, socio-legal scholars tend not to deemphasize agency and power in the processes of institutional formation – an image that is hardly compatible with the powerlessness and, to some extent, passivity with which world-society scholars have theorized individuals facing the “inevitability” of the Western cultural framework. As Suchman & Edelman wrote

\textsuperscript{22} Sociologists of science grounded in pure versions of “realist” theories might contend that socio-legal scholars are just defending their terrain against a “foreign” theoretical competitor. But, I leave that kind of speculation up to the audience.

\textsuperscript{23} “Decoupling” and the “gap” from socio-legal scholarship are virtually the same, as both refer to persistent differences between formal policies and actual practices. However, world-society scholars would not see “decoupling” as much of a problem, as the contrast of practices with the formal policies would provide a constant push for the former to comply or converge with the latter. When my references to “gaps” entail these assumptions I will use the expression “decoupling”.
while assessing the rise of new institutionalism in organizational sociology and the possible impacts of its interaction with the socio-legal field (1996:933),

Law and Society research stresses that the law is thoroughly and unrelentingly political, not only in its enactment but also in its interpretation and application. Courts, enforcement agencies, lawyers, and target populations themselves all act as filtering agents, each possessing the capacity to transform the meaning of the law and the definition of compliance, in accordance with partisan interests and ideologies. Over time, these political constructions become institutionalized in social practice and, often, embraced in judicial opinions. Organizations play a major role in this process, and institutional theorists would do well to consider how organizations mediate, not just respond to, law [emphasis added].

Moreover, Law and Society has been the terrain for critique (and self-critique) of the worldwide promotion of law as a “universal, rational, and [naturally] good” technique of governance. In a much-admired article that accounts for “the crisis of law and development studies in the United States” during the late 1970s, Trubek & Galanter (1974) describe the “malaise” that affected a whole generation of scholars and attorneys who ended up embarking on “legal development” projects in the 1960s.

“Legal development” projects, which became part of the menu of U.S.-based “developmental assistance” initiatives at that time, sought to institutionalize the rule of law in the Third-World. The assumption was that the adoption of features typical to the U.S. legal system, such as “legal aid” and an “instrumental perspective” in law schools would foster a comprehensive process of development among assisted countries – i.e., not only economic development, but also social and political development –, with the promotion of central Western “good values” such as “greater equality, enhanced freedom, and fuller participation in the community” (1974:1073).
A decade later, however, there was much frustration among “law and development” scholars and professionals. Several drawbacks took place where the taken-for-granted qualities of the law would predict the opposite. The adoption of an instrumental perspective took away from the legal system the capacity to challenge authoritarianism on the basis of its violation of formalistic rules; and the formation of an elite strata of professionals increased, instead of decreasing the chance of public participation, given that lawyers with a more sophisticated background were less likely to serve the have-nots (Trubek & Galanter, 1974:1062).

The possibility – and perhaps the desirability – of a worldwide propagation of legal techniques of “good governance” became, then, a matter of skepticism and, ultimately, of “self-estrangement” among law and society scholars. Some of the core members of the “law and development movement” began to question their assumptions – their vision of the law and its relationship to development or simply liberal legalism24 – as ethnocentric. Surprisingly enough, they claimed that law and development projects “failed to ask such questions as whether equality and participation would not be more effectively fostered by efforts to deformalize or deprofessionalize dispute settlement” or “whether the interests of the have-not groups [could] be furthered only through political action, not legal action” (Trubek & Galanter, 1974:1078).

The lessons from the “law and development” movement, in turn, remain lively in the law and society community. In an essay that reacts to Boyle & Meyer’s article, as well as to other

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24 Klare defines liberal legalism (or capitalist legality) as “the commitment to general ‘democratically’ promulgated rules, the equal treatment of all citizens before the law, and the radical separation of morals, politics and personality from judicial action”… including “the notion that values are subjective and derive from personal desire and therefore ethical discourse is conducted profitably only in instrumental terms; the view that society is an artificial aggregation of autonomous individuals; the separation in political philosophy between public and private interest, between state and civil society; and a commitment to a formal or procedural rather than a substantive conception of justice” (1979).
studies that highlighted the role of NGOs in promoting legal rules and practices around the world, Dezalay & Garth found it remarkable that:

Twenty years ago, for example, the criticisms made by the law and development program gained acceptance almost as part of the official account [and when] we go deeper in today’s descriptions and prescriptions of NGOs and the rule of law, we find the same unconscious attitudes within many of the idealist exporters. Many are so convinced that what they represent is universal that they do not consider it necessary to look behind ideals. Naiveté is of course understandable, perhaps even admirable, but pure intentions not only can lead to privileging only one set of ideals, but also can blind actors to the embeddedness of the process of exportation and importation in hierarchies of power (Dezalay & Garth, 2002a:320).

Facing these considerable “cultural” constraints, the institutionalization of new institutionalism in social-legal studies has generally led to moderate versions of Meyer’s theory about convergence – when, in fact, a claim of convergence is in place25. In an article that appears in the same collection as Boyle & Meyer’s, for instance, Klug (2002) argues that while after the apartheid South Africans drew inspiration from the so-called “world society” to design land regulations, the process of designing these regulations was heavily moderated by their interaction with local structures of power. Accordingly, Klug (2002) characterizes this South African experience of “creating local law in a globalized world” as one of “hybridization”. This is, in fact, the most common line of conclusion that socio-legal scholars reach once they scrutinize institutional developments wherein international elements play a significant role.

25 Other studies cross the strict borders of socio-legal studies, but also reflect the weaknesses of pure-breed theories of convergence to account for the nature and characteristics of “globalization” in the legal field. For instance, in a study on lawyers’ cultures of work in transnational law firms – where pressures for convergence are genuinely strong –, “economic geographer” Faulconbridge (2008) finds that “strategies used by influential partners… to drive changes… do not lead to forms of global strong convergence in practice, but converging differences as cultures change in subtle, often unpredicted ways”
Cummings & L. Trubek’s article squarely follows this pattern. While suggesting that the propagation of “public interest law” practices in developing and transitional countries may be due to the “universalist” appeal of the U.S. model of governance, authors also imply the role that (capitalist) economic development plays in this process. In their narrative, “public interest law” propagates with some sort of convergence not only because it expresses the tenets of Western Enlightenment, but also because it serves concrete economic interests, which see in the spreading of a governance model consistent with the “rule of law” either a collateral effect or a strategic tool in the promotion of the “cause” of open markets. And while hypothesizing convergence, authors take seriously the power of local structures and acknowledge some degree of adaptation. Despite constituting a very precise technique of governance at the discursive level, in which “rulers and ruled obey to the same rules” and law is a legitimate resource to challenge power, they maintain, “public interest law” takes shape in accordance with local structures of opportunities and constraints, such as “strong traditions of legal activism, more expansive constitutional rights, or greater experiences with the system of human rights”.

This analytic outcome is surely more sophisticated than a narrative of linearity and inevitability of the propagation of “public interest law”. Even so, its underlying framework displays some characteristics that may considerably limit its explanatory power. The following sections discuss such characteristics prior to advancing the broader alternative framework that this dissertation will mobilize.

2.3. Broadening the framework for the analysis of the propagation of “public interest law”
2.3.1. Towards a ground-level analysis: from institutional forms to the everyday lives of “public interest lawyers”

A distinctive feature of Cummings & Trubek’s study is that it focuses on institutional forms that are usually associated with the U.S.-based “public interest law” – namely litigation, legal aid, law school clinics, and pro bono. Because authors find propagation of these institutional forms, they argue that there has been a “convergence” toward assumptions shared by U.S. advocates. That operation, however, can be rather misleading. Echoing the tenets of socio-legal studies, for instance, Halliday & Osinsky warn that “global indicators (e.g., financial information, enactments of laws etc.) usually cannot reveal dynamics and processes that are integral to sociological explanation”. Rather, “they may be positively distorting, for they can suggest convergence when appearances of law on the books belie the reality of law in action” (2006:448).

Literature outside of “public interest law” is full of examples where “convergence” towards a U.S.-like model is far from properly describing legal globalization: legal globalization – or globalization of cultural artifacts, more generally – can entail resistance, selective appropriation, or even subversion of outside norms or institutions by locals, thus foiling the intentions or the expectations of the exporters (Dezalay & Garth, 2001, 2002; Halliday & Caruthers, 2007; Inda & Rosaldo, 2008). For instance, Santos & Rodríguez-Garavito collect several stories where instead of reinforcing the neoliberal orthodoxy to which it is attached, some forms of legal globalization end up “feeding” movements that oppose neoliberalism. In such accounts, neoliberal legal globalization turns out to be a serendipitous, yet remarkable source of “counter-hegemony”. If this happens with the “neoliberal” facet of globalization (Santos &
Rodriguez-Garavito, 2005), there is simply no reason why it could not be happening with its “public interest” facet as well. On the contrary – and despite most of the available stories about the propagation of “public interest law” are stories of success and progress – the institutionalization of “public interest law” systems in transitional and developing countries is very likely to raise opposition and resistance from powerful interests that have benefited from neoliberal globalization, not to mention other previously established interests, which may date back to colonial arrangements of power. This may have severe effects on the degree and pattern of the institutionalization of “public interest law” in these countries.

For all these reasons, there can be significant heuristic advantages if the researcher moves beyond institutional forms and brings the analysis closer to the everyday lives of practitioners, where the dynamics of the institutionalization of “public interest law” are actually experienced. What are the practices of “public interest law” that are taking place around the world? Do they look like the practices of “public interest law” that have been canonical in the U.S. context? What about the way “public interest law” practitioners conceptualize these practices? When U.S. and non-U.S. lawyers talk about “public interest law”, are they talking about the same thing? These are some of the questions that are worth asking if one wants to make claims about the globalization of “public interest law”, but that tend to be largely disregarded when the analyst’s eyes are strongly driven by models of “convergence”.

2.3.2. The meaning of looking at meanings: assessing structure and agency in the social construction of legal practices

Throughout this chapter, there has been a particular emphasis on (some may even perceive it as an obsession for) looking at “meanings” of “public interest law” across the subjects and
populations of interest. This section explains the reasons for that choice, given both the nature of the research questions raised by this dissertation (the empirical dimension of my interest for “meanings”) and the validity of research on “meanings” in the world of socio-legal research (the theoretical or analytic foundations of my interest for “meanings”).

The construction of meanings of law and legal practices – whether among ordinary citizens, professionals, or scholars – has been a central theme in socio-legal scholarship. While assessing the “gap” between “law on the books” and “law in action” – the very stuff that law and society scholarship is made of – socio-legal scholars realized that symbols, meanings, and scripts were also up there for grabs.

Critical legal scholars were perhaps the first to incorporate research on meanings into their agenda – or incorporating meanings into their research agenda, depending on how one sees it (Trubek, 1984). Their main concern was with understanding how notions so central to the bourgeois project, such as “property” and “contract”, emerge so strongly from an inherently indeterminate legal order (see generally Unger [1983] and, more specifically, Kennedy [1975; 1976; 1979], Klare [1978], Gabel and Harris [1983]). That stance was explicitly drawn from Marx’s and Engels’ critique about the construction of proletariat’s “false consciousness” – i.e., the alienating process through which the bourgeois makes its particular interests appear as general interests, thus precluding workers from realizing their own exploitation. From such a perspective, the main task of critical legal scholars was to help “deconstruct” traditional ideologies about the law and (although more remotely) unveil the possibilities (usually

26 “It is above all this appearance of an independent history of state constitutions, of systems of law, of ideological conceptions in every separate domain, which dazzles most people” (Engels, 1983). Some of these “ideological” constructions, in the works by Marx and Engels, are “commodity fetishism”, which conceals the asymmetry between workers and capitalists; or Hegel’s theory of the state and Rousseau’s theory of social contract, which conceal the fact that the government is a “committee for managing the common affairs of the whole bourgeoisie”
embedded in the available legal concepts and institutions), for the construction of alternative arrangements of power.

The “critical legal approach” to legal meanings had very limited influence in the way the socio-legal community came to address this issue. Critical legal scholars held too much of a “top down” perspective, as if the law emanating from courts synthesized the entire experience of “legality” in society (Sarat & Felstiner, 1995). Consequently, while focused on “deconstructing” the “official” law, critical legal scholars paid little attention to the vast sea of “informal” social interactions, in which socio-legal studies had long ago identified an inescapable component of “legality.”

As an “interpretive” or “constitutive” turn took place in socio-legal scholarship, scholars came to address “meanings” from other fruitful perspectives. Two of these lines of socio-legal work are of more relevance for this dissertation: legal consciousness (See Ewick & Silbey, 1998; Silbey, 2005; Kostiner, 2003; Merry, 2002) and lawyers’ professionalism.

Silbey associates the rise of “legal consciousness” scholarship with three particular turns: from official legal rules to law in ordinary life; from behavior measurement to interpretation of

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27 But see, Brigham (1998), who argues that critical legal scholars such as Klare once held another perspective about the law, one that is closer to the “interpretive” or “constitutive” perspective that this dissertation will address shortly.

28 The “interpretive” or “constitutive” turn in socio-legal scholarship was originally undertaken as a response to more “instrumental” perspectives towards the law, i.e., to the basic “realist” view: that legal concepts and institutions were crafted only to advance interests. While not separating legal concepts and institutions from interests, “interpretive” or “constitutive” scholars notice, for example, that, once enacted, legal concepts and institutions: (i) may be struggled for/against and, therefore, sociologically “reenacted” in the sites wherein law is actually experienced; and (ii) may end up serving interests other than the ones that were responsible for their enactment. Thus, “interpretive” or “constitutive” scholars stress that the “rule of law” ought to be seen from a more dynamic perspective, in which “official” and “unofficial” accounts coexist and overlap, in agreement with the “critical” premise of legal indeterminacy, while also contending that such accounts shape (and are shaped by) interests and struggles for power. It is this dynamic interplay between legal concepts, institutions, and meanings; interests; and power that explains the reproduction of a given legal order and its hegemonic characteristics. For extensive discussions about the “interpretive” or “constitutive” turn in socio-legal scholarship, see: Trubek (1984); Trubek, & Esser (1989); Harrington & Yngvesson (1990); Brigham (1996; 1998); Sarat & Felstiner (1995); Silbey (2005); Ewick & Silbey (2003).
social transactions; and from lawyers’ native categories to popular understandings of the law. Given the breadth of the socio-legal field, these turns took place in a variety of ways. Most often, scholars tried to capture ordinary peoples’ inclination to mobilize or resist the law, sometimes with a special concern about the role of race, gender, and class in the structuring of these patterns of behavior (See generally, Silbey [2005]).

Literature on lawyers’ professionalism addressed different questions, but followed roughly the same script. Lawyers’ professionalism scholars moved beyond the general definition of “lawyers” to address the specific experiences of legal work, in light of socio-demographic characteristics of practitioners, organizational structures in which they are embedded, or their clientele and its needs. Moreover, lawyers’ professionalism scholars moved beyond the formal rules of professional conduct as enacted by the bar to address the specific meanings of lawyering that legal professionals create in their contexts of practice. The outcome is a series of rich and diverse accounts about practices and thoughts of legal professionals – one that, as seen before, challenges directly the assumption of an all-embracing standard for professional conduct, despite the powerful rhetoric of the organized bar. A clear-cut example is the already mentioned book by Seron (1996). In her interviews with small firm and solo practitioners whose work was structured in a business-like fashion, Seron came across a particular vision of what “serving the public” is all about: this vision, which was coherent with their practice of advertising legal work, stressed that, while serving as a means to increase popular access to the law, legal propaganda was an expression of how lawyers can work in or for the “public interest” (Seron, 1996).

A good deal of “legal consciousness” scholarship, as Silbey evaluates, ends up taking a purely descriptive form – simply documenting differences in the way people view the law,
without further questioning how these visions were developed and became an unquestioned part of their everyday lives and, therefore, how “we the people [get to be] both the authors and victims of our collectively constructed history” (Silbey, 2005:335). Good research on “legal consciousness”, she suggests, has to produce knowledge about the social forces that make the law be not only experienced but also institutionalized the way it is. Rather than tracking “what particular individuals think and do”, scholars should examine “how the different experiences of law become synthesized into a set of circulating schemas and habits” (Silbey, 2005:335).

A very similar challenge is acknowledged in the scholarly domain of lawyers’ professionalism: plain research documents variation in the way lawyers act and in the way they think of what their appropriate professional conduct is. Good research starts by discussing the structural and ideological factors that account for this particular way in which lawyers act and think. A third and more sophisticated step consists of examining how the often-encountered variation in the way lawyers act and think relates to a putatively all-inclusive narrative about lawyers’ professionalism, or how the products of both particular and collective “arenas of professionalism” – i.e., the workplace and the organized bar (Nelson & Trubek, 1992) – relate to one another. From this perspective, a profession is as a system in which “widely divergent styles of practices” coexist (Sarat, 2002:1493), and collective professionalism is a rich amalgam “of relatively open symbols used by lawyers to assert the legitimacy of widely divergent styles of practice” (Sarat, 2002: 1493).

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29 As in Marx’s famous quote, while “men make their own history, […] they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing already, given and transmitted from the past”. 

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<td>Typical questions (i), (ii)</td>
<td>Typical questions (v)</td>
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<td>Typical variables (iii)</td>
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<td>Legal consciousness</td>
<td>How do people experience and envision the law?</td>
<td>How do those more “local” experiences and visions of the law sustain and are sustained by a broader “rule of law” system?</td>
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<td>Why do some people experience and envision the law in some ways that are different from others?</td>
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<td>Professionalism</td>
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<td>How do different styles of practice connect to a common aspiration about lawyers’ professionalism?</td>
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Table 1: General schemes of socio-legal research on meanings

Source: author’s elaboration based on literature review
The Table 1 above summarizes the previously highlighted contributions of socio-legal research on meanings to the understanding of the formation and reproduction of professional practices. At a micro-to-mezzo level of analysis, research on both “legal consciousness” and “lawyers’ professionalism (i) starts by addressing (empirical) questions of how people act and think; (ii) documents differences observed in these variables; and (iii) searches for reasons for these differences among structural and ideological forces. As such, research that includes meanings is useful to (iv) (thickly) describe and account for specific social and legal practices. A following step is to discuss how these specific practices – and their associated meanings – relate to broader ideological systems [(v) and (vi)]. Here, research that includes meanings is useful to (vii) (thickly) describe and account for the way some social and legal practices “become synthesized into a set of circulating schemas and habits” (Silbey, 2005:324).

There are several examples of the previous analytic scheme “in action”, in the study of the legal profession. A very informative one is in Granfield’s study on “the meanings of pro bono” among U.S. lawyers (2007). Similar to this dissertation, Granfield takes on the claim that pro bono work is becoming widely disseminated in the U.S. legal landscape. In contrast with the more linear views of this process of institutional propagation and in line with contemporary studies on lawyers’ professionalism, Granfield contends that “while pro bono work has become increasingly institutionalized within the legal profession and, as a result, provides a normative, cognitive, and, at least in some states, regulatory script for engaging in volunteer legal work, the meaning of pro bono must be understood more locally” (2007:117). Accordingly, he examines

30 This analytical scheme is in sync with what Gould & Barclay (2012) have recently seen as more contemporary fashions of studies on the “gap” between “law-on-the-books” and “law-in-action”. Although assessing and discussing the gap, these studies also move “from individual action and social practices to institutional factors that shape the cultural production of gap studies that, in turn, might influence some of the patterns of individual action and social practices” (2012).
engagement to pro bono in light of several structural factors, with a special emphasis on the role of different organizational settings in possibly shaping the way lawyers experience pro bono.

At some point in his analysis, Granfield shows that race is an important factor mediating the institutionalization of pro bono practice in the U.S. because racial minorities tend to feel a greater need to “give something back” to the community (Granfield, 2007:137). This finding is consistent with several other narratives about the way minority lawyers – especially African-American ones – structure their practice (see, for example, Wilkins, 2004). As such, not only race “may account for the higher rates of support and endorsement of pro bono work among minority respondents”, as Granfield accentuates (2007: 137), but it may also lead to further reflections about the way the taking and receiving of voluntary legal work can serve as a strategy of individual and collective empowerment among disadvantaged groups. Beyond just describing psychological motivations of practitioners, this finding actually suggests a condition in which the micro-physics of pro bono practice takes a rather strong socio-political significance31 – one that we would not be able to understand without including in our inquiry questions about the motivation for pro bono work32.

31 Ironically, this strong socio-political significance reinforces the symbolic value of a practice whose capacity to produce community empowerment is contentious within the bar (i.e., pro bono work), as we saw and are yet to see more in this dissertation.

32 This consideration gives me the chance to distinguish among meanings, motivations, and ideology. Commenting on different approaches to the study of lawyers’ professional ideology, Rostain notices that there is disagreement in the literature about whether ideology “is best understood as reflecting normative commitments to the values of liberal democracy, which requires consideration of lawyers’ motivations (Halliday, 1999) or should be assimilated into a larger account of status enhancement (Shamir, 1995), which stresses the effects of their conduct”. However, she sees that “this theoretical difference may be less significant than it first appears. On the one hand, an analysis based on motivations, such as Halliday’s, must take into account that lawyers’ conceptions of law’s “ideals” are socially constructed. Lawyers’ motivations are shaped by their location in a social field in which their status as guardians of the legal order is reinforced and legitimated (cf. Shamir, 1995: 129; Bourdieu, 1987). On the other hand, any normative claim can arguably be explained by its function in enhancing its producer’s authority; the concept of status enhancement, consequently, may add little explanatory value” (Rostain, 2004:149-50). Meanings and motivations relate to the same phenomenon – assessments about work that lawyers construct in the context of
While examining how lawyers from “private public interest law firms” see pro bono work, Cummings & Southworth (2009) provide another useful example of how practices, meanings, structure, and ideology connect and interact. In their account about this peculiar segment of the U.S. bar, whose participants structure their practice in a for-profit manner while also channeling part of the fees they collect to support forms of legal engagement that they see as advancing their notion of “public interest”\textsuperscript{33}, a vision of “public interest lawyering” that stems necessarily from the political commitment by lawyers becomes salient. In other words, lawyers from “private public interest law firms” subvert a cornerstone of the U.S. legal profession, i.e., the idea of a relative independence from politics.

This shared vision has particularly important impacts in the way these lawyers place pro bono in so-called “public interest” work: not only do they treat conventional pro bono “as a modest public-spirited gesture promoted by lawyers whose practice model is much less consistent with the public interest than their own”, but they also show skepticism “about (and sometimes even hostility towards) the notion that lawyers’ altruistic impulses should find primary expression through the provision of unpaid legal services” (2009:26). One of Cummings & Southworth’s interviewees, a partner in an influential “private public interest law firm” in Los Angeles, states this stance in quite an explicit way: “I don’t believe in pro bono” (2009:26). Here, the rise of a different style of practice (private public interest law) is mediated by a particular organizational structure (the private public interest law firm), encompasses different practices (the blend between professional and political engagements) and generates a particular

\textsuperscript{33} This is an expression of the differentiations that exist in the “public interest law” sector, as previously discussed.
ideology (one that opposes voluntary legal work as a contribution to further the public interest), which ironically reinforces the role of private practice – the very realm were pro bono lawyers work, which private public interest lawyers criticize – in furthering the public interest.

A third example can be seen in Katz’s (1982) classic study about Chicago lawyers working for the poor in the 1970s: Katz shows that, in their day to day work, lawyers aligned with a more aggressive perspective – that is, those undertaking “innovative legal services” – used to emphasize the legal and political complexities in the cases they were handling. In doing so, they had a way of distinguishing themselves from traditional “legal aid” lawyers and of keeping up their motivation to work. Katz characterized this process as the production of a “culture of significance” in legal services agencies. This culture was fundamental in helping lawyers cope up with the “routinization” that is peculiar to direct services and in making “legal services” programs sustainable even when the winds of reform in “legal aid” were no longer blowing from Washington. Hence, Katz provides an exemplary analysis about the way localized styles of practice generate ideology that furthers the constitution and sustainability of these very same styles of practice.

In light of these “interpretive” considerations, the Figure 3 below adds a second layer of constructs to the previously discussed analytic framework. Highlighting elements now situated at a mezzo-to-micro level, the Figure indicates that the institutionalization of “styles”, “kinds” or “sectors” of professional practices takes place along three levels: labels, practices, and meanings.\(^3^4\)

\(^3^4\) Obviously, the distinction among labels, practices, and meanings is much more of an analytical device: in the lives of actual people, it is just impossible to disentangle these three structural elements of professional “styles”, “kinds”, or “sectors”. 
Labels provide practitioners with a discursive resource that they can use to position themselves in the complex system of interactions called “profession”, while also serving as mechanisms of identification that the system creates and attaches to the practitioners. Practices are the specialized means by which professionals respond to the inputs and needs from outside systems. Because these external inputs and needs can vary to a great extent, the same “label” can end up entailing very different practices. One factor yielding such diversity can be, for example,
stratification of client groups. “Criminal lawyers” can operate along an immense continuum, which ranges from taking shoplifters out of jail in exchange for modest payments to defending former heads of states before the International Criminal Court in exchange for fortunes. All these professionals will be “criminal lawyers”, but there will certainly be subsets of “criminal lawyers” on the basis of the tasks that they undertake, the revenues that they make, the status that they enjoy, etc. In sum, practices are the level at which a professional sector or style is actually (re)produced. Finally, meanings stem from particular practices taking place within particular labels, while also imprinting these very same practices and labels with some sort of social and political significance. Hence, when widely and collectively-shared, meanings act as powerful forces binding together a given professional group. For this particular characteristic of meanings, they are taken in this research as the deepest level of institutionalization of “styles”, “kinds”, or “sectors” of professional practice.

For studies on institutional propagation across national borders, this distinction becomes analytically useful for two reasons: (i) the conditions for the propagation of labels, practices, and meanings may vary within and across multiple contexts of destination; and (ii) this variation can further produce different patterns of institutional propagation.

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35 As Nelson & D. Trubek alert (1992:04), “attention must […] be paid to the ideological dimension – to lawyers’ visions of themselves, their roles, and their practices. Such visions play a role in the structures and processes by which structural factors are changed over time, for ‘structure’ is not a set of immanent forces operating independently of human agents”.

36 Scholars working on “policy convergence” frequently distinguish among many “dimensions” along which public policies may converge, such as policy goals, content, instruments, outcomes, and style (Heichel et al, 2005:828; Knill, 2005; Bennet, 1991; Drezner, 2001). Although the significance of these distinctions is overlooked in most of the available studies, Hall (1993) argues that change (and convergence) of “ideas” about public policies is much more difficult than change (and convergence) of “instruments” and even of “settings”. Knill (2007), however, stresses that this view is not uncontested, citing the alternative claims by Radaelli and Lenschow.
The Figure 4 below illustrates one of the possibilities for such variations. Because of specific constraints observed on the ground, the transnational propagation of a model may end up being similar to a “refraction”, as in physics: the label gets institutionalized, but there may be significant “deviation” at the level of “practices” and, likewise, at the level of “meanings”. Because meanings, practices, and labels are reciprocally constitutive, depending on how big these deviations are, the “kind”, “sector” or “style” of practice will get institutionalized (and reproduced) in a strikingly different way than the original model: people will do and mean different things across the two contexts, even if calling it by the same name.\footnote{A similar analysis relates to the possibility of convergence of corporate governance institutions in the debates about “varieties of capitalism”. Some theories would predict that such institutions would inevitably converge, given their effects on international economic competition: forms that prove to be more “rational” ought to prevail over others. Yet, Gilson (2001) argues that corporate governance institutions develop through mechanisms that are more intricate, such as “functional adaptivity” and “institutional persistence or path dependence”. Therefore, Gilson distinguishes between convergence “in form” or “in function”. Functional convergence takes place when institutions were flexible enough to adapt to new circumstances; formal convergence reflects the need for more comprehensive change in institutions so that completely new regulatory scripts are required. Facing a distinct object than Gilson, this dissertation questions whether there can be some level of “formal” convergence, such as the adoption of label and even basic practical forms; with “meaningful” divergence and, therefore, the emergence of governance institutions that were originally unexpected.}
PIL’s propagation as a story of differentiation and, eventually, divergence...

![Diagram](image)

Figure 4: Understanding the propagation of “public interest law” as a process of differentiation
Source: author’s elaboration

None of this is completely new in the available studies and formulations about cross-national institutional propagation. While theorizing about legal globalization, Halliday & Osinsky argued that it implies “structural” and “discursive” changes in local affairs. “Discursive changes”, they explained, “occur through alterations in the meaning attached to structural changes, [thus entailing] epistemic realignments of initially contextualized definitions, interpretations, diagnoses, frames, archaeologies, genealogies, and extrapolations in accord with the universality inherent in the globalization discourse. An arena may be said to be globalized,”
they concluded, [only] “when there is a coincidence of structural and discursive elements” (2006:448-9, emphasis added. See also Halliday, 2009).

For all these reasons, questions about meanings bring two big heuristic advantages for an inquiry about cross-national institutional propagation. First, following from research on legal consciousness and lawyers’ professionalism, inquiries on meanings can yield both “thick descriptions” of and theoretical accounts for the formation and reproduction of styles of professional practice, such as “public interest law”. Second, inquiries on meanings can yield more reliable standards for the assessment of transnational propagation of particular styles of professional practices, given that, in order to fully operate, such propagation will necessarily involve the “epistemic realignments” to which Halliday & Osinsky refer – i.e., an institutionalization at the level of “meanings” and ideologies.

2.3.3. Toward a multilevel, multidirectional assessment of power

Another characteristic of Cummings & L. Trubek’s model is that it allows only a unidirectional inquiry – that is, one that: (a) focuses on how U.S.-like “public interest law” gets institutionalized in non-U.S. contexts; and (b) locates the exercise of power primarily across the North-South divide. Then again, the literature suggests that this choice may close many relevant avenues of inquiry.

It is known, for example, that here and there U.S. advocates also “borrow” from foreign experiences while structuring their practice. L. Trubek narrates that many of her “students pursuing the J.D., and often graduate degrees, throughout the university are interested in the theory and practice of public interest law in other countries”, and that “these students are now
using the knowledge gained from these courses and externships, including an analysis of changing trends in public interest law, to develop innovative approaches to the relationship between development, poverty, and public interest law” (2005: 468-9). When designing the Workers Course that made her practice so unique in the U.S. landscape, Jennifer Gordon also reported “borrowing” her model from Brazilian educator Paulo Freire. Therefore, an accurate assessment of so-called globalization of “public interest law” would also have to explain in what conditions Americans act as “borrowers” (Steiner-Khamisi, 2004) – or at least would have to be suitable for this kind of inquiry.

Influence from the South to the North would be fairly supported by contemporary cosmopolitan theorizations. Santos has recently laid out one of these theorizations, in the context of the debates about the “crisis of modernity” and the need for a “paradigmatic transition” in the production of knowledge and “knowledge about knowledge”. Santos maintains that the modern rationale, including even most forms of Marxism, is “indolent”. The cognitive-instrumental rationale has prevailed over other forms of rationale and this has made the modern intellect look like what literature scholars would call “metonymic” (for taking “part” of the scientific and philosophical culture for the “whole” of knowledge production) and “proleptic” (for intending to know what the future will be like, announcing it as one of infinite progress). As the modern rationale assumes that humankind will have an inexorably better future, it closes the doors for alternative forms of knowing and being, thus “compressing the present and expanding the

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38 Gordon’s “workers’ course” was a strategy that she devised to confront systematic and systemic violation of workers’ rights when she was implementing her “workplace project” in Long Island, NY. Originally thought of as mechanism for disseminating information, the course led workers (most of whom were undocumented immigrants) to share their stories and made them develop a broader consciousness of their common and collective problems, as well as of the actions that they needed to take in order to address those problems. Most of these actions were not properly legal and, sometimes, they were even “illegal”. Gordon’s course was explicitly inspired by Paulo Freire’s pedagogy of the oppressed. For a first-hand account of this “workplace project”, see Gordon, 2005.
future”. In doing so, the modern rationale becomes incapable to confront the “ideology” of the “end of history” and, hence, it needs to be replaced by something else.

Among the theoretical resources that can be mobilized in the construction of this new rationale – a “cosmopolitan rationale” – Santos mentions: the “sociology of absences”, the “sociology of emergences”, and “the work of translation”. The “sociology of absences” seeks to “expand the present”, by: (i) identifying experiences of sociability disregarded by the modern “indolent rationale”; and (ii) discussing in which conditions such experiences can provide credible alternatives to currently hegemonic forms of sociability. The “sociology of emergences” seeks to “compress the future” by studying to what extent such alternatives can be actually and more immediately explored.

Following the multiplication of experiences and alternatives allowed by those two forms of sociology is the “work of translation”. By including the “work of translation” in the building of a “cosmopolitan rationale”, Santos wishes to stress that “the task [for those who refuse the scripts of the modern rationale] is not as much to identify new totalities or to develop additional scripts for social change, but rather to propose new ways of thinking about these totalities and conceiving these scripts”. From this perspective, translation:

Seeks to clarify what unites and what separates different movements and practices, in order to determine the possibilities and limits of connection or coalition among them. There is no social practice or collective subject that can define the historical path [toward emancipation]. Translation is decisive to define, in concrete terms, in each moment and historical context, which set of practices has the highest counter-hegemonic potential (Santos, 2004a: 806).

In other words, Santos’ epistemology relies on our capacity to transform reality, by “rescuing” dismissed experiences of sociability and promoting a dialogic interaction among
these experiences and our way of being – as well as among the experiences themselves –; all of 
which he sees as a strategy to identify plural and solidary alternatives for the future in various 
domains of social life. “The emancipatory, post-modern knowledge that [the author has] been 
arguing for, seeks to discover, invent, and promote the progressive alternatives that [his vision of 
change] requires. It is an intellectual utopia that creates the possibility of a political utopia”, as 
the author states. (2001:167)

Globalization obviously factors into Santos’ analyses: in contrast with neoliberal 
globalization, he argues that there can be an “alternative, counter-hegemonic globalization, made 
of a number of initiatives, movements, and organizations, which, acting through partnerships, 
networks, and global/local alliances and mobilized by the desire of a better, more just and 
peaceful world that they think is possible and they deserve, fight against neoliberal 
globalization” (Santos, 2002:72; 2003:13-4). As such, globalization creates an important 
opportunity for experimentation, which – if driven primarily by “Southern”, dismissed social 
practices – can indicate new directions for the organization of societies: the building of this 
“cosmopolitan” rationale would strongly rely on borrowings by the North from the South.

In addition to these “cosmopolitan” constructions – and perhaps most importantly for a 
more “realist” audience –, other scholars have shown that, in legal globalization, the exercise of 
power also takes place within the context of “lenders” and/or “borrowers”, and this also matters 
for the ultimate shape, life, and itinerancy of legal institutions. The work that best represents this 
tradition in the socio-legal domain comes from Dezalay & Garth (2002b; 2011). Drawing from 
Bourdieu’s theorization about agency and structure in society, Dezalay & Garth conceptualize the 
nation state as a “field” that several actors (including lawyers) struggle to shape. The chance to
shape the field enhances one’s relative power in it once it gets shaped. In this scheme, what is outside the nation-state also matters, as long as it represents a source of “capital” that strugglers can mobilize to advance their relative positions in their domestic struggles. In a research project that runs across several examples of “legal transplants” and that is in line with these premises, Dezalay & Garth examine the importation of foreign legal structures by Third-World lawyers in light of the specific “palace wars” – that is, the struggles over state power – these lawyers are fighting. In doing so, the authors find that the Third-World lawyers do not import legal ideas and practices from the U.S. by chance – nor do First-World organizations export their ideas and practices by chance. Instead, exchanges of ideas and models are ways through which both sides mobilize international capital, hopeful that this will help them to challenge or maintain local arrangements of power, according to their relative position in their struggles.

This leads authors, for example, to see U.S. investment in Human Rights in the Third World during the late 1970s and the early 1980s as part of a competition over state power between U.S. lawyers and economists. The construction of successful policies of economic stabilization in Pinochet’s Chile through the work of the “Chicago Boys” enhanced the power of orthodox economists in the U.S., making them more capable to dictate economic policies in their own backyard. Lawyers had to fire back to maintain their status in U.S. governance, and they did so by stressing the relative importance of the rule of law for good governance.

Because of these somewhat surprising connections, Dezalay & Garth suggest that, if researchers truly want to understand the circulation of ideas about law, they need to both look at the networks and biographies of “exporters” and “importers” and to understand the struggles in
which they are involved and in which the processes of “exportation” and “importation” are taking place (Dezalay & Garth, 2002b; 2011).

A similar conclusion is in Halliday’s latest work on the so-called “global law” (Halliday, 2009). In an attempt to devise a framework for research in this area, Halliday distinguishes between three “interacting cycles” of norm-making: one at the supranational level, one at the national level, and one between the supra-national and the national levels. Each and all of these “cycles” are permeated by tensions. “Norm settling” – or convergence – requires that these tensions be resolved, which can take place through competition, cooperation, or plain exercise of power.

This “recursivity model”, as Halliday names it, departs from the traditional “gap” model by looking not just at how “global law” gets institutionalized in particular national contexts, but also at how what happens in national contexts affects “global norm-making”. For instance, national law-making processes bear some well-known structural differences: they can secure more or less civil society participation (U.S. vis-à-vis France); rely more heavily on private professional expertise or on the workforce of their civil service (U.S., Canada, and U.K. vis-à-vis New Zealand and France); or entitle courts with more or less substantive power in the policy making process (U.S. vis-à-vis China). Halliday argues that these domestic structures also have consequences for the supranational cycle: they “create mental imprints on their citizens and delegates who enter international forums with preconceptions about what is possible and by what means” (Halliday, 2009:272); so that “it frequently takes considerable socialization for state delegates… to discover that global arenas may have their own modus operandi and that the pattern of domestic politics will more or less enable global influence” (Halliday, 2009:272).
Just like Dezalay & Garth, Halliday sees circulation of people, ideas, and resources between the “global” and the “local” as a complex process, highly mediated by interests and struggles of power taking place within and across each extreme of the North/South divide. Understanding legal globalization otherwise would imply a “tendency to imagine a kind of epiphenomenal politics, a globalization from above, as if globalization emanates from the center to the periphery, from the supranational to the national” (Halliday, 2009:271; Schaffer, 2010).

2.3.4. From convergence and divergence to causal mechanisms

A final, relevant aspect of the “gap” model – which also affects the explanatory power of the most conventional initiatives in socio-legal studies – is that it ends up producing very circular accounts. Moderations in the ideal of convergence may come at the price of having to assert the obvious. Differences in “public interest law” across the U.S. and L.A. can always be “explained” because, after all, the U.S. is different from L.A. – courts are different, laws are different, legal education is different, and even the definition of what a lawyer is may be different. Thick descriptions of these legal practices and the institutional systems wherein they are embedded can satisfy much of the existing sociological curiosity, but it still adds little to broader theoretical debates.

However, the picture changes substantially, if and once one starts to search for “causal mechanisms” of convergence and/or divergence. In the very province of institutional theory, a call in this fashion was recently made by Beckert (2010). Beckert argues quite forcefully that much of the scholarship relying on institutional theory misread the classic article by Powell & DiMaggio (1983) so as to understand that their suggested mechanisms for institutional isomorphism – power, attraction, and mimesis – would produce only convergence. The author
claims that the main goal of Powell & DiMaggio was instead to advance an alternative to so-called “market isomorphism”, without rejecting organizational divergence and, less so, the possibility that divergence could be equally caused by “power, attraction, and mimesis”. To clarify his position, Beckert surveys several works in political and economic sociology that highlight divergence and finds, in each of them, those very same causal mechanisms in operation. He then challenges social scientists to move beyond the convergence/divergence debate and to look for the circumstances in which, through each of those mechanisms, institutional convergence or divergence takes place. For example, attraction can push divergence when actors are exposed to multiple models, hold distinct repertoires of evaluation about the models, or both (2010:156). In this case, precisely because actors act in accordance with broader, binding scripts (i.e. their repertoires of evaluation) they end up rejecting some solutions that before other audiences would sound credible and attractive.

By bringing the unit of analysis closer to the everyday lives of lawyers (item “a” in this section) and by pursuing a multilevel, multidirectional assessment of institutional propagation and exercise of power (item “c” in this section), this dissertation will probably highlight several other disconnects between the U.S. and the L.A. systems of “public interest lawyering”, and even find a “structural divergence” between these two systems. A subsequent goal has to be to find the “causal mechanisms” and/or the “circumstances” within which such mechanisms operate in order to produce convergence or divergence.

2.3.5. A revised framework

Drawing from the previous observations and seeking to enhance the available knowledge about how “public interest law” is taking part in the broader flows of people, ideas, and resources that
we normally call globalization, this dissertation broadens Cummings & L. Trubek’s framework and proposes an analytic endeavor that runs along two lines, both of which are in sync with the so-called “interpretive” turn in socio-legal studies. One focuses on assessing the meanings that “public interest law” acquires in the everyday lives of those who participate in this “style”, “kind”, or “sector” of legal practice, thus expecting to capture the institutionalization of “public interest law” from a different perspective than the one informing the available literature. The other focuses on assessing the way in which these meanings are socially constructed and the role that globalization plays in this process – whether it carries on powerful cultural assumptions and yields convergence between the U.S. and the developing world, or it fits into a more intricate scheme that may actually yield divergence.
The Figure 5 above illustrates this revised framework and some of the findings that can possibly emerge from it, while also demonstrating its heuristic potential. Each “cluster” in the picture represents a combination of practices of “public interest law”, which bears a distinctive *meaning* from the ones in the other “clusters”. These meanings obviously do not appear by chance, but rather in the context of structural forces, some of which can operate in a transnational fashion (Schaffer, 2010) – i.e., across the two contexts. To capture not only the “clusters”, but also the forces that are molding them, this research will collect data about some core legal,
professional, and political elements that, as socio-legal theory suggests, may relate to the social construction of “public interest law” both in the U.S. and the non U.S. experiences.

Some possible findings that become visible in the picture are:

a) Significant variation in the meanings of “public interest law” within and beyond the U.S. context, and, therefore, an impossibility of talking about a common set of understandings of “public interest law” even among U.S. “public interest law” practitioners. In other words, “public interest law” would be a style of practice too much unstable to display any kind of coherence, within and beyond the U.S.;

b) An apparent similarity in the forms of “public interest law” along the two contexts, with a great degree of differentiation in the meanings that these practices acquire in each context – and, therefore, an impossibility of talking about “convergence” towards the U.S. model in worldwide practices of “public interest law”. The question then becomes why this differentiation – or eventually divergence – is in place;

c) The construction of the meanings in one context draws from the other, and, therefore, there is some level of “globalization of public interest law”. Here, then, the main task for researchers becomes to understand the direction, intensity and the mechanisms with which this globalization operates. For example, the Figure 5 simulates that some kinds of “public interest law” receive more influence than others and that, overall, there are more flows of influence from the U.S. to the non U.S. context than the contrary;

d) “Public interest law” outside of the U.S. can take both forms and meanings that are just not seen in the U.S. and, therefore, foreigners are borrowing mainly the “label” of “public
interest law” to name their indigenous practices. Once again, it becomes interesting to learn the reasons why they would be doing so.

At the core of this framework lies, then, the suggestion for a comparative and international investigation about the practices and meanings that “public interest law” acquires in the daily lives of practitioners worldwide. The next chapter details the kind of research that is suitable to express this perspective and locates its validity in the broader world of socio-legal research.

2.4. Summary, research questions, and initial hypotheses

The main available narrative about the worldwide propagation of “public interest law” contends that, in the wake of a new legal orthodoxy, “public interest law” is becoming a “global institution”, with convergence towards understandings and practices being driven by U.S.-based forces, and adaptation being driven by local forces that operate where “public interest law” takes root (Cummings & L. Trubek, 2008). While consistent with the core of the socio-legal project, this explanatory scheme bears some theoretical and methodological shortcomings. It emerged from an analysis whose emphasis may still be too much on the surface (labels and organizational forms, instead of everyday practices and shared meanings); it locates issues of power simply along a center/periphery divide; and it enables a unidirectional inquiry only, thus concealing the “borrowings” – and the corresponding exercise of power – that may take place not just across but also within the U.S. and the foreign contexts.

To ameliorate these shortcomings, this research broadens the given framework and envisions a study that is hopefully more suitable to produce an adequate understanding of the global propagation of “public interest law”. Accordingly, it raises the following questions:
a) What practices of “public interest law” are taking place around the world? Is what people call “public interest law” the same everywhere?

b) What does it mean to do “public interest law” in both the U.S. and non-U.S. contexts? In other words: When lawyers within and between the U.S. and non-U.S. contexts talk about “public interest law”, are they all talking about the same thing?

c) How are these practices and meanings socially constructed? What structural factors account for the similarities and differences that one may find within and across the U.S. and non-U.S. contexts? How has the international circulation of people, ideas, and resources both affected and been affected by the meanings of “public interest law” that circulate within and across the U.S. and non-U.S. contexts?

d) What does all of that tell us about the nature and the characteristics of so-called globalization of law and of “public interest law”?

Finally, this dissertation considers that the findings may follow four hypothetical patterns. The first one (SC1), which is consistent with the predictions of pure world-society theory, would imply convergence along the studied contexts. Behind the commonly adopted label “public interest law”, there would be little or no variation at all, across the Americas, in the practices and the social and political meanings attached to the practices and the label, all of which would relate to the core of U.S. “public interest law”. The Figure 6 below illustrates this first scenario.
The second scenario (SC2), which is consistent with the predictions of Cummings & L. Trubek’s model, would imply convergence along the studied contexts, although with some degree of variation. Behind the commonly adopted label “public interest law”, the Americas would display some reasonably different practices and meanings of lawyering, but nothing capable of escaping from the general cultural framework of the U.S. “public interest law”. The Figure 7 below illustrates this second scenario.
The third scenario (SC3) would imply differentiation and, eventually, divergence across the studied contexts. Behind the commonly adopted label “public interest law”, there would be practices and meanings that not only entail variation but sometimes escape completely from the general cultural framework of the U.S. “public interest law”. The Figure 8 below illustrates this third scenario.
Finally, the fourth scenario (SC4), which is consistent with cosmopolitan theories, would predict mutual learning along the studied contexts, all of them leading to a set of practices and ideas with shared authorship. The Figure 9 below illustrates this fourth scenario.
Scenario 4 (Consistent with cosmopolitan theories): cross-fertilization

Figure 9: Scenario 4 (Consistent with cosmopolitan theories): cross-fertilization

Source: author’s elaboration

The next chapter provides further details of what methodological resources were used to find out the answers to this puzzle.
Chapter 3

Methods

3.1. Introduction

As methods courses usually stress, methods are the differential factor in the production of scientific knowledge. While ordinary people are also and invariably producers of knowledge and often employ forms of reasoning that are not so different from the “scientific” one – such as inductive or deductive thinking – they seldom engage in the same systematic process of “data collection and analysis” as their social scientists counterparts do.

Even so, methods are not a set of neutral instruments that scholars randomly grab and mobilize. Not only methods must have a connection with the theory that is guiding a particular effort of inquiry, but they must also relate, implicitly or explicitly, to broader assumptions shared by the scientific community about what constitutes a legitimate way of producing knowledge – or, to borrow from Kuhn’s words, to a “paradigm” in which “normal science” is exercised. From time to time, that “paradigm” may no longer provide the necessary resources that scientists need to address the problems they are faced with: “revolutionary science” then comes into play and scientists engage in a process of reviewing their existing agreements on what scientific practice is all about. Once again, competing claims will come to a settlement and normal science will find its way within the boundaries of a new “paradigm”.

This chapter reviews the literature and the trajectory of “comparative and international studies” in social sciences – or simply “cross-national studies”, in order to clarify the choice for the particular research design that was used in this dissertation.
Including the introduction, this chapter is divided into five sections. Section 2 traces general considerations about cross-national studies, thus addressing the dilemmas and alternatives that have appeared in the debates among “comparativists” and “methods scholars” about this kind of approach to social research. In other words, section 2 summarizes the successive “scientific revolutions” that have taken place around cross-national research, in order to indicate the way in which a “cross-national study” can provide support to the specific effort of inquiry underlying this dissertation. Sections 3 through 5 provide information about the logic that has informed the cross-national research design mobilized in this dissertation, given all that was previously discussed along the chapter. Section 6 summarizes the whole chapter.

3.2. Cross-national research as a way of assessing institutional propagation: general considerations

Long before there were claims about a “global village” (McLuhan, 1962; 1964), cross-national research was already an attractive avenue for social research. Foundational accounts in sociology or political science, not to mention the longstanding comparative tradition in anthropology, have explicitly or implicitly relied on cross-national investigations. Weber’s theory about the effects of religion in the development of capitalist societies openly drew from comparisons between Western and Eastern societies (Weber, 1996); and Tocqueville’s theory about the development of democratic governance in the U.S. clearly took the French structure of governance as a basis for comparison (Tocqueville, 2000).

As social sciences got increasingly specialized and professionalized, cross-national research became the terrain for more specific and rigorous elaboration. The most central concern for participants in these discussions was whether cross-national studies might help establish the
validity of originally localized findings across the borders of nation-states (Bock, 1966; Collier, 1993; Edgan, 1953; Elder, 1976; Mace et al, 1994; Odell, 2001; Pennings, Keman & Kleinnijenhuis, 2006; Radcliffe-Brown, 1951; Sjoberg, 1955; Skocpol & Somers, 1980; Smelser, 1965).

Lijphart (1971) was one of the triggers and most important participants in this debate. In a celebrated article, he both stated the general ambition of comparative and international research and indicated the practical obstacles that researchers working in this fashion were likely to find along their way. The ambition, following the script of positivist epistemology, was to produce “universal” findings about societal organization. The envisioned strategy to face that challenge was the cross-national “hypotheses testing”, with the aid of advanced statistical techniques. The main obstacle ahead in that task was, in turn, in the collection of the data that researchers would need. In order for analysts to make those highly valid claims about society across time and space, a large dataset should be available. That would make cross-national research too costly and difficult to implement. An intermediary solution, Lijphart then advocated, could be the use of “small-N” research designs – i.e., of research designs involving a small number of cases (N) relatively to the number of cases that actually exist. This, nonetheless, would make results much less “generalizable”, which some would see as defeating the purpose of comparative and international research.

Lijphart was backed by other authors in both his concern and his propositions. Some of these authors argued that, besides being too costly and difficult to implement, research using cross-national comparisons of large scale was very prone to “conceptual stretching”, that is, to employ concepts whose meanings were substantially different across the countries under study,
hence producing results that would lack precision (Sartori, 1970). In other words, research using cross-national comparisons of large scale would suffer from threats of both “external validity” (the ability to generalize results beyond the sample, given the costs and difficulties to implement a comparative research of truly large scale) and “internal validity” (the ability to make unequivocal claims about/from the sample itself, given the difficulties to operationalize concepts across countries). Even a “lawyer”, for example, can become a problematic “object” for cross-national comparison, for the simple fact that in some countries admission to the legal profession requires passing a “bar exam”, while in other it does not.

Other authors argued that research using cross-national comparisons of large scale was also prone to lose the richness of specific contexts. This claim was especially strong among interpretive sociologists and cultural anthropologists. For example, Geertz conceived the goal of comparative research in anthropology in terms of “confronting our own version of the councilman mind with other sorts of local knowledge” so as to “make [our mind] more aware […] of the quality of its own”. This would require “thick descriptions” of both one’s and another’s contexts. In his words:

This is, of course, the sort of relativization for which anthropology is notorious [but] it is one that neither argues for nihilism, eclecticism, and anything goes, nor that contents itself with pointing out yet once again that across the Pyrenees truth is upside down. It is, rather, one that welds the processes of self-knowledge, self-perception, self-understanding to those of other-knowledge, other-perception, other-understanding; that identifies, or very nearly, sorting out who we are and sorting out who we are among (1983:182, emphasis added) 39

39 Similarly, see Marcus, for whom, “multi-sited ethnography” bears an enhanced and positive capacity “to make connections through translations and tracings among distinctive discourses from site to site” (1995:100-1)
Such “paradigmatic revolution” triggered by Lijphart’s article can be said to operate at two primary levels. At a practical level, it led to considerable improvements in the techniques used for studies involving a smaller number of cases, such as in the prestigious works by Ragin (1981; 1987; 1992; 2009; Ragin & Rubinson, 2009) and D. Collier (1993; 2010). At an epistemological level, the hierarchies between quantitative and qualitative research were significantly blurred: studies using a small number of cases and even individual case studies came to be seen as valuable sources of information and arguments for theory development, and “middle-ground” solutions, which tried to combine the strengths of both quantitative and qualitative perspectives were increasingly put in place, such as what Ragin called “logical comparative analysis”. Referring mostly to Ragin’s contribution, Green observes that, in this new set of techniques:

A number of valid sets of preconditions for an outcome of interest can be identified, whereas statistical analysis will only tend to bring out the most dominant (Ragin, 1981). [Whereas] statisticians only examine the relationship between specific variables, logical comparative analysis examines cases holistically and in their ‘real’ context. Qualitative analysis can therefore pay more attention to the actual mechanisms of causation, whereas statistical analysis alone cannot go beyond determining the probable strength and direction of causation. Logical comparative analysis cannot, of course, claim that its findings can be generalized beyond the cases under review, but in avoiding the universalizing tendencies of statistical approaches it tends to respect the unities of time and place which are, arguably, essential to any credible historical or sociological analysis (Green, 2002: 23).

The thoughts by Skocpol & Somers were particularly useful in such “epistemological” front of the cross-national research revolution. Reviewing studies in comparative political history, such authors distinguished among three types of research: macro-causal analysis, parallel demonstration of theory, and contrast of contexts. Macro-causal analysis “uses comparative
history primarily for the purpose of making causal inferences about macro-level structures and processes” (1980: 181). This type of comparative research, as Skocpol & Somers define it, is “a kind of multivariate analysis to which scholars turn in order to validate causal statements about macro-phenomena for which, inherently, there are too many variables and not enough cases” (1980: 182). Scholars working in this fashion typically proceed “by selecting or referring to aspects of historical cases in order to set up approximations to controlled comparison. Always this is done in relation to particular explanatory problems and (one or more) hypotheses about likely causes” (Skocpol & Somers, 1980: 182-3).

*Parallel demonstration of theories* consists in applying “consolidated theories or hypotheses to relevant historical trajectories” (1980: 176). The goal is to “repeatedly demonstrate the applicability of [a] theory” (1980: 177) against cases that are selected “to cover all possibilities or to represent a range of sub-types or points on continua” (1980: 176). Finally, *contrast of contexts* consists in the use of comparative history “to bring out the unique features of each particular case included in [a] discussion, and to show how these unique features affect the working out of putatively general social processes” (1980: 178). Scholars conducting this type of research proceed by contrasting the features of cases against one another and in view of “themes”, “questions”, and “ideal-type concepts” or benchmarks.

The Figure 10 below, borrowed from D. Collier (1993: 109) illustrates the working of the previously addressed “paradigmatic revolutions” in comparative studies, while also including details and references about both their “practical” and “epistemological” fronts.
The subsequent Table, in turn, summarizes the possibilities for research to which such “revolutions” have given rise. Along the explanatory/exploratory divide – i.e. the “intellectual tension [...] between analyses that seek to achieve a generic understanding, based on relatively few variables and encompassing many cases, as opposed to analyses that seek to draw out the complexities of particular cases” (Collier, 1993:116) – which was seen as central in the discussions about theory development through cross-national studies, a variety of research designs are possible.
<table>
<thead>
<tr>
<th>Contribution to theory</th>
<th>Core objective of research design</th>
<th>Techniques</th>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Explanation</strong></td>
<td>Hypothesis testing</td>
<td>Multivariate analysis with large-N survey research, experiments, or other forms of data collection that are adequate for statistical analysis</td>
<td>Design allows claims about associations among variables; Outcomes present high external validity;</td>
<td>Highly costly and difficult to implement; Misses context and loses precision;</td>
</tr>
<tr>
<td></td>
<td>Causal analysis</td>
<td>Controlled comparison</td>
<td>Design presents capacity to capture the richness of context in cases; Outcomes present relative degree of generalizability;</td>
<td>Requires cases that are suitable for controlled comparison; Theoretical debates about the issue of interest must be consolidated;</td>
</tr>
<tr>
<td></td>
<td>Contrast of contexts</td>
<td>Contrasting cases among themselves and against themes or questions that relate to theory</td>
<td>Design is able to capture the richness of context in cases; Outcomes may contribute to refine, specify, or challenge theory;</td>
<td>Low degree of generalizability</td>
</tr>
<tr>
<td><strong>Exploration</strong></td>
<td>Parallel demonstration of theory</td>
<td>Applying theory to illuminate the understanding of particular cases</td>
<td>Design illustrates the workings of a theory across cases; Outcomes may contribute to refine or specify theory;</td>
<td>Low degree of generalizability</td>
</tr>
<tr>
<td></td>
<td>Individual case studies</td>
<td>In-depth examination of a given case</td>
<td>Can serve many purposes such as generating hypotheses or reassessing theory in light of “critical” examples</td>
<td>Very low degree of generalizability</td>
</tr>
</tbody>
</table>

Table 2: Techniques, strengths, and weaknesses in comparative research designs
If every method has strengths and weaknesses and if all of them can contribute to theory development, what should determine the choice for one method over another? This dissertation argues that there are two factors which can help determine the suitability of a method: paradigm consolidation and data. “Paradigm consolidation” relates to the existence of an active “epistemic community”, which is capable of producing comprehensive, yet competing accounts for a given issue. Researchers are then in the position to draw clear-cut hypotheses from that body of competing theories and test them. The existence of an active “epistemic community” does not necessarily equal the existence of a consolidated “disciplinary” approach around an issue. Sometimes an “epistemic community” forms just a subset of a given discipline, such as the “sociology of professions”. Other times an “epistemic community” is located above, beyond, or across disciplines, such as in the case of “policy studies” or “development studies”.

The ability to test theories is further deeply affected by the nature, availability, or possibility to collect the necessary data for the intended analysis. There are many reasons why researchers may lack enough or the necessary data for a study. The phenomenon may have been understudied, so that no secondary sources of information exist thus far. The phenomenon may also have an “underground” characteristic in society, such as drug traffic or prostitution, which also leads to the lack or scarcity of data. Or the available information may not yet be at the “level” at which researchers wish to operate. This is the typical case of “interpretive” research, which deals with meanings held at the individual level that were hardly collected and systematized by someone else.
Table 3: Factors that determine the soundness of research designs

Source: author’s elaboration, based on literature review

The logic of the Table 3 above goes as follows: if researchers can draw clear-cut competing hypotheses from the available theoretical accounts but cannot count on enough or proper data to adjudicate among such hypotheses, it becomes virtually impossible to advance knowledge using techniques that lead to purely “explanatory” results. Likewise, if researchers have a rich body of data but no strong, competing hypotheses that they can relate such data to, they are likely to produce findings that will reinforce, challenge, or specify the existing theory to more marginal extents.
In other words, only when researchers have strong, competing hypotheses and enough data available or feasible to collect, they can undertake procedures that are consistent with purely explanatory objectives, such as hypothesis-testing with the use of sophisticated statistical analysis and/or experimental designs. Likewise, when researchers have little data and no strong, competing hypotheses, their possibility to contribute to theory development is more consistent with the individual case study strategy: a “thick description” can be the best contribution for both future empirical work and theory development in that particular area or about that particular problem. These two extreme situations are highlighted with the darkest shading in the Table 3 above.

It is often the case, however, that researchers have more than “little” but less than “plenty” of data and/or the paradigm in which they are operating shows more than a “low” but less than a “high” degree of consolidation. If and when that happens, researchers can still choose among the several alternatives in the realm of comparative studies that have been discussed in this section. These research designs will offer a contribution to theory development that obviously differs from what experiments or statistical analysis provide, but these contributions can still be decisive for the long walk of the scientific community.

Put another way, what determines the soundness of a given scientific enterprise is whether the researcher is able to balance between the strengths and weaknesses of research designs, given the data and the theory she has available. For example, if a researcher has two cases that can be subject to “controlled comparison”, she can take the benefit of the higher possibility of generalization that stems from that research design. But what if the cases that are available to researchers are not exactly suitable for “controlled comparison”? Then a
“comparison of contrasts” or even a “parallel demonstration” of theory that reveals punctual failures in a theoretical elaboration can be the ways to take in order to refine theory, even if not radically.

3.3. **Research design**

The prior discussion sets the basis for an elucidation of the research design that will be specifically employed in this dissertation. The main objective of this research, as stated in the first chapter, is to contribute to the ongoing theoretical debate about the *propagation of both a professional practice and a technique of governance*: public interest law. To verify whether or not such propagation has taken the form of “*convergence*” towards the U.S. model, as argued by some authors, the empirical strategy will be to *examine the similarities and/or differences in the organization of “public interest law” practice across the U.S. and Latin America*.

Taking an “interpretive” perspective, this research also distinguishes among three levels along which “public interest law” gets institutionalized: labels, practices, and meanings. Convergence (or lack thereof) must be assessed at each and all of these levels. Finally, whether the research finds convergence or divergence across the cases and whether that convergence or divergence is of a higher or lower degree, a concern with understanding the “logic” that has led to one way or the other must also be paramount. The unveiling of this “logic” is what can contribute to theory development, whether through identification of “explanatory insights” for the observed outcomes or through generation of data and/or causal hypotheses that will inform subsequent efforts of inquiry.
### Synthesis of research objectives

<table>
<thead>
<tr>
<th>Case 1</th>
<th>Case 2</th>
<th>Variables of interest in the comparative enterprise</th>
<th>Nature of inquiry</th>
<th>Outcomes of interest</th>
<th>Type of validity</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Public interest law” in the U.S.</td>
<td>“Public interest law” in L.A.</td>
<td>Characteristics of “public interest law systems”</td>
<td>Exploratory</td>
<td>Thick and comparative description of practices and meanings in the “public interest law” sector across the countries</td>
<td>Descriptive and interpretive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Convergence and/or divergence;</td>
<td>Exploratory</td>
<td>Existence or lack of convergence;</td>
<td>Descriptive and interpretive;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Logic of institutionalization;</td>
<td>Exploratory/explanatory</td>
<td>Explanatory insights for convergence and/or divergence; Data and causal hypotheses to inform further research;</td>
<td>Theoretical</td>
</tr>
</tbody>
</table>

### Table 4: Synthesis of research objectives in this dissertation
**Source:** author’s elaboration

The Table 4 above synthesizes these research objectives, while also making it clear where they intend to produce findings with “descriptive”, “interpretive”, or “theoretical” validity. At

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40 This distinction was first set forth by Maxwell, as an attempt to “realistically” define the types of “understanding” that qualitative researchers expect to produce. Descriptive validity relates to researchers’ concern with “factual accuracy of their account – that is, that they are not making up or distorting the things they saw and heard” (2002: 285). Interpretive validity relates to researchers’ concern with what they can legitimately infer about the mean of “objectives, events, and behaviors […] to people engaged in and with them” (2002:288). Finally, theoretical validity relates to the way and extent to which the collected accounts relate to “concepts [and] relationships among concepts” (2002:291). For example, Mawell argues, “one could label the student’s throwing of [an] eraser [descriptive
the same time, the Table 4 suggests how the research objectives “determine” a specific research design. As an empirical objective is to assess convergence toward the U.S. model, the study needs to compare “public interest law” in the U.S. and somewhere else, or to “contrast” the U.S. with a non U.S. context in order to check whether and how theories predicting “convergence” work or do not work.

Treating the U.S. as a “model” and conducting a “single case study” with Latin America as the context of analysis appears to be a good option, but ceases to be so in face of a deeper scrutiny. This operation would require conceiving U.S. “public interest law” as an ideal-type, which is difficult to do in two ways. First, as already said, “public interest law” is a rather complex sector in the U.S., whose structural characteristics might need to be over-simplified in order to compose an “ideal type”. Second and more complicated, the available narratives about “public interest law” in the U.S. are often stylized and even passionate, for they are produced amidst political and professional struggles and by scholars who have stake in these struggles. In other words, “public interest law scholarship” is more often than not a “sport of combat” (Carles, 2001), which directly resonates with “real-world” struggles about what “public interest law” constitutes – or should constitute. The bottom line is that “public interest law scholarship” is more reliable as a source of information about these struggles than as a source of information about the empirical constitution of “public interest law” as a style of practice.

For instance, one of my U.S. respondents – a male, mid-career lawyer working for an environmental NGO – sent me some scholarly articles that he thought I might find “interesting, perhaps even entertaining”, but that I saw as very much illustrative of the combative
characteristic of “public interest law scholarship”: the Manaster/Bonine debate, which took place on pages of a law review (Bonine, 2009; 2010; Manaster, 2010). Bonine, a law professor at Oregon Law School and “one of the pioneers of environmental law in the United States” wrote an article arguing for the legitimacy of “private public interest law practice” in the environmental sector – i.e. of “representing clients seeking environmental protection through a private-practice entity rather than in a nonprofit” (Bonine, 2009). Manaster, a law professor and “respected scholar of environmental law” at Santa Clara University Law School replied to Bonine arguing that not only “private public interest law practice” was a legitimate style of practice but also that there were “many paths” to doing good in environmental law practice. According to his argument, even the work of business lawyers on behalf of “polluters and developers” could lead to positive outcomes if, for example, these lawyers shared “values” that were consistent with environmental protection (Manaster, 2010). Bonine found that assertion outrageous and wrote back in response to Manaster, arguing for the existence of two irreconcilable roads in environmental law: one towards “public interest law”; and the other towards “business law” (Bonine, 2010).

Of course, scholarly combats about what “public interest law” constitutes, as the Manaster/Bonine debate illustrates, are not unique to their particular area of work – i.e., environmental law. An example that is more generic is in the scholarship about the emergence of “right-wing public interest law” groups. Quite frequently, the literature in the “public interest law” realm is very critical of this fact. From a political perspective there is nothing wrong about this stance. By trying to connect themselves to the “public interest law” tradition, conservative

41 See [http://law.uoregon.edu/faculty/jbonine/](http://law.uoregon.edu/faculty/jbonine/), last access 05 Sep 2012

42 See [http://law.scu.edu/faculty/profile/manaster-kenneth.cfm](http://law.scu.edu/faculty/profile/manaster-kenneth.cfm), last access 05 Sep 2012
groups end up threatening liberals with de-characterization, as “speaking law to power” has been a central strategy in U.S. liberal political action: a liberals’ “defense” of that political asset and ultimately of liberals’ own political identity is both understandable and legitimate. However, from a sociological viewpoint, the emergence of “public interest lawyers” among right-wing groups and organizations is of extreme significance: it reveals the strong “procedural” and “pluralistic” roots of “public interest law” in the U.S., while also suggesting that the role of law and lawyers in governance has been institutionalized to an even greater extent in the past few years, for both extremes in the political spectrum are now relying on the law to advance their positions.

Another broad example is in the scholarship about “pro bono”, which frequently attempts to minimize the conflicts between “pro bono” lawyers and the lawyers from the more traditional “public interest” sector (but see Cummings, 2004; Davis, 2005): although it is possible and may be desirable that these two groups collaborate, from a sociological viewpoint the tensions in their relationship are of extreme importance for an accurate understanding of the social construction of “public interest law” as it relates to competing perspectives about the profession and its connections to politics and business.

None of this means that one should disregard the rich body of literature on “public interest law” in the U.S.; it simply means that one should avoid “deducting” what “public interest law” is on the exclusive basis of that kind of literature, especially if the ultimate goal is to have a basis for looking at the institutionalization of “public interest law” outside the U.S. Not only can such an operation raise legitimate political or moral concerns about the use of Northern models.

43 For a book that is explicitly written in “defense” of a subset of the legal system that is said to have “liberal” roots (tort law), see Koenig and Rustad (2001).
as baselines to judge Southern practices, but it can also lead scholars to produce a misleading body of sociological explanations, as even for the North such models will not fully apply.

Another option would be to add cases that were suitable for “controlled comparison” with Latin America. Methods books suggest that there can be two canonical alternatives for such a controlled comparison. In the first one, the additional cases should bear *structural similarities* with the L.A. context, but display *different outcomes* than L.A. with respect to the institutionalization of “public interest law”, vis-à-vis the U.S. model (what Mills [2002] called the “method of agreement”). In the second one, which might be easier to find, the additional cases should bear *structural differences* from the L.A. context, but hold *similar outcomes* to L.A. with respect to the institutionalization of “public interest law”, vis-à-vis the U.S. model (what Mills [2002] called the method of difference).

However, given the “interpretive” perspective taken in this dissertation, such a research design becomes rather difficult to implement, for there is scarce data to inform the selection of cases that are comparable in this fashion. In other words, there is little knowledge about what people “mean” when they talk about “public interest law” over the world, which leads back to the “data” issue as it has been discussed in this chapter. Likewise, there are no clear-cut competing hypotheses to explain convergence towards and/or divergence from the U.S. model in this area either. In other words, the “structural” factors helping mold “public interest law” in Latin America and elsewhere (the *independent variables* for a causal analysis) are not quite well mapped so as to allow a rigorous “controlled comparison”, which leads back to the “paradigm consolidation” issue. To borrow from the classic article by Lijphart (1971) there would certainly be “more variables than cases” before the analyst.
For all these reasons, research with a strong “exploratory” component seems to be both of more need and adequacy for theory development when it comes to understanding the worldwide propagation of “public interest law”. For one, findings of convergence and/or divergence through “thick descriptions” of “public interest law systems” in the U.S. and Latin America can already speak about the correctness of some of the available theories for or expectations toward “public interest law” propagation. For another, findings about the “logic of institutionalization” of “public interest law” across the U.S. and L.A. contexts can provide valuable explanatory insights about convergence and/or divergence in the global propagation of legal practices, as well as data and causal hypotheses that may be useful in future research about this and the related issues.  

3.4. Data collection and analysis: a general description of this research process

Even after restricting the universe of inquiry, this research was not able to avoid being costly and difficult to implement, as Lijphart’s article perspicaciously predicted. In empirical and logistical terms, the two “cases” (i.e., the U.S. and Latin America) cover almost a whole continent. To make things even more complicated, the strong exploratory component involved in

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44 This passage resonates with Marcus’ project of conducting ethnography in/of the “world system” through multi-sited research, although this dissertation does not necessarily subscribes to the tenets of the world-society theory. That kind of research, as Marcus suggests, “takes unexpected trajectories in tracing a cultural formation across and within multiple sites of activity that destabilize the distinction, for example, between lifeworld and system, by which much ethnography has been conceived. Just as this mode investigates and ethnographically constructs the lifeworlds of variously situated objects, it also ethnographically constructs aspects of the system itself through the associations and connections it suggests among sites” (1995:96). In Marcus’ viewpoint, what sorts out “the relationships of the local to the global is a salient and pervasive form of local knowledge that remains to be recognized and discovered in the embedded idioms and discourses of any contemporary site that can be defined by its relationship to the world system” (1995:112) – such as the meanings of “public interest law” across sites.

45 One can legitimately raise the issue of whether “Latin America” can be seen as one “case”. Although each Latin American country has its own particularities, two factors were determinant in my methodological choice for treating them as such. First, they all share a very similar history: they are all former colonies, most of them have gone through democratic transitions, and have political histories featuring common problems such as U.S. imperialism, populism, and a tradition of “un-rule of law”. Second, as will be seen shortly, there has been a movement garnered towards creating a “regional” network of “public interest lawyers” and organizations, which has led to a “Latin American vision” about “public interest law”.
the research and the need to collect primary data in order to reach the “interpretive” perspective desired for the analysis require a lot of back and forth between fieldwork and data analysis. To cope with these challenges, this dissertation relied on a complex yet very practically oriented research design, which this section will seek to briefly describe.

Data collection began in March, 2010 having as its very first step a series of “computer assisted web interviews” (CAWI) using a popular web-tool (surveymonkey.com). After weeks of internet research, samples of “public interest lawyers” from the U.S. and several Latin American countries were generated, including their most probable contact information. The U.S. sample had 164 lawyers; the L.A. sample had 72 lawyers. An email invitation and at least one reminder were sent to each potential participant, all according to Northeastern University’s IRB-approved protocols (IRB# 10-02-16).

The questionnaire included questions along three main substantive themes. The first theme was “practice”, which included questions about basic elements of respondents’ everyday work, such as the areas of practice wherein they operate, the characteristics of the clients they serve, and the main activities they perform. The second was “vision”, which included questions about the main objectives respondents assign to their “public interest law” practice, as well as about the positive and negative aspects that they see in this “sector”, “type” or “style” of legal practice. The third was “globalization”, which included questions about both the experiences in

\[46\] Here, again, Marcus’ perspectives on research design in multi-sited ethnography are rather useful. While facing the “threat” of “attenuated power of fieldwork” in such kind of research, author argues that “to do an ethnographic research, for example, on the social grounds that produce a particular discourse of policy requires different practices and opportunities than does fieldwork among the situated communities such policy affects. To bring these sites into the same frame of study and to posit their relationships on the basis of first-hand ethnographic research in both is the important contribution of this kind of ethnography, regardless of the variability of the quality and accessibility of that research at different sites” (1995:100).
and the visions of the worldwide circulation of people, ideas, and resources around “public interest law” among respondents.

Besides themes of more substantive interest, the questionnaire also included questions that helped characterize respondents (and hence “control” the analysis) along variables such as race, gender, class, political/religion socialization, school/professional socialization, exposure to other cultures/legal traditions, and career preferences. Many of these questions were drawn from previous studies (Hendler, Hollingsworth & Erlanger, 1978; Heinz et al, 1994; Dinovitzer et al, 2004; Nielsen & Albiston, 2006; Rhode, 2008), having already been “tested”. All questions were formulated in a “closed-ended” fashion, for the primary purpose of data collection was to identify similarities and differences within and across the two “cases”.

The last item in the questionnaire asked whether the respondent would like to provide his or her contact information for an in-depth interview. The interviews were meant to enrich the data gathered through CAWI procedures by collecting stories that would detail the responses to the CAWI questionnaire and provide the objective and subjective context for such responses. For example, the CAWI questionnaire asked participants about their relationship with pro bono lawyers from the private, corporate bar. The interview included questions that asked for details about and examples of this relationship, as well as for the visions that respondents held as to whether and how pro bono work relates to “public interest law”.

In October, 2010 I had a meeting with the members of the dissertation committee to discuss the development of the research process. The basic results of that first wave of data collection were then reported: 71 U.S. individuals had responded to the CAWI questionnaire, with 39 of them having volunteered to participate in the in-depth interviews. 10 of such
interviews were conducted prior to the meeting and another 10 were scheduled to be conducted between October, 2010 and March, 2011. In addition, 37 L.A. individuals had responded to the survey, with 29 of them having volunteered to participate in the in-depth interviews. 20 of such interviews were scheduled to be conducted between October, 2010 and March, 2011.

Also in the mentioned meeting, the committee members and I agreed that there were three methodological, logistical and/or conceptual issues in the research process that needed to be resolved. To begin with, (i) the universe of respondents needed to be expanded so as to produce a better “coverage” of the variety of “public interest law” practices in the U.S., which, in the vision of participants in the meeting, was not properly captured through the first wave of CAWI procedures and planned interviews. In addition, (ii) I would have to find the proper balance between the need to collect more data and the costs that such new wave of data collection was likely to generate. Finally, (iii) I would need to secure the financial resources that were necessary in order to pay for already foreseen costs, such as interviews transcriptions and fieldwork travels, all of which were seen as very important for the desired “interpretive” analysis. In fact, in order to get a first-hand contact with the “context” of each case, I did one-on-one interviews, travelling to several places in the U.S. (Boston, New York, Philadelphia, Washington D.C., Miami, and San Francisco) and South America (Buenos Aires in Argentina; Bogota in Colombia; Santiago in Chile; in addition to Sao Paulo, Belo Horizonte, and Brasilia in Brazil).

As for issue (iii), my study was fortunate enough to receive two grants: the Juan Celaya Grant for Studies in Law and Globalization, from the International Institute for the Sociology of Law, in Oñati, Spain (IISL); and the Law, Policy, and Society Dissertation Research Grant from
Northeastern University. These resources were of the highest importance for the process of data collection to take place. As for issue (ii), as suggested by the dissertation committee, I continued to rely on CAWI procedures, while also plugging into the questionnaire some of the open-ended questions that were originally asked through in-depth interviews.

After months of internet research, a larger sample was finally generated, with 800 U.S. “public interest lawyers”, 200 L.A. “public interest lawyers”, and their most likely contact information. Akin to the first wave of data collection, an email invitation and at least one reminder were sent to each potential participant. About 150 U.S. lawyers and 50 L.A. lawyers fully completed the closed-ended questions in the electronic form. Moreover, about 80 U.S. respondents and 40 L.A. respondents provided responses to most of the open-ended questions. 70 of the U.S. respondents and 31 of the L.A. respondents provided their contact information for a follow-up interview, if need be. No further in-depth interviews were conducted, given the surprising richness of the responses to the open-ended questions, but a lot of back and forth contact was maintained with respondents in order to clarify punctual aspects of such responses.

The rate of response in both waves of data collection was not of much concern, especially given the challenges facing questionnaire administration. Besides obstacles that are common to online questionnaires – the invitation may be seen as spam or scam, the contact information available is sometimes incorrect and the messages keep bouncing back, and so on – the difficulties to engage lawyers in research are well known: not only are they extremely busy professionals, but they also tend to be skeptical of social scientists.

Some reactions to the email invitation reflect these common barriers to social research, specifically due to the subjects of interest in this research. A U.S. lawyer invited to participate in
the first wave of CAWI procedures replied to the email invitation asking, “on behalf of [himself] and several [others]”, to know “a little more about this survey […]. First,” he asked, “can you provide me with the name and contact information of a Northeastern faculty member who is supervising this research? Second, can you provide a more detailed explanation of the confidentiality protections that you have put in place? Third, can you provide me with a copy of your university’s guidelines for research which you are operating under?” Another U.S. lawyer, invited to participate in the second wave of CAWI procedures, showed a similar kind and extent of skepticism: in his reply to my email invitation, he said he “would like to know a little more about what [I was] trying to show in [my] thesis before [responding] to the survey. Like most public interest attorneys”, he said, “I do my work because I have certain values. I can’t tell from your email how my input will be used, and what values your thesis will support”. A third U.S. lawyer, also invited to participate in the second wave of CAWI procedures, was very gentle in his note, but claimed not to have the necessary time to participate: “Probably like many public interest attorneys,” he said, “I would like to help, but honestly, most of us don’t have 40 minutes to complete a survey. Those who do probably don’t have very busy practices, which might skew your results. If you had a survey that took 10 to 15 minutes, I’d take it”.

For all these reasons, and despite the assertion of some authors that CAWI is a good strategy to collect open-ended answers when compared, for example, to self-administered pen-and-paper interviews (Hampton, 1999), I had fears that respondents would not feel encouraged to answer to the open-ended questions in this second wave of data collection, or at least that they would not feel encouraged to provide deep enough answers for the questions they were being asked. Thus, I kept asking for contact information of respondents, in case it became analytically interesting or empirically necessary to have another round of deeper conversation with them.
Overall, my fears were not confirmed. Some respondents literally ignored the open-ended questions – and others, like the third lawyer mentioned in the previous paragraph, may not have responded to the questionnaire precisely because of the open-ended questions. However, others took out commendable amount of time to provide thoughts and accounts about the issues that were being addressed. Similarly, some were brief in their responses to the open-ended questions, but left their contact information and indicated that they would be available for parallel conversations in order to detail their answers further.

In total, the process of data collection involved online responses of at least 221 U.S. lawyers and 87 L.A. lawyers, as well as 40 fully-transcribed in-depth interviews and 120 CAWI records with rich responses to open-ended questions. In both waves of data collection, findings generated through CAWI procedures and in-depth interviews were also contrasted with available documents, such as internet profiles and/or institutional materials of/about lawyers, law firms, and “public interest law” organizations, as well as with academic articles and books that were more descriptive of the “public interest” sector in the two “cases”. Finally, the research process also involved participant observation in a Pro Bono conference in Santiago, Chile.

This sequence was thankfully able to generate the necessary data at a reasonable cost. However, one of the issues identified in the 2010 meeting is still on the table for considerations: how did the research manage to find the actual people who constitute the “public interest law” sector and who “represent” its variety across the Americas? The next section deals with this “sampling” issue, which was crucial for the validity of the research design as a whole.

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47 As mentioned already, some clearly focused on the closed-ended questions; some responded to both closed-ended and open-ended; still others provided just brief responses to the open-ended questions. This means that the final dataset displays different numbers of respondents according to the question asked. The numbers mentioned in this passage are the lowest number of valid responses.
3.5. **Sampling issues and samples’ characteristics**

While in the process of devising a sampling strategy, this research encountered several other challenges. For one, potential participants had to fairly represent the “public interest law” sector not only in the *symbolic* sense, but also and more specifically, in the *practical* sense. In other words, participants should be able to articulate accounts that reflected the actual variation in “public interest law” *visions* and *practices* across the countries involved in the study\(^48\). For another, there seems to be no reliable “sampling frame” from which participants could be recruited – i.e., no “directory” whatsoever of “public interest law” practitioners in the U.S. and abroad. Finally, at least for the U.S. case, many kinds of practitioners (from corporate lawyers who devote a fraction of their time to do pro bono work to Public Defenders advocating for minorities before the Criminal Justice system), could be seen as “public interest lawyers”, depending on researcher’s discretion.

Such an “independent determination” of who is or who is not a “public interest lawyer” in the researched contexts was theoretically and empirically risky in at least two ways. First, given both the “interpretive” concern and the “institutionalist” approach underlying this dissertation, it somehow assumed that the more institutionalized a “sector”, “kind”, or “style” of legal practice is, the more it is likely to produce a collective – even if not entirely homogeneous – identity among its putative participants. Second, struggles over the “public interest law” label take place

\(^{48}\) Implicit in this choice is an attempt to include “ground-level” practitioners, in contrast to what Liu sees as a common bias in law and globalization studies: “existing studies on the globalization of the legal profession direct most of their attention on elite lawyers in large corporate law firms […]. Arguably, for any field researcher, it would be extremely difficult to go beyond the English-speaking legal elite in major urban centers and examine how globalization shapes the works and lives of ordinary practitioners in various countries. Nevertheless, by focusing on the elite, [scholars] assume that the globalization of the legal profession is a social process that occurs mostly at the top tier of the professional hierarchy. This leads to a strong conceptual bias against ordinary law practitioners (2012:18)”.
not only among scholars, as in the Manaster/Bonine debate, but also among practitioners: lawyers have difficulties in dealing with “closed definitions” of “public interest law”, and end up challenging research designs in which they see any attempt to set the limits for this kind of practice.

A not-so-anecdotal evidence of that was produced by two former students of Professor Jeffrey Selbin’s Law and Social Justice course at U.C. Berkeley’s Boalt Hall Law School. These students decided to write a final course paper on the possible effects of legal education on the career choices of law graduates, with a special interest on the reasons why some graduates choose to go to “public interest” practice and others do not. Their “method” was also exploratory, comparative and based on CAWI procedures: they sought to collect responses to an electronic questionnaire from fellow colleagues from both Boalt Hall Law School and Suffolk Law School, in Boston. They hypothesized that, although “law school is a universal experience, and every student endures similar stressors, challenges, and ultimately reaps similar rewards for their hard work”, the differences between Suffolk and Boalt Hall in aspects like “grading, rank, courses offered, and student body” might affect career choices in these two environments (Warnken & Williams, 2009: 1-2).

Students then devised a questionnaire that was “intentionally broad in its questions and opportunities for students to share their thoughts”, hoping that “with the chance to answer open-ended questions about their own path, students would give [them] a window into how much their respective schools both influenced career choices and fostered career aspirations that they already had”. Moreover, they “intentionally did not provide too many details in [their] email
request because they felt that if they explained that it was for a class entitled ‘Law and Social Justice’ that might color the responses” (Warnken & Williams, 2009: 1-2).

The rate of response was low (13 from Boalt and 17 from Suffolk), but that was “already expected” by the students. What perhaps was not expected was that “within a matter of minutes they started getting emails back (11 in total) asking them questions such as ‘who commissioned this?’, ‘what is this for?’, and ‘what is the impetus behind these surveys?’ […] Interestingly,” students reported, “we got far more of these inquisitive emails than we did responses” (Warnken & Williams, 2009: 1-3).

But the story kept going on: the next day a student wrote a “lengthy post” about the survey in a Boalt Hall student blog. The author of the post argued that some of the survey questions “just had a ‘gotcha’ quality that rubbed her the wrong way” and that questions such as those on the “prestige of various legal jobs” or on “how do [one] and others value public interest work” were “offending”. She went on to say that:

Treating ‘public interest’ as an amorphous blob is actually incredibly polarizing. In a black and white public interest vs. private sector world, you are either (a) saving the world or (b) being a selfish prick. Or, on the other hand, you are either (a) a lunatic hippie who may one day stage a protest by living in a tree or (b) a rational human being who wants to pay their bills and live in a house. Needless to say, these dichotomies are unfair.

This post was followed by numerous anonymous comments, posted by other students, all of which backed up the author of the post. The bottom line is that even modest and collegial enterprises of social research about “public interest law” tend to be extremely controversial, perhaps “polarizing”, as the post author defined it.
For other reasons, although with similar consequences, research on the “public interest law” sector in the so-called developing world may also raise a lot of distress. In a relatively long, yet very insightful and informative passage, Cummings, Sa e Silva & L. Trubek, remarked that:

This concern, which is fundamentally about local ownership and the threat of external influence, has a long history in the debate over PIL. In the 1980s, Baxi famously argued against India adopting the PIL label for the legal rights advocacy ushered in by expanding standing rules and Supreme Court activism, preferring instead the term “social action litigation.” He noted that “while labels can be borrowed, history cannot be. The PIL represents for America a distinctive phase of socio-legal development for which there is no counterpart in India; and the salient characteristics of its birth, growth and, possibly, decay are also distinctive to American history.” Nonetheless, Baxi was pessimistic that lessons from the American model would be critically examined: “[S]o great is the hold of colonial legal imagination that, in the last analysis, these lessons will be learned only after the attempts at transferring the success stories...have demonstrably failed. In the process, the appreciation of the vital political cultural differences between the two societies will be deferred; and a loose-minded importation of notions opposite to the circumstances of development in the United States will continue to obscure a genuine appreciation of the distinctive social and historical forces shaping, generally, the role of adjudication in India.” Other scholars have noted that the U.S. version of PIL, as both a conceptual and historical matter, have fit only loosely with the experiences of other countries—and sometimes not at all. Ellman’s research on PIL in the 1990s emphasized not only that the PIL rubric did not also map onto local context, but that it obscured the important contributions of the “alternative lawyering” movement to global advocacy trends.

Aware of these distressful predispositions in the “field” – and despite having been skeptical about using accounts from the U.S. “public interest law movement” (Rhode, 2008) in order to define what “public interest law” is, given all the “biases” that might reside in such accounts –, when it came to collect data for this dissertation I chose not to judge myself who was or who was not a “public interest lawyer”. On the contrary, in order to find participants for this research, not only did I search for those who were “labeled” as “public interest lawyers” in the
profession and before the larger society, but I also gave a chance to individual lawyers for “self-declaration” on whether they were “public interest lawyers” or not.

In practical terms, that orientation was put in place as follows: in the first wave of data collection, individuals in the U.S. sample were recruited from among “fellows” of two major “public interest law fellowship programs”; while individuals in the L.A. sample were recruited from among participants in the 2009 meeting of the Latin American Network of Public Interest Law Clinics or Red Latinoamericana de Clinicas de Interes Publico. For both the U.S. and the L.A. “cases”, the sampling process followed a similar logic: the sources of contacts had the “public interest law label” clearly attached to them, and could be said to gather individuals whose work is “representative” of the “public interest law” sector in their respective contexts

Even so, as it became evident in my 2010 meeting with the dissertation committee, these first two samples might have had severe limitations. Although the universe of respondents among L.A. lawyers was still very small, this case was less delicate. To begin with, the population of “public interest lawyers” in L.A. is much smaller than in the U.S. Moreover, given all my extensive internet research preceding the first wave of data collection, the Network meeting seemed to have brought together a very representative collection of “public interest lawyers” in L.A.: even if its focus was on clinics, the meeting had also gathered NGO lawyers, who could already provide information about the dynamic of “public interest law” in this other practice setting. Hence, although efforts to expand this sample were also necessary in order to

49 “Fellowships” have been seen as central in the reproduction of “public interest law” in the U.S., as “in light of the difficulty in gaining access to entry-level positions [they] offer a pathway into public interest law, while affording the additional inducement of prestige associated with the receipt of highly competitive grants”. Moreover, as fellowships require applicant lawyers to design projects, they “also promote creativity” (Cummings & Eagly, 2006: 1266). And despite clinics operate as part of a specific enterprise – i.e., legal training – they are both practically oriented and relatively open to innovation.
enhance internal and external validity of the research, there were feelings that such an operation was not going to add any dramatic change to the data that had already been collected.

U.S. fellows, however, were suggestive of three specific caveats, as the committee and I saw it. First, fellows were certainly too young, as in practical terms fellowships function as entry-level positions within the “public interest law” market. In other words, a “generational bias” would be certainly in place if I did rely exclusively on fellows. Second, fellowships were limited by the interests and orientations of their sponsors. Although in some cases that means going beyond most moderate and conventional forms of legal services – for example, several fellowships focus on immigration law work, which legal services units cannot undertake due to restrictions from their funding sources – there are some kinds of “public interest law” work that apparently fellowships do not engage with, such as environmental law. Finally, as fellowships are extremely competitive – especially at times of scarcity of jobs – they can “limit the entry” of non-elite law school graduates, who may hold lower levels of social and cultural capital than their elite law school graduates counterparts and, therefore, have a lower likelihood of succeeding in such competition.

In line with the concerns of the first wave – (i) taking the label “public interest law” seriously; (ii) avoiding judging who belongs to the public interest law sector or who does not; and (iii) making sure to include ground-level practitioners –, three main strategies were put in place for the production of the sample for the second wave of data collection. First, after a great deal of internet research I came across both free and paid websites that lead to lists of “public interest law” organizations and practitioners, namely www.publicjustice.net; www.pslawnet.org; and www.martindale.com. In addition, I set several “Google alerts” with the terms “public
interest law”, “public interest lawyer”, and “public interest lawyering” in English, Spanish, and Portuguese so that I could “track” people and organizations in the U.S. and L.A. whose names or work were featured on the web in connection with these terms.

Besides internet research, I also relied on the so-called snow ball technique: both in the interviews from the first wave of data collection and during back-and-forth contact maintained with the subjects invited to participate in the research, other potential participants were often mentioned. Some of these lawyers were referred to as having “far more experience” than the selected subjects; others as “interesting [persons] to be in contact with”. All their contacts were taken note of and generally included in the sample.

A last technique that was used in this extended sampling process was what one may call network mapping: simply looking at websites of “public interest law” organizations and searching for other organizations or even individuals that they partner with. Quite frequently, some organizations would report filing a lawsuit in partnership with others, and the names and email addresses of lawyers would be available for contact. Other times organizations would subscribe to petitions in partnership with other organizations, and such documents would also have lists of contacts. This sort of network mapping can be useful not only for network analysis, as the name suggests, but also for making sure that some patterns of “public interest law” practice will be included one way or another in a sampling process.

Below are some characteristics of the two samples, which highlight the virtues and limits of sample extension when that comparison is possible. In terms of gender (Table 5), the first wave of data collection among U.S. lawyers reached 18 males (26.1% of the sample) and 51

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50 Of course, all these techniques were extremely time-consuming to execute: it took months until I got to the larger list of contacts that was used for the second wave of data collection.
females (73.9% of the sample)\textsuperscript{51}. The second wave reached 55 males (35.9% of the sample) and 98 females (64.1% of the sample). In L.A, the proportions were much more similar across the two waves, with 18 females (50.0% of the sample) and 18 males (50.0% of the sample) in the first wave, and with 24 males (48.0% of the sample) and 26 females (52.0% of the sample) in the second wave. For the U.S. case, a second sampling process visibly increased variation in the sample.

<table>
<thead>
<tr>
<th>Gender</th>
<th>U.S.</th>
<th>L.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Wave</td>
<td>2nd Wave</td>
</tr>
<tr>
<td>Male</td>
<td>18</td>
<td>55</td>
</tr>
<tr>
<td>Female</td>
<td>51</td>
<td>98</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>153</td>
</tr>
</tbody>
</table>

Table 5: Characteristics of the samples: Gender

Source: data collected for this dissertation

In terms of race (Table 6), the first wave of data collection among U.S. lawyers reached 53 whites/Caucasians (82.8% of the sample) and 18 individuals from minority groups (17.2% of the sample). The second wave reached 122 whites/Caucasians (81.9% of the sample) and 27 individuals from minority groups (16.1% of the sample). Although the proportions were generally similar across the two waves, considering the contrast between whites and non-whites, there were some changes in the minority groups represented. The second wave reached 3 (2.0% of the sample) American Indians/Native Americans, who were absent in the first sample. From

\textsuperscript{51} The use of percentages to report these data is questionable, given that there are not 100 cases in the L.A. sample, but the procedure helps to make the two samples more “comparative”, which, after all, is the purpose of this research.
this point of view, a second sampling process increased variation in the whole sample, even if very marginally, while also suggesting that this is not a variable along which “fellows” have a strong bias. The L.A. sample maintained roughly the same composition, with a generally smaller number of lawyers from minority groups in both waves of data collection.52

<table>
<thead>
<tr>
<th>Race</th>
<th>US 1st Wave</th>
<th>US 2nd Wave</th>
<th>LA 1st Wave</th>
<th>LA 2nd Wave</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Indian / Native American</td>
<td>—</td>
<td>—</td>
<td>3</td>
<td>2.0%</td>
</tr>
<tr>
<td>Asian</td>
<td>4</td>
<td>6.3%</td>
<td>5</td>
<td>3.4%</td>
</tr>
<tr>
<td>Black / African American</td>
<td>2</td>
<td>3.1%</td>
<td>4</td>
<td>2.7%</td>
</tr>
<tr>
<td>Hispanic / Latino</td>
<td>5</td>
<td>7.8%</td>
<td>10</td>
<td>6.7%</td>
</tr>
<tr>
<td>White / Caucasian</td>
<td>53</td>
<td>82.8%</td>
<td>122</td>
<td>81.9%</td>
</tr>
<tr>
<td>Pacific Islander</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Middle Eastern</td>
<td>3</td>
<td>—</td>
<td>1</td>
<td>0.7%</td>
</tr>
<tr>
<td>Bi/Multiracial</td>
<td>4</td>
<td>—</td>
<td>4</td>
<td>2.7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>71</strong></td>
<td><strong>100%</strong></td>
<td><strong>149</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 6 Characteristics of the samples: Race
Source: data collected for this dissertation

Questions about the “practice setting” were only introduced in the second wave, as these responses were generally known in the first phase: U.S. fellows normally worked at NGOs and, although there were NGO lawyers in the first L.A. sample and there have been clinics in L.A. that work separately from law schools, L.A. respondents normally worked at law schools. In any event, a second sampling process seems to have increased variation in the whole sample along this variable as well (Table 7). This is clear in L.A., where, besides additional clinicians, the

52 The race category is often problematic in research outside the U.S.; for that reason the racial classification for L.A. respondents had only two options: minority groups or non-minority groups.
second sample included several respondents from non-profit organizations and clearing houses for pro bono cases. In the U.S. case, it is also interesting to note the presence of “private public interest lawyers” and, although with a very low frequency, pro bono attorneys in the second sample.

<table>
<thead>
<tr>
<th>Practice setting, 2nd Wave</th>
<th>L.A.</th>
<th>U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>%</td>
</tr>
<tr>
<td>Nonprofit public interest organization – Client oriented/Legal Aid</td>
<td>18</td>
<td>29%</td>
</tr>
<tr>
<td>Nonprofit public interest organization – Policy oriented</td>
<td>25</td>
<td>40%</td>
</tr>
<tr>
<td>Clearing House for Pro Bono cases</td>
<td>13</td>
<td>21%</td>
</tr>
<tr>
<td>Law school clinic or project</td>
<td>3</td>
<td>5%</td>
</tr>
<tr>
<td>Public defender's Office</td>
<td>1</td>
<td>2%</td>
</tr>
<tr>
<td>Prosecutor's Office</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Government (Executive/Administrative agency)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Legislature</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Court</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>International public interest organization</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>Private public interest law firm</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Small law firm performing Pro Bono work (fewer than 35 attorneys)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Medium law firm Performing Pro Bono work (35-100 attorneys)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Large law firm performing Pro Bono work (+100 attorneys)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>62</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 7: Characteristics of the samples (second wave of data collection): Practice setting

Source: data collected for this dissertation (second wave)

With respect to areas of practice, a contrast between the two U.S. samples is also suggestive of “area biases” among fellows, which were shortened in the second wave of data.
collection through an increase in sample variation: environmental law was very badly represented in the first wave, while areas related to some kinds of socio-economic rights (health care and welfare benefits), as well as immigration law were somewhat “over-represented”. Women’s/reproductive rights also had a lower frequency in the second wave as compared to the first (Table 8).
<table>
<thead>
<tr>
<th>Main areas of work</th>
<th>U.S. First wave</th>
<th>Second wave</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Rights/Civil Liberties</td>
<td>16</td>
<td>17</td>
<td>33</td>
</tr>
<tr>
<td>Environmental Protection</td>
<td>1</td>
<td>24</td>
<td>25</td>
</tr>
<tr>
<td>Consumer Protection</td>
<td>12</td>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td>Employment/Labor</td>
<td>11</td>
<td>11</td>
<td>22</td>
</tr>
<tr>
<td>Education</td>
<td>10</td>
<td>12</td>
<td>22</td>
</tr>
<tr>
<td>Media Reform</td>
<td>—</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Health Care</td>
<td>11</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>AIDS/HIV</td>
<td>—</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Welfare Benefits/Poverty</td>
<td>18</td>
<td>10</td>
<td>28</td>
</tr>
<tr>
<td>Housing/Homeless</td>
<td>19</td>
<td>23</td>
<td>42</td>
</tr>
<tr>
<td>Zoning and Land Use</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Voting Rights</td>
<td>—</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Occupational and Safety</td>
<td>—</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Criminal</td>
<td>9</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>Immigration</td>
<td>26</td>
<td>12</td>
<td>38</td>
</tr>
<tr>
<td>Disability</td>
<td>14</td>
<td>14</td>
<td>28</td>
</tr>
<tr>
<td>Community Economic Development</td>
<td>3</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Women's/Reproductive Rights</td>
<td>12</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>Family/Children</td>
<td>18</td>
<td>26</td>
<td>44</td>
</tr>
<tr>
<td>Domestic/Intimate Partner Violence</td>
<td>—</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Prisoners' Rights</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Gay/Lesbian/Transgender Rights</td>
<td>—</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Human Rights</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Racial Justice</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Government Transparency and Accountability</td>
<td>—</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Elder Law</td>
<td>—</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Native Americans/Indigenous Peoples’ Rights</td>
<td>—</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>14</td>
<td>—</td>
<td>14</td>
</tr>
<tr>
<td>N=</td>
<td>71</td>
<td>200</td>
<td>*</td>
</tr>
</tbody>
</table>

Table 8 Characteristics of the samples: Areas of work (U.S.)

Source: data collected for this dissertation

When applied to L.A. samples, that same exercise produces different but equally interesting results (Table 9). The scores for “Human Rights” grew impressively, from 0 in the
first wave to 18 in the second. This is suggestive of several interesting facts. To begin with, when compared to both samples in the U.S. and with some responses to the open-ended questions or the in-depth interviews, it becomes clear that “public interest law” bears a much stronger relationship to “Human Rights” in L.A. than in the U.S. This is not going to be without consequences; the “Human Rights” discourse “contaminates” practices in different ways than, let’s say, “civil rights”, the prevailing area in the U.S.

In addition, as the second sample was produced after “network mapping” and generally did not include participants of the “public interest network” meeting, it may well be that individuals included in the second L.A. sample were identified more with the “Human Rights” label (and perhaps less identified with the “public interest” label). Put another way, the high concentration on “Human Rights” as an area of practice in L.A. may suggest a weak convergence towards the “public interest label” in this context. Needless to say at this stage, this is more of a hypothesis for future research rather than a clear-cut finding in this one.
### Table 9: Characteristics of the samples: Areas of work (L.A.)

<table>
<thead>
<tr>
<th>Main areas of work</th>
<th>L.A.</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First wave</td>
<td>Second wave</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Civil Rights/Civil Liberties</td>
<td>22</td>
<td>10</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Environmental Protection</td>
<td>15</td>
<td>10</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Consumer Protection</td>
<td>5</td>
<td>1</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Employment/Labor</td>
<td>2</td>
<td>—</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td>14</td>
<td>2</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Media Reform</td>
<td>3</td>
<td>—</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Health Care</td>
<td>14</td>
<td>3</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td>AIDS/HIV</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Welfare Benefits/Poverty</td>
<td>7</td>
<td>—</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Housing/Homeless</td>
<td>8</td>
<td>1</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Zoning and Land Use</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Voting Rights</td>
<td>2</td>
<td>—</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Occupational Health and Safety</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Criminal</td>
<td>5</td>
<td>2</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Immigration</td>
<td>7</td>
<td>3</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Disability</td>
<td>7</td>
<td>3</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Community Economic Development</td>
<td>3</td>
<td>—</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Women's/Reproductive Rights</td>
<td>13</td>
<td>4</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td>Family/Children</td>
<td>11</td>
<td>2</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Domestic/Intimate Partner Violence</td>
<td>—</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Prisoners' Rights</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Gay/Lesbian/Transgender Rights</td>
<td>—</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Human Rights</td>
<td>—</td>
<td>18</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Racial Justice</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Government Transparency and Accountability</td>
<td>—</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Elder Law</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Native Americans/Indigenous Peoples' Rights</td>
<td>—</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>37</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>N=</td>
<td>36</td>
<td>64</td>
<td>*</td>
<td></td>
</tr>
</tbody>
</table>

Source: data collected for this dissertation

In terms of law school status (according to respondent), suspicions about the “elite school” bias among U.S. “public interest fellows” were confirmed (Table 10). Among the U.S.
lawyers reached in the first wave of data collection, 39 (54.9% of the sample) were from elite schools and only 7 (9.9%) were from schools with “more of a local reputation”. The second wave reached 46 respondents (30.5% of the sample) from elite schools and 29 (19.2%) from schools with “more of a local reputation”, with a better distribution along the intermediate categories as well. In L.A., the second wave was also able to increase the proportion of respondents from schools with “more of a local reputation”, from 1 person (2.9% from the first sample) to 5 (9.6% of the second sample). From this point of view, a second sampling process clearly increased variation in the whole sample.

<table>
<thead>
<tr>
<th>Law school status according to respondent</th>
<th>U.S.</th>
<th>L.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Wave</td>
<td>2nd Wave</td>
</tr>
<tr>
<td>Elite school</td>
<td>39</td>
<td>54.9%</td>
</tr>
<tr>
<td>Major school in the country</td>
<td>15</td>
<td>21.1%</td>
</tr>
<tr>
<td>Major school in the region</td>
<td>10</td>
<td>14.1%</td>
</tr>
<tr>
<td>School that has more of a local reputation</td>
<td>7</td>
<td>9.9%</td>
</tr>
<tr>
<td>Total</td>
<td>71</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 10 Characteristics of the samples: Law school status

Source: data collected for this dissertation

A description of the samples with respect to family situation when respondent was growing up (taken in this research as a proxy of class background) shows roughly the same trend (Table 11). In terms of proportion, the U.S. sample shows lower scores for the “very bad” and
“bad” categories, and higher scores for “good” or “very good” in the first wave, relative to the second. This is suggestive, again, of an “elite” bias among U.S. fellows. In L.A., scores also find a better distribution, with higher scores for “neither bad nor good”, “bad”, and “very bad” in the second wave of data collection, relative to the first. Once again, a second sampling process clearly increased variation in the whole sample.

<table>
<thead>
<tr>
<th>Family situation when respondent was growing up (class background)</th>
<th>U.S.</th>
<th>L.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Wave</td>
<td>2nd Wave</td>
</tr>
<tr>
<td>Very bad</td>
<td>2</td>
<td>2.9%</td>
</tr>
<tr>
<td>Bad</td>
<td>3</td>
<td>4.3%</td>
</tr>
<tr>
<td>Neither bad, nor good</td>
<td>14</td>
<td>20.0%</td>
</tr>
<tr>
<td>Good</td>
<td>37</td>
<td>52.9%</td>
</tr>
<tr>
<td>Very good</td>
<td>14</td>
<td>20.0%</td>
</tr>
<tr>
<td>Total</td>
<td>70</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 11 Characteristics of the samples: Class background
Source: data collected for this dissertation

In terms of mean age and years of graduation, the “generational” bias among U.S. “public interest fellows” was strongly confirmed (Tables 12 and 13).

<table>
<thead>
<tr>
<th>Mean age</th>
<th>U.S.</th>
<th>L.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Wave</td>
<td>31</td>
<td>37</td>
</tr>
<tr>
<td>2nd Wave</td>
<td>46</td>
<td>36</td>
</tr>
</tbody>
</table>

Table 12: Characteristics of the samples: Age
Source: data collected for this dissertation
The mean age of the first U.S. sample was 31 years; with all respondents displaying between 1 to 5 years of time difference since law school graduation. In the second sample, the mean age of the U.S. sample went up to 46 years and the time difference since graduation was much better distributed, including 37 people with more than a 30 year gap since graduation. In L.A., the mean age patterns were more consistent (an age of 37 years in the first sample and 36 in the second), with small differences between the two samples with respect to time passed since graduation. This reinforces the idea that in many relevant ways, the first L.A. sample was somehow “representative” of the “public interest sector” in this region.

<table>
<thead>
<tr>
<th></th>
<th>U.S.</th>
<th></th>
<th>L.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Wave</td>
<td>2nd Wave</td>
<td>Years since graduation</td>
</tr>
<tr>
<td>1 to 5</td>
<td>71</td>
<td>21</td>
<td>1 to 5</td>
</tr>
<tr>
<td>6 to 10</td>
<td>--</td>
<td>25</td>
<td>6 to 10</td>
</tr>
<tr>
<td>11 to 15</td>
<td>--</td>
<td>12</td>
<td>11 to 15</td>
</tr>
<tr>
<td>16 to 20</td>
<td>--</td>
<td>15</td>
<td>16 to 20</td>
</tr>
<tr>
<td>21 to 25</td>
<td>--</td>
<td>11</td>
<td>21 to 25</td>
</tr>
<tr>
<td>26 to 30</td>
<td>--</td>
<td>12</td>
<td>26+</td>
</tr>
<tr>
<td>31 to 35</td>
<td>--</td>
<td>26</td>
<td>--</td>
</tr>
<tr>
<td>36 to 40</td>
<td>--</td>
<td>14</td>
<td>--</td>
</tr>
<tr>
<td>41 to 45</td>
<td>--</td>
<td>6</td>
<td>--</td>
</tr>
<tr>
<td>46+</td>
<td>--</td>
<td>1</td>
<td>--</td>
</tr>
<tr>
<td>N=</td>
<td>71</td>
<td>143</td>
<td>N=</td>
</tr>
</tbody>
</table>

Table 13 Characteristics of the samples: Years since graduation
Source: data collected for this dissertation

A description of the samples with respect to position in the political spectrum shows that a second sampling process increased variation in the whole sample, although most respondents
still fall under the “liberal/ leftist” or “very liberal/ very leftist” categories in both U.S. and L.A. samples (Table 14). The comparison of the two U.S. samples shows an increase in centrists and the appearance of one single conservative/ right-wing. The comparison between the two L.A. samples shows an increase in “liberals/ leftists” or “very liberals/very leftists” relative to the other categories.

<table>
<thead>
<tr>
<th>Position in the political spectrum</th>
<th>U.S.</th>
<th>L.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Wave</td>
<td>2nd Wave</td>
<td>1st Wave</td>
</tr>
<tr>
<td>Very liberal/left-wing</td>
<td>41</td>
<td>59.4%</td>
</tr>
<tr>
<td>Liberal/left-wing</td>
<td>27</td>
<td>39.1%</td>
</tr>
<tr>
<td>Center</td>
<td>1</td>
<td>1.4%</td>
</tr>
<tr>
<td>Conservative/right-wing</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Very conservative/right-wing</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 14: Characteristics of the samples: Respondents’ position in the political spectrum

Source: data collected for this dissertation

Finally, a second sampling process and a second wave of data collection increased variation in an obvious other way: geographic coverage was higher in both cases and at both levels of data (Table 15). While Argentina and Colombia are central in both L.A. samples, the second wave of data collection increased (substantially) the number of Mexican participants, while also including participants from countries such as Uruguay and Ecuador; all of which enhanced the validity of the study.
<table>
<thead>
<tr>
<th>Country</th>
<th>1st Wave</th>
<th></th>
<th>2nd Wave</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percentage</td>
<td>Frequency</td>
<td>Percentage</td>
</tr>
<tr>
<td>Argentina</td>
<td>9</td>
<td>25.0%</td>
<td>11</td>
<td>21.6%</td>
</tr>
<tr>
<td>Bolivia</td>
<td>0</td>
<td>0.0%</td>
<td>1</td>
<td>2.0%</td>
</tr>
<tr>
<td>Chile</td>
<td>3</td>
<td>8.3%</td>
<td>2</td>
<td>3.9%</td>
</tr>
<tr>
<td>Colombia</td>
<td>17</td>
<td>47.2%</td>
<td>20</td>
<td>39.2%</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>1</td>
<td>2.8%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Ecuador</td>
<td>—</td>
<td>—</td>
<td>2</td>
<td>3.9%</td>
</tr>
<tr>
<td>El Salvador</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>2.0%</td>
</tr>
<tr>
<td>Mexico</td>
<td>3</td>
<td>8.3%</td>
<td>10</td>
<td>17.6%</td>
</tr>
<tr>
<td>Paraguay</td>
<td>1</td>
<td>2.8%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Peru</td>
<td>1</td>
<td>2.8%</td>
<td>2</td>
<td>3.9%</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>2.0%</td>
</tr>
<tr>
<td>Uruguay</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>2.0%</td>
</tr>
<tr>
<td>Venezuela</td>
<td>1</td>
<td>2.8%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>36</strong></td>
<td><strong>100%</strong></td>
<td><strong>51</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 15: Characteristics of the samples: Respondents’ geographic location (L.A.)

Source: data collected for this dissertation

Geographic variation was also produced within the U.S. “case”. As shown in the Table 16 below, 41 U.S. states were “represented” in the second sample. Although the first wave of data collection did not include any question about the state in which U.S. respondents lived, it is very likely that, given the focus on “fellows”, that sample did not include respondents from as many places in the U.S. as the second one.
In sum, despite the difficulties in producing (even convenience) samples for this research, the successive sampling processes put in place were able to produce a rich body of data. By using that rich body of data to draw a “contrast of contexts”, as described in the prior section, this dissertation will hopefully be able to draw reliable and insightful conclusions about whether and how “public interest law” is globalizing, considering its institutionalization in the U.S. and L.A.
3.6. A methodological synthesis: expanding the sample and conducting an “iterative triangulation” of CAWI procedures, qualitative interviews, and document analysis

This chapter covered two central issues that the empirical side of this research had to deal with. On one hand, the puzzle under examination required a comparative task of a very specific nature, whose validity should have been sorted out amidst the debates on the “comparative method”. On the other hand, there were several “inconveniences” to produce even a “convenience sample” of individuals to conduct research on, given the political and professional interests and struggles that relate to the social construction of “public interest law”. The Figure 11 below illustrates the research design that I ultimately decided to employ, after facing those challenges. Such design takes the form of an “iterative triangulation” of CAWI procedures, in-depth interviews, and document analysis, in which “practices” of and “visions” about “public interest law” are increasingly understood as alternate “waves” of data collection and analysis are undertaken.

Figure 11: A graphic representation of the research process: an “iterative triangulation” of CAWI procedures, qualitative interviews, and document analysis

Source: author’s elaboration
Research designs, once again, are strongly dependent on theory and methods – and, therefore, are subject to a great deal of variation. Methods sections, as in one of the books that triggered the modern debate on this issue, must not be expected “to teach the method which each ought to follow for the right conduct of his reason, but solely to describe the way in which [the researcher had] endeavored to conduct [his] own” (Descartes, 2008: 12). I hope that at least such “descriptive” task was properly fulfilled in this chapter, so that by means of another “iterative process” the broader audience of social scientists can not only judge the soundness of this dissertation, but most importantly, also venture beyond the points explored in it.
Chapter 4

Two institutional systems and their logics: mapping “public interest law” across the Americas

4.1. Introduction

In an article that became highly influential in studies about legal pluralism in the 1980s, Santos undertook a creative association between law and cartography. Santos’ basic argument was that legal orders regulate by representing (and at the same time distorting) reality in a way that is consistent with their regulatory objectives. Thus, “in the modern era law has become the privileged way of imagining, representing, and distorting […] social spaces and the capitals, the actions and symbolic universes that animate or activate them” (1987:286).

The mechanisms to produce such representations or distortions are much similar to the ones used in map drawing, namely: scale, projection, and symbolization. Scale involves a decision as to whether to provide “more or less detail” to map readers, thus constituting a technique through which cartographers (and legal orders) “reveal [some phenomena] and distort or hide [others]”. Large-scale maps can present more detail; small-scale maps are not intended to permit an accurate measurement of the represented elements, but “‘rather to show… the relative positions of these and other features’ (1987: 283-4)”. The complexity in socio-legal life is that it “is constituted of different legal spaces operating simultaneously on different scales and from different interpretive standpoints (1987: 288)”. For example, a single labor conflict in a factory is of large scale for workers and managers, of medium scale for union leaders and sometimes the employer, but of very small scale for the multinational corporation that subcontracts the factory, which can “easily [circumvent it] by moving the production to Taiwan or Malaysia” (1987:288).
Projection involves a decision as to what “shapes and distant relationships” to distort and which elements to locate “in a privileged position around which the diversity, the direction, and the meaning of other spaces is organized”. For instance, Cold War maps used to adopt the Mercator projection, which “exaggerates the areas in high and median latitudes”, thus “inflating the size of the Soviet Union” and “dramatizing the extent of the communist threat”; while “medieval maps used to put a religious site at the centre – Jerusalem in the European maps, Mecca in the Arab maps” (1987: 284-5). Conventional representation of the law among scholars and even ordinary citizens tends to place nation-state law at the core of legality, thus concealing “the latent or suppressed forms of legality in which more insidious and damaging forms of social and personal oppression frequently occur” (Santos, 1987: 299).

Finally, symbolization involves a decision as to what graphic symbols to use in order to detail selected features and details of reality (1987: 285). “According to… circumstances, maps may be more figurative or more abstract; they may rely on emotive/expressive signs or on referential/cognitive signs; they may be more readable or more visible” (1987: 284-5). As examples of styles of symbolization in the law, Santos drew from his research in Cape Verde, in which he observed different ways judges settled the disputes:

While some – generally older – judges [adopted] a local, image-based view of law, describing law and fact without much distinction, in figurative and informal terms, resorting to verbal and gestural signs of the iconic, expressive, and emotive type, other – generally younger – judges [sought] to impersonate the professional judge or even the political cadre and, consequently, adopt an instrumental view of law distinguishing law and fact, and describing both in abstract and formal terms by resorting to verbal and gestural signs of the conventional, cognitive, and referential type” (1987:295).
Perhaps because lawyers are inescapable mediators in the (re)production of legality (even if a specific kind of legality), a comparative assessment of professional practices can take an enormous benefit from this “cartographic” metaphor. As “public interest lawyers” in the U.S. and L.A. provide reports on some elements of their practice such as their clientele, methods, objectives, and visions of lawyering, they also imply scales (by focusing on some aspects of reality and obscuring others), projections (by placing some structures and relationships at the core and others at the margins of their practice), and symbols (by establishing different kinds of association between “public interest law” and democratic governance), which end up revealing the structural characteristics of this “kind, “sector”, or “style” of practice in each of the contexts under study. Accordingly, the next sections will build on this relative schematic correspondence between Santos’ theorization and this specific research, and share the findings from the fieldwork by tracing a symbolic map of “public interest law” across the Americas.

4.2. Clients and methods: the different scales of “public interest law” across the Americas

The served clientele and the deployed methods in “public interest law” present a great deal of variation across the U.S. and the L.A. contexts. Graph 1 below displays the distributions of valid answers to closed-ended questions about participants’ main clientele, including both rounds of data collection. Considering just frequencies, 160 U.S. lawyers reported working primarily for individuals (N= 260), whereas only 11 L.A. lawyers did so (N= 91). In contrast, 53 L.A. lawyers reported working primarily for groups, communities or social movements (N=91), whereas only 69 U.S. lawyers (N=260) did so.

For an elaboration on the relationship between stories of everyday life and social structure, see Ewick & Silbey (2003)
Graph 1: Main clientele served: Frequencies

Source: Author’s elaboration based on fieldwork

Graph 2: Main clientele served: Percentages

Source: Author’s elaboration based on fieldwork
Differences in clientele across the two studied contexts become even more evident when one looks at the percentages, as shown in Graph 2 above. 61.54% of the U.S. lawyers in the sample reported working primarily for individuals (N=260), whereas only 12.09% of the L.A. lawyers (N=91) did so. In contrast, 58.24% of the L.A. lawyers reported working primarily for groups, communities, or social movements (N=91), whereas only 26.54% of the U.S. lawyers (N=260) did so.

The interviews made these differences between the U.S. and L.A. even clearer. For example, facing the question of what distinguishes a “public interest lawyer” from a “non-public interest lawyer”, Molly Lewis, a 30-years old lawyer working with family/children law, health care, and education in D.C. said that it is “the focus of the work: generally public interest work focuses on serving people directly or through systemic reform” (Computer assisted web interview, transcript on file with the author, emphasis added). Alexander Jackson, a young legal services lawyer from Philadelphia who works on labor law issues provided more concrete evidence of this wide latitude of the clientele basis in the context of U.S. “public interest law”. As he was talking about his perspectives for the future of his “public interest law career”, at the end of an in-person interview, he said that before starting his fellowship at a legal services organization he was considering working there “for, like, five years”. He would “gain experience with people doing direct legal services […]”, have a really good idea of what the issues are […]

54 The use of percentages to report these data is questionable, given that there are not 100 cases in the L.A. sample, but the procedure helps to make the two samples more “comparable”, which, after all, is the purpose of this research

55 All the names in this dissertation are fictional, as agreed with the interviewees and proposed in the IRB application. The fictional names were produced using a random combination of the most popular names and surnames in the U.S. and L.A., as retrieved from specialized websites. After the first list was generated, the researcher also reviewed it to see if there was any similarity with the actual names of the research participants. A few adaptations had to be made in order to secure the desired anonymity.
and move to a policy organization”, where he would like to “work on these high level issues at a
government level; writing reports and talking to newspapers; doing one big impact case”.

However, he said “[he doesn’t] believe that anymore […]”: he just

[Loves…] the fantastic mix of both working on these individual cases and having
the daily experience of being able to, you know, win a case for somebody, for an
individual that [he gets] to see in the office and hand [him] a check and say ‘we
did this together, we won this for you, you’re able to have money and know that
you were able to have a case for yourself and get your money’ (In person
interview, transcript on file with the author).

A rather different picture emerges once one crosses the Mexican border down. Not only
do L.A. lawyers focus on a clientele basis of larger scale (groups, communities, and social
movements), but their vast majority considers that work for individuals is not one typical of
“public interest law”. For instance, facing a question about what distinguishes a “public interest
lawyer” from a “non-public interest lawyer”, Fortunato Magallon, a Mexican NGO lawyer who
works with human rights, criminal law, women’s/reproductive rights and indigenous peoples’
rights considered that “the public interest lawyer deals with cases that impact a number of
people, whereas the traditional lawyer just focuses on redressing the rights of his ‘client’”
(Computer assisted web interview, transcript on file with the author). Similarly, as Valentina
Martinez, a lawyer who works on disabilities issues at a leading law school clinic in Colombia
was explaining the procedures for case selection at her clinic, she said that unlike another
existing “clinic – in the U.S. they would call it a clinic – that does individual cases, which is
called the consultorio juridico, [they] look for cases that somehow will impact a large group of
people (in-person interview, notes on file with the author, emphasis added).
Occasionally L.A. lawyers acknowledge serving individual clients, but only to the extent that they see that this work will *directly* benefit a larger group of people. As Celina Turner, a 36-years old Ecuadorian NGO lawyer who works with immigration and Human Rights issues was facing a question about her relationship with her clients, she gave an instructive example of this: “If the organization understands that gender-based violence is affecting the refugee population to a great degree, it may decide to bring about strategic litigation in this area; it may accept to represent an individual refugee who had suffered sexual violence in Ecuador and get involved in the criminal law case” (Computer assisted web interview, transcript on file with the author). Similarly, as 46-years old Peruvian lawyer Angel Delafuente was explaining his relationship with his clientele, he told the story of “a client who became disabled at the military and was further harmed by the way the military classified his disability”. As addressing this case, lawyers identified procedural avenues that could benefit either the client as a single individual or the client and other people in the same situation. “After *negotiation with the client*, as reported by Angel, “he chose to take the itinerary that would benefit others as well”. The lawsuit is underway but “[his clinic] keeps advising the client, suggesting that he disseminates the story through the media and take concerted action with other people who support him” (Computer assisted web interview, transcript on file with the author, emphasis added).

This narrative keeps consistent even beyond the strict “public interest law” bar in L.A. For example, when Sofia Perez, a Colombia corporate lawyer who leads the pro bono sector in her firm was addressing the history of pro bono in that country, she said that the Pro Bono Foundation that she and some of her colleagues created in 2008 “was transformed into a clearinghouse of pro bono cases” and “also seeks to disseminate pro bono culture in Colombia”. From this perspective, Sofia said that the Foundation “has conducted journeys to disseminate
legal information in poor communities or communities that have problems with disabled people, displaced people, children, etc; it has promoted continuing legal training and it has had a few cases of public interest litigation – or collective litigation, let us say… a few cases” (In person interview, transcript on file with the author, emphasis added). As such, Sofia clearly made a distinction between all that the Foundation has undertaken, including individual legal assistance through the Pro Bono clearinghouse, and the “few cases” of “collective” legal representation, which, from her viewpoint, are the actual cases of “public interest” within the Foundation’s portfolio.

The same difference in scale is seen in the deployed methods and strategies across the U.S./L.A. contexts. U.S. lawyers tend to consider direct services as a legitimate and somewhat natural component of “public interest law” practice, besides, of course, strategies of broader impact such as litigation and various forms of lobbying.

Many U.S. interviewees also report using non-legal strategies, such as community education, organizing, and media campaigns. Many times, this wide range of methods, strategies, and levels of practice is actually combined in the work lives of U.S. “public interest lawyers”. Hence, as Olivia Jones, a young welfare benefits lawyer from Pennsylvania was asked whether she would like to do something different in her work, she said that “no”, since her current job provides her with a more than satisfactory number of possibilities to work in or for the “public interest”. Indeed:

In any given week, Monday I’m intake, meeting with clients who come in with problems and fixing problems for them. Tuesday, I’m [elsewhere], training other public benefits lawyers on stuff that I happen to know, because I’ve specialized in this area that can help them make a difference in other people’s lives … The power of training, training the trainer, as they say, is amazing… Wednesday I
might be down in D.C., meeting with the Commissioner of Social Security … and
telling him how he’s changed his programs to make them better. And he listens.
And we’re sitting there, and I’ve drafted some huge document that his policy
people take in, and they make changes to their programs… And then Thursday, I
might be making a film … that’s going to get sent to every senator that might
make a difference … And then Friday I might be meeting with top lawyers … on
health care reform, which is something else that I have a huge interest in, on how
to implement the kickback, the Patient Provider Reduction Care Act, Obama’s
health care bill … so that it actually makes life better for people who are on
Medicaid (in person interview, transcript on file with the author).

L.A. lawyers, in contrast, deploy a much narrower, although much more aggressive set
of methods and strategies: they always report deploying strategies of broad impact; and always
report doing so in strict connection with non-legal strategies that seek to broaden the overall
impact of “public interest” law work.

Answers to closed-ended questions about the most common opponents among U.S. and
L.A. “public interest law” practitioners are also illustrative of the preference for strategies of
broader impact among the latter. From an initial perspective, as seen in Graph 3 below, responses
of both groups appeared similar. While in 55.45% of their responses L.A. lawyers reported
working against government organizations (f=112; N=202); U.S. lawyers did so in 52.37% of
their responses (f=265; N=506); and while in 42.57% of their responses L.A. lawyers reported
working against businesses (f=86; N=202); U.S. lawyers did so in analogous 37.35% of their
responses (f=189; N=506)56.

56 Respondents were asked to inform the percentage of the time they spend working against each of these possible
opponents; thus the number of responses differs from the number of respondents. The exhibited frequencies
correspond to the answers that included each category of opponents, regardless of the amount of time spent working
against them. The actual number of respondents was U.S.=178 and L.A.=58; the number of response “hits” was
Graph 3: Generally, advocates against...

Source: Author’s elaboration based on fieldwork

Graph 4: Percentage of cases where advocates against...

Source: Author’s elaboration based on fieldwork
However, a disaggregation in the response choices, as seen in Graph 4, reveals important details – and differences. First, when the intensity of work against each of these opponents is taken into account, both U.S. and L.A. lawyers report acting more against government organizations than against businesses. Second, though, except when it comes to local government, L.A. lawyers report acting against the government generally more than U.S. lawyers. Moreover, L.A. lawyers report acting against the national/federal government much more intensely than U.S. lawyers.

Impact litigation (at both domestic and international arenas) is reported to be the reigning method deployed by this population, and it is often referred to as a means to: (i) generate transformative legal precedents; (ii) create model arguments that other advocates can further utilize; or (iii) open a window to subsequent legal and political actions in an area that has been out of the sight of the justice system.

The relationship that U.S. and L.A. “public interest lawyers” maintain with judicial authorities, as reported in Graph 5 below, provides further evidence about their reliance on impact litigation. While 62.90% of L.A. lawyers reported having “some/a great deal” of direct relationship with national Supreme Court Justices (f=39; N=62), only 8.12% of U.S. lawyers did so (f=16; N=197); and while 66.00% of L.A. lawyers reported having “some/a great deal” of direct relationship with state Supreme Court Justices (f=32; N=61), only 34.00% of U.S. lawyers did so (f=68; N=200). In contrast, while 64.52% of L.A. lawyers reported having “some/a great deal” of direct relationship with local judges (f=40; N=62), 81.19% of U.S. lawyers did so (f=164; N=202). All in all, L.A. “public interest lawyers” seem to focus more on top-level judges; whereas U.S. “public interest lawyers” seem to focus more on ground-level judges.
This prominence of impact litigation in L.A. gets to affect even the circulating label that names “public interest law” practices in this region. More often than not, “public interest law” organizations are presented as ones of “public interest litigation” (litigio de interes publico), of “strategic litigation of public interest” (litigio estrategico de interes publico), or also of “strategic litigation in Human Rights” (litigio estrategico en Derechos Humanos). For example, as Juan Torres, a Mexican Human Rights lawyer was reporting on his clientele, he explained that his NGO became specialized in providing litigation services to other NGOs, because many of these NGOs “work more with individual cases and seek to solve problems of individuals who face
trouble at some point”. As such, he argued further, “these organizations provide a first help […]
They undertake] one concrete case and that is not bad, that kind of work is already important
[but] what [his organization does] with them is to add the concept of strategic litigation in
human rights; [i.e. to perform] the public interest turn in search of collective results (In person
interview, transcript on file with the author, emphasis added).

The reliance on (domestic and international) litigation is also all over the interviews. For
instance, facing the question of “What are the main objectives of your work?”, Joaquin Romero,
a young lawyer working at a leading “public interest law” clinic in Colombia said in very
straightforward terms that “[the clinics] tries to solve structural problem in society using the
law”, which it believes can take place through three different strategies:

  Legislative lobbying, i.e., participation in the formation and construction of laws;
  … rights education, i.e., bringing legal discourse down, from a technical,
specialized language to a tool that people can in fact mobilize; …and high impact
litigation, i.e., using constitutional tools to transform the legal system from inside
out (in person interview, notes on file with the author, emphasis added).

Likewise, when Diogenes Avelar, a 44-years old Chilean lawyer who works at a Pro
Bono Clearinghouse was reporting on his relationships with clients, he mentioned that “[his
organization] had been discussing for two years with an LGBTT NGO about taking a case
addressing equal marriage rights up to the Interamerican Human Rights system, in order to make
this issue internationally visible and obtain a favorable ordinance that can be applicable to other
countries”. As Diogenes reported, the case has been litigated “at the local level, both before
ordinary judges and the constitutional court” and, “once domestic litigation is over, [his
organization] will take it to the Interamerican Human Rights system” (Computer assisted web
We expect to enforce environmental legislation by mobilizing domestic policy tools, as well as the rights to access to information, public participation, and the judiciary, in defense of local communities that have been affected in their Human Rights, as well as of strategic environmental sites. In this area of work, we present claims before judicial and administrative authorities at both the domestic and international arenas such as the Interamerican Commission and Court... and others (Computer assisted web interview, notes on file with the author, emphasis added).

Besides litigation, L.A. lawyers also rely intensely on communication and education strategies. This is to make sure that their actions and their positive outcomes will become widely known in their communities, their countries and even beyond. This combination is easily noticeable in the words of Valentina Martinez. As she was explaining the procedures for case selection at the clinics, she said that one of the criteria

...Is that the case will help create massive conscious about a given problem. Nobody cares that, let us say, no media vehicle will report that Joaquin wants to change his name... but there was extensive newspaper coverage when we sued the mayor for not complying with norms of accessibility in the [subway service]. This story was all over the media. So we had litigation around this issue, but not a hundred percent of our cases involve litigation. What matters is that we have some way of disseminating [the stories] (in-person interview, transcript on file with the author, emphasis added).

Similarly, when explaining what she liked most about working as a “public interest lawyer”, Javiera García, an NGO lawyer working in the countryside of Argentina said that: “[unlike] a private lawyer”, who accepts a case “if [it] sounds economically profitable” or “reframes the case as one of private interest so that he can collect damages”, her clinics
addresses cases that will “resolve the issue or at least produce a palliative solution”, thus “adding to social change”:

Private litigation can give you the satisfaction of winning a case or of helping an individual who was really in need, but that is where it ends. [“Public interest law”] has to do with affecting society. Although many times we do not win the cases, the fact that we have put [an issue] into the agenda, that we were able to debate it over the media, that somebody beyond the group that is being affected [by the issue] may have had the chance to interfere in it, all of that, that is the most gratifying [aspect of her practice]. If we win the case, much better, but it is good to feel that one can add to social change (in-person interview, notes on file with the author, emphasis added).

These differences are, once again, visible in the responses to closed-ended questions in the electronic questionnaires. The emphasis on litigation can be seen in Table 17 below, which conveys lawyers’ accounts about their very “main strategy” in the practice of “public interest law”. 50% of L.A. lawyers reported using litigation as their very main strategy, whereas less than 20% of U.S. lawyers did so. Likewise, 33.7% of L.A. lawyers reported using community education and research/reports as their very main strategy, whereas only 8.3% of U.S. lawyers did so.
<table>
<thead>
<tr>
<th>Main strategy</th>
<th>Frequencies</th>
<th>Percentages</th>
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<tbody>
<tr>
<td></td>
<td>U.S.</td>
<td>L.A.</td>
</tr>
<tr>
<td>Test-case litigation</td>
<td>51</td>
<td>46</td>
</tr>
<tr>
<td>Direct services before courts</td>
<td>126</td>
<td>2</td>
</tr>
<tr>
<td>Direct services before administrative agencies</td>
<td>28</td>
<td>1</td>
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<tr>
<td>Direct services before third, private parties</td>
<td>7</td>
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<tr>
<td>Policy work before legislative bodies</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Policy work before administrative bodies</td>
<td>17</td>
<td>4</td>
</tr>
<tr>
<td>Community education, training</td>
<td>15</td>
<td>13</td>
</tr>
<tr>
<td>Research/reports</td>
<td>7</td>
<td>18</td>
</tr>
<tr>
<td>Community organizing, political mobilization</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Act as &quot;clearing house&quot; for other pro bono/public interest lawyers/organizations</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>265</strong></td>
<td><strong>92</strong></td>
</tr>
</tbody>
</table>

Table 17 Main strategy reported by respondents in their “public interest law” practice

Source: Authors’ elaboration on the basis of fieldwork research;

The “native” literature corroborates these findings. In addressing the characteristics of so-called *litigio estrategico* or strategic litigation, Correa Montoya defines it as “a process of identification, discussion, socialization and definition of social problems”, followed by the “search for concrete cases that may help achieve comprehensive solutions… and bring about substantial change”. Such change takes place through several institutional domains: “the judicial domain, as it requires judges to rule in a given way; the administrative domain, as it requires the
development of plans, projects, and public policies to resolve an issue; the legislative domain, so that real legal change can be achieved; and the civil society, which must be educated and empowered to become a social actor with higher capabilities, in Sen’s terms” (2008:250). As such, strategic litigation ends up involving:

A juridical component... which entails a different kind of legal practice... that makes strategic use of judicial and administrative means in order to achieve the desired objectives; a political component, since... impact litigation cannot be reduced to its juridical component and... there must be direct or indirect intervention in the discussion, as well as in the process of decision making and implementation... Thus the gains stemming from litigation are twofold: social change... and stronger connection among the mobilized groups; and a communications component, which consists in informing and intervening in the public opinion in order to provide details about the lawsuit... and to back up the activities and the search for a comprehensive solution... This is not just about giving publicity to other activities... but it is a component that is justifiable in its own right (2008:253-8).

The specific emphasis on communications (again, as a way of ensuring that “public interest law” actions and their positive outcomes will become widely known) can be also seen in Graph 6 below, which conveys lawyers’ accounts about their interaction with the media in the context of their daily work lives. As one can notice, L.A. lawyers generally reported having a greater degree of relationship with the media than their fellow U.S. counterparts, whether it was the local (80.65%, in contrast to 67.49% of some/a great deal), regional (73.77%, in contrast to 52.76% of some/a great deal), or national media (80.65%, in contrast to 67.49% of some/a great deal).
All in all, a symbolic map of “public interest law” across the Americas is revealing of an interesting differentiation in *scale*, with respect to the served clientele and the deployed methods among “public interest lawyers”. U.S. lawyers mobilize a wide range of methods, with different levels of impact, for the benefit of a wide range of constituencies, including *individuals, groups, communities, and social movements*; L.A. lawyers mobilize a narrower range of methods, though always with an intended higher level of impact, for the benefit of an equally narrower range of constituencies, including *groups, communities, and social movements*, and generally excluding individuals.

### 4.3. Projection: “public interest law” amidst concurrent objects on the “map”
As the U.S. and L.A. lawyers interviewed in this research provided accounts of their practices, they also tended to situate these practices in relationship to “objects” relatively specific to each of the contexts under study, thus conveying different “projections” on a symbolic map of “public interest law”. As readers are going to notice along this section, both these objects and their relationships to “public interest law” are helpful to clarify the structural characteristics (and further differences) in this “kind”, “sector”, or “style” of professional practice across the Americas.

4.3.1. Public interest law and professional systems: distinctions among “kinds”, “sectors”, or “styles” of professional practice across the Americas

The U.S. legal profession is reported to be strongly pervaded by the corporate world and the large firm model. Statistics from the first wave of the After the JD study, albeit obtained before the financial crises that may have changed the contours of the legal market, showed that one quarter of the new lawyers in private practice in the sample had gone to offices with more than 100 lawyers (Dinovitzer et al, 2004).

This picture was widely evoked in this research to sustain a claim of distinction between “public interest lawyers” and other sectors of the U.S. legal profession. This claim of distinction pervades the very vision of U.S. interviewees about what “public interest law” is: the meaning of “public interest lawyering” among U.S. lawyers is constructed in a fundamental contrast with: (i) corporate legal work; (ii) taking place in big law firms and (iii) undertaken with the primary purpose of monetary compensation.

For example, facing the question of what he liked most about being a “public interest lawyer”, Ethan Martin, a U.S. civil rights attorney from Maryland, said it was “getting to help
not working for a corporation or something like that, [but] working for people who, if [he] wasn’t providing them help, wouldn’t have any help” (in person interview, transcript on file with the author, emphasis added). Likewise, as Madison Wilson, a women’s rights lawyer working at a non-profit based in Washington D.C., was explaining how she became a “public interest lawyer”, she emphasized that “[her] parents’ parents were all kinds of working class folks and [her] grandfather was very involved in the labor movement; [her] parents were also very liberal […so] she just kind of grew up with a sort of innate sense of responsibility for just kind of the things that the world could be more just, more fair for people”. And although she had gone to a “private prep school” and had a “kind of sheltered life”, she still “kind of had the sense that [her] parents had worked really hard to do what they had done and she could continue it and become a corporate lawyer and make a lot of money whatever, but [she] felt like she wanted to do something more than just continue to amass money: [she] wanted to do something meaningful with [her] life” (in person interview, transcript on file with the author, emphasis added). Finally, facing the question of what distinguishes a “public interest lawyer” from a “non-public interest lawyer”, Zachary Humphrey, a 64-years old private public interest lawyer working with disabilities, civil rights, and housing wrote that:

I try to make sure my plate also contains some clients who are corporations or rascals and that some of the cases are without social significance because I worry about being too self-righteous or about demonizing my adversaries and I see that as a cure. Maybe that is a way of saying that I see a public interest lawyer as one who attempts to use his or her skills in service of a particular set of clients (Computer assisted web interview, transcript on file with the author).
The constitution of the “public interest law” arena in L.A. stems from a similar claim of distinction. However, if “public interest law” in L.A. is also far away from high salaries, corporate work, and the large firm setting, these are not the primary factors of contrast between “public interest law” and “non-public interest law” work in that region, as evoked by interviewees. Instead, a more central divide in L.A. relates to a working style that atomizes, privatizes, and depoliticizes conflicts – i.e., one that bears purely interpersonal implications. For instance, when describing what her “public interest law” clinic takes into account to select cases and clients, Catalina Diaz, a 30-ish Colombian lawyer working at a “public interest law” clinic said that they “will give preference to a person [who] has limited resources, has no way to defend her rights, and is part of a community being affected”, as this person’s case will “have a broad social impact,

Because this is our job as public interest lawyers, to help the community […] We also examine whether the case is legally attractive and whether the case is one of public interest – i.e. it encompasses collective rights or actions against the state or if it relates to state action. Because if [the case] relates to more punctual issues […], if it is a criminal case or a child support case or a divorce case, so it is not a “public interest law” case (in-person interview, transcript on file with the author, emphasis added).

Similarly, facing the question of what distinguishes a “public interest lawyer” from a “non-public interest lawyer”, the Argentinean lawyer Felix Garrido, who works at a legal clinic and deals with environmental law, human rights, and women’s rights wrote that:

From my personal experience, there is a generalized confusion about public interest lawyers and their work. Many clients come to us with problems that belong to other areas [of law] or consult with us about issues of private or personal interest. This creates difficulties for us, with respect to selecting issues that are relevant to our agendas (Computer assisted web interview, transcript on file with the author, emphasis added).
Finally, as Nicolas Sousa, a 30-ish Colombian “public interest lawyer” who runs a law school clinic, was providing details about the way he selects students for the clinic, he explained that by the law “every Colombian university has a consultorio jurídico, which is a practice setting in which students in the last year of law school offer free legal services for low income people and in small claims”. What he and his colleagues do is:

“We make students join the public interest clinic instead of the consultorio jurídico and here we do litigation and other things that have, let us say, a broader community impact such as constitutional actions and amicus curiae for the inter-American court or the national Supreme Court … We work with the idea that public interest law comprises actions in which the interest goes beyond the individual, that is, cases that will produce benefits for the community and the country and that do not… let us say, this is the difference we have with the consultorio jurídico, the consultorio jurídico acts in cases of individual interest, the case of a woman who wants the husband to pay for child support, the case of the worker who needs an evaluation of how much his employer owes to him, but these are all individual interests. Ours can be a case that grows from an individual, but we know that the lawsuit we present will produce change in Colombian law and in the community (in-person interview, transcript on file with the author, emphasis added).

The examples he subsequently provides about the work of his “public interest law” clinic are more than illustrative of the differences between “public interest” and “non-public interest” lawyers, as most L.A. lawyers see it:

For instance, we presented amicus curiae in a case of a transgender person that was beat. In principle that is going to benefit only that individual person, but we know that the Supreme Court decision will affect not just this person, it will create law and will move the state apparatus towards a position that is more beneficial to the LGBT community. Same with this community [of displaced people, which was being threatened by the government with removal] we are helping. The government’s argument was that they were not there in the last census. So if we change this, if we produce a legal precedent this is not just for that neighborhood, but for any group of displaced people in Colombia who get to a territory and who will not be evicted from there because two years ago there was a census, or
something alike. This is where we see the difference, we create strategies not for a person but for a group, this is what we conceive as public interest law (in-person interview, transcript on file with the author).

Differences between the professional landscapes of the U.S. and L.A. definitely help account for the way lawyers in each of these contexts distinguish between “public interest law” and non-“public interest law” work. Corporate law and lawyering are much less significant in L.A. than in the U.S. legal profession: whether triggered by privatization and liberalization in the 1990s or by the more recent economic impulse experienced by some L.A. countries, the presence and economic relevance of private owned corporations – and, consequently, the existence of a vibrant market for corporate legal services – have been relatively novel facts in the region, with the exception, of course, of multinationals. In such circumstances, the rise of a robust corporate bar is more likely to challenge “senior advocates” and the handful of larger firms that have a virtual monopoly over the capacity to provide high-quality corporate work, than the so-called public interest sector. At the same time, the constitution of a “public interest law” sector in L.A. is clearly impacted by other longstanding conflicts in the legal landscape of this region. Back to 1984, Thome made the English-speaker audience aware of the emergence of “innovative legal services”. As per his account (1984:532),

The new models of legal advocacy – sometimes called ‘innovative’ to distinguish them from the traditional legal aid approach – look very different from their predecessors. Frequently they are nonspecialized in the sense that they are not confined to specific areas of the law but rather focus on all the problems of one or more client groups. They often include nonlawyers and engage in activities that go beyond traditional legal aid, such as community legal education and paralegal training, representation of the poor before administrative and legislative bodies, law reform activities, and the systematic denunciation of inequalities that affect full participation of the poor in the legal process.
One of the distinctive characteristics of these “innovative” legal services was precisely (Thome, 1984:532, emphasis added)

... group representation, [not] treating each client on an individual basis [like in] the “traditional legal aid model”, but limiting clientele to specific groups with common interests and needs, such as small labor unions or nonunionized workers (ADEC in Peru), indigenous Indian tribes whose communal tenure lands are being threatened by settlers or commercial farmers (FUNCOL and Propublicos in Colombia), associations of peddlers and street vendors (IEDAL in Chile), rural workers, peasants, associations of women (Centro de Defesa dos Direitos Humanos, in Brazil), and slum or squatter settlement residents (CINEP, in Colombia).

The contemporary prototype of “public interest law” in L.A. and the way it is projected by lawyers amidst other components of the professional system cogently expresses this conflict between “innovative” and “traditional” forms of legal mobilization.

Of course, none of these distinctions – between “corporate” and the “public interest” lawyers, in the U.S., or between the “traditional” and the “innovative” lawyers in L.A. – are ever absolute. Because professional struggles are always relational, not only these other segments of the profession interact with “public interest lawyers”, but such interactions also help shape the “public interest law” arena – whether by challenging or reinforcing its contours and its relationships with concurrent objects on the map. For instance, although the U.S. corporate bar often occupies an opposing side to “public interest law” in the discourse of lawyers, corporate law firms are responsible for providing time and resources that are of crucial help for the maintenance of the “public interest law” bar – although some will say that this phenomenon takes place at the cost of a deradicalization of the “public interest law” sector (Cummings, 2004; essays in Granfield & Mather [2009]).
Some of the lawyers in this research were lively examples of this contradiction, as they had their “public interest law” fellowships sponsored by large law firms. For instance, when Isabella Smith, a labor lawyer acting in New York was talking about her law school experience, she said that her law school “has about 400 in each class and I would say that … about 30 people would be hard core “public interest law”, and then another 30 would be sort of the pro bono type, right? People who want to do public interest law eventually, whatever that means [chuckles]…” When asked about her vision of these people, in turn, she said: “This is a very complicated question, because, you know, I am a fellow, [sponsored by a large law firm], right? I would not have a job if it was not for this big law firm, and my organization also, we employ now seven or eight firm deferrals” (in-person interview, transcript on file with the author, emphasis added).

Participation of large law firms in the “public interest law” arena then leaves its imprints, some of which “public interest lawyers” feel hard to deal with. Continuing to address the recent phenomenon of firm deferrals, Isabella said that: “It is a very delicate issue, because I have friends who are unemployed, who have always been public interest people, who really want nothing more than to work for [the organization], but we have the room full, you know, we do not have space for them” (in-person interview, transcript on file with the author).

Pro bono is certainly the most decisive contribution of corporate law firms to the “public interest law” sector – and it is the most controversial issue as well. A considerable number of respondents stated that they “really appreciated the help of pro bono lawyers” (Ajam Bousaid, a 31 years old civil rights lawyer from Maryland); that they “wouldn’t be able to handle the volume of cases [they] do without relying on pro bono attorneys” (Aaliyah Morrow, a 49 years
old lawyer working with LGBTT rights in New York); that pro bono lawyers “bring enormous resources to cases… can learn new legal skills and feel that they are putting their J.D. to a good cause”; and that “sometimes it is good to have people… who are new to the area… and are outraged by the abuses clients suffered, [because] those… who do this work every day can become desensitized (Claire Johns, a 59 years old women’s rights lawyer working in Washington, D.C.); that the “experience and skills [of pro bono lawyers] are very valuable”; not to mention that they “tend to add a ‘scare’ factor in litigation and have more funds to help pay for litigation expenses (Gabriella Bowers, a 42 years old lawyer working with disabilities rights); so on and so forth. Yet, other U.S. respondents reported having difficulties or disagreements in structuring their relationship with pro bono lawyers.

A core aspect of this disagreement seems to be a fundamental need to draw a clear-cut line between corporate work and “public interest” work. Isabella Smith continues her critique by raising a classic theme in pro bono work – i.e., conflict of interest:

For instance, we have a big problem with a large national, multinational corporation […], they have a practice of shutting out people with convictions no matter how old the convictions are, and it is hard to find pro bono counsel on those cases if you want to sue them, so it is hard to sue Wall Mart if you are [a lawyer from the firm that sponsors her fellowship]. Even if [the firm] does not represent Wall Mart directly, it may represent their shareholders, or the trustees, so there becomes a conflict within [the firm] and there is a sort of inherent slowness to that process.

But there are also other concerns with the boundaries between corporate pro bono work and “public interest law” in the U.S. landscape. For instance, facing the question of what role pro bono lawyers can play in “public interest law”, Aria Gilmore a 32-years old lawyer, working with environmental protection in Wisconsin said that these lawyers: “have less of a perspective
of the big picture fight. They might be plugged in here and there but don’t have a good idea of how a particular case fits in with an overall campaign, and why we might spend resources on it or not. There’s more of a broader strategy for public interest lawyers” (Computer assisted web interview, notes on file with the author). Charlotte Kirk, a 68-years old lawyer working at a legal services organization with housing and family law issues said that “there is a tendency among corporate lawyers to assume that poverty law is simple and easy, which is far from true: try reading the Immigration and Nationality Act sometime, or public housing regulations”. Lily Bruce, a 40-years old lawyer working at a legal services unit with family/children issues endorsed this critique by stating that “corporate lawyers doing pro bono work aren’t as well-versed in community resources. They might not be as comfortable working with low-income people. They feel they don’t need to do as good of a job as they do in their practice because they are not getting paid. For example, one of our trained volunteer pro bono attorneys never even met with his client!” (Computer assisted web interviews, notes on file with the author).

In line with Charlotte and Lily, but also providing a more detailed account, Emma Williams, a NY immigrant lawyer who works for an NGO, made the following comment about her experience with pro bono lawyers:

I am trying to think about how to say it sensitively. I think that sometimes it is this assumption that, because you work for a firm, you already know anything that you would need to know, when a lot of these people have never talked to a client with a different skin color than they are, or comes from a different country, or is indigent. So I think that this assumption that just because you work for a big firm you can do good work on a pro bono case, I don’t think that is the case […]. We used to have an immigration clinic that was run by a law firm, and, I mean, they were really amazing, they would come every single week, they worked really hard, and I don’t want to say anything discouraging, but I think because they didn’t have the interviewing techniques and working with the kids, they would miss some stuff. And in fact we had a lot of cases where the person would return
up, and the pro bono lawyer had determined that they didn’t have a case; when they sat down and talked to us, they absolutely had a case [...] so, it is not about a public sector person versus a private sector person, it is just about being taught those skills.

Despite being relatively less complex than in the U.S., the professional structure in L.A. also produces interactions among different working styles, which, in turn, also help shape the “public interest law” sector and its relative position in the professional arena. For instance, there has been an important investment by local and U.S. NGOs in order to promote pro bono work in the region. These efforts have been relatively successful, as shown by Sofia Perez’s previous account about Colombia. However, the connection between pro bono and the “public interest” in these non-US contexts has been strongly moderated by the local ideologies about what constitutes legitimate “public interest law” work. As such, in the vision of “public interest lawyers” in L.A., pro bono work just serves the “public interest” if it deals, once again, with cases of broad impact that seek to make issues visible and trigger change in public policies or structures of governance.

Sofia kept providing useful assessments of the relationship between pro bono and “public interest law” in L.A. When I presented her with the question of “can you please talk about the public interest law cases that have been undertaken in Colombian context?”, we had the following exchange:

**Respondent:** How do you define what are public interest law cases?

**Interviewer:** This is a question that I had for you. So maybe you could talk a little bit, in more general terms, about how pro bono connects to public interest law for you.

**Respondent:** Well, to be totally honest I believe that the possibility of working on “public interest law” cases in law firms is still way beyond us. Right now our firms are taking cases of individual persons, with very concrete and particular
legal needs, which I suppose do not qualify as issues of “public interest”… such as family law, criminal law, labor law, disabilities law, employment for people with disabilities. But they are very concrete and individual cases. Also, our firms provide legal assistance to NGOs that have a broad number of beneficiaries, but …it is more likely that we help these organizations with registration issues, tax law, and private law issues. There have been cases that encompass rights of broader communities. For instance, some firms have done work on reproductive rights, but active participation in cases of “public interest” or more collective, let us say, that involve rights of communities or social and economic rights, no, we are not there yet, we are not there yet. I don’t know if firms are afraid of taking cases that involve economic rights, because after all our clients come first. We must be faithful to our clients and we cannot undertake public interest litigation whose content may affect our clients (in-person interview, notes on file with the author).

Sofia’s account reminds the concern with “conflict of interest”, commonly expressed by U.S. “public interest lawyers” when addressing their fellow pro bono colleagues. Yet, the barriers she erects between pro bono lawyers and “public interest law” are much higher than in the U.S. experience: from her perspective, either pro bono lawyers find a way to undertake cases of high impact and for the benefit of a large population, or they will not be providing any contribution to the “public interest”.

This consideration is implied in other interviews as well. The Argentinean NGO lawyer Cristobal Alvarez is one that also tries to connect pro bono lawyers and “public interest law” issues in his day-to-day work. In providing an example of success in building that bridge, he told the story of:

…A case where we urged Senators to present their sworn statements of properties. The public ethics act mandates [public servants] to present their sworn statements of properties and put it at the public’s disposal, but Senators simply ignored the law and presented no statements whatsoever. So what we did [with the help from private lawyers doing pro bono work] was to bring about legal action, to file an amparo against the Senators and after that against the judges [who had not
presented their statements either]; and that, combined with campaigns, that worked out (in-person interview, notes on file with the author).

As Cristobal further reported, volunteer lawyers working in cases of this kind often feel “surprised, stimulated” facing the “whole new world” that they encounter. Yet, many of these volunteers lack the “skills” or the “long-term commitment” to take on these “cases of higher impact”, so many of the actual “public interest law” cases are directly handled by his NGO or, when passed along to volunteers, are closely monitored by his NGO. A similar account was provided by the Mexican lawyer Clorinda DeSantiago. Facing the question of “What is the role of pro bono lawyers in the “public interest law” sector?”, she stated that:

Pro bono lawyers act exceptionally by providing services, but the defense of collective or human rights is not their ultimate goal. Their ability to take on cases is subject to very strict rules and just a handful of their caseload is undertaken in the pro bono fashion (Computer assisted web interview, notes on file with the author, emphasis added).

Therefore, although pro bono lawyers are also coming to participate in the realm of “public interest law” in L.A., their participation reinforces the divide between the world of “individual” and “concrete” cases and the world of cases of “collective” and “higher-impact” cases. The same happens with the “traditional” legal services that “public interest lawyers” in L.A. seek to distinguish themselves from. Besides an occasional rhetoric of competition, such lawyers end up relying on so-called “traditional” legal services to address “private” cases and keep “public interest law” as a separate arena in which they can claim a working style that serves, again, as “a vehicle for change, [for] acting upon reality and transforming failing public policies”. As Valentina Martinez was explaining her criteria to select cases, she argued that it matters:
That it be a structural issue or a single case that can have structural impact, an impact on many [people]... When we choose cases, which is not the only way we work, [these cases] have to have the potential to be disseminated more widely... Generally we do not look for cases, generally they come to us; and sometimes there are way too many cases, because this [the disabled] is a population that has had no access to lawyers... So because too many individual cases come, what we did, which was important, is we have made an alliance with the consultorio juridico. So we send them these individual cases and we help students who work in the consultorios juridicos with information.

Neither in the U.S. nor in L.A. “public interest law” is projected solely in relationship to elements internal to the legal profession. On the contrary, as next section clarifies, structures of governance and the way they relate to “public interest law” are of utmost importance to define the contours of this “kind”, “sector”, or “style” of legal practice and, consequently, to make it similar to or dissimilar from the U.S.-matrix as it propagates toward other national contexts.

4.3.2. Public interest law and governance systems: speaking law to power across the Americas

Since Tocqueville set forth his influential appraisal about American democracy (2000), it has become a commonplace in political sociology that lawyers and the law can occupy varied positions vis-à-vis structures of governance across political communities. Data collected for this research show that such different “projections” end up affecting the practices and meanings of “public interest law” wherein it has been institutionalized. The U.S. society is based on the utopia of having the law, not men rule. Accordingly, U.S. lawyers are members of a collectivity that has been somewhat designed to participate in government affairs and speak to power – whether such power lies in the hands of state officials or in the hands of private parties.
The narratives from U.S. interviewees quite often reflect this privileged position that lawyers have had in the U.S. society. For instance, as Jayden White, a community lawyer working on education inequalities in an NGO based in Washington, DC was recalling his reasons for going to law school, he told that, after graduating from college, he got a job “teaching… for high school dropouts, essentially”:

And I was teaching them communication skills, which meant interviews and resume writing, and how to not scare employers, that kind of thing. A lot of it wound up being anger management. The takeaway is, these kids were really screwed up by schools [Then again,] I felt I wasn’t having as much of an effect as I wanted … I wanted to do something more systemic to attack the problem deeper. I think a lot of people who have an abstract idea that they want to do something good in the world, and who get good grades, and who are highly achieving academically think, “Well, law school seems a good option”. So I applied to law school (in-person interview, transcript on file with the author, emphasis added).

Nathan Kemp, a 44-years old lawyer working at a non-profit with family/children issues and women’s rights/domestic violence told a very similar story: he “grew up poor but with very high grades in upstate New York and Central Florida; … had thoughts about law school since undergrad”, but his volunteer work at a consumer action center and nursing home ultimately convinced him that “he needed the esquire behind [his] name and the letterhead to truly be able to accomplish justice for most individuals” (Computer assisted web interview, transcript on file with the author, emphasis added).

The relevance of lawyers in the U.S. context reappears when interviewees speak of their involvement in the handling of particular matters. Facing a question about the kind of difference he believes he can make as a “public interest lawyer”, Michael Thomas, a health law advocate acting in New York provided what he “guess is a classic example, but”:
You know, your kid was with asthma, and the doctor can sort of figure out that the asthma relates to …droppings in your apartment, and the doctor can talk to the landlord and the landlord probably will not do anything, then a social worker can talk to the landlord and the landlord will not do anything, but if there is a lawyer involved, all of a sudden, “Gosh!”, the landlord starts to act, and can clean up the apartment, and the kids gets better, and the asthma gets cleared up, and the kid can, you know, move forward in terms of his life and school (in-person interview, transcript on file with the author, emphasis added).

Likewise, facing a question of what kind of change or impact he expects to produce in society, Anthony Cooper, a 1977 law graduate living in Virginia and working with issues such as consumer protection, housing, and elder law, wrote that it is “the removal of local, state, and national impediments to a level playing field for the poor and downtrodden”. And he provided this following instructive example:

30 years ago, I was a new lawyer with little knowledge and no experience. A young woman came to me for assistance. She and her infant had been padlocked out of her apartment by the City Sheriff on the basis of a ‘distress warrant’. She wasn’t going to have a hearing for another week or so…. Under the law, this was an extraordinary remedy that could only be used if the tenant was ready to abscond. In practice, landlords routinely used these against tenants who were late in paying their rent…. I confronted the Sheriff and the Commonwealth Attorney, who represented the sheriff. They ignored my legal arguments and maintained that they were perfectly comfortable with the practice, which had gone on for decades without anyone challenging it (no doubt because there had been no legal aid office there). I filed for an injunction hearing scheduled for the next day, and before the end of the day that I filed, the Sheriff’s lawyer called to tell me that the padlock had been removed and that my client was free to return. They have never padlocked another tenant again in that city using this distress warrant practice. A few years later a deputy sheriff stopped me in the hall of City Hall and thanked me for bringing this practice to a stop. He explained that they had always thought that they had to do it this way, even though they despised the practice, because no one had ever challenged it. Of course, the reason no one had ever challenged it was because the people oppressed by this practice never had access to an attorney before I came to the area as the legal aid attorney. It didn’t take a ‘Clarence
Darrow’ to stop the practice. It just took a lawyer (Computer assisted web interview, transcript on file with the author, emphasis added).

That lawyers have a privileged position in society and that they can use this position to serve the “public interest” is so much taken for granted in the U.S. culture that many interviewees cannot even trace back in their memories where they get these ideas from. These ideas appear in their discourses as the product of a lifelong learning process that takes place through the family, college, and socializing institutions alike. And as these individuals start their law school experience, the basic discovery that a legal career can serve for purposes other than bringing about social change – such as achieving social mobility or monetary success –, sounds “totally surprising” to them. For example, when asked about her first contact with “public interest law”, Isabella Smith said:

I mean, I cannot remember because that was since I was a little baby… I guess I came to understand more of the different kinds or levels of social justice law, I guess what we call impact litigation versus direct services versus policy work, but I really do not remember the first time when I became aware of something like this. Honestly, when I arrived to law school in 2003 I was completely surprised; totally surprised about the fact that 90% of my colleagues were just there for other things besides social justice (in person interview, transcript on file with the author, emphasis added).

Also of importance in the projections of “public interest law” among the researched subjects are the specific ways in which lawyers come to participate in broader schemes of governance, within that particular range of agency they have available. In an influential study about popular legal consciousness, Ewick & Silbey (1998) elaborated three schematic narratives of how legality is constructed in the U.S. society. They called these schemas before the law, with the law, and against the law.
The “with the law” schema describes legality as an arena that people can use to advance their interests and manage their ordinary problems. However, as the authors properly underline, “seeing legality as an arena of contest, potentially available to self and others is not to say that the perceived uses are thought to be infinite. People recognize the constraints that operate on law (Ewick & Silbey, 1998:131).” Among such constraints are, for example, “rules governing what law can do”, “costs associated with using the law, or with using it in a certain way” and, most important for this research, “players’ different levels of skill and experience” (Ewick & Silbey, 1998:131-2). Accordingly, Ewick & Silbey report a “virtual agreement” among participants in their research about the importance of having a lawyer once, by choice or by fate, one finds herself playing the game through which legality is (also) constructed.

U.S. lawyers are, then, masters of a specialized body of knowledge and a distinct set of skills that are not widely available in the society. Their legitimacy to handle governance affairs becomes highly enabled by their dominance over such relatively scarce resources, in a society that tends to give the game schema a central place in its structure of governance57. Consistently with these claims, expertise is perhaps the main resource that “public interest lawyers” in the U.S. report to rely on. For example, as she was describing the basics of her work, Emma Williams constantly provided examples of how she goes about invoking legal rules, principles, and procedures to challenge a status quo that victimizes her clients:

The cases that I work are all [Asian] kids, youth that were sent to the US before they turned 18 years of age, and they are smuggled by [...], and they have about a debt of 70-90 thousand US dollars, which is insane. They work in restaurants

57 “The broader issue [in the concern with equity in legal representation], however, related to letting specific conflicts and disputes be resolved in the courts rather in the public forum. Presumably, the provision of an impartial mechanism for the resolution of conflict is the ideal to which the profession is committed” (Marks, Leswing & Fortinsky, 1972: 15)
throughout the US, so there is a street in Chinatown called [...], where they go up to a window and get a job assignment and they are put on a bus to go to Missouri, Michigan, N. Dakota or California, and then they work in restaurants to pay off their debt. So depending upon the youth situation, if they are still under 18 when I meet them and they are interested in it, we write letters and do advocacy work before the office of resettlement to see if we can have them designated as victims of human trafficking. And then I had a couple of clients getting into the unaccompanied refuge minor program, which is a foster care program that helps them get out of trafficking, a foster care so they can go to school, have a family, and a better situation.

For a lot of the youth, because the smugglers have connections in America and [Asia], they threaten the family, they threaten the youth, they threaten the parents back in [Asia], so they are still working in these restaurants and they are still in this situation. So what I do for them is I see if I can get them into schools, for the time, whatever time they are able to go to schools, so I do a lot of educational advocacy. I do not know if you saw that recently but the NY Times talks about how a lot of immigrant students are turned away illegally from schools. I also make sure that they know about all their rights, they know about phone numbers to contact. Then I do immigration applications for them as well, so I spend a lot of time in family court, helping them get guardians, and to get orders that make them eligible to special immigrant juvenile status, which is a type of status for those who are [recites]: under 21, unmarried, are dependent upon a juvenile court, their reunification to parents is impossible, and it is not of their best interest to return to [Asia]. And then, for some of them I also do applications for victims of human trafficking and coordinating work with law enforcement write memos helping them get the benefits that they need.

But lawyers can be even more technical as they report their day-to-day work. An example is in the accounts by Gabriel Powell, a 61-years old lawyer working with legal aid in Virginia, who provided some of the richest responses to the CAWI questionnaire. When he was asked to detail his practice, he stated what follows:

My primary practice areas are landlord-tenant, unemployment compensation, garnishment protection and bankruptcy. An example of a landlord-tenant case: Landlady got a judgment of possession. After that, the tenant paid the judgment, and paid all rent through the current month. Landlady did not give tenant any
notice accepting rent with reservation. Because the landlady did not give tenant these notices, she had waived the right to evict and would have to file a new unlawful detainer. However, landlord had the court issue a Writ of Possession. I filed and served a Motion to Quash Writ of Possession, arguing that the landlady’s acceptance of payments had waived her right to evict under Code of Virginia §55-248.34:1. The court quashed the Writ, allowing the tenant to remain [and keeps providing similar examples in the areas of unemployment compensation and garnishment protection] (Computer assisted web interview, transcript on file with the author).

While Emma and Gabriel may sound almost unconscious about the role of expertise in their ability to participate in governance, others have it clear that their capacity to “navigate bureaucratic webs” or to develop “creative strategies” using a unique set of skills and knowledge is constitutive of their working styles and identities. For instance, as she was describing her area of work and the main problems it presents her with, Olivia Jones said that:

The Social Security Administration is nuts. They have a million hoops you have to jump through to prove that you’re eligible for their benefits program, including if you’re disabled. You also have to prove that you’re poor. And by poor I mean very, very poor. You have to prove that you have very limited income or no income. You have to prove that you have nothing in assets. You have to prove that you are a citizen, sick in your first number of years. You have to prove that you live in a certain living arrangement, that you don’t take handouts from your family. It’s unbelievable all of the things that you have to prove. People get really caught up in all those other hoops. They either don’t provide the right application, or they are disbelieved, or Social Security just screws up. And there is probably a million pages worth of tough regulatory guidelines that the agency is run by. What I do is to get creative and get people on benefits when they hit up against these stupid words (in-person interview, transcript on file with the author, emphasis added).

Further in the conversation, when facing the question of how she believes that her work advances the public interest, Olivia said “that is a bullshit question”: “It is people who don’t have a voice, don’t have the means or the savvy or the networks or the time to navigate, definitely
navigate, the complicated bureaucratic webs” of social security. From this perspective, what she and her fellow welfare benefits lawyers do “is we learn those webs and then serve as the advocates for those people who are being thrown right in to try and get high”, and “it’s remarkable that these programs are set up in such a way that you actually have to have a lawyer. I mean, you really, you can’t...” And she went on to say:

I’ll give you an example. Five times a week I get clients that come in, and they’re in tears. They’ve got a notice from Social Security, read it over they don’t know what to do. They are just so wrought with anxiety and fear. And I read the notice and all I need to do is look at it for 10 seconds to notice, the same notice I’ve seen 100,000 times. And it says, “Dear Mr. X, you have been overpaid $85,000. We would like this money back now. Please enclose a check or money order in the envelope provided at your earliest convenience. If you don’t respond to this we will take all your money that you get every month.” And their looking at me and their holding the postage paid envelope. And they’re going, “$85,000? But I didn’t do anything wrong.”

Well, of course they didn’t do anything wrong. Social Security fucked up in some way, and they crossed their numbers, or they think somebody wasn’t as innocent, or somebody wasn’t living in Philadelphia, whatever it is. And somebody had a criminal record that prevented them, whatever it is. And they, instead of looking into it themselves, instead of actually thinking about it for five minutes, they just send this notice, and the person freaks out. And I mean, we’re glad when they even come into us. But nine times out of 10, they’re probably sitting out there not knowing what to do and they just let what happens happen to them, which is either their entire check gets taken or some chunk of it gets taken every month. And they’re missing on $300 a month or something.

So, what do I do? I request that the overpayment be waived, because there are a variety of legal arguments that they would never know were available to them, because they don’t even know that the sub regulatory guidance exists, let alone have an Internet connection to look at it if they understand it. So without me to do the research, figure out what argument I’m going to hang my hat on and get the overpayment waived, they’ll lose most or all of their money. And this is sometimes $674 that they’re surviving on. And I see this five times a week, and I’m just one person. So what is my role? My role is to give poor vulnerable people, who are completely overwhelmed by bureaucratic disentitlement, a
If lawyers occupy a privileged position in the U.S. society for they dominate the rules, procedures, and principles that constitute the game facet of the law, the legitimacy of “public interest law” stems precisely from the fact that it can serve as a conduit between the game arena and the interests that have been underrepresented in it. This is not a completely original finding: one of the foundational works of “public interest law” scholarship in the U.S. had long anticipated that:

The definitions... of public interest law share one common characteristic: they all rest on a pluralist ideal and emphasize the procedures used to guarantee the representation of all interests. Traditionally, for the lawyer, this has meant that the public interest is always represented in a legal controversy [...] Most lawyers who have discussed the public interest and public interest law do not seem to have any quarrel with this view; the problem, as they see it, is either that too many ‘interests’ are not represented at all in the adversary process, or that they are inadequately represented. Lawyers who practice ‘public interest law’, then, assume that the public interest is, indeed, a result of the legal process, and that their activities will contribute to the ‘representation of the underrepresented’ (Weisbrod & Benjamin, 1978:28)

In another book that dates back to the early days of “public interest law” in the U.S. Marks, Leswing & Fortinsky reinforced this claim (1972:14). In tracing the roots of pro bono in the U.S. legal profession, authors write that:

58 In a book foreword that addresses the advent of “public interest law” in the U.S. context, Thurgood Marshall argued that: “These lawyers have, I believe, made an important contribution. They do not (nor should they) always prevail, but they have won many important victories for their clients. More fundamentally, perhaps, they have made our legal process work better. They have broadened the flow of information to decision makers. They have made it possible for administrators, legislators and judges to assess the impact of their decisions in terms of all affected interests. And by helping to open the doors to our legal system, they have moved us a little closer to the ideal of equal justice for all” (Marshall, 1976: 7-8)
While accepting the view that the public’s interest is automatically served by single-minded representation of client interest, and perhaps because of such acceptance, lawyers began to recognize the consequences of the inequality of access to legal representation. They began to grapple with the fact that the act of accepting or rejecting clients involves the discharge of a public duty. If the advocate is seen as representing the public interest through the process of representing his clients, special care need be taken that no man or no interest be denied an advocate. This awareness of a responsibility to the public regarding access first centered on issues concerned with representing the criminal defendant and unpopular client – not always mutually exclusive categories.

Three decades after Weisbrod & Benjamin’s and Marks, Leswing & Fortinsky’s accounts, interviews with U.S. “public interest lawyers” corroborate this ideology of equal representation. For example, when he was asked about what he liked most about being a “public interest lawyer”, William Harris, a welfare benefits lawyer working in Florida stated that: “In law school I learned that being a lawyer is, it is a helping profession. Some people choose to help companies and businesses, and things of that nature, whereas there’s arguably an even greater need for people to advocate for folks who don’t have the means and resources to hire an attorney and to truly have a justice system.” After all:

*If there’s going to be justice then both parties to matter should be provided with legal assistance. And so that’s why I do gain a certain level of satisfaction knowing that I’m assisting folks, kind of leveling the playing field if you will, by representing people who otherwise would not be represented in their legal issues* (in-person interview, transcript on file with the author).

Similarly, facing the question of what kind of impact he expects to produce in society, Elijah Stepherson, a 64-years old housing and welfare benefits lawyer working in Rhode Island, stated that he wishes to see:

Better and safer housing, intact families, and healthy kids, [yet], “additionally, we try to provide a counterbalance to the powerful forces that often array against our
clients. We level the field (a tired cliché) to ensure fairness and justice for our clients. Whether it’s housing court, district court or family court, our clients deserve the respect that comes from independent, professional representation (Computer assisted web interview, transcript on file with the author, emphasis added).

But perhaps the most fascinating example of this ideology of legal representation and its strong presence in the legal consciousness of U.S. “public interest lawyers” was provided by Eva McCallister, a 61-years old environmental lawyer working for an NGO in Washington, DC. Facing the same question of what kind of impact she expects to produce in society, she stated that it is “to make the world a better, fairer, healthier place [and] to give a voice to species and animals that otherwise are not represented” (Computer assisted web interview, transcript on file with the author, emphasis added).

Quite a different picture emerges as one crosses the Mexican border down. In the L.A. context law has not been a hegemonic tool of governance. Legal arguments do not necessarily challenge power and strict legal expertise has only a moderate weight in governance affairs. L.A. lawyers, instead, are struggling to establish a more central position for the law and for themselves in broader schemes of governance. The rule of law itself becomes a “cause” that is in frequent overlap with the others, which these lawyers are advocating for59. For instance, when he was asked about what he liked most in his work, the Argentinean civil liberties lawyer Felipe Acosta said that he and his colleagues “are convinced that [they] bring about change to the legal system, to institutions, and to people’s condition”. He described his team as “a little crazy, a little romantic, because the truth is that [they] lose most of our cases, [they] really lose more than [they] win”. Yet,

59 About the rule of law itself as a “cause” that lawyers can act for, see Hilbnik (2004).
There is a conviction that the justice system can work in a different way, that lawyers can behave in a different way, that the law can be used in a different way, and that judges can work in a different way. There is a satisfaction in working with this conviction and using the courts for something different than asking for damages, as it happens in the practice of most lawyers (in-person interview, transcript on file with the author, emphasis added).

Facing the same question, Juan Torres said that “working close to people and having the chance to give visibility to a reality that is not seen around there… this is really good”. Yet, Juan seemed to feel particularly enthusiastic about the impact that he produces in the students that he shares his stories with. As per his account: “They get surprised by what I tell them sometimes … And when I provide them with evidence that [a massive violation of Human Rights] can be taking place in their country… I see a change in these kids: they begin to think that their work as lawyers can be precisely one of solving these national problems (in-person interview, transcript on file with the author, emphasis added).

This relationship between legal practices and institutional development, which is a building block of “public interest law” in L.A., can find very elegant formulations in the accounts of L.A. “public interest lawyers”. For example, when he was addressing the socio-political significance of his practice, Matias Lopez, one of the forerunners of “public interest law” in Argentina said that:

Maybe I am exaggerating, but after the democratic transition in Argentina, for the first time in years we are starting to take rights and the constitution more seriously. Because before that, the idea that the constitution places limits to politics was not something that politicians accepted and that we thought of; we expected that everything would come from politics, that the right to work, to housing, to good labor conditions would come from politics, as with Peron. But if politics gives that to you, it is not a right that you can claim, less so before courts, they [courts] are not there for that. So when for many reasons democracy comes back, the language is that now we have rights and we have ways to make them
effective through courts. This, I believe, is what is truly revolutionary in our democratic transition [...] Now you have a window; now there is another way to do politics [in which] an NGO can now bring about a judicial case to impact public policy (in-person interview, transcript on file with the author, emphasis added).

The available literature on L.A. “public interest” corroborates this interpretation again. For example, as a Foreword to a book on “Human Rights and the Public Interest”, which is part of a series through which much of the memories of L.A. “public interest law” have been recorded, Gonzalez states that:

Historically, the notion of “public interest” was evoked as an argument for the state to restrict rights. It was said that a “right was limited for reasons of public interest”. This way of using the expression “public interest” associated it with the “interests of the state”. There were even some state agencies that were established in order to protect the “public interest”. More recently, however, the concept of public interest has acquired a different meaning, which is connected with a broader notion of the “public” and includes the both state and non-state interests, i.e., which welcomes civil society manifestations and citizens’ participation. This has taken place in parallel with a change in the relationship between “public interest” and the exercise of rights, so that the former does not limit the latter, instead it has become associated with the protection of such rights (2001:07).

Nonetheless, exactly because the L.A. context is one of transition, legal strategies are not fully sufficient to speak to power. In effect, “public interest law” in L.A. exhibits an inherent political dimension60. For example, when Celestino Ruiz, a 28-years old lawyer who works with

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60 In fact, in a book entitled La lucha por el derecho: litigio estrategico y derechos humanos (Fighting for the law: strategic litigation and human rights), the Centro de Estudios Legales y Sociales (Center for the Studies on Law and Society), a leading Argentinean “public interest law” organization states that: “The cases presented in this volume are also an important part of the recent history in human rights activism. The relevance of this activism, whose most visible protagonists are lawyers and courts, is in that the selection of causes is a product of work in conjunction with various and very different collectivities and social groups that make rights claims. Hence, if historically CELS’ activism relates to claims for truth and justice in the context of crimes of the military dictatorship, over the last years other themes have emerged in the democratic agenda: police violence, prisons’ conditions, and access to justice; discrimination and issues related to the immigrant population, indigenous peoples and minorities; illegitimate restrictions against the freedom of expression and access to information, among others. The selection of cases has been always connected with the possibility that litigation be also embraced by the needy social group, because in it
Human Rights and civil rights in the countryside of Argentina was asked to explain what kind of impact he expects to produce in society, he wrote that: “In the short term, the main impact is to infuse the issues we are addressing into the media and the public opinion, to attract the sympathy of other social movements, and to generate a favorable political climate. In the long run, we expect to contribute to make a less unjust world” (Computer assisted web interviews, transcript on file with the author, emphasis added). Juan Torres provides another interesting assessment of this close connection between the legal and the political in L.A. “public interest law”:

When analyzing potential cases we are also doing meetings with two or three external persons, with specialists in various areas or themes, to see not only if we have enough evidence if we are to present them to the judiciary, but also if it has legal viability, that is, if a judge can accept it and if it will have the impact we are expecting. Moreover, we look not just for legal viability, but also for political viability, that is, if a theme is in the agenda or if it is possible to put it into the agenda. For example, migration is currently very strong in Mexico; it is daily and all over the media; it is in the agenda. So we are always thinking of how to put cases in this public, I am sorry political agenda. We call the best cases “noble cases”, cases that will open us a door to, let us say, put an issue [in the agenda] so that we can open more room [to discuss it] (in-person interview, transcript on file with the author, emphasis added).

All of this helps explain why “public interest law” in L.A. often involves media and political strategies, as well as collaboration with community leaders and NGOs. “Public interest lawyers” in L.A. frequently have to draw from these other sources of capital and expertise such as social research and communications: law is one component in an amalgam of interests that connect through a transformative strategy. And the relationship among lawyers and these lay

in this mobilization that we deposit our expectation to expand rights and make them effective in the democratic political arena. Other than this, the cases would count just as small battles, won within the small circle of legal scholars” (Centro de Estudios Legales y Sociales, CELS [2008]).
actors may well be horizontal. For example, when Angelo Duque, a 47-years old lawyer from El Salvador who works with prisoners’ rights and Human Rights was asked to provide a story illustrating the kind of impact he expects to produce in society, he mentioned the case of a “rural community [that had been] affected by toxic garbage after a judicial order was issued in a lawsuit filed against a businessman for environmental contamination”. Angelo explained that as “the lawsuit was stuck at the Court because the businessman had filed an appeal… he advised the community to put pressure on the Ministry of Environment, given the implication [of the garbage] over the [community’s] right to health. After [he and the community] undertook public pressure and wrote public petitions, the Ministry did interfere and the garbage was removed” (in-person interview, transcript on file with the author, emphasis added). Yet the most interesting story about the interplay between law and politics in the work lives of L.A. “public interest lawyers” was seemingly set forth by Felipe Acosta. When he was providing details about the cases he has handled and the way these cases have contributed to further the “public interest” in Argentinean society, we had the following exchange:

For example, access to public information. We have a strategy of litigation so that judges recognize the right to access to public information, like the FOIA in the U.S. There is no such a law, but we want judges to recognize that right. So we look for cases that have a public appeal, so that the media also says that we lack a law regulating access to public information and we can say “this is happening because we don’t have an access to information law. So these are cases in which sometimes the information is of our interest, but sometimes no, we just do it for the sake of…

For example, last year we filed a lawsuit against the Argentinean President. Actually we did not file a lawsuit; we sent her a note asking for her paycheck. She said no. We then said, “OK, this is not secret information, there is no exception in the available regulation that prohibits her from passing along to us that information, and the only way that there can be a proof that the state is paying her – and this is public money for a public employee – is the paycheck”.
So we filed the lawsuit, but at the same time we went to the website of the Mexican president and we asked him to send us the copy of his paycheck. And he did. So when the judge said we were right, we picked this information and we picked the story that Calderón had given us his paycheck and we went to the newspaper and said: “If this goes in the front page we give you exclusive access to the materials” and they said “OK, this is of our interest”. So it went to the front page: “The president hides her salary”. The newspaper published the two stories, the one of her paycheck and the one of Calderón’s paycheck. That very same day the president called a press conference at the Casa Rosada and said: “Well, there are some NGOs arguing that I hide my salary, here is my salary”, and gave copies for everyone. That was at 9AM. At 12 noon… This is funny, I don’t know if this interests you but…

Interviewer: How come it doesn’t?

Respondent: I was at my office and my secretary said “People from the Vice President office [who was then in conflict with the President] want to talk to you”. And I said “Well, pass me the phone call”. She said, “No, no, they are here”. And I said “Well, let me see them”. So we sit together and there were two aides to the Vice President and they bring me a package with papers and they say: “Listen, we want to bring you copies of all the paychecks of the Vice President”. So I have that with me, as a souvenir [chuckles]. So to some extent we have to come up with a whole strategy to make sure that litigation sometimes has other kind of impact, which is to put the issue onto the public agenda (In-person interview, transcript on file with the author, emphasis added).

Hence, “public interest law” in L.A. can be seen as a lively institutional experiment, typical of a transitional context, in which structures of governance are somewhat unsettled and in which the “rule of law” gradually appears like an avenue that people can walk through. While U.S. lawyers expect to connect the people with the law, LA lawyers expect to connect the law with the people. The paradox, however, is that when trying to make the law outshine politics in

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61 See, for example, the report entitled La Corte y los Derechos [the Court and the Rights], produced by the Asociacion por los Derechos Civiles (ADC), another leading “public interest law” NGO in L.A. In the foreword of this report, the leadership of the association states that “in 2005… it published for the first time this report, addressing the main important ordinances issued by the Supreme Court in the time period of 2003-2004. At that time, we showed our concern with the lack of interest by the press and the citizens with respect to the decisions of the Argentinean Supreme Court. The main reasons, as we saw it, were twofold. First, there was a lack of a critical consciousness about the Court’s importance for the everyday lives of citizens. Second, there was a lack of
structures of governance, “public interest lawyers” reinforce the close connections between law and politics that have been a mark of L.A. history, which some may see a signal of institutional underdevelopment and the ultimate reason for the persistence of a tradition of “unrule of law” in this region (Mendez, O’Donnel & Pinheiro, 1999).

4.4. Symbolization: “public interest law” and democratic governance

The structural differences in “public interest law” across the Americas, which have been observed in this Chapter, further resonate in the way “public interest lawyers” in each of these contexts symbolize the socio-political significance of “public interest law”. L.A. lawyers understand that “public interest law” entails: (i) giving visibility to (ii) structural problems in the functioning of government and society and, hopefully, (iii) triggering changes in policies or, more generally, in the existing structures of governance. For instance, when Cristobal Alvarez was asked about his practices of client selection, he said that:

[There are] two variables that we consider to be important [when selecting cases and clients]. On one hand, the person needs to belong to a vulnerable sector, so that lawyers will not have incentives to take on her case. This first filter of admission does not necessarily lead to “public interest” cases, but is one that we use. On the other hand, the idea of “public interest” itself, as another filter, has to do with the capacity of the case to produce a critique against systematic failures

legitimacy affecting the Court in the 1990s, which was deepened by the end of 2001…” Further, they consider that “it continues to be absolutely necessary that citizens know and control the Supreme Court decisions with respect to constitutional rights and institutions… We are convinced about the need to keep monitoring the Supreme Court and articulating activities that contribute to promoting a public discussion about its interpretations of the national Constitution…” And they indicate that this kind of initiative has been backed up by foreign institution, by remarking that: “this project was possible thanks to the support of the British Embassy in Buenos Aires’ Strategic Program Fund, as well as of Ford Foundation (Saba & Herrero, 2008: 23-4)”

62 As per another “native” account: “Within the traditional canons, it is difficult to conceive citizens as plaintiffs in cases that address interests that are beyond their own. Yet and in spite of the limitations in legal structure and legal culture, there has been in L.A. legal strategies designed and deployed by defenders of the public interest, which consist in the emblematic defense of either an individual right that has been affected so as to call society’s attention to the structural denial of this same right by the legal system, or of collectivities of citizens through entities organized to demand multiple social needs, which embodies the public interest”, (Gonzalez, 1999: 13).
in a given public policy, or to activate mechanisms or tools that lead to change in a given structural situation in which there are violations of rights (In-person interview, transcript on file with the author, emphasis added).

Similarly, when Maximiliano Flores, a young lawyer who works at a leading law school clinic in Peru was accounting for the development of “public interest” clinics in his country, he recalled that in 1997 his law school applied for World Bank funds in order to establish additional legal clinics in Peru. The law school was granted the funds and started to implement the project by establishing legal clinics in three Peruvian areas: Ayacucho, Puno, and Arequipa, “all of which had very deep-rooted problems of social exclusion and poverty”. He then said that:

The intention was to convert the clinic into a tool to combat these social problems by enforcing rights of these people. The project had an important impact; many actions were undertaken by other universities in those regions and now, although the project is over, the clinics are still working. Through public interest actions, what these clinics seek is to give visibility to problems in order to create implications in the political realm (In-person interview, transcript on file with the author, emphasis added).

Although sharing the understanding that “public interest law” entails improving the functioning of government and market institutions, U.S. lawyers see this process as a much more iterative one. As Linda Ferguson, a 35-years old lawyer from Maryland working with environmental protection precisely defined:

You try to win one case, one issue at a time, and build on that. Whatever the outcome, you try to bring a voice to the court and to an issue that no one would hear otherwise, and that needs to be heard for the court to understand the full picture of an environmental problem. You try to build on past success to create a legal bulwark that is stronger than corporate money and influence (Computer assisted web interview, transcript on file with the author)
In this vein, acts of individual resistance can be as significant as acts of broad impact, whether because they empower individuals fighting against systemic injustices or because, sooner or later, they help to curtail such systemic injustices\textsuperscript{63}. Facing the question of “What do you like most about being a ‘public interest lawyer’?”, Texas immigration lawyer Chloe Garcia provided a compelling example of “public interest law” being symbolized as a mechanism of empowering individual clients. She said to believe that her practice:

…Sends a strong message “Hey”, no matter who you are… it’s not OK to go get these people and make them work for you for free, and scare them and oppress them. And if you do try to do that, you could end up in court before a judge. And here’s the law. I’ll show you the law that says you are responsible. And it was very empowering, because a lot of our clients would just hear it through word of mouth, mostly through friends. “Well, hey, give them a call today, they recovered my wages…, maybe they can do something for you”. And a lot of the time they didn't know; they thought “Oh, I thought I had absolutely no rights in this country. Really? Did lawyers help you? American lawyers? So that was pretty neat.

In addition, as Lauren Carey, a 31-years old lawyer working with disabilities, health care, and education issues at a non-profit in IL was asked to provide an example of her day-to-day work, she actually ended up providing a rich example of “public interest law” being symbolized as a triggering mechanism for curtailing systemic injustices through legal assistance to individuals:

Last year, I worked on a case for a 17-year boy in his senior year of high school. In July 2010, A.S. was diagnosed with a rare cancer of the body’s connective tissue. By the time the … school year started, AS was already in the middle of intensive chemotherapy treatments, which limited his ability to make it through a full day of school. When his mother went to enroll him in school, she provided

\textsuperscript{63} “For the most part, public interest law represents the rights of large numbers, many of them poor or members of minority groups. Yet the legitimacy of litigation does not depend on the numbers benefited, or the economic or ethnic status of the clients. Rather, it is the nature of the right or the interest at issue that justifies action by a public interest law firm” (Ford Foundation, 1976: 11)
documentation of A.S.’s health condition and explained to the administrators that A.S. had been receiving homebound educational services because of the cancer, and would need to continue on homebound in order to graduate high school… District administrators refused to enroll A.S. I started working to help get A.S. enrolled in school. A.S. was finally enrolled after having missed almost two months of schooling. Unfortunately, that January A.S. was admitted to a local children’s hospital for abdominal pain…. A.S.’s physician and social workers sent multiple letters to the school district to provide updates on his condition, and to strongly recommend the use of remote in-hospital educational services for A.S. The school district did finally agree to provide a CD with a computer program that A.S. could use to complete his credits, but never delivered the program. One and half months after being admitted to the hospital, A.S. was discharge home on hospice care and died less than 24 hours later. Two days after his death, his school called A.S.’s mother to tell her that the computer program was ready… Even with the turmoil she was going through…. his mother worked with me to draft a powerful letter to Illinois state legislators in support of a bill to strengthen the provision of homebound and in-hospital education services to sick children… The bill was passed several months later and signed into law. The case was hard because the client never got what he really wanted – to be able to finish his schoolwork and graduate before he died, [but] it was a success in that the mother was willing to work with us after her son’s death to pass laws that could have helped him while he was alive, and that will help family like hers in the future. The ultimate lesson was that low-income clients with legal issues really just want enough help to be able to meet the basic needs for their families – but even when those efforts fail, the work itself was not necessarily in vain because it might help feed into larger-scale positive impact on people in the future (Computer assisted web interview, transcript on file with the author, emphasis added).

Given this “iterative” approach with which U.S. “public interest lawyers” symbolize law and change, even when they use impact litigation they assign it with a different role than their L.A. counterparts do: lawsuits that come to a settlement and/or that benefit individual clients are also seen as furthering the “public interest” as they are prospectively discouraging the defendants from insisting in the same conduct. For instance, as Mia Taylor, a housing lawyer in Colorado was telling a story of success in advancing the “public interest” in which she had collaborated, she went on to say:
This was an individual homeowner who was going to lose out, was going to lose his home. And, it took quite a bit of my time, but I am fairly certain that they actually were successful and able to save his home….I don’t remember if they settled the case or if they went all the way through litigation. In cases like that, I feel really strongly it is important for as many people as possible to have representation, because then the underrepresented people are less likely to be mistreated. This guy was one homeowner out of many, many who had these loans. But, if just a few of them are able to find relief, then the bank will probably, first of all, stop using this kind of loan [chuckles]. But secondly, they’ll be a lot more likely to settle quickly or do something to help out the remaining people so that they don’t get sued by them, too. So, it actually has a ripple effect. Representing individual clients helps out all the people that can’t have a lawyer, which is most people [laughs] (in-person interview, transcript on file with the author, emphasis added).

Likewise, as Jacob Anderson, a young community economic development lawyer in NY was talking about what he finds challenging in his work, he gave the following example:

I use to do foreclosure defense. Homeowners being foreclosed by their lenders, they have very little power related to the bank, which is, you know, enormous, recently had a lot of revenue. So two weeks ago we brought an action against JP Morgan and Chase, on behalf of three individual homeowners. This is part of a strategy of trying to get a resolution to their foreclosure actions, because just talking to Chase we were not able to get them an adequate settlement, so going into court and litigating is one step in that strategy to try to bring successful resolution. And I think that it has been satisfying, because… what is keeping the justice system from being fair is the fact that Chase can spend, if they choose, a lot of money with lawyers, when individual people will never have a chance to do that. So often we are fighting against people or corporations who have more resources, but that is nice, effective, I guess (in-person interview, transcript on file with the author, emphasis added).

Of course, these symbolizations of public interest law relate directly to the larger trajectory of legal and political institutions. For example, it is virtually impossible to understand the picture of “public interest law” in the U.S. without taking into account the profound changes that have taken place in this country’s politics. Public interest law scholarship has made it quite clear that the more “aggressive” approach for the “pursuit of legal rights” (Handler, Hollingsworth & Erlanger, 1978) faces daunting times in this country for, among other reasons:

[…] an increasingly conservative judiciary has become less amenable to rights claims from liberal public interest lawyers, while creating openings for advocacy by religious
conservatives, property rights groups, and business interests. Increased decentralization and privatization have shifted regulatory authority to states, municipalities, and private sector actors, erecting challenges to lawyering focused on administrative rulemaking at the federal level. Cutbacks to social welfare programs have narrowed advocacy opportunities within poverty law. There have also been significant changes in the organizational context within which public interest lawyers practice, with large law firm pro bono programs taking on increased importance as federally funded legal services offices face stricter constraints. The ideology of social reform that marked the liberal public interest law project in the 1960s and 1970s has been overtaken by a new orthodoxy that is deeply skeptical of the usefulness of legal strategies to promote social change (Cummings & Eagly, 2006:1254).

U.S. lawyers themselves have a clear sense of that. Facing the question of “When was the first time you heard about ‘public interest law’?”, Taylor Schneider, a 57-years old female lawyer working with domestic/intimate partner violence, consumer protection, and housing in AK said that ”public interest law seems like a new term that has not always been applied to legal aid work or government attorney work. I associate public interest law with law reform issues”. Similarly, facing a question about his personal trajectory, Joshua Shields, a 59-years old male government lawyer working in CT wrote that:

I went to an Ivy League college and wanted to be an English professor, but as I was traveling across Pennsylvania after finishing up my very long Honors paper … I realized that maybe 5 people in the State of Pennsylvania had any idea what I was talking about and that made me want to do something more ‘relevant’ – which was the catchword of our generation in the late 1960s/early 1970s. So law it was. This was in the days of the Warren Court, so using law as a force to change society was a very real possibility (Computer assisted web interview, transcript on file with the author).

Younger lawyers also display an analogous consciousness. When I was debriefing with Olivia Jones, she asked about the preliminary findings of this research. We then had the following conversation:

**Interviewer:** You know, it is still too early to make claims, but I feel like there is one big difference. LA lawyers are generally more aggressive than US lawyers.

**Respondent:** What do you mean?
Interviewer: Their cases are all of broad impact and their clients are only groups and communities.

Respondent: If you were doing this research in the 1970s you would probably find the same here (in-person interview, transcript on file with the author).

The symbolization of “public interest law” in L.A. has also had direct relationship with the recent history of legal and political development in this region. Besides appearing as a vernacular characteristic of L.A. “public interest law”, collective mobilization is also a hallmark of the democratic restoration in L.A. countries. Throughout this process, groups, communities, and social movements in L.A. acquired a strong political subjectivity, upon which “legal subjectivities” could be built by the L.A. “public interest law” movement. Some of these groups and their networks of support such as the Catholic Church actually made a deliberate decision to invest in legal institutions in their struggles for political change (Thome [1984]; Hurtado [1988]; Campilongo [1994]; Chapter 5 in this dissertation). While providing prospective “public interest lawyers” with a unique opportunity for legal and political engagement, such historical traits also instilled “public interest law” with practices and symbols that are constitutive of the identities of L.A. groups and communities, such as liberation theology.

But the connection between “public interest law” and the history of political and legal institutions can be even more deep-rooted. Cultural assumptions, such as political philosophies that mark the history of a people, need to be taken into account when “public interest law” is locally institutionalized: they may also shape the contours that “public interest law” practices ultimately take.

It is fair to say, for example, that the more iterative perspective that “public interest lawyers” in the U.S. ascribe to law and lawyers in creating change and accountability, stems from what some have seen as marks of the policy process in the U.S. landscape: incrementalism,
adversarialism, and pluralism (see, for example, Kagan [2003]; Miller & Barnes [2004]; Macfarland [1987 and 2007]; Sabatier [2007]. See also Rosenberg [1991]; and Scheingold, [1974] for examples of how law and rights play an inextricably incremental role in policy change in the U.S. context). Accordingly, a “successful” globalization of “public interest law” would lie, at least to some extent, in the development of this pluralist philosophy of governance overseas. This is clear, for example, when Rekosh discusses the way “public interest law” practices might relate to the realities of Central and Eastern Europe. Starting with the question of “who defines the public interest?”; he argues that: “In a liberal society, maybe the answer is: you and me. We all participate in defining what is – and what is not – in the public interest. And the public interest is worked out in the resulting contest of values and opinions. The point is: we don’t need to concern ourselves as much with what the public interest is, so much as who gets to participate in defining it and through what means” (2005:11).

In coherence with this definition, Rekosh suggests that the institutionalization of “public interest law” in post-communist regions should involve three components. The first is the active embrace of the law by “…NGOs pursuing social goals, such as human rights” in order to “enlarge the public sphere”, i.e., to include citizens’ participation in the management of public affairs. Hence, the “law… becomes instrumental not just for state authorities, but for everyone. It is no longer merely an instrument of state control; it is a forum for resolving conflicts and working out competing notions of what is in the public interest” (Rekosh, 2005:12). The second component is the infusion of critical reasoning among lawyers, so that they become able to understand that the handling of legal cases involve more than just applying a static body of rules, but rather constructing the meaning of “public interest” in light of competing “substantive conceptions” of what it is (Rekosh, 2005:13). The third and final component is the guarantee of
fair access to the legal system, so that groups and individuals at the bottom can actually mobilize the law and advance their claims about the “public interest” (Rekosh, 2005:13). All of these components relate to the foundations of a pluralist society, and closely resemble the original philosophy of U.S. public interest law, as documented by Wasbrod & Benjamin and by Marks, Leswing & Fortinsky, among others.

While not taking issue with this aspiration, data collected for this research and reported previously in this Chapter seems to remind that, although the pluralist philosophy of governance may be commonly shared in the U.S., the same does not necessarily happen outside of the U.S., and this may not be the only case of post-communist countries. The L.A. political tradition seems to lean more towards a “republican” or even a “communitarian” philosophy of governance than to a “pluralist” one64.

4.5. Final remarks

64 “By the liberal component that has been injected into modern polyarchies I mean, basically, the Idea that there are some rights that should not be encroached upon by any power, prominently including the state. By the republican component I mean, basically, the idea that the discharge of public duties is an ennobling activity that demands careful subjection to the law and devoted service to the public interest, even at the expense of scarifying the private interests of the officials. Both the liberal and republican traditions posit a crucial distinction between a public and a private sphere, but the implications of this split are very different. For liberalism the area of proper and eventually fuller development of human life is the private sphere…. For republicanism the area of proper and fuller human development is the public sphere. It is there that the exacting demands of dedication to the public good require, and nurture, the highest virtues…. In its turn, the democratic tradition ignores these distinctions: factually there may be private activities but, first, those who participate in the collective decisions are not a virtuous elite but those same who may undertake an active private life and, second and foremost, as Socrates and others discovered, the demos can rule over any matter – it has the right to make decisions on whatever issues it deems appropriate… But there is an important convergence. Democracy, in its equalizing impulses, liberalism, in its commitment to protect freedoms in society, and republicanism, in its severe view of the obligations of those who govern, each in its way supports another fundamental aspect of poliarchy and of the constitutional state that is supposed to coexist with it: the rule of law. All citizens are equally entitled to participate in the formation of collective decisions under the existing institutional framework, a democratic statement to which is added the republican injunction that no one, including those who govern, should be above the law, and the liberal caution that certain freedoms and guarantees should not be infringed”. At the same time, there can be “radical, counterintuitive, and historically original” consequences of these assumptions. “The complex and changing mix of these three elements is an important element for characterizing polyarchies, the really existing democracies of the modern world” (O’Donnell, 1998:3-5)
As seen in the first Chapter, the dominant account for the observed propagation of “public interest law” worldwide contends that it represents a “convergence” towards principles and methods of legal practice worldwide. Driven by the circulation of people, resources, and ideas, U.S.-based “public interest law”, in this narrative, has expanded to become an increasingly “global institution” (Cummings & Trubek, 2008). However, the “symbolic map” of “public interest law” in the Americas, as revealed by this research, has shown some considerable differences in terms of clientele (L.A.= clientele predominantly constituted of communities, groups, and social movements; U.S.= clientele that also includes individuals) methods employed (L.A.= methods of high impact, with much emphasis on impact litigation; U.S.= a variety of methods, including direct services before courts and administrative agencies); definition (L.A.= “public interest law” as opposed to individual-oriented legal practices; U.S.= “public interest law” as opposed to corporate-oriented legal practices); political agenda (L.A.= “public interest law” as an inextricably political enterprise; U.S.= “public interest law” as more of a professional or technical enterprise) and social change agenda (L.A.= “public interest law” as a vehicle for structural change; U.S.= “public interest law” as a vehicle for more iterative change) of this “kind”, “style”, or “sector” of legal practice across the studied contexts. These findings allow a refutation of the idea that “public interest law” has propagated according to a scheme of straight-forward convergence. Although the “public interest law” label and some of its institutional forms that are canonical in the U.S. have become widely disseminated in L.A. countries, the practices and the meanings that are associated with these forms in the latter context are considerably different from the ones observed in the former.

So far in this analysis, the main explanatory insights for such differentiation reside in the role of local institutions and struggles for professional and political power, all of which would
separate L.A. practices and meanings of “public interest lawyering” from their U.S.-matrix. Yet, all these findings still express a purely static picture. In a globalizing world, institutional propagations are processes in which local and transnational forces are in constant interplay. Local institutions and struggles for power may hinder convergence at some point in time, but: (i) they may not be the only forces operating around the flows of “public interest law” across the contexts under consideration; and (ii) nothing guarantees that they will continue to prevail over forces possibly driving actual “convergence”. By exploring visions and experiences of so-called globalization in the daily lives of participants, the next Chapter seeks to shed some light on the processes that may have been reinforcing the observed differentiation in the practices, meanings, and even labels associated with “public interest law” across the U.S./L.A divide.
Chapter 5

Experiences and visions of globalization in the daily lives of respondents: borrowing and lending in the social construction of public interest law

In search of a more comprehensive assessment of the observed differentiation in the propagation of “public interest law” across the Americas and in light of the data collected for this research – i.e., stories of “public interest law” in the everyday lives of U.S. and L.A. lawyers, this Chapter examines in more depth: (i) The interplay between local and foreign forces in the constitution of the “public interest law” arena in L.A. and the U.S.; and (ii) The factors and mechanisms mediating such interplay\textsuperscript{65}.

5.1. Circulating “public interest law”: power and inequality in institutional propagations along the center-periphery divide

Data collected for this research shows that “public interest law” circulates in multiple directions and with multiple degrees of intensity along the center-periphery divide. Flows within the periphery are surprisingly intense, with abundant examples of interaction among lawyers from different L.A. countries. For instance, some lawyers report filing amicus briefs in other jurisdictions so as to help groups with similar interests to theirs. As he was detailing his strategies, Felipe Acosta said his organization has appeared before Supreme Court of Colombia and the Supreme Court of Paraguay:

\textsuperscript{65} Of course, the constitution of “public interest law” arenas in transitional and developing countries is not the only way in which globalization relates to “public interest law”. As it was possible to capture in this research, globalization: (i) provides new opportunities for “public interest law” practice, such as before international regulatory systems or across national systems; (ii) creates new problems that “public interest lawyers” may help to address, such as immigration and human trafficking; (iii) poses “public interest lawyers” before considerable challenges if they are to make some global players such as corporations accountable; and (iv) seems to be producing a transnational field of expertise, which has been completely understudied and in which lawyers and NGOs from both the South and the North are operating with at least some degree of collaboration. Unfortunately none of these themes will be addressed in this research, unless they become necessary to clarify other findings of more interest.
In Paraguay there is a case about access to public information, in which we appeared as amicus curiae with support of another 12 NGOs from Latin America. Here in Argentina right now, for example, we have another case of access to public information before the Court and we have had the support of these same 12 organizations... This works to articulate mutual help. Then in Colombia... we have filed many amicus. The last one they asked for was a case involving “libelous” conduct; a journalist was convicted for his work and I maintained that this was against the Interamerican Commission of Human Rights jurisprudence. Another example was the case Claude Reyes, a Chilean case in which the Interamerican Court for the first time ever acknowledged the right to public information.... Supporting the work of other organizations in their countries and at the regional level is very important to us, because afterward we can take benefit from that help. If the Inter American Court recognizes that “libelous” conduct shall not be criminalized, this is useful to us, we can use that decision before our Court because the Argentinean Court has ruled that sentences from the Inter American Court are like local laws. Now in Venezuela the government has enacted a law 2 or 3 weeks ago that allows NGO-budget control, so immediately we all reacted and sent a letter to our president saying “You understand what Human Rights are all about, they are shutting down Human Rights NGOs in Venezuela”.... I think globalization can have many definitions but information circulates very fast; a considerable part of globalization has to do with these local events impacting on other countries or things we can take very quickly (in-person interview, transcript on file with the author).

Another instance of this South-South collaboration is in the arrangement of cross-national gatherings in order to share and disseminate knowledge and strategies of “public interest law” practice. Antonia Ruiz, an environmental lawyer from the countryside of Argentina, provides illustrative examples of this. When she was explaining how cross-national collaboration takes place in her work life, she said that:

It is good when we travel around, share experiences and see what is going on out there...and find out how we can be of help. For example, we had a very interesting idea together with this lawyer from Guatemala, in terms of going to Guatemala and El Salvador to foster public interest law clinics. That is when you realize “well, public interest law is more developed in Argentina, let us help out the others, shall we?” We can also act more directly, for instance, as I said, with
amicus briefs. Or as in this network of environmental, most of them are environmental lawyers, which also shared resources with us. Because when you deal with water contamination, fact finding is very expensive and we do not have enough resources to handle it. Sometimes we don’t find places that can undertake the analysis around [her city], so our hands get tied if we cannot count on technical resources, you know? At some point we had this case in which we were acting on behalf of a community living close to a waste deposit site and nobody would conduct the studies that were necessary to produce evidence. This all takes time and it is good to have collaboration from groups in other countries (in-person interview, transcript on file with the author).

Ignacio Ramirez makes similar remarks. As he was talking about the L.A. Network of “Public Interest Law” Clinics, he said that:

It seems highly beneficial to our projects, especially because it saves time and lets you learn from others’ mistakes…. Because, well, there are people living below the poverty line in contaminated zones, this takes place in Brazil, Argentina, Chile, Paraguay, and Bolivia. And these days, let alone local laws, there are… international instruments that allow us to say “Well, the case that the La Plata clinic worked on, about, I don’t know, the right to water, that is a case that a Chilean group that is working on the same issue can use and save time”. I have been to the last three meetings of the [Network] and… a commonplace in these meetings was “Guys, we don’t have resources, we are a handful of lawyers and we have no money for this”, so the challenge was “How are we able to multiply the scarce resources that we have?” So we had this idea about organizing a data set with documents that organizations can consult and use (in-person interview, transcript on file with the author, emphasis added).

Although some of these passages may suggest that L.A. lawyers are collaborating with one another for purely tactical reasons – for instance, when Felipe argues that favorable sentences produced internationally can have direct impact in his own backyard or when Antonia

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66 As for this issue, Elias Huizar, an Argentinean lawyer who works with economic and social rights, said he “participates in international groups or forums... and pays attention to cases of structural litigation in other countries in order to learn from their successes and failures”. Similarly, Cintia Davalos, a 32-years old Colombia lawyer who works with women’s rights, said that since 2007 her organization “offers a comprehensive training program every year to 4-6 lawyers from different L.A. countries with potential and commitment to face legal and social challenges with respect to reproductive rights” (Computer assisted web interviews, transcripts on file with the author).
and Ignacio place cross-national collaboration amidst their efforts to maximize scarce resources –, it is also clear that such collaboration is part of a broader, collective project. In fact, when Felipe talks about his involvement in transnational mobilization for freedom of speech and association in Venezuela, when Antonia talks about her intent to disseminate “public interest law” clinics to other L.A. countries, or when Ignacio suggests that, facing similar issues, L.A. “public interest lawyers” could be using similar tools, they are all, implicitly or not, promoting a given scheme of governance across borders.

Although both the U.S. and LA prototypes of “public interest law” are propagating internationally, the influence flows much more strongly from the center to the periphery than the opposite. Most L.A. lawyers acknowledge owing to U.S. influence, but it is very rare for U.S. lawyers to report having received a similar kind of foreign influence. Thus, as one would fairly expect, the barriers between the center and the periphery are still very high and the constitution of a truly “global” arena for “public interest law” is still and at most a normative aspiration.

Several mechanisms account for such unequal distribution of power in the global circulation of “public interest law” institutions. On one hand, the U.S. concentrates most of the resources that foster the development and reproduction of “public interest law” – i.e.: financial resources and experts. On the other hand, as this dissertation will address shortly, the propagation of “public interest law” operates through mechanisms that make U.S. visions and practices more resilient to foreign influence.

5.2. Borrowing public interest law

a) The power and weakness of ideas
The available literature about the advent of “public interest law” in L.A. has placed strong emphasis on the propagation of institutional forms, such as impact litigation and clinics. Nonetheless, when L.A. lawyers report borrowing from the U.S. tradition, they emphasize less the forms or practices and more the ideas that they envision circulating in the U.S. One of the favorite ideas is that law, lawyers, and legal institutions must have a say in schemes of governance – thus, as seen before, the rule of law itself becomes a “cause” that “public interest lawyers” in L.A. expect to advance through their practice. For example, as he was addressing the question of whether and to what extent the development of “public interest law” in L.A. owes to U.S. influence, Felipe Acosta said that:

Yes, this… is definitely inspired in ideas from the U.S. and the U.S. experience… In November we organized a conference about judicial remedies. By the 1950s-60s, in all cases of prison reform in the U.S. South judges ruled that there was a violation of rights of all prisoners… The remedy was very complex, it was necessary to build a new prison facility or to make a new prison policy… The issues in these lawsuits were not an issue about a single person; they were issues about the whole prison policy and the U.S. judges found ways to deal with these cases. In Argentina no, judges would say “here there is a problem that involves massive violation of rights but I will not order to the state that it will need to build a new prison”. We would say “yes, you can [do it], or you can freeze government money to secure the building of a new prison, or you can call the government to sit with you and you can say: listen, you have a lot of problems here, there is violation of rights, please do something to address it – and then you set up a panel to discuss what to do”… So we organized a conference bringing federal judges from the U.S. who have had similar cases on housing, prison, state/church separation, and asked them to tell our judges how they had gone about dealing with these cases 67 (in-person interview, transcript on file with the author, emphasis added).

67 Felipe continues saying: “We did not say this way; we said it was going to be a dialogue between judges from the U.S. and Argentina to discuss common issues. And the truth is that, at the end of the seminar, U.S. judges said “we are surprised, you have done things that we are not bold enough to do, you did very innovative things; you are very brave judges”.”
Another idea that L.A. lawyers frequently borrow from the U.S. experience is that law schools must provide students with a greater deal of practical sense and social responsibility – thus legal clinics are one the main venues for the propagation of “public interest law” in the region. As he was also addressing the question of whether and to what extent the development of “public interest law” in L.A. owes to U.S. influence, Maximiliano Flores considered that: “An argument for the creation of a law clinic, especially in a context like ours, where lawyers understand that codes are ‘the law’, is that there are good practices in other countries. In the U.S. this is something that dates back to the 1920s, the time of legal realism” (in-person interview, transcript on file with the author).

This finding has two important consequences for an accurate understanding of the propagation of “public interest law”. For one, as “ideas” are more elastic cultural products than actual forms or practices, they can serve as much more adaptive “blocks” for the construction of “public interest law” systems, which, as seen before, takes place amidst a series of political and professional struggles. For another, precisely because “public interest law” has a strong ideational basis, it becomes less likely to propagate globally according to a model of “convergence”. L.A.-type of “public interest law” does make lawyers an integral part of schemes of governance, but the role it assigns to lawyers in such schemes of governance is considerably different than in the U.S. L.A. clinics do seek to provide students with practical training and opportunities for social responsibility, but the meaning of lawyers’ social responsibility in L.A. is considerably different from the one seen in the U.S.68. “Borrowers” can always enact broad ideas

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68 For example, Catalina Diaz said that “law school clinics as a pedagogic experience is definitely an influence of the U.S. model, but the social needs in L.A. countries like ours are incompatible with their model, so we need to make adjustments according to our needs” (Computer assisted web interview, transcript on file with the author).
about “public interest law”, while also adapting the “borrowings” to the needs and struggles in which these ideas are evoked.

b) Between foreign importation and local legitimacy

As both the U.S. and L.A. “public interest lawyers” interviewed in this research reported borrowing from foreign traditions to structure their practices, they also revealed that potential imports need to find legitimacy amidst their communities and cultures of work. For instance, in the U.S., where the law is a highly professionalized arena, foreign impulses to design “public interest law” as an explicitly political enterprise sound strange at least 69. U.S. interviewee Alexander Jackson provides a story that is particularly illustrative of this finding. Throughout our conversation, Alexander mentioned a previous experience studying and working in Africa. When asked whether such experience has had any influence in his current work life as a “public interest lawyer”, he promptly answered:

*I would say no... not in a way that I can specifically point to and say, “I met with this person. They were doing X, I’m trying to do X too”. I think the thing I saw in other countries, and I don’t know if this is structural or this it just happens to be how other models are is... Our organization [...] – and this is something that I think that people just have a problem with and I do a little bit –, we see ourselves as a legal organization. We are lawyers and we do law stuff. And if you’re not doing law work then, what are you doing here? You know, maybe there’s some other community or mission you should be doing. And it was apparently a big struggle to get us to higher social workers even... And when I was in these other countries there was a much more organized model of working with people. You did law, but you did law in conjunction with power building, empowering people to be leaders, building up structures outside the legal system that could attack problems as you were going to court. And I think that’s really important. And we

69 For example, Amelia Correia, a 44-years old lawyer who lives in California and works with family and women’s issues said she “lived in Mexico for a time, when [she] already had several years of public interest law practice under [her] belt, but it was impossible to really put [her] knowledge or training to work there because the legal and nonprofit structures are [too] different. There is some advocacy happening but it is completely different”.
don’t really do that here. And so yeah, I see that, I got to see that first hand in other countries also (in-person interview, transcript on file with the author, emphasis added).

In turn, “public interest law” solutions that display a more “technical” appearance sound more easily digestible to U.S. lawyers and can flow more successively into the U.S. landscape. Jacob Anderson was a U.S. interviewee who also had experience living and studying outside of his home country. As he describes this experience:

The way I got interested in community development abroad was to spend a year abroad and get involved in cooperative development, study cooperative development internationally”. He “presented at international conferences with lawyers from other jurisdictions that are writing about co-op law; wrote a Master’s Thesis on comparative cooperative legislation… That is one way [he’s] been able to get involved because public interest lawyers can be academics too and keep up scholarly interest, so that is one way to understand innovative legal approaches elsewhere” (in-person interview, transcript on file with the author).

Yet, unlike his peer Alexander, while facing the question of whether such experience has had any influence on the way he structures his practice as a “public interest lawyer” Jacob said he believes “it is directly related”:

There are a lot of similarities because co-ops are self-help tools; they have existed for long in [the country where he had been]. The [country’s] economy was almost 100% agricultural in the 1950s [and] most of the dominant legal structure was cooperative, because [provides several examples of how farmers would need to get together to produce goodies], so they created a co-op to do that. Studying that history and looking at the legislation that was used to make it possible gave me a model for creating community economic development here, among poor immigrant community that need things like wealth creation and jobs. It’s a different context but we are creating or helping our clients create these networks of co-ops, that is the goal, we are just in an earlier stage in that (in-person interview, transcript on file with the author, emphasis added).
Note that while Jacob reports actively borrowing from foreign traditions to structure his practice in “public interest law”, he also construes what he borrows as an exemplar of expert knowledge, whether by making it part of an “academic” enterprise or by focusing on a very technical aspect of it, that is, the “legislation that was used to make [co-ops] possible”. In doing so, Jacob inevitably adds a layer of legitimacy over his imports.

This finding is consistent with others in organizational sociology. In a survey of work-family policies in U.S. corporations, Goodstein, Blair-Loy & Wharton identified variation in the development of such policies. This variation was correlated to core-ideologies of firms, i.e. the set of beliefs that they enact through mission and values statements, which could place more or less importance on employees and employees’ well-being. In light of these findings, authors contended that, whereas “organizational theorists have understood organizational legitimacy in relation to external institutional and strategic environment,” organizational action is based on “interaction between an organization’s response to broader institutional pressures and its particular identity, based on its core ideologies” (Goodstein, Blair-Loy & Wharton, 2009: 44, emphasis added). “In addition to promoting continuity, the core ideology can guide adaptation and change in ways that reinforce the integrity of the organization. In particular, it can provide a reference point to help ensure that changes in strategy, structure, policies, and practices take ‘place in a principled way, that is, while holding fast to values and purposes’” (Goodstein, Blair-Loy & Wharton, 2009: 49). In the case of this research, this need to balance between organizational legitimacy and extra-organizational inputs may hinder “convergence”, as predicted in conventional institutional theory, for it brings local interests and visions to the process of borrowing cultural artifacts, such as “public interest law”.
5.3. Institutionalizing “public interest law”: between globalization and regionalization

Many analysts in international relations have stressed that “globalization” fosters some dialectic impulses towards “regionalization” (see, for example, Hurrell, 1995). L.A. has been a lively expression of that suggestion. After two decades of neoliberal regimes, in which competition in the “global market” dominated the policy agenda in L.A., “regional integration” is becoming an important part of the latest strategies for development among L.A. countries.

Regardless of what has driven this move – scholars suggest several explanations, from economic protectionism to security, from identity or cultural factors to reaction against foreign hegemony –, “public interest law” in L.A. has had strong participation it. An example is that academics and civil society groups undertaking “public interest law” work in L.A. countries are now highly articulated around a regional institution, the Latin-American Network of Public Interest Law Clinics.

This regional turn plays an important role in the institutionalization of “public interest law” in L.A., since it provides the basis for a faster reproduction and propagation of “public interest law” among L.A. countries. However, the persistence of a strong trend of regionalism in L.A. also helps to produce divergence from U.S. models. For example, when Ignacio Ramirez was answering the question of whether the development of “public interest law” in L.A. stems from an imitation of U.S. traditions, he said that:

Listen, it seems natural to me that the idea of public interest law had been somehow imported […]. Nevertheless, I believe we have to work on developing our own perspective about [public interest law] and... Let me put it this way: it seems to me that we need to separate the issues from the methods [we use] to face the issues. When it comes to methods, yes, I believe we have to work on developing and trying out our own identity, taking advantage from the U.S.
experience, which is huge in this area, but developing our own identity [...] The U.S. has decades of experience in this [area] and it would be fool to disregard it, we must look at it, we must read about it, we must study it, but we also have to form our own idea of “public interest law”, because we do not have the same notions about [civil society], participation [...] and state [action] (in-person interview, transcript on file with the author, emphasis added).

Likewise, facing the question of whether his experience of globalization is one of cross-border cooperation and learning, Nicolas Sosa said that:

To [my clinic] globalization has been only beneficial, because it has enabled us to participate in international forums where we have seen that our problems are not just ours, Colombian problems are unfortunately common to the overall L.A. We have been at international forums about the defense of the public interest or about clinical legal education and then when we say “well, we have this problem” everybody else says “well, in my country that happens too”. Then it is not that one finds himself more comfortable, saying “good, it is not just with us”; instead, one says “good, we can do stuff together, we can do research together, we can work together” (in-person interview, transcript on file with the author, emphasis added).

As it becomes clear in all these narratives, regionalism leads actors to emphasize the commonalities among L.A. countries and practitioners and, consequently, their differences to the U.S. with respect to problems, institutions, and approaches around which to structure “public interest law” as a “kind”, “sector”, or “style” of professional practice. For instance, Cleopatra Tenorio, a 40-years old Bolivian lawyer working with civil rights, health care, and education said that: “Latin America has developed its own experience in light of a broader knowledge about ‘public interest law’. In [her] experience [she has] drawn very little from the U.S. tradition”. Likewise, Cintia Davalos said that “although public interest law started in L.A. thanks to the importation of the American tradition, the work models for public interest law in Latin America are now very innovative and perhaps can serve as models for the U.S. tradition, instead”. This
nourishes a mechanism that increases the likelihood of divergence from the US tradition: the claim for a “Latin-American identity” to “public interest law” practice.

5.4. Propagating “public interest law”: mimicry for differentiation

Many lawyers in the L.A. sample belong to a second generation of “public interest lawyers”. They are not among the forerunners who had gone to U.S. law schools in the late 1970s or early 1980s and who were able to learn directly about the U.S.-tradition of “public interest law”. Many of them do not even have U.S.-based legal education or are now in the process of applying to LLMs in U.S. law schools. This new generation appears to have lost the track of the trajectory of “public interest law” from the U.S. to L.A. Some of them know about the forerunners and the first investments in “public interest law” that Ford Foundation made in the region, but others got to learn about “public interest law” from their fellow Latin-American colleagues or teachers.

An illustrative case is Dalia Menjivar, a 29-years old Colombian lawyer who works with women’s rights, immigration, and LGBTT issues. Dalia explained that she became involved with public interest law after she “took some courses at the University of Chile, attended some conferences at the University of Los Andes and did some readings on [her] own” (Computer assisted web interviews, transcript on file with the author). There are several examples alike in the sample, although citing institutions such as the Pontific Catholic University of Peru or The Palermo University in Argentina. All these are sites where the precursors teach or where the first “public interest law” clinics/ projects were set up. In the interviews, the precursors had a clear notion of the importation process and value; the younger generations much less so. For instance,
as he was addressing the question of whether and to what extent the development of “public interest law” in L.A. owes to U.S. influence, Juan Torres said that:

The experience that was created around this in Colombia, in Argentina, in Chile is so good that I think that we sometimes forget that this was originally from the U.S. It has “Latinamericanized”, it is now something that, at least the way I see it, relates to another concept. Colombia I would say that is the most developed [L.A. country] with respect to strategic litigation... It has transformed the U.S. experience towards the interest of... I would say it is a response to very strong problems of rights violation (in-person interview, transcript on file with the author, emphasis added).

Nicolas Sosa even rejects the idea of drawing inspiration about “public interest law” directly from the U.S.:

Here it actually came not as the American model, but rather as the Chilean model. In L.A. [public interest law] landed in Chile and at the University of Rosario [in Colombia], and although we have had some ties to [a U.S. university] our model resembles much more what they do in Chile – or not in Chile, but in Latin America as a whole, as now [that model] is also in place in Argentina, Chile, and Colombia. Peru also does a good job and Colombia does a good job [in this area...]. I would say that it is not too much the U.S. model, it is an importation of foreign models and the U.S. model was adopted at some point, but these days [public interest law] already has its own model in Argentina and Chile and I believe we have followed more what is done in these countries than what is done in the U.S (in-person interview, transcript on file with the author, emphasis added).

This finding is both consistent and contrary to predictions of classic institutional theory. Once institutionalized, as the theory suggests, “public interest law” in L.A. seems to be being reproduced through mimicry – a traditional story of convergence. Yet, as the pattern institutionalization of “public interest law” in L.A. has not been one of complete convergence towards the U.S. tradition, mimicry becomes a mechanism that produces and may continue to produce further differentiation in this experience of institutional propagation. Antonia Ruiz, one
of the younger lawyers in the L.A. sample who never had direct contact with the U.S. tradition provided a lively example of how she helps disseminate a typically Latin American vision of what “public interest law” is all about. As she was providing details of her interaction with other L.A. lawyers, she said:

Lawyers from Colombia who were also dealing with water contamination said “we had never realized that we could use the press, ever”. So when we tell about our experiences we often find that. Some people don’t understand how the justice system can influence politics, how a judicial decision can lead the governor, lead politicians to do something and bring about change. I am not saying that judges will create good public policy, but that they can have a say in it; just like the press. So as we convey our experience we are somewhat saying that lawyers are not monsters, that [lawyers] can be collaborative, that [lawyers] can go to courts, talk to the press, create a communication strategy, and so on. And this has been positive, many lawyers who were there [among the Colombians she initially referred to] said to me: “alright, we got it; when we file this [lawsuit] will certainly contact the local radio” (in-person interview, transcript on file with the author).

5.5. “Representing the other, representing oneself”: visions of problems and institutions in a cross-national perspective

*Representation of the other and of oneself* is the basic mechanism through which both U.S. and L.A. lawyers guide themselves throughout the processes of borrowing and lending “public interest law”. These processes of representation are highly enabled by globalization – that is, the intense circulation of people, ideas, and resources around the globe – and reinforce many of the “structural” forces that the prior Chapter has discussed. In other words, globalization helps lawyers continuously reassess their domains of agency, and the contingent conclusions that they reach in this process shape their very practices and visions of “public interest law” – or the way “public interest law” is *projected* in their narratives.
Problems and institutions are the main ingredients in the processes of representing the other and oneself. Comparison with others helps enhance criticism about existing problems in one’s country – whether when the other is seen as “developed” or when one realizes that her country still has a long way to go in the process of “development”. For example, when she was asked whether her practice was somehow influenced by other traditions of “public interest law”, the U.S. lawyer Isabella Smith said that:

I would say that, in some respects what I have learned about other countries is more on the realm of prisons, so I am fascinated by the Scandinavian model for prisons, and I have done some research on models of sentencing in Europe, specifically… so that was something that I was fascinated about…. I certainly take those lessons, not in the sense of what lawyers do in England or Scandinavia, but in terms of the model and the goal, the end-goal... I think that the U.S. criminal justice system is clearly the worst, beyond the shadow of the doubt, among Western industrial countries...And to me that is the enemy, right? That is what I want to change in my career.... So I definitely don’t know criminal lawyers in Europe or any other place who I am modeling my day to day, but the kind of goals are modeled out of something that I have seen (in-person interview, transcript on file with the author, emphasis added).

The comparison is not just with chief welfare states, such as Finland and Sweden. Sophia Johnson, a NY civil liberties lawyer who had an experience living and studying in Chile, contrasts the U.S. with this Latin American country, as she considers that:

The most interesting thing that I learned from doing the comparative work involving Chile and the U.S. was how similar the issues were, and, you know, the U.S. likes to paint itself in this sort of… first world country, but when it comes to issues of sexuality and STDs and pregnancy and stuff we have such a different dynamics… Europe has very little teen pregnancy, much more access to abortion, contraception, and really, the U.S., due to its religious roots and sort of the way the society is really, I was shocked, very similar to Chile, in terms of how people perceive the issue, how sex is talked about, how teens are abused, whether they are sexual age or not, sort of gender stereotypes and how all that played out, that
was really similar in both countries.…. (In-person interview, transcript on file with the author, emphasis added).

Ethan Martin adopts a similar reasoning. When he was asked whether he had borrowed anything from foreign experiences he had contact with or heard about, he said that “no”, but “more generally… Seeing how different people live and coming to the realization that in a nation [as ours] there are still such disparities here strikes me as unacceptable […] that is just unacceptable to me” (in-person interview, transcript on file with the author).

However, although globalization encourages U.S. lawyers to be more critical about their country’s problems, it also pushes them to reiterate the power of the institutions available in the U.S. to deal with such problems. For instance, when commenting on her experience living and studying in China, Emma Williams said that:

When I did my summer abroad I did work with lawyers who were doing HIV work in China and that at least taught me that at least we can get something done here, right? Their suits are dismissed every single day because they are too sensitive or the judges don’t want to hear them, so at least, even given how horrible our system is here, at least there are measures in place. At least if a judge denies my case I can go to the appellate division, you know? I can do an [cites a legal procedure] (in-person interview, transcript on file with the author).

As she was explaining why she decided to go to law school, Mia Taylor told a story that resembles Emma’s. Mia “spent a lot of time in South Africa” following an advice of a college professor and reports that such experience “exploded [her] whole world view” for, among other reasons:

There were huge human rights issues in the courts. And it was really easy for people to bring all these social and economic issues into court, particularly about poverty. And so once I saw that and saw how a lot of South Africans really admired the U.S. legal system, and they would cite like old American cases from
the 1970s and things like this, I came back and started looking more at all those old big structural litigation in the U.S., like discrimination cases and school cases and all that kind of setup. And just saw, I guess [law is] a very good way to be able to change institutions really effectively compared to like the political process, which isn’t very favorable to poor people right now, or any other way of trying to influence policy. I think that law is very, it moves very quickly in the U.S. considering a lot of other ways that people can try and [get a result] (in-person interview, transcript on file with the author, emphasis added).

All these narratives indicate that U.S. lawyers represent themselves as members of a society that has more functioning legal institutions and more wealth, as compared to most of other societies in the world. Accordingly, “public interest law” becomes: (i) the locus for the mobilization of those functioning legal institutions against persisting inequalities; and (ii) a societal patrimony that has to be protected and promoted. In discussing whether and how his experience in Africa informed his practice as a “public interest lawyer” in the U.S., Alexander Jackson made remarks that are particularly illustrative of this:

Seeing different cultures, what poverty looks like here versus elsewhere, seeing what rights we have here that don’t exist in other places that we have taken for granted… Despite what we think, we have a very well functioning government compared to most places. Corruption is extremely low compared to most places, and to see that, to understand that and kind of work within that, I think that’s, it’s opened my eyes a lot to what we can accomplish here, how well we have it but also to fight to kind of make this a model for other people to emulate, because you do see other people trying to emulate it. I spent some time in Uganda doing some legal work and meeting with legal organizations… and they couldn’t talk about working with certain types of people because the government would just shut them down… it would just say it’s illegal to work with those types of people… And to see the struggle that people have in other countries, it makes you definitely want to appreciate where we are more but work harder to make sure and say, “Hey, we have all these rights, we have this well functioning system, we should not be seeing people who aren’t having these needs met […] We need to, you know, fix ourselves… It gives you a completely new understanding and perspective on the privileges that you have, the privileges that other people don’t
L.A. lawyers also show a very critical perspective about their problems, which they generally see as more serious and structural than U.S. problems. In addition, they understand that they have weaker institutions to deal with these problems, as compared to their U.S. counterparts. For example, as Maximiliano Flores was explaining how the “Latin American perspective” is distinct from what we might call the U.S. perspective to “public interest law”, he said that:

I believe that the differences are radical. *We basically have problems that are different from the problems they have in the U.S.*, the Latin American problems are basically ones of violation of Human Rights by authoritarian governments, litigation on behalf of disadvantaged groups for lack of opportunities due to poor economic conditions, terrible prison conditions, social rights – Latin America is becoming a highly special place for strategic litigation around these issues. *These are very Latin American issues and clinics are contributing, still to a very modest extent, but they have come to contribute to these fights.* So our community is built around issues that unite us, that make us think of the law is a similar way, but it is also a community that is approaching the law from a similar angle too. I mean, I can talk to [cites several lawyers from Argentina Chile, and Colombia] and we can think within the same paradigm [...] and some of what we are achieving is we are changing the L.A. paradigm. *This is something that has already happened in the U.S.* For instance, it is almost useless to discuss now the importance of the constitution, of social rights, *these kind of issues end up being more of the same.* In L.A., despite everything, *thinking of social rights, minority rights, constitutional rights, this is all still innovative.* That is why I said that the problems, but also the opportunities provide the L.A. clinics with a sense of community (in-person interview, transcript on file with the author, emphasis added.

These distinct understandings of problems and institutions that stem from the processes of “representing the other, representing oneself” apparently relate to the distinct visions and practices of “public interest law” across the U.S. and L.A. realities as well. Perhaps by
understanding that L.A. problems are more serious and L.A. institutions are weaker than in the U.S., L.A. advocates are led to adapt “discursive” and “structural” ingredients of U.S. liberal-legalism in order to inform the strategies of broad, *structural* impact that mark their practices and visions of “public interest law”. Likewise, perhaps by understanding that the U.S. has comparatively better institutions and resources to deal with serious problems that remain in the U.S. society, U.S. advocates are led to reinforce their commitment to “public interest law” even in its most conventional forms. One way or the other, “representing the other, representing oneself” appears as a mechanism that, at least across the U.S.-L.A. divide, accounts for a pattern of “divergence” in the transnational propagation of “public interest law”.

5.6. Bridges across the Americas

a) Pro bono

There can be seen, however, some “bridges across the Americas”, i.e., some roads through which U.S. and L.A. types of public interest law may converge. One of them is pro bono. Remind that one of the main differences between the U.S. and L.A. with respect to what “public interest law” means is on whether direct service to individuals equals serving the “public interest”. Many U.S. lawyers in the sample believe it does, unlike virtually all their L.A. counterparts, which acknowledge a defense of the “public interest” primarily (if not solely) in practices that produce broader impacts.

Reasons for this variation are spread along and across professional and political trajectories, as already discussed. But the dissemination of organized pro bono work in L.A. (unquestionably influenced by U.S. institutions) may carry on the U.S. vision of “public interest
law”, given that pro bono and “public interest law” are now considerably overlapped in the talks of U.S. lawyers.

Readers may recall Sofia Perez, the Colombian corporate lawyer who leads the pro bono sector in her [top] law firm – the one who asked what my understanding of “public interest” was before articulating her answer to my question of how her work related to “public interest”. At the very end of our conversation, I decided to give her a “probe” again on that issue. We then had the following exchange:

Interviewee: One last thing I would like to know, I would like to go back to our discussion about the relationship between Pro Bono and public interest. You said to me that you were trying to connect the two and now you are trying to work in more specific cases that would meet your standards of “public interest law”. What is your vision of public interest? How are you going to define which one is a public interest case or issue and which one is not?

Respondent: Well, I have trouble with this term, because to me my work as a whole seems to be of public interest, but this is my vision…

Interviewee: That is exactly what I am looking for…

Respondent: Well, they say to me that public interest law encompasses only collective litigation or that involves communities, or the rights of a broader community. I’m not an expert on this issue, but personally believe that individual, pro bono cases… Well, they are also of public interest, as after all we are helping a community that has its legal needs unmet, but from what I have learned from my colleague [cites a leading “public interest law” scholar] this is not public interest, public interest is the defense of a collective right that affects a community or a broader group of people (in-person interview, transcript on file with the author, emphasis added).

There are several other pressures in place for pro bono to become a “legitimate” manifestation of “public interest law” in L.A., much like it has become in the U.S. Besides the firm culture, law school socialization is also playing such role. Several lawyers who have been to
the U.S. for advanced studies more recently have argued in the interviews that “private practice also must fulfill the public interest”.

However, the emergence of “organized pro bono” according to the U.S. script has been also raising its own issues. The dissemination of organized pro bono through U.S. based organizations focuses on larger law firms, which are a tiny fraction of the L.A. legal market. Moreover, L.A. bears a strong tradition of volunteer legal work fulfilled by lawyers as a matter of charity, not of professional obligation as it has been sold in the U.S. legal culture. The bottom line is that when U.S. organizations try to push L.A. lawyers to “organize” their pro bono work having in mind the firm model (with coordinators, mandatory billable hours, and so on), they raise a lot of anxiety on the ground. For example, Sebastian Sanchez, a Colombian lawyer whose organization serves as a “clearing house” to pro bono argued that “the [U.S. organization promoting pro bono in his country] focuses solely on law firms, which is something we do not take issue with, but we are not convinced of the feasibility of pro bono work among law firms because of conflicts of interest [gives examples of conflicts of interest that may happen]. So we do not focus on disseminating pro bono to firms, we focus on law school clinics and NGOs”.

Moreover, he said, “we do things here that no U.S. organization does and that some people in the U.S. have trouble with, which is, we provide pro bono work to government organizations […] For example, let us say that a housing department at the state government wants to develop a housing or a land regularization project that will benefit hundreds of people. We establish a

70 This phenomenon is referred to as one of “organized pro bono” because it implies a great deal of bureaucratization of volunteer work, given two main pressures surrounding its institutionalization: the market (the need to organize volunteer work in order to prevent conflicts of interest within big law firms in the U.S.) and the profession (pressures from segments of the bar and the law school community to make pro bono work mandatory for concerns with professional responsibility).
partnership with that department and provide lawyers that will help them structure the project” (in-person interview, transcript on file with the author).

The differences between both the U.S. and L.A. approaches to pro bono and the way pro bono work relates to “public interest law” were visible in the Pro Bono Conference that took place in Chile in 2011, which I attended as part of my fieldwork activities. The synthesis of the round table on pro bono and public interest was that “not all pro bono activities are of ‘public interest’”, for the “public interest” quality of legal work stems either from the “breadth” or from the “substantive impact” that it produces (fieldwork notes, on file with the author). Accordingly, given the possibility of conflicts of interest between law firms and defendants in “public interest” cases, the recommendation was that law firms interested in doing pro bono “in the public interest” should focus on issues that are not controversial but that are still of broad impact, such as children rights (fieldwork notes). Moreover, not only the projects that were being “showcased” at the event (with support from the U.S. firms and organizations) were impressively diverse, but they also held little resemblance with the dominant model of pro bono in the U.S. landscape. For instance, the project “Promotores Barriales de Justicia y Red de Voluntariado Legal” from a Paraguayan NGO seeks to gather a group of volunteer lawyers that will act in support of “community promoters of justice” – i.e., ordinary people who have some kind of informal legal training and help their communities address their needs. In other words, not only would pro bono work in this project be relatively “disorganized”, as compared to the dominant U.S. model for this kind of activity, but it would also operate in the context of an extremely “de-professionalized” enterprise (fieldwork notes).

71 For an additional account on this Conference, see Inouye (2011)
b) Radical lawyering

Given the need to balance between foreign importation and local legitimacy, which is shared by both groups of interviewees and explains differentiation, it has been said in this Chapter that U.S. lawyers are more likely to borrow “public interest law” solutions from foreign contexts if these solutions meet the requirements of a highly professionalized system, in which law is constructed as opposed to politics. That is, nonetheless, only one side of the story. In parallel, subsets of the U.S. “public interest law” sector that adopt a more “heterodox” practice end up looking for or ultimately drawing from Southern inspiration.

An obvious example of that is in International Human Rights lawyers, which many of the interviewees in the U.S. sample mention as being a core cadre of “importers”. Owen Boone, a 63-years old lawyer working with domestic/intimate partner violence, consumer protection, and housing in Alabama said that he “[knows] of some U.S. advocates that are drawing on international law to add strength to arguments for positions for which U.S. law provides limited support” (Computer assisted web interview, transcript on file with the author). Another example is so-called “community lawyers”, i.e., lawyers who situate their services in the context of community empowerment and, therefore, are willing to engage in negotiation with clients about the place and meaning of their work within a broader campaign or strategy. Still other cadre is made of lawyers who work for people who are extremely disempowered (perhaps even to claim for legal protection), such as undocumented immigrants.

These lawyers certainly find opportunities to exercise that more “cosmopolitan” identity. Consider, for example, Allison Nash, a 58-years old Native American lawyer who works with education, health care, and family, and children issues in a “community lawyering” fashion.
When she was asked whether globalization provides her with any chance to cooperate internationally, she said “yes”, for she: “[has] had the opportunity to help influence social change movements through several leadership programs with which I have been involved”. Detailing these experiences, she said she served “as ‘host’ to advocates from South Africa and Namibia, and India and Bangladesh” and “worked as part of the International Global Advocacy Team that met in Nepal to develop a series of public policy advocacy training modules for grassroots advocates”. Later on, she “worked with advocates from Mexico, New Mexico, Guatemala, and New Jersey around issues of ‘mapping’ as a tool for social change, including developing and implementing a series of mapping training modules that were delivered to grassroots advocates in each of these locations to strengthen local organizing initiatives”. These experiences reportedly “strengthened her commitment to using law as a tool for empowering constituencies to engage in their own self-advocacy and community empowerment”. When given a “probe” on whether the U.S. lawyers are somehow “importing” from other traditions, she replied: “[Yes,] as I said before. We all learned from each other [in the mentioned examples]” (Computer assisted web interview, transcript on file with the author).

Consider also Lena Yum a 21-years old Asian American lawyer who works with community economic development, environmental protection, and civil rights in California and proclaims that her objective is to “disrupt our current system of economic and political exploitation”. She describes herself as “strongly motivated by, and [reports to] appreciate the efforts of ‘anti globalization’ communities worldwide, including indigenous communities in Latin America, the late Wangari Maathai, and Vandana Shiva”. As Lena was asked whether U.S. lawyers can be ever “importing” from other traditions of “public interest law”, she said that she has “rarely seen [that]” and her “general impression (working on domestic poverty) is that many
Americans working on domestic public interest law issues do not engage with international knowledge, nor do they pay attention to or acknowledge lessons from other nations. Notable exceptions are farm worker and labor advocates who work with immigrant communities and immigration attorneys” (Computer assisted web interview, transcript on file with the author).

Needless to say, both Allison and Lena belong to an extremely disempowered group within the bar, which is not as faithful to U.S. institutions as they fellow colleagues described in prior sections. As she was asked about the traditional narrative that “public interest law systems” outside the U.S. are drawing extensively from U.S. models, Lena said that:

I do not have sufficient knowledge to know if this is true, but if it is, I am sorry to hear it. The U.S. model is based very closely on a hierarchical relationship between lawyer/client that is privileged, exclusionary, and systematically unable to ensure justice for all. [The U.S.] legal system is also significantly different from many other nations. I hope others are able to innovate and learn from our failures (Computer assisted web interview, transcript on file with the author).

For those who are optimistic about the appearance of “cosmopolitanism” in this area, nonetheless, there may the hope that the barrier will be lower in future generations. Joshua Shields said that he has “no idea what is going on the world and barely knows what is going on across state lines” and that “most judges pay little attention to decisions from other states and no attention to decisions from other countries”. However, he “[reports to see] a lot of interest in international human rights among students who apply for internships with [his] agency”, but [stated he] “has to say that is something this current group of law students is interested in and not something that would have much or any relevance in people of [his] generation or among judges in [his] state courts” (Computer assisted web interview, transcript on file with the author).

5.7. Thanks to the academy…
Although “public interest law” in L.A. exhibits a rather different – and in many respects more radical shape than in the U.S. –, the U.S. academy appears as an inevitable “pit stop” to L.A. advocates. Many L.A. lawyers in this research – and many of their peers – have been in the U.S. to receive legal or socio-legal training. The evident paradox is that, even when they go through a similar process of professional and academic socialization, L.A. and U.S. “public interest lawyers” end up understanding “public interest law” in very different ways.

Drawing from data collected in this research and beyond, one can advance several explanations to that apparently paradoxical pattern of “public interest law” borrowing and lending: for one, U.S. law degrees can be seen as resources of power that L.A. lawyers mobilize in order to fight their “palace wars” (Dezalay & Garth, 2002a), so that the actual training becomes of lower significance. For another, U.S. law schools can be seen as sources of “ideas” that L.A. lawyers find attractive, but do not implement in full in their countries, as seen above in this Chapter.

Nevertheless, this research shows that strategic uses of foreign ideas and symbols are not the only explanation to differentiation in the propagation of “public interest law” across the Americas. L.A. lawyers report that the U.S. academy reinforces the divide between the U.S. and the L.A. cultures of “public interest law” work in two other ways. First, the U.S. academy is able to theorize more systematically about the law (and, most especially, about “public interest law”) and, consequently, to produce hegemonic frames about what “public interest law” practice is. Facing the question of whether L.A. “public interest lawyers” are somehow copying the U.S. experience, Carina Pabon, a 42-years old lawyer who works with environmental and immigration issues said that “No”, as she believes that public interest law is a “natural development of
indigenous practices [in Colombia],” but “of course”, she acknowledges, “not only do U.S. folks have more tradition in the practice of public interest law, but they also have reflected about it to a greater degree [than in L.A.]” (Computer assisted web interview, transcript on file with the author). Similarly, Valentina Martinez adds that:

There is an effort to develop a common identity among the L.A. clinics, [a] Latin American identity… This is important and it seems that the Network is part of this effort, an effort to reflect about what we are doing. But I will give you an impression that I have, given the clinical experiences that I know of: given our scarce resources, given our time constraints and the fact that our clinics are not as robust as U.S. clinics in terms of, let us say, staff, I think that most of what we have done is to act… So some of us undertake a more academic reflection about what clinical work is or should be, but not all of us. And I think that the Network is partly about [reflecting], but that is not part of our everyday work. The gringos produce much more in that fashion… (Don’t put gringos, chuckles) (In-person, transcript on file with the author).

Second, the U.S. academy is reportedly more focused on learning about L.A. “public interest lawyers” than on learning from L.A. “public interest lawyers”. By objectifying foreign experiences of “public interest law” in accordance with the hegemonic frames that these lawyers themselves have produced, U.S. scholars prevent further cross-cultural learning and collaboration. Joaquin Romero provides a first-hand account of these processes, as he recalls experiences of exchange between U.S. scholars and the law school clinic where he works:

Respondent: The way L.A. clinics are developing has changed a little bit; I believe they are more resilient now. Let us say, we are no longer passive recipients of what is going on in the U.S. We do not want to simply walk the same way as 30 years ago; things are much more dynamic now. I believe we are now reflecting about our relationship with the U.S. model and what we could do in LA and, at some point, it became almost a case of “academic tourism”. They would come here and spend some 8 days and leave and write something that had no effect on the local ground. Now there has been a less passive response; what we want is to build a Network and a dialogue among equals, which is something, I
believe, is missing. U.S. clinics do not see L.A. clinics as equals; whom they can get together with, discuss themes jointly, and discuss common strategies. There are some cases in which this [cooperation] works, in which we are working hand-to-hand with L.A. clinics and not like hotels in L.A. for fieldwork. I believe that U.S. clinics are the origin of what is currently taking place here in L.A. and I think they have an important role to play, if they understand that they are another player, not a referee that determines what works and what does not work in clinics.

*Interviewee:* Can you give me an example of this change you have seen in the relationship between US and LA clinics?

*Respondent:* Let’s say, we have come to decide our own… before there would be a clinic from, whatever, that wanted to do an investigation about previous consultation among indigenous communities; so we would serve more as administrative support. This has changed; we do not do this kind of work anymore; what we do is to select cases and contact people in the U.S. to see if they can help us with specific themes to make our strategy more robust. In terms of content, the strategy is built here. We are the ones who make the legal strategies and they may help us with these strategies, but they are not the ones who define what we do and what we do not do in the cases.

Therefore, behind the propagation of “public interest law” there seems to be an international division of labor that, while granting ideological and symbolic legitimacy to particular interests in the South, reinforces cultural domination by the North. Both these characteristics are likely to keep producing relative differentiation in “public interest law” across the U.S. and L.A. communities of practitioners.

**5.8. Law school socialization: a cross-cutting force**

As in virtually any other research on the legal profession, this one discovered that law school socialization is an important force shaping “public interest law” on the ground and, consequently, explaining the different approaches to “public interest law” practice across the U.S. and L.A. contexts.
To begin with, law schools are revealing of the degree of institutionalization of “public interest law” in each of the studied contexts. Although U.S. law schools are often criticized for focusing on corporate training and marginalizing students with a “public interest law” orientation, the fact of the matter is that they provide substantial resources for engagement with “public interest law” – not only clinical programs, but also mentorship, career services, and even loan repayment programs. If “public interest law” is not in the mainstream of the U.S. legal profession, it is not a trivial component of it either. L.A. entails a rather different condition. “Public interest law” generally enjoys a much lower degree of institutionalization, which law schools end up reflecting. As Ignacio Ramirez was talking about what he likes most in his work life as a “public interest lawyer”, we had the following conversation:

Respondent: Kids who have been working in our clinics… are all thankful for having had such a unique experience in their law school lives, because our law school, I don’t know how it was in your case, but our school remains locked into a formalist, encyclopedic box of legal education, [where one is taught only to] memorize the texts and codes. And [in clinics] they get to learn about all this game of power that is behind the law and all of that…

Interviewer: Despite the formalist and encyclopedic roots, all that you say, how open to “public interest law” issues is Argentinean legal education?

Respondent: I believe we have a difference of intensity in globalization, since public universities in Argentina… have been a little isolated from [“public interest law”, as compared to private law schools]; when we started introducing [“public interest law” into these schools] three or four years ago it was totally unknown. The idea, the notion of “public interest law” was something totally unknown

Law schools are strong players in the institutionalization and development of “public interest law”. The development of clinical legal education in the U.S. and L.A. is illustrative of this. U.S. clinics were first thought of as training devices to instill a “practical” approach in the U.S. legal education, in view of concerns that the Langdellian reform had made law schools too
much “theoretical”\textsuperscript{72}. Yet, in the effervescence of the 1960s, clinics quickly became the institutional supports for broader intents by the progressive sectors of the legal community, which expected to infuse law schools with mechanisms to not just provide more practical training, but also to *sensitize students about the needs of the broader community and the ways they could put their legal knowledge at the service of these people*\textsuperscript{73}. The Ford Foundation was a strong player behind the institutionalization of the U.S. law clinics at that time, through the so-called CLEPR project\textsuperscript{74}.

Although there has been critique against the clinical method, quite often from within the clinical movement itself (see, for example, White [1990]), other research projects have shown positive effects of clinical legal training in terms of the main objectives that they have been historically assigned with: teaching practical skills; socializing students in the arena of “public interest law”; and, more recently, infusing students with “good professional values” (see, for example, Stuckey et al, 2007; Sandefur & Selbin, 2009). This research was able to corroborate

\textsuperscript{72} See, generally, Sullivan et al (2007)

\textsuperscript{73} See generally Barry, Dubin & Joy (2000); Meltsner & Schrag (1976; 1998); L. Trubek (1994). Scholarly works about clinical legal education are abundant. A very comprehensive list, although updated until 2005 (so far) was prepared by Ogilvy & Czapanskiy and is electronically available at: \url{http://faculty.cua.edu/ogilvy/Biblio05clr.htm}

\textsuperscript{74} According to the official account, “For most of the 20th century American law schools were content to train students to “think like lawyers,” leaving the job of training students to practice law to the workplace. In the early 1960's a handful of law faculty began small experiments in applied legal education through the development of legal clinics. The goal was to facilitate a reflective and experiential learning process without the economic and efficiency pressures of the workplace, and to help students understand how the law works in action while providing sorely needed pro bono representation to the poor. In 1969, the Council on Legal Education for Professional Responsibility (CLEPR) was formed upon the notion that "applied legal education effectively places the practitioners-to-be in the chaos of real life; sharpens their skills in this context; teaches them to triumph over emotional stress and tensions as professionals; heightens their appreciation of quality standards of practice; shows them what it is to be people-oriented; enables them to help the machinery of justice function better by their presence as lawyers in training; and, above all, exposes them to the complexities and demands of justice on the level at which it operates." With an 11 million dollar endowment, CLEPR soon awarded grants to 209 law schools to establish live-client clinics, effectively starting modern applied legal education. In live-client clinics, students provide direct representation to clients in a wide variety of substantive contexts under the supervision of a faculty member who is also a licensed attorney. The field soon came to include a significant number of “off-site” field placement programs in which students are simultaneously taught and supervised by law school faculty and practicing lawyers in the field”. Information electronically available at: \url{http://www.csale.org/}, last visit 05 Sep 2012.
these claims, at least with respect to the ability of clinics to attract and nurture student commitment to “public interest law” practice: most of, if not all the U.S. lawyers interviewed mentioned clinics one way or the other as an important factor in their career development as “public interest lawyers”.

Graph 7: Direct interaction with the national legal academy in the context of "public interest law" practices

Source: author’s elaboration based on fieldwork

In L.A., law schools have provided even greater support for the institutionalization of “public interest law”. As Graph 7 above denotes, the interaction between L.A. “lawyers” and the national legal academy in the context of “public interest” practice is remarkable, especially as
compared to their U.S. counterparts: 87.10% of L.A. lawyers report having “some/a great deal” of such interaction, whereas only 12.90% of their U.S. counterparts do so.

Clinics, once again, appear as the “Trojan horse” for both local institutionalization and cross-national propagation of “public interest law” along the U.S. /L.A. divide. For example, when I was still explaining the purpose of the interview to Matias Lopez, he reacted in the following way:

Well, my story is extremely linked to this, I think that what happened was that… in my case the issue of “public interest law” is very much linked to a concern with legal education and to with developing a constitutional democracy in my country and in Latin America more generally… Many of us were educated in the U.S., we saw how legal clinics worked in the U.S…. and that gave us ideas not only in terms of changing legal education, educating different lawyers which could do a democratic legal work, [which could work] in the context of a constitutional democracy, but also in terms of how these institutions actually work, how a clinic work, how pro bono works, what kind of cases one can take…

This narrative holds true across different generations as well. The young clinician Maximiliano Flores tells a very similar story:

My interest for or my contact with “public interest law” stem basically from my connection with a law professor who is very committed to “public interest law” issues and who is certainly one of the most important scholars in this area in Peru and L.A. I worked with him as his teaching assistant and it was due to this influence that I developed a close connection with this area. He was a member of the Ford Foundation project, you surely know about this, which started in 1998 and was responsible for this latest wave of legal clinics, especially in Chile, Argentina, and Peru.

L.A. authors such as Gonzalez (2007) and Coral-Diaz, Londoño-Toro & Muñoz-Avila (2010) distinguish between two phases of the L.A. clinical movement: the first taking place from the 1960s-1990s and the second taking place after the 1990s. The first was part of the “law and
development movement”, sought to transfer the legal education model from the U.S. to L.A. and failed because: (i) the 1960s model was mandatory for all students, and neither schools had enough resources to maintain clinics under these conditions ("faculty supervision became more apparent than real"), nor there were complex enough cases for all students to address; (ii) L.A. countries generally went through military dictatorships, which shortened any transformative role of law schools; and (iii) clinics ended up handling cases of very low impact (Gonzalez, 2007).

The second phase has as its chief characteristics: the “focus on public interest” issues; “an agenda… of collective rights and groups of special constitutional protection”; the “priority for strategic litigation”; and an international bond through the South American Network of Public Interest Law Clinics (Red Sudamericana de Clínicas de Interés Público), which later became a “Latin American” network. Put another way:

In the second phase... many clinics adopt a more clear-cut concept of strategic litigation, undertake more of domestic litigation, and start to use a variety of instruments such as participation in the policy process… mechanisms to enhance public participation and lobbying. A systematization of the lessons learned starts in Chile (1997), Mexico (2007), Argentina (2008), and Colombia (2009) (Coral-Díaz, Londoño-Toro & Muñoz-Avila, 2010: 57).

Interestingly, these accounts are, all at once, revealing of: (i) the connection between legal education and the recent attempts to promote legal development in L.A.; (ii) the role of U.S. institutions in these attempts75; and (iii) instructive visions of the “successes” and “failures” in the transnational propagation that has taken place across the U.S. /L.A. divide as part of this

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75 Although this second phase does not include direct support from U.S.-based organizations, Coral-Díaz, Londoño-Toro & Muñoz-Avila acknowledge that the new “public interest law” clinics receive influence from the U.S., because “... most of the clinicians in L.A. bear U.S. advanced legal training; and… there have been interesting partnerships between L.A. countries and U.S. institutions, which benefit strategic litigation taking place in the former contexts, such as the production of amicus briefs and litigation before the Interamerican Human Rights System” (2010: 57).
process. Notice that the authors see failures in the first phase because it has not led to clinics that address cases of “high impact” or “collective rights”, which would be finally happening in this second phase. Hence, L.A. law schools are active participants of the previously conceptualized “mimicry for differentiation”: they serve as conduits for foreign models, at the same time as they help change these models, in view of struggles that constitute the socio-political L.A. “map”. Accordingly, law schools can be revealing of these struggles and the way they shape the contingent arena of “public interest law”.

Indeed, U.S. law schools have reportedly been in search of a more “integrated” model of legal training – one that represents a better equilibrium between knowledge, skills, and values (Sullivan et al, 2007). This aspiration suggests a greater emphasis on aspects related to “public interest law” in the curriculum. “In practice”, however, U.S. law schools have been investing in alternatives that are less radical – or that are not completely at odds with the provision of corporate training –, such as pro bono. The “corporate” and the “public interest” orientations actually coexist and moderate one another. The same happens with the conflicting models of legal services in law schools, which several interview passages have addressed in the preceding Chapter: “public interest law” clinics appear as innovative settings, but they develop and work in both competition and collaboration with the traditional “consultorios juridicos” or pedagogic devices alike.

Law schools shape visions and practices of “public interest law” in two additional ways. First, regardless of subsequent effects of the workplace, law schools help lawyers understand the scale of “public interest law” practice in each of the studied contexts. This is clear in preceding interview passages extracted from the L.A. context, in which clinics strongly embrace the basic
clientele basis, methods of lawyering, and vernacular objectives of the L.A. prototype of “public interest law”. Yet, this research has gathered evidence that U.S. law schools also “teach” students in accord with the hegemonic scale of “public interest law” in this country. For instance, Emily Davis, who went to a law school that has a strong “public interest law” program said that a remarkable element in her student experience was meeting with:

…Anything from people from whom working in public interest law means working for a large law firm and doing a lot of pro bono work. Or even, since my political leaning tends to be more on the left side, people who promised to do public interests. What they considered public interest work to further conservative social views or interest […] So I guess, before going to law school I would have said that public interest law would necessarily take place by a lawyer working for a non-profit organization. Now I have a bit of a broader concept of what it entails.

Second, law schools are mechanisms of socialization that help reproduce structural divisions and hierarchies between different styles of practice or cultures of work. Facing this context, as also seen in prior research (Stover, 1989; Granfield, 1992; Mertz, 2007), U.S. interviewees report that informal networks are the greatest anchor to “public interest law”-oriented students. For instance, when Olivia Jones was describing her law school experience, she said:

In some ways I felt very isolated, because the culture at most of the top ten law schools is very corporate. Everyone is there, they say that they’re there for a variety of reasons, but really, the track is to get a job in a big firm, and everything is set up in ways that you do that. There are […] interviews, they… I mean, it is laid out on a silver platter. You show up, you go to 15 interviews inside of a week, and you end up with a summer job that leads to permanent employment. Everybody does that. I was one of two people in my graduating class of 112 who didn’t go through that process. It blew me away.
As such, U.S. legal education, especially in elite law schools, operates very strongly in the construction of the symbolic boundaries between the “prince” corporate, firm work and the “pauper” public interest work.

5.9 Final remarks

Building on evidence contrary to theories of convergence in “public interest law” across the Americas as provided by the preceding Chapter, this Chapter advanced some of the possible mechanisms driving the observed differentiation, including both “intra” and “inter” institutional factors. The role of regionalism and the need to build legitimacy for the imports are some of these encountered mechanisms at the “intra” institutional level, while the struggle for power and legitimacy across the North/South divide is an example of an “inter” institutional level. The next Chapter will provide further evidence on the same phenomenon, which can help refine these findings and their consequences for the underlying theoretical debate about the nature and the characteristics of “globalization” in the realm of “public interest law”. And it will do so by addressing what apparently sounds like a “negative” case in Latin America: Brazil and its “lack” of “public interest law” practices.
Chapter 6

“Not for beginners”: Lawyers, globalization, democratic governance in Brazil

6.1. Introduction

This chapter stems from a different analytic (and empirical) strategy than the prior one. By and large, this is due to the specific way that the propagation of “public interest law” has manifested itself in Brazil, as compared to the larger L.A. context. Indeed, there is much less “talk” about lawyering in/for the “public interest” in the Brazilian legal profession than in the other Latin American countries included in this research. Bibliographic and internet research conducted for the past five years led to almost no reference at all in which the expression “public interest law” was used in Portuguese, including all the possible vernacular variations of it. In addition, as reflected in Graph 8 below, the “Google alert” device that I set in search for mentions to “public interest law” retrieved not a single entry of this or similar expressions in Portuguese from the (whole) web either. And through all the interviews and fieldwork activities that I undertook in Brazil (including fieldwork travels to the cities of Sao Paulo, Brasilia, and Belo Horizonte), the lawyers that I met with were almost unanimous in not embracing the “public interest law” label to refer to their practices: “The only person that I know of who sometimes refers to our work as one of ‘public interest’”, said a male NGO lawyer, who is about 30 years old and lives in Brasilia, “is Denise Dora” (the former representative of the Ford Foundation in Brazil who, therefore, bears a unique degree of socialization in the U.S. legal tradition and lingo, as compared to most Brazilian lawyers).76

76 Perhaps the only other lawyer who frequently turns to the “public interest” label to name legal practices, but who has also a degree of socialization in the U.S. tradition and lingo that is similar to Denise’s is Oscar Vieira, who is
According to the analytic framework that has been guiding this dissertation, the adherence to a “label” in the context of destination is an important indicator of the propagation of a specific “style”, “kind”, or “sector” of professional practice. From this point of view, the worldwide circulation of people, resources, and ideas connected with “public interest law” taking place these days (i.e., the “globalization of public interest law”) has impacted the legal profession in Brazil to a considerably lesser extent than the rest of Latin America. Consequently, the research design used to assess the propagation of “public interest law” across the U.S. and the other L.A. countries (in short: sampling only lawyers who had a clear connection with the “public interest law” label, so as to avoid judging for myself who is and who is not a “public

Graph 8: "Public Interest Law" on the Web: Google Alerts including this expression and its main variations in English, Spanish, and Portuguese (Feb, 2011-Aug, 2012)

Currently the Dean of FGV School of Law in Sao Paulo and has written extensively about law and social justice in Brazil.
interest lawyer”; then comparing the “cases” of U.S. and L.A. in terms of the practices and ideologies reported by the lawyers sampled in both contexts) would not lead to an appropriate incorporation of Brazil to the study.
### Research design and analytical strategy to incorporate Brazil in the study

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<td>Characteristics of “public interest law systems”</td>
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<tr>
<td>Nature of inquiry</td>
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<tr>
<td>Outcomes of interest</td>
<td>Thick and comparative description of practices and meanings in the “public interest law” sector across the countries</td>
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**Figure 12: Research design and analytical strategy to incorporate Brazil to the study**
Facing this challenge, and as the Figure 12 above well illustrates, my strategy was one of assessing and situating the institutional experiences of “access to justice”\(^\text{77}\) and “legal mobilization”\(^\text{78}\) in Brazil, as broader constructs, against the features of the previously addressed cases and in light of three primary questions: (i) What is the exact pattern of influence that U.S.-based “public interest law” has had over the Brazilian legal profession – and how does this pattern relate to what happens in the larger L.A. region?; (ii) What accounts for this pattern and for its possible differentiation from what happens in the larger L.A.?; and (iii) How does the discovery of this pattern impact the broader debates on the globalization of law (and of “public interest law”, more specifically), as they have been taking place in this dissertation?\(^\text{79}\) In other words, borrowed from the already cited passage by Geertz, the study on the “globalization of public interest law” for the specific case of Brazil came to be an exercise of “[confronting] our own version of the council-man mind with other sorts of local knowledge” so as to “make [our

\(^\text{77}\) To borrow from Sandefur (2008:339): “Access to civil justice is a perspective on the experiences that people have with civil justice events, organizations, or institutions. It focuses on who is able or willing to use civil law and law-like processes and institutions (who has access) and with what results (who receives what kinds of justice)”. Alternatively, and in the context of “legal reform” projects, access to justice has been defined by World Bank consultant, as “access by people, in particular from poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions” (see, for example, World Bank, n.d.).

\(^\text{78}\) To borrow from McCann (2006:22): “This is the core meaning of what many scholars label legal mobilization: ‘Law is mobilized when a desire or want is translated into an assertion of right or lawful claim’ (Zemans 1983). Most such specific legal claims refer, of course, to settled, relatively uncontested entitlements. But at other times citizens interpret laws in different ways, reconstructing law in the process to fit shifting visions of need and circumstance; we reconstitute to some degree the law that constitutes us. In this sense, legal conventions are understood as a quite plastic and malleable medium, routinely employed to reconfigure relations, redefine entitlements, and formulate aspirations for collective living. The concept of rights consciousness— as a developing understanding of social relations in terms of rights—has been particularly important for analysis of law and social movements throughout the world (McCann 1994, Marshall 2003)”.

\(^\text{79}\) This strategy is not foreign to the literature about the comparative method. As discussed in Chapter 3, Skocpol & Somers conceptualize the “contrast of contexts” research design in terms of “contrasts […] between or among individual cases […] with the aid of references to broad themes or orientating questions or ideal-type concepts. Themes and questions may serve as frameworks for pointing out differences between or among cases. Ideal types may be used as sensitizing devices – benchmarks against which to establish the particular features of each case” (Skocpol & Sommers, 1980: 178).
mind] more aware [...] of the quality of its own”; the kind of analytic endeavor “that welds the processes of self-knowledge, self-perception, self-understanding to those of other-knowledge, other-perception, other-understanding; that identifies, or very nearly, sorting out who we are and sorting out who we are among (1983:182)”. The following sections detail the outcomes of these analyses.

6.2. Globalization, the legal profession, and the “emancipatory pillar” of the law in Brazil

Globalization, the legal profession, and the “emancipatory pillar” of the law in Brazil: towards a map of “access to justice” and “legal mobilization” in this country

In order to articulate the answers to the first two questions above [(i) what is the exact pattern of influence that U.S.-based “public interest law” has had over the Brazilian legal profession – and how does this pattern differ from what happens in the larger L.A.?; and (ii) What accounts for this pattern and for its possible differentiation from what happens in the larger L.A. region?], a succinct description of the “access to justice” and “legal mobilization” fields in Brazil becomes necessary.

Although there have been few attempts to draw a comprehensive assessment of these fields (but see Vieira [2009], Rocha [2009], and Santos [2007]), authors generally converge in considering that the 1988 Constitution did represent a turning point in the country’s history in

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80 The expression “emancipatory pillar” of the law was borrowed from Santos (2002), who describes modern institutions and political culture as the product of two pillars: a regulatory and an emancipatory one. The regulatory pillar involves the cognitive-instrumental reasoning that is typical of science, i.e., the human attempt to produce certainty, predictability, and regularity. The emancipatory pillar involves the moral-practical and the aesthetic-expressive reasoning that are typical of law, arts, and literature. The inter-dependency of these pillars would ensure to humanity a common destiny consistent with the ideals of the French and the British Revolutions, i.e., of liberty, equality, and fraternity. Santos argues that due to the historical confluence between capitalism and modernity, the tension between the regulatory and the emancipatory pillars was resolved in favor of the former. An approach of “public interest law” as a social practice that seeks to reclaim the emancipatory pillar (or at least the tension between the regulatory and the emancipatory pillars) was once made by Dezalay & Garth (2001:314).
this aspect as well. The impact of the 1988 Constitution can be described as twofold. For one, it expanded the range of “rights” acknowledged by the Brazilian political community, including the so-called socio-economic rights. This established a new discursive arena for individuals and groups to make claims before justice institutions or, to borrow from Abel’s influential expression, for individuals and groups to do “politics by other means” (Abel 1995; see also Vianna [1999 and 2002] and Arantes [1997]). For another, it assigned two state agencies with the deliberate task of providing representation to individual and collective interests before the Courts and administrative agencies: the Defensoria Publica (Public Defender’s Offices) and the Ministerio Publico (Public Prosecutor’s Office).

However, neither the Defensoria Publica nor the Ministerio Publico “have taken root on a blank slate” (Cummings & L. Trubek, 2008:04): before and after the 1988 Brazilian Constitution there have been several other competing models for the provision of “access to justice” and for the “mobilization of the law” in Brazil. The primary goal of this section is to briefly draw a map of these (and other) organizational forms and their main characteristics, while also stressing on two themes: (i) the relationships of competition and/or collaboration that the participants of these forms have established over time; and (ii) the role of “globalization” in the constitution of these forms.

For didactic purposes only, this section clusters the forms that it will address according to their main institutional arenas, i.e. the “state”, the “profession”, and the “civil society”. Sections 5.2.1 through 5.2.3 below are dedicated to exploring each of these arenas. Following the objectives of this research, Section 5.2.4 examines practices of “access to justice” and “legal mobilization” that display some degree of foreign (primarily U.S.) inspiration.
6.2.1. State-based experiences

a) **Ministerio Publico (Public Prosecutors)**

The institutional history of the Brazilian prosecutorial agency *Ministerio Publico* is one of assimilating increased prerogatives in the civil and criminal law domains, in addition to the most conventional tasks in criminal prosecution. Statutes enacted during the Empire ascribed the *Ministerio Publico* with the task of “protecting” the “weak and defenseless”, as well as of “representing [indigenous individuals], orphans, and mentally incapacitated; [and] monitoring prisons and mental health institutions”. The 1939 Civil Procedure Code ascribed the *Ministerio Publico* with the task of acting in *custus legis*, i.e., so as to monitor the implementation of the law in the “interest of the public” (Vieira, 2009: 238; Macedo Jr., 1999).

However, the definitive establishment of the *Ministerio Publico* as the agent mainly responsible for mobilizing the law on behalf of the “public interest” in Brazil took place in the 1980s, when legislation ensuring protection to “collective and diffuse rights” began to be enacted at both federal and state levels. The statutory regulation of class action lawsuits (*Lei da Ação Civil Publica*) enacted in 1985 was a landmark in this process, for it both created a specific procedural mechanism for the judicial processing of claims in which protection to “the environment; as well as to cultural, touristic, historic, and landscape heritage” was sought (Federal statute # 7.347/1985 – *Lei da Ação Civil Publica*, as originally enacted\(^81\)) and assigned the *Ministerio Publico* with a virtual monopoly over the use of such mechanism\(^82\).

\(^81\) There have been changes in this list so as to include other hypotheses in which a class action lawsuit can be brought, as this Chapter will discuss shortly.

\(^82\) In its literal and original terms, Federal statute # 7.347/1985 did not grant the *Ministerio Publico* with the exclusive legal standing to file class actions lawsuits. Instead, the same legal standing was also granted to the federal, state, and municipal governments; governmental organizations, and under certain conditions, even civil
The 1988 Constitution consolidated this trend by defining the *Ministerio Público* as “a permanent institution, essential to the jurisdictional function of the state, whose mission is to protect the legal order, the democratic regime, and the inalienable interests of both social and individual nature” (F.C., art. 127), while also assigning it with the “institutional function” of “bringing about civil investigative processes and class action lawsuits so as to protect public and social resources, the environment, and other diffuse and collective interests” (F.C., art. 129). Moreover, the Constitution granted the *Ministerio Público* with both “internal” and “external” autonomy: not only was the institution ensured the financial and administrative means that it needs to operate but its members were also benefited with the same basic guarantees of independence that Brazilian judges enjoy, including a full discretion over whom to prosecute and what issues to address. In his research, Arantes came across an expression that is widespread among prosecutors themselves to describe this so-called “functional independence”: “at work, members of the *Ministerio Público* are subject only to the law and to their own consciousness” (Arantes, 2007:329-30, emphasis added. For similar assessments see also Arantes, 2002; Vieira, 2009: 238; Macedo Jr., 1999).

society organizations (associations with at least one year of formal activity, which were constituted with the specific mission of defending the collective rights that fall under the statute). However, there are few records of class action lawsuits filed by these other entities, as compared to the *Ministerio Público*. There can be many possible reasons why such virtual monopoly was constituted in favor of the *Ministerio Público*. One of them may relate to a monopoly that the *Ministerio Público* actually holds – the monopoly over the handling of civil investigative processes; which can be useful to produce evidence to support subsequent class action lawsuits. Another possible reason is more of the “symbolic” kind: as members of the *Ministerio Público* enjoy more respect from the Judiciary than ordinary citizens and organizations, even the most activist advocacy groups may prefer to contribute to a lawsuit that is being filed by the *Ministerio Público* than to have the actions filed by them themselves. The bottom line is that the system of class action lawsuits has become increasingly more centralized in the hands of (the state agency) *Ministerio Público*.

83 In the context of these civil investigative procedures, the Ministerio Público has also acquired a powerful instrument: the Terms of Adjustment of Conduct, through which it can offer to individuals and organizations a deal involving change of behavior in exchange of not prosecuting them in either the civil or the criminal arena, as sort of a U.S. plea bargaining. “This quasi-judicial instrument has been very useful in convincing the administration and private parties to change their behavior regarding the implementation of their constitutional duties” (Vieira, 2008: 243)
Even so, as Arantes forcefully analyzes, these constitutional provisions were only an intermediary chapter in the assertion of Ministerio Publico’s institutional and political power. The Consumer Protection Code from 1990 included a provision that broadens the scope of the Ação Civil Publica (the previously discussed procedural mechanism that almost solely the Ministerio Publico can put into effect) to a tremendous extent, letting it be filed for the protection of “any diffuse or collective interest” (Federal statute # 8.078/1990, art. 110). Subsequent Federal statutes have also performed the operation of “replacing the individual legal standing with supra-individual legal standing” and making “the Ministerio Publico the society’s tutelary body” (Arantes, 2007:327). As examples of such post-1988 statutes that acknowledge diffuse and collective rights and assign the Ministerio Publico with special roles in the protection of these rights, Arantes cites legislation that focus on:

…People with disability (1989); children and adolescent (1990), the consumer protection code (1990), lack of administrative probity (1992); breach of the economic order (1994); bio-security and genetic engineering techniques (1995); and fiscal responsibility (2000). As of 2001, class action lawsuits can be filed in further cases of breach of the economic order and the social economy, as well as of breach of the urban order (2007:328)

Also of extreme importance for this process was the development of a shared ideology among members of the Ministerio Publico. Based on surveys and interviews with these subjects, as well on their public manifestations, Arantes captured such ideology and described it in terms of a “political voluntarism”. As per his account, members of the Ministerio Publico are firm believers that “the Brazilian society is fragile, public institutions are degenerated, and somebody needs to do something” (Arantes, 1999:96). As evidence, he mentions that 84% of the prosecutors that he surveyed “totally agreed” or “agreed” with the assertion that the civil society
is “unable to defend its interests and rights by itself and, therefore, justice institutions need to work in an activist fashion in order to protect [the society]” (Arantes, 1999:95-6). He also cites an article by a female prosecutor in Sao Paulo, which explicitly maintains that

When the drafters of the Federal Constitution assigned the *Ministerio Publico* with the institutional function of bringing about class action lawsuits to protect rights, both at the individual and at the collective levels, they demonstrated sensibility and attention to the state of marginality that affects a significant part of the Brazilian civil society, clearly fragile as compared to public institutions. The Brazilian civil society is not yet organized so as to defend its interests and have its needs met, whether through associations or other entities. Thus, at the present moment and due to the institutional functions of the *Ministerio Publico* [as established by the 1988 Constitution], it must bring such bigger issues to the Judiciary (Arantes, 1999:96).

The Figure 13 below illustrates what Arantes defines as the process of “institutional reconstruction” of the *Ministerio Publico* after the 1970s, which, also according to his terms, has transformed prosecutors into “political agents of the law”. The legalization of collective and diffuse rights; the statutory regulation of class action lawsuits via *Lei da Ação Civil Publica*; and the constitutional guarantee of institutional independence represent the “institutional tripod” over which a “new *Ministerio Publico*” was built. Associated with this tripod is also an ideology of “political voluntarism”. All of this allows prosecutors to reframe policy issues into legal issues and to use the law to demand policy solutions from Courts and administrative agencies, literally doing “politics by other means” (Abel, 1995).
The academic assessments of this peculiar institutional history have been multifaceted (for a good synthesis, see Coslovsky, 2011). While some scholars have examined the impact of the Ministerio Público’s actions and stressed on their contribution to the consolidation of democracy and the rule of law in Brazil (McAllister 2008), others have been skeptical about the excess of independence and the lack of societal accountability that members of this agency enjoy. For example, Vieira notes that “in the first years of the Constitution there was great enthusiasm about the potential of the Ministerio Público to become the main representative of civil society organizations in the judiciary”, which “helps to explain why the great majority of civil society organizations abdicated from the task of organizing their own legal services to advance their causes. [However], with the passing of time, this higher expectation of the role of the Ministerio Público, as the defender *per excellence* of the public interest, has been mitigated among civil society organizations”. Vieira also laments that “there are no accountability mechanisms by
which civil society organizations could pressure members of the Ministerio Publico” (2009:240) and reviews further critiques about the agency’s “tendency to become self-serving [as other large institutions]”; the existence of “political partisanship among certain factions within the institution”; and the “danger of cooptation by middle-class demands, which explains why so much attention and time of the Ministerio Publico is being dedicated to consumer and environmental issues” (2009:240. See also Arantes 2002; Sadek & Cavalcanti 2003; Hochstetler & Keck 2007; Kerche 2007; Nóbrega 2007; Taylor & Buranelli 2007).

By incorporating into the analysis elements that are typical of the sociology of organizations, Coslovsky has developed an alternative and in many ways innovative account of the Ministerio Publico. In light of Silva’s (2001) finding that there were two ideal-types of prosecutors (the “office-bound” versus the “fact-oriented” or “problem-solving”), Coslovsky questioned how this diversity might impact the organization’s role in regulation. The author discovered that the coexistence of both styles of practice enhanced the institution’s regulatory responsiveness and resilience, while also unveiling the basic mechanisms through which both factions negotiate their coexistence. But even if assuming differences in the internal composition and dynamic of the Ministerio Publico and finding these differences to be a factor of organizational prosperity for this agency, Coslovsky ended up confirming the existence of a hegemonic corporatist ideology among agency members, which, for example, lead “many prosecutors devoted to social problem-solving and relational regulation publicly claim to be just enforcing the law, even as they are stitching solutions together”. He also noted that “prosecutors like to tell a cogent and unified story about themselves, and this unity helps them protect the MP from frequent attacks on their legal powers and professional discretion” (2011: 83-4, emphasis added).
This leads to an issue that has been rarely addressed in the literature, i.e. the way the Ministerio Público has been able to maintain its distinctive status in the landscape of legal mobilization in Brazil (but see Arantes). From a macro perspective, there is evidence to suggest a concerted and strategically oriented effort to enhance corporatist power, which has taken place since the 1980s. This included “copying the structure of judicial careers”; “helping judges by writing memoranda related to cases pending in higher courts”; and lobbying before the Constitutional Assembly and congressional sections (Vieira, 2009:238-9; Arantes, 2002 and 2007).

The corporatist power of the Ministerio Público was not directly challenged until very recently. The core of the dispute was the virtual monopoly over the capacity to mobilize the law on behalf of collectivities so as to enforce rights claims and confront policy decisions. The opponent was the soon-to-be addressed Defensoria Pública. In 2007, Congress passed Federal Statute # 11.448, adding the Defensoria Pública to the list of institutions with legal standing for

84 The emphasis is to distinguish this analysis from others like Coslovsky’s, which looks at the Ministerio Público form a micro to mezzo perspective. There are certainly many instances of collaborative problem-solving links through which the Ministerio Público, the civil society, and even the Defensorias Públicas “stitch solutions together”, and these links will be of total importance for keeping up the legitimacy of the Ministerio Público in its everyday interaction with other characters of the Brazilian legal profession and society at large (Coslovsky, 2011. Vieira equally maintains that such collaborative experiences are possible, although “depending on the relationships between the civil society and the members of the Ministerio Público in a particular place and time [2009: 240]). But, again, from a macro-perspective, it is impossible to neglect the struggles for power taking place among these institutions, all of which, “in particular places and times”, get to be (re)settled.

85 The outcomes in favor of the Ministerio Público in congressional sessions and the Brazilian Constitutional Assembly are in effect outstanding. Vieira explains part of this success on the basis of the “key presence of Plínio de Arruda Sampaio, a former member of the Ministerio Público in Sao Paulo, as the [congressperson responsible for drafting the articles regulating the Justice system] at the Constitutional Assembly” (2009:239), but Arantes observes that, much likely due to an active strategy of enhancing corporatist power, statutory legislation that deals with collective and diffuse rights had incorporated references to the Ministerio Público even before the constitution (2002; 2007). Arantes also notes that when congress was discussing the statutory regulation of class action lawsuits there were two drafts under consideration: one had been proposed by civil society groups; the other had been proposed by congressmen connected to the Ministerio Público. This latter proposition prevailed with support from the Ministry of Justice. As Arantes argues, the Ministerio Público must also have shown impressive political skills to prevail in this dispute, at a “time of strong critique to state institutions and of claims for expanded civil society participation in the legal order” (2007:329)
bringing about class action lawsuits under the hypotheses of Federal statute # 7.347/1985 – Lei da Ação Civil Publica. The National Association of the Members of the Ministerio Publico (CONAMP) fired back by filing an Action of Unconstitutionality before the Brazilian Supreme Court (the ADI # 3943). According to CONAMP, Federal Statute # 11.448/2007 harms both the constitutionally-assigned prerogatives of the Ministerio Publico and the constitutionally-assigned functions of the Defensoria Publica – i.e. to provide free legal assistance to the indigent –, given that, from CONAMP’s perspective, in cases where protection of “collective and diffuse rights” is sought there is no way to clearly separate those who can afford legal counsel from those who cannot.

Obviously, this lawsuit has raised both a critique and an organized reaction from the Defensorias Publicas. Besides the legal guerrilla that has taken place through requests of admission to the lawsuits as amici curiae, as well as through the submission of several memoranda by Brazilian grand jurists in favor of the litigants, the case has also fostered more open debates whose terms, to say the least, can be very instructive for the analysis intended in this Chapter. For instance, a Defensor Publico recently wrote an article, which was disseminated

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86 Associations of Defensores Publicos and members of the Ministerio Publico at the Federal level have asked to act as amici curiae, which has been accepted by Supreme Court Justice Carmen Lucia. The Brazilian Federation of Banks had also asked for such admission as amicus curiae of members of the Ministerio Publico, but this request has been denied by Justice Carmen Lucia. For information on the developments of this lawsuit and all the requests for admission as amici curiae, See http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?numero=3943&classe=ADI&origem=AP&recurso=0&tipoJulgamento=M, last visited July.10, 2012

87 Grand jurists have been very typical characters in the Brazilian legal landscape, and were once defined as: “Those acknowledged professionals in the legal field whose works help shape up the accepted meaning of statutes and legal institutions and guide the practice of other legal professionals, exerting thus a form of intellectual domination over the other actors in the field through the authority of their doctrines and their personal prestige” (Queiroz & Reis, 2012). One of these grand jurists mobilized in this dispute was University of Sao Paulo School of Law Professor Ada Pelegrini Grinover, who helped write the statute on class action lawsuits and wrote a lengthy memorandum favoring Public Defenders. See http://www.apadep.org.br/news/2009/03/professora-ada-pellegrini-grinover-recebe-premio/?searchterm=ada, last visited Feb. 20, 2012
through the Federal Public Defenders’ Association (ANADEF) website, arguing that: “The defendant in the ADI # 3943 is neither Congress, which passed the law under attack, nor the President, which endorsed it. The defendant is the public interest, which is being threatened by the private, corporatist interest. And whatever the decision is, this story will be told as follows: it was an association of the rich against the mass of needy Brazilians” (Vieira, [n.d.]: 13, emphasis added).

ADI # 3943 has not been decided yet, but it is useful to illustrate one of the main conflicts in the Brazilian landscape of “access to justice” and “legal mobilization”: the conflict over the legitimacy to represent collective and diffuse interests and, to some extent, the interests of “the public”. So far, the dispute, if existent at all, takes place primarily among state institutions: the (reigning) Ministerio Publico and the Defensoria Publica. “…After nineteen years of constitutional experience it would be not improper to say that these two public agencies have become the core pieces of Brazil’s public interest law litigation system” (Vieira, 2009:244).

b) Defensoria Publica (Public defenders)

All over the Brazilian history, there have been several legal provisions ensuring the right to free legal services to the needy population in both criminal and civil cases. Federal statute # 1.060/1950 established that “the federal and state governments shall provide legal assistance to the indigent” (art. 1st). This statute was amended in 1986 to include a stipulation that these obligations should be fulfilled “independently from the contribution [that these entities may receive] from municipal governments and the organized bar” (emphasis added), thus demonstrating a historical intent of making legal assistance to the indigent clientele a government-funded service.
However, it was only after the 1988 Constitution that the country adopted a nationwide model to organize the provision of these services. While endorsing the prior legislation by stipulating that “The Brazilian state shall provide comprehensive and free-of-charge legal assistance to those who demonstrate lacking the necessary resources” (F.C., art. 5°, LXXIV), the Constitution also established the Defensorias Publicas (Public Defenders’ Offices) as “institutions that are essential to the jurisdictional function of the state, being responsible for providing legal advice and defense to the indigent at all jurisdictional levels” (F.C., art. 134, emphasis added). In 2004, the Constitutional amendment # 45 granted Defensorias Publicas with both “functional” and “administrative” autonomy, making their institutional design similar to the bench and the Ministerio Publico.

But regardless of these on-the-books provisions, the actual story of Defensorias Publicas has had much less of glamour. The establishment of Defensorias Publicas has been a slow process both in the states and at the federal level. Graph 9 below illustrates this trend. Before 1990, there were Defensorias Publicas in only 06 (six) states in the country. This figure increases substantially by the 1990s, when these institutions were established in 12 (twelve) states.

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88 This emphasis relates to the fact that, as in the U.S., Brazil has courts at both the state and federal levels. The federal courts normally address cases in which interests of the federal government are in place. This explanation is important because a striking number of legal cases that relate to welfare policies end up being submitted to federal courts. From a policy perspective, this is a jurisdictional level in which access to legal counsel should be readily available, for welfare cases have a high distributive potential and normally involve a very poor clientele. However, the highest pressure is certainly at the state level. For one, state courts have the competency to handle issues that generate even more cases than welfare, such as family law, criminal law, and consumer protection. For another, state governments are closer to citizens than the federal government, which makes state authorities more subject to societal accountability than their federal counterparts.
other states. The remainder 09 (nine) states would implement their Defensorias only after the 2000s, with the last one being implemented this 2012, in the state of Santa Catarina.

The state of Sao Paulo provides an illustrative case of this intricate process of institutional development. For almost two decades after the constitutional provision that made Defensorias

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99 Also in the 1990s the first offices of the Federal Defensoria Publica were implemented.

90 A state statute creating the Defensoria Publica in Santa Catarina passed recently in the state house, but the human resources and institutional conditions that will be available for the daily operations of this organization are not clear yet.

91 Based on what still are the most up-to-date data available (Ministerio da Justiça, 2004; 2006), Santos provides a both objective and provocative assessment of the institutional weaknesses of Defensorias Publicas in Brazil (Santos, 2007: 31): “The structure of the federal Defensoria Publica is insufficient – until May, 2004 only 111 positions for federal Defensores Publicos had been opened in the whole country”. In addition, “the number of state Defensorias Publicas is insufficient given the needs of a society such as Brazil. The service coverage is low – 996 county jurisdictions have services of Defensorias Publicas, which corresponds to 39.7% of all county jurisdictions in Brazil. In only 6 states all county jurisdictions are covered by the services of Defensorias Publicas. Also, the services of Defensorias tend to lack more in the states with the worse social indicators”. Even in the jurisdictions in which federal and state Defensorias Publicas had been already established, the number of Defensores is clearly
Publicas the institutions “responsible for providing legal advice and defense to the indigent at all jurisdictional levels” (F.C., art. 134), Sao Paulo maintained a controversial structure for the provision of such legal services, which was based on government lawyers designated to a particular unit of the state attorney’s office, supplemented by private lawyers working under the soon-to-be-addressed state-bar financial agreements.

The critique against this structure was strong and multifold (Cunha, 2000; Haddad, 2011). For instance, critics stressed that government lawyers would face a potential conflict of interest when providing legal assistance to the indigent, for they would not feel comfortable suing the government itself if, while addressing the demand of an individual, this proved to be the case. Likewise, these critics maintained, facing scarcity of resources the state would be more likely to ensure its own legal counsel, in detriment to the citizens’ rights: the “haves”, yet again, would “come out ahead” (Galanter, 1974).

Another source of critique was the profile of lawyers acting in such provision of legal services. Lawyers designated to work at the “legal assistance” unit of the state attorney’s office were not necessarily identified with the task of helping the indigent, for the plain reason that they had been recruited to help bureaucrats. Moreover, as these lawyers could be assigned overnight with other tasks throughout their careers (and, conversely, lawyers working in other areas could be assigned overnight with the task of defending the indigent), there would be little or no chance for organizational specialization on issues that are of the interest of the needy population.

insufficient, given both the currently observed and the potential demand for free-of-charge legal services. A simplistic but frequently-undertaken analysis consists in estimating the demand for these services by taking into account the adult population that earns less than three minimum salaries in Brazil (R$ 1,866.00 or about US$ 933), which various Defensorias Publicas use as a proxy to lack of resources to pay for legal fees. Considering 2010 Census data, Brazil has more than 145 million individuals over 10 years old in that condition (IBGE, 2010).
Without an agency fully devoted to the provision of these kinds of services, critics argued, such inefficiencies were much likely to take place, in further detriment of the poor clientele.

The attitude towards the *Defensoria Publica* among Sao Paulo government officials changed over time. In the beginning, they argued that the issue was just one of “brand” (Cunha, 1999), suggesting that a “legal assistance unit” made of government lawyers would fairly satisfy the Constitution. Subsequently, they conceded that independent *Defensorias* represented the model actually established by the Constitution, but still claimed that the state did not have enough resources to implement this model. The organized bar also showed a double-edged behavior in this period: while in the late-1980s it actively demanded that the state created a *Defensoria Publica*, in the late-1990s it was mostly concerned about the future of its affiliated lawyers who were supplementing the services of government lawyers through the mentioned “state-bar financial agreements” (Almeida, 2006). In a short note to the press after a state house session in which the issue was raised by a state representative, the organized bar expressed this ultimate position as follows:

While giving a talk at the state house last June, 4th, 2003, the General Attorney for the State of Sao Paulo, Elival da Silva Ramos, spoke in favor of the creation of the *Defensoria Publica*. But he conceded that, given the enormous demand and the number of people already assisted under the PGE-OAB/SP financial agreement, it shall endure for, at least, another ten years.

“The *Public Defender’s Office* will be created, no question about that, but as the Attorney General stated, this is not going to happen in the short or even medium term,” said the bar’s President Carlos Miguel Aidar, recalling that the judicial assistance agreement currently entails 40,000 lawyers, thus representing an
important market share for private lawyers and a crucial way to promote access to justice to a considerable number of indigent citizens in the state of Sao Paulo.  

Interestingly enough, these resistances from the bar and the government to effectively implement the Defensorias Publicas ended up becoming a triggering factor for broader social mobilization. In 2002, a Movement for the Defensoria Publica was created in Sao Paulo. This “movement” came to involve no less than 440 (four hundred and forty) institutions, including two that will be mentioned later in this dissertation – Instituto Pro Bono and Conectas Direitos Humanos –, and was responsible for organizing public petitions and manifestations, while also gathering support for this cause from important sectors of the legal and political communities.

All these events took place right before the election of President Lula. When he took office in 2003, Lula appointed Marcio Thomaz Bastos (a liberal lawyer, whose synthetic biography will be provided shortly) to serve as his Minister of Justice. Bastos created a National Secretary for Judiciary Reform and invited lawyers who were very close to the Movement for the Defensoria Publica to work at this unit, such as the Sao Paulo government lawyer Renato P. DeVitto and the Rio de Janeiro Defensor Publico Andre Luiz M. Castro. A direct product of this unit’s work was the previously mentioned Constitutional Amendment # 45, which granted the state Defensorias Publicas with “functional” and “administrative” autonomy and provided better institutional conditions for the functioning of these organizations.

The logic of social mobilization for the implementation of the Defensoria Publica as observed in Sao Paulo was disseminated countrywide: in every state where the Defensoria was not available, social movements, labor unions, and civil society groups ended up getting

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92 “It can take ten years for the Defensoria Publica to be in place”. Electronically available at: http://www.oabsp.org.br/noticias/2003/06/12/1900/, last visit 27 Aug 2012
organized to put pressure on governments. Perhaps more importantly, these social movements and civil society groups both helped draft the bills that were being sent to state legislatures with the purpose of finally implementing the *Defensorias Publicas*, and established continuous collaboration with leaders and staff members of the *Defensorias* once they were implemented.

![Figure 14: Symbols of social mobilization in favor of the Defensoria Publica in Brazil](image)


This peculiar history of *Defensorias* in Brazil (which were able to transform an initial resistance from the bar and the government into an opportunity for gathering political support, thus “making lemonade” [Boutcher, 2005]) has had important consequences for their ultimate institutionalization, in sociological terms. First, the institutional design of the contemporary *Defensorias* is very innovative and democratic. By the law, the Sao Paulo state *Defensoria Publica* enjoys administrative and functional autonomy; but it also has an independent
ombudsman who serves as an interface with civil society groups. In addition, the Sao Paulo state Defensoria must organize its action plan through local and state conferences open to civil society participation\(^{93}\).

Second, the areas and methods of work of Defensorias are very much in line with a more aggressive approach to the law and legal services. Also by the law, the Sao Paulo state Defensoria works both through legal and non-legal/extra-legal means; provides an interdisciplinary approach to the cases it deals with; has specialized units to address issues such as “Human Rights” and “prison affairs”; and has the institutional function of defending collective and diffuse rights (a function that has been bolstered after Congress passed a law extending the prerogative of filing class action lawsuits to the Defensorias, as seen in the prior section)\(^{94}\). And, as part of an international agreement, the National Association of Defensores Publicos (ANADEP) recently appointed two individuals to serve as Interamerican Defensores Publicos. These Interamerican Defensores Publicos are responsible for representing indigent victims of Human Rights violations before the Interamerican Human Rights system.

\(^{93}\) Sao Paulo State Complementary Statute # 988/2006, available electronically at http://www.defensoria.sp.gov.br/dpesp/Repositorio/23/Documentos/Lei%20Complementar%20988%20de%2009_01_06.pdf, last access Aug 23 2012. For a good description of how these mechanisms of social participation work, see Cardoso (n.d.).

\(^{94}\) These provisions, which were ultimately adopted by a Federal law and apply to all states (Federal complementary statute # 132/2009), include virtually all the claims publicly made by the organizations and groups that participated in the Movement for the Defensoria Publica in Sao Paulo, according to the petition wherein the Movement advanced the 10 points it considered imperative for Defensorias to fulfill their constitutional mission. As per this petition, the Defensoria ought to: “Defend the collective and diffuse interests of indigent citizens”; “provide legal support to groups and non-governmental organizations that act in defense of Human Rights, victims of violence, children and adolescent, the elderly, people with disabilities, indigenous peoples, people of color, sexual minorities and people struggling for land and housing”; “provide an interdisciplinary approach that includes Defensores, psychologists, and social workers”; “provide community education about human rights and the law”; “provide citizen participation in the formulation of its annual action plan, through discussions open to everyone”; “institute an independent ombudsman to serve as mechanism of civil society participation and control”; “make sure that the recruiting processes are able to select professionals committed and prepared to serve the indigent citizens”; and enjoy “administrative and financial autonomy, including the control over the Legal Assistance State Fund” (Cited by Brandao, 2010). For the full text of Federal complementary statute # 132/2009, see https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp132.htm)
Third, as a process of social construction, the institutionalization of Defensorias Publicas was responsible for creating identities more strongly connected with the agendas of “access to justice” and “legal mobilization”, which, following Katz’ account (1982), can be crucial factors in the maintenance of a (counter-hegemonic) organization. Many lawyers that became part of this institution contributed with the Movement as law students and decided to apply for a job as a Defensor Publico after graduation. Likewise, the acting Defensores Publicos themselves came to establish vibrant professional associations such as ANADEP and ANADEF. Through these associations and their connections with civil society groups and organizations, they have been able to disseminate their practices and ideologies and to influence access to justice policies nationwide.

A cogent example, as it will be discussed shortly, was in their (so far) successful campaign against the need to celebrate the mentioned state-bar financial agreements with the organized bar in order to recruit private lawyers willing to work in indigent defense. The issue was ultimately decided by the Supreme Court, but the Defensoria raised strong support from civil society organizations and put in place a very concerted strategy in order to win the Court case.

All in all, while consolidating the role of state agencies in providing access to justice and/or mobilizing the law, the Defensorias Publicas have (so far) developed a strong stance against corporatisms at the bar and the Ministerio Publico, as well as a strong connection with civil society groups and organizations that are supportive of more radical and aggressive practices. These characteristics will be on the basis of the way Defensorias collaborate, conflict, and negotiate with the other institutions that constitute the Brazilian legal and political landscape.
and, therefore, will help shape the structure of opportunities and constraints for the propagation of U.S.-inspired “public interest law” in this country.

6.2.2. Profession-based experiences

a. “Cause-based” and “charity-based” legal aid: Liberal lawyers; “traditional legal aid offices” at law schools; and “spontaneous” pro bono

The participation of individual lawyers in the provision of free-of-charge legal aid to the poor and disadvantaged has also been a relevant component of the Brazilian landscape on “access to justice” and “legal mobilization”. Such participation can take place on the basis of “causes” with which a professional resonates, or simply on the basis of “charity” – i.e. a professional’s desire to “help others” in the community. Except for the underlying motivation, which, for the purpose of this particular chapter is of lesser significance, both these kinds of legal aid activities share core structural features. In essence, they involve: (i) a “donation” of (a sometimes considerable amount of) time by lawyers, which, nonetheless, is not subject to much control or coordination by external actors or institutions such as pro bono managers in U.S. law firms95; (ii) a served clientele that is basically constituted of individuals; and (iii) employed methods of the more “traditional” kind96, i.e., direct legal representation before courts and administrative agencies.

95 The expression “spontaneous pro bono” is used in this section precisely to stress characteristics in the provision of free-of-charge legal services by the private bar in Brazil that make these services distinct from the U.S. (organized) model of “pro bono”. The advent of US-inspired “organized pro bono” in Brazil will be addressed in separate, due to the specific objectives of this chapter.

96 The distinction between “traditional” and “innovative” legal services is central in the debates and disputes about “access to justice” and “legal mobilization” in Brazil, as it will be discussed in more depth subsequently, when the experiences of “people’s lawyers” and student-led legal services to social movements get to be examined.
Vieira provides a series of examples of these “cause-based” legal aid activities. The author begins his narrative by distinguishing among three “waves” of lawyers who “made use of the law as an instrument of rights protection and social change” in the Brazilian history prior to the 1988 Constitution. The first two of these “waves” were constituted of “liberal lawyers”, often connected to broader socio-political forces such as the anti-slavery movement and the progressive sectors of the Catholic Church, who provided free legal assistance to individuals so as to “challenge the established order” or to protect clients’ Human Rights against authoritarian regimes (2009: 223-30). Some examples of these “liberal lawyers” providing “cause-based”, free-of-charge legal aid, according to Vieira’s article, are Luiz Gama (a former slave “who had received informal legal training”, “was fired from his job”, and “started to place advertisements in several newspapers announcing his activities as a pro bono solicitor in cases linked with the liberation of slaves” [2009, 224-5]); Ruy Barbosa (“a prominent figure of his time, not just as an advocate […], but also as a lawyer, politician and statesman who contributed to the establishment of the new constitutional order”; who “after leaving his [position as the Minister of Finance] began to use the courts, newspapers and his position as a Senator to promote the rights of dissidents, including those of his opponents”; and “also represented rural workers and women in their struggle for equal salary and labor conditions” [2009, 225-6]); and the “network of lawyers [that the Justice and Peace Commission of the Catholic Church] created all around Brazil, to defend, on a pro bono basis, the rights of political prisoners and their families”, including characters such as Dalmo Dallari, Jose Carlos Dias, Jose Gregori, and Fabio Konder Comparato (2009, 228-9).

However, these “cause-based” legal aid activities are not the only way through which the legal profession has participated in the “access to justice” and “legal mobilization” landscapes in
Brazil. In the everyday lives of firms and solo practitioners, thousands of lawyers have contributed with part of their time and resources in the provision of free legal representation to clients of low income, particularly in family law or small claims cases. And at the law school level, long before the legal curriculum required the provision of practical training, Brazilian law schools had established at least the so-called “traditional legal aid offices” as pedagogic devices through which law students supervised by licensed lawyers provided free legal advice and legal assistance to the indigent.

Although these forms of voluntary provision of legal aid belong to a longstanding tradition in Brazil, they have been seen as directly challenging laws and regulations recently enacted in this country in the corporatist interests of the bar. The federal statute that governs the legal profession, which dates from 1994, establishes that: “The lawyer must avoid the degradation of legal services fees by not setting these fees at values that are irrelevant or lower than the price list established by the bar, unless it is fully justifiable” (Federal statute # 8.906/1994, art. 41). The more lawyers and law schools try to institutionalize voluntary legal aid practices, the more they become targeted by the bar with threats of disciplinary action. In a small town in the state of Minas Gerais, the bar leadership required law schools to apply for a special “license”, in order to provide free legal advice and assistance through its “nuclei for legal practice”. The case was submitted (interestingly enough, by a representative of the Ministerio Publico).

97 The inclusion of law schools as part of the “professional arena” may sound controversial in Brazil. Unlike in the U.S., law degrees in Brazil are not professional degrees, but rather academic degrees. As such, Brazilian law degree programs are more similar to the European model, comprising an “extended-undergraduate course” of five years, which can be undertaken right after high school, and which provides law graduates with a very generalist education, instead of a specialized training. At the same time, a law school credential is absolutely necessary for someone to enter the legal profession, whether this means taking the bar exam or applying for a legal job in the public sector, such as at the Defensoria Publica or the Ministerio Publico.

98 After 1994, when a regulation of the legal curriculum was enacted by the Brazilian Ministry of Education, law schools were encouraged to establish “nuclei of legal practice”, which would differ from these “traditional legal aid offices” for being designed to provide “innovative” legal services, instead of these “traditional” ones.
Publico) to the Ministry of Education. The Ministry issued the Opinion CNE/CES n. 362/2011, asserting that such “nuclei for legal practice” have predominantly-educational purposes, which should not be subject to any kind of “corporatist intrusion”. In any event, there lies a clear-cut conflict in the relationship between the bar and lawyers and law schools that wish to engage more openly and systematically in the provision of free-of-charge legal services. Obviously, this will impact the institutionalization of U.S.-inspired organized pro bono in Brazilian law firms, as it will be discussed shortly.

b. State-bar financial agreements

Unlike the traditions of the previously addressed “cause-based” and “charity-based” forms of legal aid, which lie mostly in lawyers’ and students’ personal commitment and sense of responsibility regarding the indigent clientele, state-bar financial agreements represent an aggressive, corporatist strategy to put private lawyers at the heart of “access to justice” policies.\(^{99}\)

State-bar financial agreements were originally conceived as a way of ensuring the provision of legal services to the indigent in the lack of a Defensoria Publica’s office in the state of Sao Paulo, while also creating an alternative to the then-contentious judicial practice of compulsorily assigning lawyers to the defense of indigent litigants.\(^{100}\) These agreements operate as follows: the organized bar recruits lawyers who want to serve as appointed counsel to the indigent in the various state counties. State officers resort to the bar’s list when an individual claims that she does not have enough resources to pay for a lawyer’s fees and assign this individual’s case to a lawyer who is in the list. The state government pays for the fees of this

\(^{99}\) Especially when considered along with the bar’s resistance to the establishment and spreading of state-funded Defensorias Publicas.

\(^{100}\) For a beautiful chronicle of these agreements’ history, see Almeida (2006, pp. 92-106)
lawyer (monthly), according to the job that she has performed and on the basis of a price list previously set.

Members and supporters of the *Defensoria Publica*, as well as social movements’ leaderships have raised several issues against these agreements. As for the quality of representation, it has been argued that lawyers recruited by the organized bar not always meet a minimum standard of diligence and commitment to the cases. As for the economics of the agreements, it has been argued that they encompass an expensive solution, given that the state keeps paying for fees for as much as the lawsuit is taking place: this would stimulate assigned lawyers to adopt measures of debatable need, so as to postpone the resolution of the cases and, in the meantime, keep collecting legal fees. There have also been claims of corruption against the bar leadership with respect to the submission, to the state government, of undue or controversial proofs of service by recruited lawyers, although none of that has been proved so far.

It is unclear the extent to which agreements of this kind have been signed beyond the state of Sao Paulo\(^\text{101}\). Then again, considering just Sao Paulo, the figures involved in these agreements remain impressive. In the first semester of 2011 they involved about R$ 160 million (or US$ 80 million), a monthly average of about R$ 22 million (or US$ 11 million)\(^\text{102}\). The agreement celebrated for the year period that goes from July, 2011 to July, 2012 estimates the

\(^{101}\) A recent agreement of this kind was signed by the state of Goias. For general information about this agreement, see: [http://www.oabgo.org.br/oab/noticias/assistencia-judiciaria/10-08-2012-convenio-entre-a-oab-go-e-o-governo-do-estado-paga-dativos-e-aumenta](http://www.oabgo.org.br/oab/noticias/assistencia-judiciaria/10-08-2012-convenio-entre-a-oab-go-e-o-governo-do-estado-paga-dativos-e-aumenta)

expenditures in R$ 284 million (or US$ 142 million)\textsuperscript{103}. And the list of lawyers who can provide services under this agreement for the year of 2012 includes no less than 44,609 individuals\textsuperscript{104}.

Given the (slow, but continuous process of) strengthening of Defensorias Publicas all over Brazil, these agencies are coming to at least coordinate the provision of legal services to the indigent: although the agreements are still on the map of “access to justice” policies in Sao Paulo, it is the Defensoria Publica, now, who controls the budget available for these partnerships and, therefore, it can dictate the terms of contracts under which the recruited lawyers are going to work.

The latest move in this struggle about state-bar agreements in Sao Paulo was triggered by a Supreme Court decision, which released the Defensoria Publica in Sao Paulo from the obligation to reach private lawyers who want to provide legal assistance to the indigent exclusively through the organized bar, therefore breaking the bar’s monopoly over the supply side of the market in these state-bar agreements. Because of this decision, the Defensoria Publica will now be able to contract legal services directly from intended providers and, thus, have more control over these lawyers’ work and remuneration. The bar leadership was infuriated with this decision. Acting through state representative Campos Machado (PTB-SP), president of the “coalition of state representatives in favor of lawyers”, the bar sent a bill to the Sao Paulo state house seeking to transfer the control of the resources with which these lawyers are hired from the Defensoria Publica to another state agency, the State Secretary for Justice Affairs (or Secretaria de Justica e Cidadania). With this move, the bar leadership clearly intends to recover its

\textsuperscript{103} \url{http://www.defensoria.sp.gov.br/dpesp/repositorio/0/documentos/conv%C3%AAnios/antigo_conveniodpeoab.pdf} \textsuperscript{104} \url{http://www.defensoria.sp.gov.br/dpesp/advogados_homologados_2012.pdf}
influence over the decision on how these resources will be spent, hoping it will have more room for negotiation with state officers than it has had with the Defensoria Publica’s leadership.

6.2.3. Civil society-based experiences

a) Advocacia Popular (Lawyering for the people)\textsuperscript{105}

Although so-called advogados populares (or “People’s lawyers”) have been part of the legal profession landscape in Brazil for more than two decades and in 2001 one of them, Darcy Frigo, became the first Brazilian to receive the Robert F. Kennedy award for his work in defense of human rights\textsuperscript{106}, the history of this socio-professional segment remains largely unknown to the socio-legal community\textsuperscript{107}.

The scarce references available in the literature locate the emergence of the first advogados populares in the mid-1980s\textsuperscript{108}. In terms of the legal profession, this was a time when Brazil was going through a curious process of diversification, which became visible in various ideological fractures that took place not just within the private bar, but also in the judicial branch\textsuperscript{109}. To some extent, this was due to the restoration of basic civil liberties, which provided

\textsuperscript{105} This account is based on my own research with this population for the past ten years (see, for example, Sae Silva 2011a; 2011b), as well as on data kindly shared with me by Carlet (n.d.) and Almeida (n.d.)


\textsuperscript{107} Some exceptions, although mostly in Portuguese, are: Junqueira (2002), Gorsdorf (2005), Engelmann (2006), Luz (2008), Abrao & Torelly (2009; and Santos & Carlet (2010). For more general analyses about the “alternative legal services” that emerged in the 1980s and that have strong parallels with the work of advogados populares, see Thome (1984); Hurtado (1988); and Campilongo (1994).

\textsuperscript{108} In a recent study, also based on interviews with advogados populares, Carlet [n.d.] observed that some of these individuals tend to locate the origins of their activity long before, referring to characters such as Luiz Gama or Francisco Juliao as some of the first advogados populares. In all these narratives, there seems to be an attempt to expand the historical and political significance of a given experience, perhaps in order to strengthen a socio-professional identity. However, from an analytical standpoint advogados populares just cannot be localized before the 1970s if they are defined as: (i) an organized segment of the bar that; (ii) is linked to social movements; (iii) deliberately mobilizes legal and non-legal strategies; (iv) works with collective causes; and (v) acts both in a defensive fashion and by actively seeking to assert and expand rights.

\textsuperscript{109} Ruivo (1989) refers to this phenomenon by the provocative expression “professional conversion”.


lawyers and law schools with the opportunity to engage in unconstrained dialogue with the “critical scholarship” that was in vogue in Europe and even in Latin America. References to Barcelona’s “alternative law” and its Gramscian approach for the study of the legal system; to Mialle’s (1980) “critique du droit” and its classical Marxist approach for the study of the legal system; or to Warat’s linguistic approach and its focus on deconstructing the “theoretical common sense of jurists” (1995) became then very frequent, even in the legal mainstream. Regardless of the differences among these schools of thought and the many others that became influential by that time, they provided the new generations of lawyers with an important intellectual fuel with which they could reassess their understandings of the law.

In terms of politics, this was a time when Brazil was experiencing the decline of the military dictatorship and the emergence of a democratic socio-political order, which in itself improved the status of the law and legal institutions in broader schemes of governance. If in the military regime progressive legal action was officially limited to more discreet and subtle measures – such as the use of habeas corpus after the arrest of political activists so as to force the government to issue information about the conditions of the arrest, while, at the same time, formally acknowledging that it had the activists in custody –, in the context of democratic restoration lawyers were unleashed to exercise various forms of activism, within and outside the courts.

In addition, the country was witnessing the emergence of a variety of social movements protesting against inequalities inherent to the development model adopted by the military regime.

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110 For information on these three critical streams of scholarship, see, respectively, Arruda Júnior (1991; 1992); Mialle (1980); and Warat (1994, 1995). For a broader and also critical map of the so-called critical legal thought in Brazil after the 1970s, see Wolkmmer (2002).
and its main formula of “first make the pie grow, and then divide it”. In urban areas, these movements were claiming for more effective policies in sectors such as housing and transportation, as well as for new contours for labor relations and new channels for free expression, such as the right to “community broadcasting”. In rural areas, the main struggle was against the great landed estate, given its impacts not only to economic development, but also to the reproduction of schemes of power at the local level. The entry of so many of these “new characters” into the sociopolitical “scene”, as defined by Sader (1988), produced a well known legacy: in a few years, the labor movement would give rise to the workers’ party (PT), having the then-union leader Luis Inacio Lula da Silva as one of its figureheads. In rural areas, the mobilization towards land reform would lead to the constitution of an important movement, the Landless Workers’ Movement (MST).

Moreover, there was a growing perception among social actors and organizations (such as unions, political parties to the left, and the Catholic Church) that the law needed to be dealt with, instead of being rejected or denied as an instrument of plain “bourgeois oppression” – although there is still an enormous controversy over the terms in which citizens can deal with the law, as this chapter will address shortly. The most emblematic case of this adherence to the law, which, in fact, many people envision as a milestone in the emergence of *advocacia popular*, was the increasing presence of lawyers in the progressive branches of the Catholic Church, such as the *Pastoral Commission for Land Issues* and the *Justice and Peace Commission*.\(^{111}\) An *advogado*

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\(^{111}\) It is important to add the role of the student movement to this list, given its frequent mention in the interviews with lawyers between 30 and 35 years old. In fact, from the late 1980s to the early 1990s, the student movement was a venue where important discussions about the possible meanings of law students’ mobilization in a democratic context were held. A significant number of participants in these discussions argued that the new task for students was to support the struggles of social movements and to invest in activities of “extension”, that is, in activities that sought to enhance the interaction between law schools and the larger society. Accordingly, the idea of constituting “university-based” projects to provide “legal assistance to the people” became very strong in the National Meetings
popular interviewed by Carlet (n. d.) defines the “facts or demands that [had] contributed to the organization of this group [advogados populares]” in the following way:

I believe that the main factor motivating the organization of advogados populares was exactly the social struggle, the struggle of social movements. In the case of rural areas, for example, it was the struggle of poor workers for access to land possession. When [these workers] were victims of violence, such as murders, death threats, and evictions, they ended up looking for the Catholic Church and unions. So the demands were originally presented to the Church, where there was the CPT [Pastoral Commission for Land Issues], and these entities started seeking lawyers who had sensibility towards the issue in order to advocate on behalf of workers. I remember that, at that time, one of the first lawyers that came here, in 1982, was […], who by the way was murdered here in […]. He was the first lawyer working for the CPT here. Before him there was an advogado popular, which was […], he was a member of the [party] and advocated for workers in this region. He was murdered in 1987. Then we had […], also murdered, but now in 1989. So notice that there were these demands from social movements that were being victims of extremely violent acts. These demands were presented to organizations that were already doing some legal work and these organizations, understanding the need to defend the rights of the workers, hired lawyers through CPT itself or invited some lawyers to act in very specific situations, such as a hearing, a case, or a jury session, for example.

In this context, advogados populares have structured their work along four main lines, which are constitutive of what the literature considers an “innovative” approach to legal practice. First – and due to their historical linkage with social movements that, in urban and

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112 The distinction between “traditional” and “innovative” legal services was originally set forth by Thome (1984), Hurtado (1989), and Campilongo (1994) and has been highly influential ever since in the debates of the socio-legal community and even of the Brazilian legal profession. In Campilongo’s account, “traditional” legal services can be distinguished from “innovative” legal services on the basis of the interests they expect to serve (individual vs. collective); the underlying intent (paternalistic help vs. support for community organization); client role (apathy vs. participation); approach to law (sacred object vs. community resource); strategies (legal vs. extralegal); degree of mobilization (demobilizing vs. remobilizing); professional involvement (lawyers-only vs. multi-professional); kinds of demands (classical vs. of social impact); underlying ethics (utilitarian/individualistic vs. communitarian); and objective (legal certainty vs. substantive justice).
rural areas, were claiming for collective rights —, they tend to approach the cases that they take as expressions of structural patterns of oppression in capitalist societies. As an exponent of *advogados populares* has written, those who seek the services of these professionals “are very seldom alone. Overall, they are part of a broader community […] whose shared characteristic is to live in poverty, deprivation, or misery” (Alfonsin, 2005:84).

Second, and also due to their genetic linkage with social movements, *advogados populares* have had a very peculiar form of measuring success. Instead of looking for favorable outcomes in lawsuits, as one would naturally expect of a typical provider of legal services, they are more concerned with contributing to empower an ongoing social action. The consequences of this ideological trait are twofold. On one hand, *advogados populares* work eminently for those who are either already organized or in the process of getting organized in order to combat systemic injustices, such as:

Formal or informal organizations, social movements like the MST (Landless Workers’ Movement), the MMTR (Rural Women Workers’ Movement), the MPA (Movement of Small Farmers), the MAB (Movement of People Affected by Dams’ Constructions), MNLM (National Movement in Struggle for Housing), the CPT (Pastoral Commission for Land Issues), the CEBS (Christian Base Communities), the MTD (Unemployed Workers’ Movement), [as well as] Human Rights movements and commissions, urban and rural labor unions, pastoral groups, groups advocating against torture, racism, and illegal arrests, or in defense of children and adolescents, homosexuals, freedom of expression via community broadcast, among others (Alfonsin, 2005: 84).

On the other hand, *advogados populares* tend to ensure a significant role to “clients” in the handling of the cases. One of the interviewees in this research notes that

It is very common for [clients] to actively track and monitor the cases that they are involved in, whether these are cases about land possession, criminal lawsuits, and even lawsuits for land expropriation filed by the National Institute of
Colonization and Agrarian Reform (INCRA). These clients track the progress of court proceedings on the websites, go to the secretary of courts, they are increasingly taking charge of the judicial labyrinth.

In a more traditional fashion of legal practice, this would be seen as a factor of mistrust in the relationship between the client and the lawyer. In the case of *advogados populares*, it is another element in the “process of organizing [clients], which [lawyers] seek to strengthen” (Junqueira, 2002: 202). Even the term “client” is actually rejected by *advogados populares*. In an article coauthored with Santos (2010), Carlet – herself a former *advogada popular* – used the term “recipients” of legal services while referring to the social movements and groups that these professionals advocate for.

Third – and because *advogados populares* are fully aware of existing ideological fractures within the legal profession –, they tend to consider legal strategies as insufficient to produce the kind of structural changes they believe is necessary. This leads to both (i) a deliberate decision to associate *legal and extra-legal strategies* such as community legal education, direct action in coordination with other actors or institutions within the justice system and from the political realm, or network building along with other civil society organizations; and (ii) a vision of lawyering that emphasizes the *exploration of the contradictions of the legal system*, in that *advogados populares* differ from both the liberal positivism (which sees the legal system as a coherent and just body of norms) and from the orthodox Marxism (which sees the state and the official law as mere “business tools of the bourgeoisie.”)\(^\text{113}\)

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113 A classic example of how contradictions of the justice system can be used to back up social mobilization was the use of procedural arguments to invalidate preliminary injunctions in possessory lawsuits in rural or urban areas. The Brazilian Code of Civil Procedure requires that accurate information about the defendant be provided in any lawsuit. This was almost impossible in the cases where a farm or a building were occupied by many people, which normally were not familiar to the plaintiff. In the 1980s many lawyers started questioning injunctions issued generically
Finally, *advogados populares* try to reconcile social change with legal change. By exploring the contradictions of the justice system, they engage in the imagination of a new legal order. Speaking of the creation of the National Network of People’s Lawyers (RENAP), of which he was a protagonist, an interviewee in this research recalled when a group of people’s lawyers was assembled in a hotel in Sao Paulo and the movement’s founder, Plínio de Arruda Sampaio, asked: “Who writes the books of legal doctrine in this country?” When the other participants started to name the most influential authors, Sampaio interrupted and asked: “Which of these is a leftie?” Given the silence among the participants of the meeting, said the interviewee, Sampaio proposed: “See? It’s time for us to start writing our own textbooks.”

In fact, *advogados populares* have it clear that, beyond just “representing clients”, they are also paving the way for the emergence of another pattern of jurisprudence in the country—a pattern that really meets the needs of the “people”. No wonder that many of these professionals have been linked to socio-legal movements that seek to study a law that is “insurgent” (Pressburger, 1990) or that can be “found on the streets” (Sousa Jr., 1987; 2002a; 2002b; s.d.)\(^\text{114}\).

In fact, *advocacia popular* has always sought to be an inherently intellectualized activity. *Advogados populares* attend post-graduate courses, write papers and books\(^\text{115}\), and publish newspaper opinion editorials. Through these efforts, they seek to improve their arguments and

\(^\text{114}\) The expression “the law found on the street” relates to an academic movement rooted at the University of Brasilia and led by José Geraldo de Sousa Júnior. “The law found on the street” wishes to capture visions of legality that underlie the actions of social movements and to translate these visions in legal categories that can help structure new patterns of social organization, so that “the law becomes able to express the legitimate principles for the social organization of freedoms” (Sousa Jr., [S.l.:s.n]).

\(^\text{115}\) See, for instance, Strozake (2002) and the various issues of *Cadernos RENAP*. 

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Against “the occupants”. As there were no precedents deeming such occupations legal, lawyers knew that at some point the injunction would be issued. Nonetheless, they used the law to gain more time, so that the movement could discuss what steps it would take, as well as negotiate with political authorities or call the media attention so as to guarantee that the eviction would take place without the use of police violence.
influence the legal agenda\textsuperscript{116}. Sometimes they are successful. For example, Santos & Carlet remind the case of the Primavera Farm, where \textit{advogados populares} made the argument that the human rights of the landless ought to prevail over property rights of farmers (2009: 14). In deciding an appeal against a lower-court decision that granted preliminary injunction in a lawsuit seeking land repossession, the Rio Grande do Sul State Supreme Court Judge G. Spode agreed with this argument and ruled that “the material damage that the invasion will certainly cause” should not trump “fundamental rights or the denial of the minimum social conditions to 600 landless families who, being evicted from here, have literally nowhere to go”\textsuperscript{117}.

Table 18 below summarizes the main characteristics of \textit{advocacia popular}: as a socio-professional practice\textsuperscript{118}.

\textsuperscript{116} More recently, this characteristic of \textit{advogados populares} has been severely undermined by the lack of resources and the difficulties that they face to celebrate financial agreements with public or private institutions in order to raise funds for their courses and publications.

\textsuperscript{117} State Supreme Court of Rio Grande do Sul, AI # 598360402 (XIX Civil Chamber). Decision issued in 06 Oct 1998, with Judge G. Spode writing for the majority.

\textsuperscript{118} This is all consistent with Almeida’s notes (Almeida, 2010), which had been taken about 10 years ago.
Table 18: Contextual and ideological assumptions; meanings of action; and advocacy methods in the everyday work of *advogados populares*

<table>
<thead>
<tr>
<th>Contextual and ideological assumptions</th>
<th>Meanings of action</th>
<th>Advocacy method</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Intensification of conflicts over collective goods and services;</td>
<td>- Empowerment of ongoing social action</td>
<td>- Emphasis on the collective aspect of conflicts;</td>
</tr>
<tr>
<td>- Emergence of social movements;</td>
<td></td>
<td>- Selection of the “clientele” that favors groups that are either organized or in the process of getting organized;</td>
</tr>
<tr>
<td>- Investment in the law by some organizations and social movements</td>
<td></td>
<td>- Combined use of legal and extra-legal strategies</td>
</tr>
<tr>
<td>- Diversification of the legal thought and the legal profession</td>
<td>- Change of the legal system</td>
<td>- Creative exploration of the contradictions of the system;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Imagination of a new legal order.</td>
</tr>
</tbody>
</table>

But regardless of the historical importance of *advogados populares* in the democratic restoration and the consolidation of the “rule of law” in Brazil, their most recent times have been somewhat daunting.
The challenge to *advocacia popular* is twofold. For one, *advogados populares* are facing a *challenge of sustainability*. Traditional social movements, which have been the basis for the activism of *advogados populares*, are in a much weaker position than they were in the late 1970s and early 1980s. This has also affected their ability to form, recruit, and retain lawyers. For another, *advogados populares* are facing a *challenge of identity*. As previously mentioned, the Brazilian 1988 Constitution incorporated a great deal of rights and egalitarian principles and the post-constitutional order welcomed a series of International Human Rights covenants. In contrast with the longstanding view that the law is no more than a “contradictory order” and that these “contradictions” can at best be “explored” through concerted legal and political action, there has grown a view among some *advogados populares* (especially the youngest ones) that such rich body of rights and principles is good enough for the interests of “the people”. From an interpretive perspective for the analysis of institutional propagation, this is a very important change, because it helps reduce the (vernacular) gap that lies between indigenous and foreign approaches to legal mobilization (professional versus political, traditional versus innovative, so on and so forth). As such, the younger generations of *advogados populares*, socialized in the

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119 The reasons for this drawback are still unclear, but at least four hypotheses circulate in the public debates: (i) as Brazil experiences a fast process of economic development and social inclusion after 2003, some of the claims that had animated social movements in the 1980s were, at least to some extent, already addressed; (ii) social movements were co-opted by partisan politics, especially after the subsequent elections of the left-wing Workers’ Party for the federal government; (iii) social movements lost their main sources of funding and were subject to a harsh process of “criminalization” by state agencies (including, by the way, the criminal prosecution sectors of the *Ministerio Público*); and (iv) the political power of social movements has decreased after the emergence of “new forms” of political participation, such as internet mobilization.

120 One example of both the backlash against social movements and the challenges they face to raise new generations of *advogados populares* was the MST partnership with the Federal University of Goias School of Law, counting on further support from the Ministry of Agrarian Development (MDA) and the National Institute for Colonization and Agrarian Reform (INCRA). This partnership was geared towards providing legal training to a special cohort made exclusively of youngsters linked to the MST. The initiative was attacked by the *Ministerio Público* on the grounds that this kind of “affirmative action” was unconstitutional. After years of litigation, the cohort graduated this August, 2012, weeks before the case was dismissed by the Court of Appeals. Nonetheless, the painful and costly process obviously discouraged similar initiatives by other movements and/or law schools.
post-Constitutional order, can end up serving as bridges between indigenous traditions of legal mobilization and the U.S.-inspired tradition of “public interest law”. The context and the conditions for this somewhat serendipitous operation and the consequences that it may have for the debates on the “globalization of public interest law” will be discussed in section 5.3 and the conclusion.

b) **Student-led legal services to communities: **Assessorias Juridicas Populares Universitarias (AJUPs)

Besides (and to some extent against) the model of “traditional legal aid offices” in law schools, organized law students have set “innovative” student-led legal services to communities and social movements, widely known as Assessorias Juridicas Populares Universitarias – AJUPs.

AJUP participants tend to locate the origins of these institutions in student initiatives from the 1950s-1960s (particularly the service models established at the Federal University of Rio Grande do Sul School of Law [SAJU-RS, which dates from 1950] and the Federal University of Bahia School of Law [SAJU-BA, which dates from 1963]), with the twofold purposes of providing legal aid to the poor and providing legal training to students. However, there is evidence that the current configuration of AJUPs was put in place only in the mid-1980s and early-1990s, in the same context that made advocacia popular take off: the restoration of civil liberties, the diversification of the legal profession, and the emergence of social protests and movements in urban and rural areas. Students and some helping teachers drew inspiration from

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121 SAJU-RS and SAJU-BA are frequently referred to as both the first and the most prosperous student-led legal services offices of that period and were both shut down during the military regime (1964-early 1980s). In the mid-1980s/early-1990s a new generation of students reopened these SAJUs and transformed them into not-for-profit organizations.
this context and the liberating educational philosophy by Paulo Freire (1969 and 1975), whose visions of “education as a practice of freedom” and of “academic extension as communication” were very much in sync with the call for “innovative” legal services. Hence, AJUP groups were reestablished as vehicles for both social change and change in the Brazilian legal education.\footnote{While in education for domestication one cannot speak of a knowable object but only of knowledge which is complete, which the educator possesses and transfers to the educatee, in education for liberation there is no complete knowledge possessed by the educator, but a knowable object which mediates educator and educatee as subjects in the knowing process. Dialogue is established as the seal of the epistemological relationship between subjects in the knowing process. There is not an ‘I think’ which transfers its thought, but rather a ‘we think’ which makes possible the existence of an ‘I think’. The educator is not he who knows, but he who knows how little he knows, and because of this seeks to know more, together with the educatee, who in turn knows that starting from his little knowledge he can come to know more. Here there is no split between knowing and doing; there is no room for the separate existence of a world of those who know, and world for those who work” (Freire, 1972:180).}

The cultural practice of AJUPs has been effectively disseminated through annual student meetings and a nationally-established network, the RENAJU. AJUP activities and areas of practice can vary along a wide range of possibilities, but AJUPs tend to share some core structural features.\footnote{These features were drawn from the comprehensive accounts by Luz (2006; 2008); Abrao & Torelly (2009); Ribas (2008a; 2008b; 2009); and Cunha & Miola (2009)}

AJUPs tend to reject the “traditional” models that take place in the previously addressed “legal aid offices”. As such, AJUPs normally favor groups, communities, or even social movements instead of single individuals; and focus on what they see as structural issues affecting such collectivities, rather than on issues of significance strict to individuals. Likewise, AJUPs tend to emphasize non-legal and extra-legal activities, instead of direct services before courts and administrative agencies. Housing, labor rights, and women’s rights are themes frequently explored by AJUP groups through this “innovative” approach.

The preferred methods in AJUPs include “community education” and “political mobilization”, sometimes on the basis of unorthodox techniques such as Augusto Boal’s Theater.
of the Oppressed\textsuperscript{124} or similar strategies to involve community participation. Generally, AJUP groups are also open to students from other undergraduate courses as well, thus constituting an interdisciplinary venue for legal mobilization. Beyond the law school borders, AJUP groups can interact positively with all the sectors of the “access to justice” and “legal mobilization” systems that are willing to share their very style of practice, including the \textit{advogados populares}, \textit{Defensorias Publicas}, some sectors of the \textit{Ministerio Publico}, and some NGOs; while excluding all the variations of “traditional” and “patronizing” legal aid lawyers.

AJUP groups serve as venues not only for practical training to law students, but also for university research and extension. This means that, much like the \textit{advogados populares}, AJUP groups see themselves also as producers of an “innovative” and perhaps “alternative” knowledge about the law, which both addresses the structural needs of the community and is instilled with the community’s perspectives and aspirations. Several students who participate in AJUP groups end up working as law professors and participating in socio-legal movements such as the mentioned “the law found on the streets”\textsuperscript{125}.

\textsuperscript{124} The Theater of the Oppressed, established in the early 1970s by Brazilian director and Workers’ Party (PT) activist Augusto Boal, is a participatory theater that fosters democratic and cooperative forms of interaction among participants. Theater is emphasized not as a spectacle but rather as a language accessible to all. More specifically, it is a rehearsal theater designed for people who want to learn ways of fighting back against oppression in their daily lives. In what Boal calls ‘Forum Theater,’ for example, the actors begin with a dramatic situation from everyday life and try to find solutions—parents trying to help a child on drugs, a neighbor who is being evicted from his home, and individual confronting racial or gender discrimination, or simply a student in a new community who is shy and has difficulty making friends. Audience members are urged to intervene by stopping the action, coming on stage to replace actors, and enacting their own ideas. Bridging the separation between actor (the one who acts) and spectator (the one who observes but is not permitted to intervene in the theatrical situation), the Theater of the Oppressed is practiced by "spect-actors" who have the opportunity to both act and observe, and who engage in self-empowering processes of dialogue that help foster critical thinking. The theatrical act is thus experienced as conscious intervention, as a rehearsal for social action rooted in a collective analysis of shared problems” (Augusto Boal and the Theater of the Oppressed. The Brecht Forum. Electronically available at: \url{http://brechtforum.org/abouttop}.

\textsuperscript{125} The reconversion of these students to \textit{advocacia popular} was also very common, but it has been hindered by the same factors hindering \textit{advocacia popular} in itself.
The main role of AJUP groups in the Brazilian context of “access to justice” and “legal mobilization” seems to be one of helping reproduce the practices and ideologies that have been enunciated as typical of “innovative” legal services. In this way, AJUP groups are engaged in a more “symbolic” dispute, one that relates to what it means to provide legitimate legal assistance to the poor and disadvantaged, on the basis of a very much indigenous tradition and counter-hegemonic perspective.

6.3. Recently-institutionalized and foreign-inspired experiences of “access to justice” and “legal mobilization” in Brazil: organized pro bono, law school clinics, and litigation-oriented NGOs

For both didactic and analytic purposes, this section separately addresses three other experiences of “access to justice” and “legal mobilization” in Brazil: organized pro bono, law school clinics, and litigation-oriented NGOs work. These experiences share three common characteristics. First, they only came to be more strongly institutionalized in Brazil more recently, say, after the 2000s. Second, each of them bears at least some degree of influence of the U.S. “public interest law” tradition. Third, the conduits for such influence are similar to the ones observed in the larger Latin American region and to what the available literature had already been suggestive of. By and large, this influence takes place through the provision of funding, technical assistance, and advanced training of legal professionals by U.S. institutions or, broadly speaking, through the circulation of people, resources, and ideas. Because of such characteristics, these experiences become of particular interest to this dissertation. Their close examination can both: (i) reveal the circumstances for the propagation of U.S.-based practices
and ideologies in the Brazilian legal professional landscape; and (ii) establish the basis for a further comparison with what happens in the larger Latin American region.

a) Litigation-oriented NGOs

Litigation-oriented NGOs use court-based strategies and invoke constitutional principles and International Human Rights covenants in search to benefit groups, communities, or social movements. While addressing the experience of Artigo 1.º, a project by one of these NGOs based in Sao Paulo, Vieira provides a good example of the way these organizations operate

As per his narrative: “The team has broad discretion in selecting cases. [However,] the chief criterion is that the case offers an opportunity to produce decisions that can alter institutional practices that violate rights and generate public policies conducive to promoting the human rights of vulnerable groups.” Also, “Artigo 1.º works in close collaboration with community and grass roots organizations that represent the rights of vulnerable groups”, as well as “with the Defensoria Publica, the Ministerio Publico [and] the pro bono community in order to increase the reach of its activities”. Finally, “although Artigo 1.º uses both domestic and international human rights mechanisms, its main objective is to challenge domestic institutions to implement both the new framework of rights that resulted from the 1988 Constitution as well as the international treaties ratified by the Brazilian Government” (2008:248-9, emphasis added)

126 The main area of focus of Artigo 1.º is violence perpetrated by state officials. Project members have filed lawsuits against the administration of adolescent custody facilities and taken measures so that possible arbitrary executions by the police were properly investigated. Artigo 1.º is actually an initiative of Human Rights NGO Conectas Direitos Humanos’ programme. According a first-hand account by Vieira, who was behind the establishment of Conectas, this NGO’s founders “understood human rights infrastructure to mean stronger civil society organizations, sustainable sources of funding, and independent human rights thinking and information”. Accordingly, Conectas’ mission is “to promote human rights in the global South by strengthening the capacity of local organizations to work internationally, and by exploring legal means to protect human rights both in local and international spheres”(2008: 247-8).
Overall, these litigation-oriented NGOs have attracted lawyers from both the progressive legal elite and advocacia popular (and its academic basis, AJUP groups). These moves are consistent with changes in the civil society taking place both worldwide and domestically. Internationally, the professionalization of civil society (well examined by Bosso [2005]) and the successive “rule of law” campaigns (Dezalay & Garth, 2002) may have made law reform NGOs appear to donors as the most “rational” institutions to invest and encourage in order to promote “good governance” overseas. Domestically, lack of funds and the criminalization of social movement activities have made the NGO sector a more promising alternative for advogados populares and graduates with history in AJUP groups to sustain their practices.

However, as previously noticed, in each and all of the groups that have “invested” in litigation-oriented NGOs in Brazil (but especially among advogados populares) there has been a central divide about the role that law and lawyers ought to play in bringing about actual change. Besides a longstanding view that the law is “contradictory” order and that these “contradictions” can at best be “explored” through concerted legal and political action, there has grown a view that “the new framework of rights that resulted from the 1988 Constitution as well as the international treaties ratified by the Brazilian Government” (Vieira, 2008: 248-9) are good enough for the interests of “the people”, as some say, or of “vulnerable groups”, as others say. In this vein, the actual problem is in “[other] institutions,” which that (inherently just) body of laws should be invoked to challenge127.

127 Perhaps this is also a reason for the emphasis on litigation, which offers a good basis for the combination of all the coexisting claims about legal mobilization: the claim for a radical, political, and community-oriented kind of practice, on one hand; but also the claim for a technical, legal, and professional kind of practice, on the other hand.
The most comprehensive inventory available about the work of these litigation-oriented NGOs (a collection of essays produced in 2010 by the NGO Terra de Direitos [Rights’ Land], with support from the Ford Foundation), is illustrative of this divide. From its very title (Justice and Human Rights: Experiences of Assessoria Juridica Popular) the book is revealing of the coexisting positions about the law in the NGOs realm. For one thing, it is a book about Justice and Human Rights, i.e. the favorable institutional context for legal mobilization. For another, it is a book about Assessoria Juridica Popular or advocacia popular, i.e. a “style”, “kind”, or “sector” of legal practice that was institutionalized in Brazil precisely under the view that the institutional context was unfavorable.

The articles throughout the book further clarify the coexisting perspectives. The first one examines the (still incipient) presence of NGO-litigation in the environmental arena (Leitao & Araujo, 2010). Although making a more generic assessment of this issue (instead of addressing specific cases or experiences, as in other articles of the same book), the authors frequently resemble the most conventional accounts of advogados populares. For instance, at some point of their narrative, they assert that:

Many times, the lawsuit is a means to a concrete end, such as, for example, cancelling a public hearing prior to the issuing of an environmental license in a development project, simply because the public hearing was not organized in accord with the law. Once a decision cancelling the hearing was issued, the social movements were able to better organize themselves so as to participate in the debate… It also happened that, once the hearing was cancelled, the project lost priority in the government agenda, being replaced by another one …All of this also means that a lawsuit, contrary to what may appear, is not a son that one needs to take care of forever. Depending on the situation, it can have a very fast cycle of existence; when it produces the desired outcomes or when it becomes clear that it will not produce these outcomes, the cycle can be closed (Leitao & Araujo, 2010: 23)
In other words, neither the authors take the right to participation for granted (despite it has been inscribed on-the-books), nor they expect to achieve this right through adjudication. The interplay of law, policy, and politics appears as considerably intricate.

A few pages ahead, however, lawyers working for the right to education at NGO Ação Educativa seem to approach the issue from a somewhat different perspective (Rizzi & Ximenes, 2010). The article details NGO’s agenda as follows:

Beyond doing continuous work before administrative agencies, the [NGO’s justice program] filed lawsuits in defense of the right to education… in connection with other organizations, forums, and, to the extent that it was possible, with the Ministerio Publico and the Defensoria Publica. In addition, [the justice program] is participating in the constitutional debates taking place at the Supreme Court, acting as amicus curiae in cases of judicial review that address the human right to education… Whether filing lawsuits or collaborating in pending cases, [the program] prioritizes cases that have collective or paradigmatic characteristics, in which, besides the interests of the individuals directly involved, legal arguments that relate to the right to education and that can help expand it are also under debate (2010: 106, emphasis added).

Subsequently, the article reports that, facing a scenario of “high exclusion” of low income families from the public pre-school system and “the stagnation in the actions of the Ministerio Publico – which had played an important role in changing jurisprudence in this area in Sao Paulo” (Rizzi & Ximenes, 2010:113), Ação Educativa decided to assist other civil society organizations in the construction of a litigation strategy128.

The chronicle about the way this strategy was constructed and implemented is beautiful and well-written in the article. However, the final considerations are more important to this

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128 The article also makes abundant use of the term “strategic litigation”, which shows at least some level of discursive connection between the Brazilian the L.A. traditions of legal mobilization, although, in Brazil, lawyers generally do not say that their work is “in the public interest”.
dissertation. While assessing in more depth the significance of their work, authors end up raising the following question:

Can this structural change [increase in the size and coverage of the public pre-school system] be achieved only through the judiciary? Not really. But can the change be achieved without any pressure through the judiciary? Not really either… The judiciary is of strategic importance in this symbolic dispute; it is an ambiance in which rights are discussed. If the judiciary [accepts the case], this means there is a right that can be claimed before the Executive branch for everyone. This perception of pre-school education as a right makes claims before the “political” sectors of the government stronger (2010:125)

As such, the passage inevitably suggests the existence of a “mythical” view of rights in the ideology of some of these NGO lawyers. Litigation is seen as a means to “evolve a declaration of rights from courts”; “it can, further, be used to assure the realization of these rights”; and “that realization is [seen as] tantamount to meaningful change” (Scheingold, 2004: 05).

The risks associated with this “myth of rights” are well-rehearsed in the literature\textsuperscript{129}. The ultimate question is whether litigation-oriented NGOs lawyers are to “lead the movement with the law” (Levitsky, 2006) or to act as “policy entrepreneurs” (Barnes, 2007: 39)\textsuperscript{130}, thus departing from the more indigenous tradition of *advocacia popular* and innovative legal

\textsuperscript{129} As proficiently summarized by Marshall, law and society and social movements scholars have constantly “argued that litigation [is] an inherently conservative strategy, dominated by elites who were reluctant to engage in disruptive tactics. As a result, movements that chose to pursue litigation [will] probably suffer from demobilization as the masses lost opportunities to participate. In addition, the outcomes [will] always be incremental and ultimately inadequate to make structural changes needed to remedy inequality”. Yet, Marshall mentions other strands of scholarship, which develop a more nuanced account of the relationship between lawyers and social movements, such as McCann’s “path breaking” book *Rights at Work* (1994), which specified the ways that social movements rely on litigation campaigns to attract activists into a movement (2005: 06).

\textsuperscript{130} Notice this policy entrepreneurship, for example, when *Ação Educativa* reports publishing “the Newsletter OPA (Opportunities and Possibilities in Access to Justice – Information for the Right to Education), with information about the right to education and the legislation, court jurisprudence, initiatives for defense [of this right] and opportunities for furthering [it]” (2010: 106).
services. An illustrative example is, once again, in the *Justice and Human Rights* book (Terra de Direitos, 2010). In an article that discusses the redrafting of the Sao Paulo urban development plan, in which local government was said to be acting with a bias towards corporate and private interests, Saule Jr. et al stress on the role of two civil society organizations in bringing about class action lawsuits to challenge the redrafting process: the *Instituto Polis* and the *Movimento Defenda Sao Paulo*. The course of the lawsuits was tortuous and ultimately … Frustrating, to the extent that the preliminary injunctions in favor of plenty citizen participation in the redrafting of the urban development plan, as granted by judges, were dismissed by the Court of Appeals. [However, authors maintain], *the lawsuits fostered civil society mobilization* with respect to that [policy making] process. Such mobilization led to some changes in the way the Executive and the City House were acting. And, *amidst the discussions and claims for increased citizen participation in the redrafting of the urban development plan, a “Coalition in Defense of a Strategic Urban Development Plan” was established, gathering 180 Sao Paulo organizations in the struggle for a democratic and socially-oriented urban development plan and, therefore, for a more friendly city* (Saule Jr. et al, 2010: 141, emphasis added)

In other words, this story reveals that only after the *Instituto Polis* and the *Movimento Defenda Sao Paulo* (this latter being a very elite organization, by the way) brought about their lawsuits, a broad-based movement “for a democratic and socially-oriented urban development plan and, therefore, for a more friendly city” (Saule Jr. et al, 2010: 141) was established. Lawyers and the legal process were, yet again, catalysts of social mobilization (Bosworth, 2001),

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131 *Ação Educativa* lawyers (and possibly other NGOs) fully acknowledge this. For instance, when I was talking to an *Ação Educativa* lawyer who had introduced herself in a meeting as an *advogada popular* about what I saw as differences between her work and the more classical tradition of *advogados populares*, she replied: “I guess you are right when you challenge me for using *advogada popular* to designate my work. As we were working in this lawsuit, several times we asked ourselves whether there was a social movement at all that we were advocating for. Although students, their families, and other civil society groups and organizations were generally excited about the lawsuit, they were somewhat atomized” (A female lawyer in her early 30s who undertakes litigation for educational rights. Personal ethnographic interview, notes on file with the author).
but in a way that departs from the tradition of *advocacia popular* and the innovative legal services with which the book is supposedly associated\(^{132}\).

All that being said, it is worth discussing the way that litigation-oriented NGOs relate to the so-called “globalization of public interest law”, as compared to other cases examined through this dissertation. In many ways, the emergence of litigation-oriented NGOs in Brazil follows the general script of cross-national institutional propagation. While the advent of a new legal order has stimulated the emergence of these NGOs, Ford Foundation provides them with much support and several of their members have acquired educational credentials and work experience in U.S.-based institutions: Vieira (a member of the progressive legal elite and a figurehead in the NGO sector in Brazil) holds a LL.M. from Columbia; Denise Dora (an *advogada popular* who created *Themis*, an NGO that focuses on women’s rights and has also done litigation work) later became representative of the Ford Foundation in Brazil; and even younger generations such as Instituto *Polis*’ lawyer Julia M. Neiva have circulated across the Brazil/U.S. borders\(^{133}\). Yet, none of this is sufficient to make the NGOs widely use the label “public interest law” to name their practices, as others have done in the larger Latin American context\(^{134}\).

\(^{132}\) As in the case of *Ação Educativa*, this is not necessarily a “fault” of Saule Jr. and his team. It may well be that this more independent form of lawyers’ participation relates to the kinds of “causes” or organizational characteristics of the social movements they have dealt with. Or (in Durkheim’s term) this may well be the kind of “normal” relationship to expect between lawyers and social movements in Brazil, as the country’s democracy gets more mature and even the most radical legal activists get more “domesticated”.

\(^{133}\) “Julia worked at the Human Rights Clinics at Columbia Law School-NY, at the Center for Reproductive Rights, at the Global Affirmative Action Praxis Project – Brazil, and has served as a consultant to several international organizations. She is a law graduate from PUC-SP, specialist in Human Rights from the University of Sao Paulo School of Law, and human rights fellow at Columbia University School of Law-NY”. Polis’ website, electronically available at: [http://www.polis.org.br/equipe-polis/julia-mello-neiva](http://www.polis.org.br/equipe-polis/julia-mello-neiva)

\(^{134}\) The most recent “carrier” of the label and of ideas about “public interest law” in Brazil seems to be Evorah Lusci Cardoso, a recently graduated PhD from the University of Sao Paulo School of Law, who did fieldwork in Latin America and was in contact with several “public interest law” organizations in the region. Evorah works now at the Brazilian Center for Analysis and Planning – CEBRAP and, in that capacity, submitted a research project to the Ministry of Justice, which, in 2012, was funding studies on *advocacia popular*. Her project reassesses *advocacia*
At the same time, the process that accounts for the formation of the litigation-oriented NGOs sector includes sources of “capital” based not just in U.S. (Vieira, Dora, Neiva). Lawyers and collaborators of litigation-oriented NGOs in Brazil have intensely interacted with parallel experiences in Latin America and the “global south”\textsuperscript{135}, as well as with “imagined cosmopolitan communities” engaged in debating whether and how “the law can be emancipatory” (Santos, 2006), such as the World Social Forum\textsuperscript{136}. These interactions and all that Brazilian lawyers can take to and get from them certainly contribute to shape their practices and to produce similarities or differences among the Brazilian and other foreign traditions of “access to justice”, “legal mobilization”, and, eventually, “public interest law”. All these characteristics will have important consequences for a reassessment of the “globalization of public interest law”, as section 5.3 and the conclusion are to discuss.

b) Organized pro bono

\textit{popular} in view of what she sees as the emergence of a “public interest law” sector in Brazil comprising not just social movements but also litigation-oriented NGOs, and one of her main questions was whether and how this emerging sector has been able to cooperate with state agencies such as the Ministerio Publico and the Defensorias Publicas. The project was approved precisely because the Ministry of Justice saw the use of the “public interest law” label as a “conceptual innovation”. It will be interesting to follow this project to check if it will somehow catalyze the emergence of an actual “kind”, “style”, or “sector” of legal practice that will recognize itself as one that works in or for the “public interest” amidst the complexities of the “access to justice” and “legal mobilization” fields in Brazil as reported in this chapter.

\textsuperscript{135} Consider, for example, Conectas’ global South program, which has “invested in mobilization and capacity-building exchange programs. Through its annual human rights colloquium, Conectas has directly affected more than six hundred young advocates, from more than fifty developing countries. Through its academic initiative, SUR, it formed a network of researchers and human rights professors across the global South, which publishes the SUR Journal, which circulates in more than one hundred countries” (Vieira, 2008: 248).

\textsuperscript{136} The mention to Santos and the World Social Forum is essential in this section. Santos is one of the most influential characters in the litigation-oriented NGO sector in Brazil, having written the Preface of the book edited by Terra de Direitos (2010) and being one of the most cited authors in these lawyers’ academic and even professional works. Likewise, lawyers and collaborators of the NGO sector such Jacques Alfonsin, Darcy Frigo, and Jose Geraldo de Sousa Junior are some of the most active participants of the World Social Forum and the network articulated by Santos. None of these lawyers has U.S. credentials, but all of them find ways to reproduce their social, political, and professional capital along parallel and in many ways “counter-hegemonic” arenas. As such, they have been able to keep influencing the development of the Brazilian “access to justice” and “legal mobilization” camps in ways that are conducive to further divergence from U.S. canons.
In the late-1990s and early-2000s, Conectas Direitos Humanos organized a series of activities in Sao Paulo to address the social responsibility of the private bar and the U.S. experience of organized pro bono. These activities featured former CEO of the U.S. NGO Public Counsel Daniel Grunfeld and Columbia University law professor Ellen P. Chapnik. Following these activities, several of the participant lawyers came together to establish the Instituto Pro Bono (Pro Bono Institute) in Sao Paulo. The Instituto Pro Bono was thought of as both a clearing house for pro bono cases and as an emulator of organized pro bono work, much like parallel experiences in the larger Latin America. Both the activities preceding the launching of the Instituto and the activities undertook by the Instituto in its first years were supported by Ford Foundation grants.

Writing as both a scholar and as one of the figureheads behind the launching of the Instituto Pro Bono in Sao Paulo, Vieira mentions some contextual factors in the late-1990s and early-2000s, which might have favored the institutionalization of organized pro bono in Brazil. As per his analyses, economic liberalization taking place in the 1990s made the Brazilian market increasingly attractive for foreign investors and created the demand for high-quality corporate legal services. This led to more intense exchanges between Brazilian law firms and clients and personnel from U.S.-based law firms, which made Brazilian corporate lawyers and law firms

137 In both Grunfeld’s and Chapnick’s biographies (available at: [http://www.kayescholer.com/professionals/grunfeld_dan](http://www.kayescholer.com/professionals/grunfeld_dan) and [http://www.law.columbia.edu/fac/Ellen_Chapnick](http://www.law.columbia.edu/fac/Ellen_Chapnick)) the circulation between law firm and public service jobs that is constitutive of the elite of the U.S. legal profession (Dezalay & Garth, 2011) is very much clear. The Brazilian legal profession does not have this same characteristic. Most of the lawyers who take positions in the government work in the small firm or solo practitioner fashions, making “commitment to public service” a “personal”, rather than an “institutional” attribute. As “texts travel without contexts” (Bourdieu, 2000), it has taken a lot of effort for the Instituto Pro Bono to sensitize lawyers from bigger law firms to donate their time to pro bono work. Although I did not have access to numbers of pro bono work by lawyers by law firms, my interviews with the staff of the Instituto Pro Bono revealed that there are few big law firms that are more strongly committed to providing pro bono work.
aware of the existence and importance of pro bono. Vieira also stresses on the “influence of a new generation of Brazilian law students that started to be trained in American universities” (2008: 257).

As important as these contextual factors, however, seems to be the actual profiles of the actors, i.e. the lawyers who gathered to back up the launching of the Instituto Pro Bono. Three basic biographies (and, consequently, interests) were present in this group. First, it encompassed what one can call the progressive legal elite of Sao Paulo, i.e. lawyers who hold liberal values; who either inherited or acquired a great deal of capital through working in the state, the profession, or society; and who ultimately became very prominent in their careers. Second, it encompassed lawyers who were more or less familiar with the U.S. social, legal, professional, and academic tradition of “public interest law” and pro bono work. Finally, it encompassed lawyers from elite corporate firms who wanted to espouse “good practices” from the U.S. legal landscape, in order to improve their capacity to attract U.S. based clientele that might end up doing business in Brazil, such as multinationals and foreign investors. These elite corporate firms from Sao Paulo had started to act in a more coordinated fashion as they established a think tank, the Centro de Estudos de Sociedades de Advogados (CESA), or Center for Studies on Law Firms as it can be translated. “CESA is these lawyers’ academic branch. With the Instituto Pro Bono, they envisioned the chance of having a social branch as well,” defined a specialist on the Brazilian legal profession that was interviewed in this research.

Perhaps mentions to some of the founders of the Instituto Pro Bono helps reveal its socio-political backgrounds. Vieira himself is a lawyer whose biography may be instructive. His father

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138 Interviews with former lawyers from some of these elite corporate law firms
was close to Alberto Franco Montoro, a relatively progressive politician and former Sao Paulo state governor. In the building of his career, Vieira combined an excellent legal training at the Pontifical Catholic University of Sao Paulo School of Law (which also gathered a cadre of progressive jurists at the time) with advanced studies in political issues, holding a Masters’ [1991] and a PhD [1998] in political science from the University of Sao Paulo. “That is where I learned that the end of the military regime would not necessarily be the beginning of democracy and the rule of law in Brazil,” he said once to a journalist. “I read the classics in political science, got involved with critical thinking, and dug deep into the Brazilian political thought”\textsuperscript{139}. Vieira also completed an LL.M. degree (1995) at Columbia University School of Law, where he established a strong relationship with members of the U.S.-based “public interest law” community, including representatives of the Ford Foundation and the Open Society Institute. “At that time I became sure I was never going to leave the University; but I only would be able to stay at the University if I were able to match together teaching and researching with a professional and political activity geared towards reforming institutions and furthering the rule of law”, he also explained to a journalist (emphasis added)\textsuperscript{140}.

Other characters behind the Instituto Pro Bono whose biographies may also help readers understand in more depth the complex nature of this organization. Dalmo de Abreu Dallari, José Carlos Dias, and Belisario dos Santos Junior, also founders of the Instituto Pro Bono, were some of the leading liberal lawyers who provided political prisoners in Brazil in the 1960s and 1970s with free legal services, working in close connection with the progressive sectors of the Catholic

\textsuperscript{139} [http://www.estadao.com.br/noticias/vidae,coisas-que-eu-queria-saber-aos-21-oscar-vilhena-vieira,810129,0.htm](http://www.estadao.com.br/noticias/vidae,coisas-que-eu-queria-saber-aos-21-oscar-vilhena-vieira,810129,0.htm)

\textsuperscript{140} [http://www.estadao.com.br/noticias/vidae,coisas-que-eu-queria-saber-aos-21-oscar-vilhena-vieira,810129,0.htm](http://www.estadao.com.br/noticias/vidae,coisas-que-eu-queria-saber-aos-21-oscar-vilhena-vieira,810129,0.htm)

This passage is very instructive because it resembles the ideology shared by Latin Americans involved with “public interest law”, as addressed in the prior Chapter.
Church. Dallari provided support to *advogados populares* in the 1980s, especially in cases involving indigenous peoples; Dias ended up becoming Minister of Justice during the Cardoso era; and Santos Jr. was the State Secretary for Justice Affairs in Sao Paulo during the Covas administration (1999-2000). Marcio Thomaz Bastos, another founder of the *Instituto* was the President of the Sao Paulo state bar in the mid-1980s, worked closely with former President Lula da Silva in the 1990s, drafted the legal *memorandum* that was the basis for the impeachment of former President Collor de Mello in 1992, and ended up being the Minister of Justice during the Lula era. Market-oriented lawyers among the launchers of Instituto Pro Bono must not be neglected either. A good example is Ary Oswaldo Mattos Filho, a lawyer who combines liberal values; a great deal of (inherited or acquired) social and political capital; career prominence, and even U.S. legal training. Mattos Filho holds Harvard Law School credentials; had served as a special counsel to the Sao Paulo Stock Exchange Company (BOVESPA); helped institute and ultimately became the chair of the Brazilian Securities & Exchange Commission (CVM); and has played a leading role in the Brazilian stock market for the past decades. At the same time, he ended up becoming the first Dean of the innovative *Fundacao Getulio Vargas* School of Law in Sao Paulo and is partner at a law firm that was one of the precursors in undertaking (serious) pro bono work.

But in spite of these privileged connections held by the *Instituto Pro Bono*, its mere establishment raised quick and harsh opposition from the organized bar. A few months after the *Instituto’s* inauguration, the Sao Paulo state bar took its first measures against it. Almeida had observed that, while until the mid-1980s the Brazilian legal profession was closely associated with liberal values and transformative politics (especially in Sao Paulo), after that it became
increasingly oriented towards protecting the “market” for private practitioners. In fact, the bar reportedly came to address this issue because it understood that the provision of pro bono legal work might create opportunities for “unfair competition” and “clientele co-optation”. As Robison Baroni, then-President of the Sao Paulo Bar Ethics Court stated to a journalist: “We are not against free-of-charge work but this initiative can generate undue advertisement. It can be also a way for lawyers to insinuate themselves to clients with similar needs.” Then-President of the Bar Ethics Commission, Jorge Eluf Neto, defined the issue in similar terms: “The ethical code clearly rules that lawyers must sustain a commitment with the larger society, [but regulation is necessary] to avoid that the provision of such solidary services ends up fueling clientele co-optation, immoderate advertising, and unfair competition.”

An important difference between the U.S. and the Brazilian context in this respect is in the number of “lawyers” that the two countries annually produce vis-à-vis the characteristics of the market for legal services, both in its supply and in its demand sides. Brazil has more than 1,200 law schools, about six times more than the U.S., but the majority of law schools in Brazil are of extreme low quality. The Brazilian economy is less dynamic than the U.S., displaying too much concentration of wealth among a few families in the Rio-Sao Paulo axle. The socio-political culture is also much less litigious in Brazil than the U.S.; and Brazil has instituted state-based legal aid systems that include civil cases, unlike the U.S. For all these reasons, the Brazilian legal market has always shown some kinds of dysfunctions, such as too many lawyers that are unable to provide more complex services and that have to compete against one another (and, often times, against state-based legal services) for the problems of middle-to-low income citizens. The bottom line is that, unlike in the U.S., the protection of the “legal market” for private practitioners in Brazil cannot be undertaken by regulating the entry of other professionals (they are already a lot), nor can it be undertaken by legalizing complex economic issues (which will just benefit the small elite of legal services providers). In many ways, this protection requires expanding work opportunities for private practitioners against state and civil society-based provision of free legal services, or even against the interest of ordinary citizens. Recently legal reforms in family law, for example, allowed divorce claims in which there were no property or child custody issues involved to be processed administratively and by direct requested of the interested parties. The bar lobbied for the inclusion of a provision requiring attorneys to supervise this procedure, which Congress ultimately welcomed (Federal statute # 11.441/2007, available at http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/lei/l11441.htm, last visited Aug, 21, 2012).

Eventually, this argument finds some empirical support in the U.S. experience. Lochner Jr. (1975) shows that solo and small-firms lawyers had a preference for providing (spontaneous) pro bono work to clients that were similar to their paying clients. But besides the differences between the two markets, as addressed in the previous note, this does not seem to be the case of mid and large firms that the Instituto Pro Bono wants to reach out to.


Emphasis added. To some degree, this story is similar to what Seron tells about the conflicts between the elite of corporate firms, and solo practitioners and mid law firms in the U.S. As previously seen, most of the solo
In light of this reaction from the bar’s ethical sector, then-President of the Sao Paulo State Bar, Carlos Aidar, who actually had been involved in the establishment of the Instituto Pro Bono, created a working group to regulate pro bono practices in that jurisdiction. This regulation (Pro Bono Resolution, Aug 19, 2001) places considerable limits for the provision of pro bono work. To begin with, it rules that pro bono work must include *solely legal advice*, not litigation. In addition, it rules that the only “clients” that can benefit from pro bono work are *non-profits lacking resources to pay for legal services*. Moreover, it rules that lawyers must observe a *two-year quarantine before they can provide paid services to the same clients that they had served in a pro bono fashion*. Finally, it rules that lawyers must submit to the bar an *initial request of authorization to perform pro bono, as well as reports detailing the services provided every six months*.

In 2012 (ten years later), in a very instructive decision, the Ethics Court upheld this resolution, by ruling that:

[...] Lawyers working at NGOs cannot provide services to needy clients under the Pro Bono Resolution. The Resolution allows pro bono work to be provided solely to non-profits lacking resources to pay for legal services. Work for members of NGOs may be seen as charity that masks clientele co-optation and unfair competition, practices that the Lawyers’ Statute and the Ethics Code prohibit. Low income people in need of legal services must be sent to free-of-charge services, such as the Defensoria Publica-bar agreement, law schools’ legal aid offices, [...] and the Defensoria Publica itself (Precedents E-3.765/09, E 3.542/07, E-3.330/06, E-2.278/00, E-2.392/01 e E-2.954/04). Case # E-

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practitioners and small firm lawyers in her sample were “adamantly against” proposals of mandatory pro bono (Seron, 1996: 134), which they saw as “a product of Wall Street lawyers and their chums” (Seron, 1996: 134), who “[did] not understand or appreciate or respect the work that they [did]” (Seron, 1996: 136). The difference (so far) is that Seron’s lawyers opposed the model of *mandatory* pro bono, while the Brazilian bar is opposing even *voluntary* pro bono.

4.0852011 – unanimously decided in Dec. 15, 2011; attorney Marcia Matrone writing for the Court146.

This more recent ruling is of special importance in this story because it addresses the most central aspect of pro bono: the provision of legal assistance (even if not court-based) to individuals. In fact, the ruling was a cause for much outrage among the constituencies of the Instituto Pro Bono. Marcos Fuchs, the Executive Director of the Instituto promptly commented the decision as follows: “The bar should have been concerned with democratizing access to justice among the poorer, not with maintaining its monopoly of poverty”147. Alberto Z. Toron, a prestigious criminal lawyer in São Paulo and founder of the Instituto Pro Bono wrote to a lawyers-oriented website in terms that stress on both the “longstanding tradition” of pro bono in Brazil and the supposed intent of “market protection” behind the bar’s approach to this issue. According to his letter, the prohibition of pro bono work for individuals:

Not only lacks legal support, but ignores the history of lawyering, a profession that was raised to care about people. In its early days, the nobles [practiced law] in exchange not for monetary compensation, but for recognition of honor. In my 30 years of practice I defended numerous individuals on a pro bono basis […] I feel happy when I undertake free-of-charge defenses and I have always believed that I was honoring our best [professional] traditions. I hope I can keep doing that without being prosecuted; actually everyone who works for a better and more solidary country expects to be left in peace. I want to borrow from [Supreme Court] Justice Gilmar Mendes’ words and say that “there are poor people for

146 Interestingly enough, in 2009 the National Council of Justice enacted a resolution regulating (courts-led) pro bono services in the whole country. This initiative took place after the Council President Justice Gilmar Mendes launched a project for massive legal assistance in prisons and realized that both there is a complete lack of legal services to the indigent prisoners and there is a low level of commitment by the bar to tackle this issue. There were some questions about the legality (and even constitutionality) of this resolution, but as it demanded that courts organized the list of pro bono lawyers “directly or through agreements with the Defensorias Publicas”, which was likely to happen to an only marginal extent, no further measures were taken by the bar. See this resolution in: http://www.cnj.jus.br/atos-administrativos/atos-da-presidencia/resolucoespresidencia/12181-resolucao-no-62-de-10-de-fevereiro-de-2009

147 http://ultimainstancia.uol.com.br/conteudo/noticias/54485/instituto+critica+decisao+da+oab+que+proibe+advogados+de+prestar+atendimentos+gratuitos.shtml
everyone”. There is no need to protect the market when there is so much anguish among the families of incarcerated people [the pro bono clientele he specifically deals with].

But despite these restrictions (or perhaps because of them), the Instituto Pro Bono has been able to undertake several innovative activities. Some of these activities are similar to “rights education”, such as the Mutiroes, in which volunteers make an assessment of facts and claims brought by individuals and, depending on the conclusion, refer them to legal services or other agencies where their problem could be addressed. Others are more geared to providing direct assistance to citizens in support to the government or civil society institutions. For example, the Instituto Pro Bono did a partnership with the University-based project Casa Saude da Mulher (Women’s health house), which provides assistance to women victims of domestic violence. As in U.S.-existent “medical-lawyer partnerships”, the role of volunteers is to address the legal aspects of the victims’ story, which can unfold into claims to the police or the judiciary.

The Instituto Pro Bono also plays a leading “emulating” role, whether by making public claims about the importance of voluntary legal work for both the profession and the society or by trying to stimulate pro bono work at law schools. However, equally interesting is the “political” and “activist” roles that the Instituto has performed for the “causes” of “access to justice” and Human Rights. For example, the Instituto has been a strong supporter of the struggles for the establishment and strengthening of Defensorias Publicas in Brazil, against the previously

148 http://www.migalhas.com.br/mig_leitores.aspx?cod=4562&datap=08/01/2012 Toron was backed up in his opinion by other more ordinary lawyers, which confirms the longstanding tradition of providing pro bono work among Brazilian lawyers, even if from a “spontaneous” perspective. For instance, Emerson Jose do Couto simply asked: “And since when can the bar or its ethical court prohibit lawyers from doing charity? I think this is just another misfortune in the conflicts between the bar and the Defensoria Publica in São Paulo. This lack of dialogue is just shameful”

149 Vieira (2008: 258). See also: http://www2.uol.com.br/aprendiz/n_colunas/g_nascimento/ge081003.htm
addressed resistance from the bar. Likewise, the Instituto has led initiatives of more impact in consortium with NGOs, such as filing *amicus briefs* in Supreme Court cases.  

More recently, the conflict between the bar and the pro bono movement in Brazil has been (intriguingly) affected by another component: the internationalization of the Brazilian legal market. The economic liberalization that took place in the 1990s had made Brazil an attractive place for foreign investors. Foreign law firms have quickly seen in this context an opportunity to profit. The organized bar soon identified this threat and enacted *Provimento # 91/2000*, a regulation that places severe limits to the institutionalization of foreign law firms in Brazil. According to this *Provimento*, all that foreign law firms can do is to provide legal advice in foreign law. And even if it is to work in such restrict terms, these law firms also need a special license, issued by the Brazilian bar association, in order to operate.

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150 One example is in the ADI # 3,239, filed by a conservative political party against the criteria set by the federal government to certify the traditional occupation of areas by former slaves’ descendants, which, according to the Brazilian constitution, generates in favor of these descendants the right to maintain the possession over such occupied areas. The plaintiff understands that these criteria are too permissive and want to restrict them. *Instituto Pro Bono* took the opposite side, against the interest of big land owners.
The economic growth and the increased international importance that Brazil ended up reaching in the late-2000s – i.e. the context of an international crisis of enormous proportions – seem to have reinforced the good feelings about the Brazilian market among foreign lawyers. As Graph 10 above shows, the number of foreign law firms in Brazil grew significantly from 2001 to 2011 (Almeida & Nassar, 2012).

Some of these firms started to get around the bar’s Provimento by establishing associations with Brazilian law firms. As such, they were able to provide services under either the Brazilian law or transnational legal regimes. Most of these “joint ventures”, so to speak, have been established in Sao Paulo, as in Graph 11 below.
In 2005 one of these “joint ventures” (Lefosse Linklaters) was subject to disciplinary action, but came to a (confidential) agreement with the bar involving changes in the terms of the firms’ partnership so as to meet the terms of Provimento # 91/2000. Until these days, the bar closely monitors the conduct of Lefosse Linklaters.

As the trend was kept, the elite corporate law firms from Sao Paulo took a more proactive stance. CESA filed a consultation to the Bar’s Ethics Court as to whether this “joint venture” model would be consistent at all with the rule of Provimento # 91/2000. In 2011, this case was finally decided by the Ethics Court, which ruled against the “joint ventures”. The main “ethical” argument for the Court’s decision was that, not differently from pure-breed foreign law firms, these “joint ventures” would be directed or at least highly influenced by individuals who have not proved to be familiar with the Brazilian law and the regulations of the Brazilian legal profession, i.e. who are not certified bar members. This would arguably harm the
“independence” of Brazilian lawyers working in these “joint ventures”, while also creating risks to clients. The issue was also taken to the Federal bar, whose Ethics Commission has extended the basics of the Sao Paulo ruling to the whole country.

Critical commentators see in this ruling, once again, an attempt to “protect the market” of legal services, this time in favor of elite native corporate firms. However, they stress on the “generational conflicts” that appear in the very province of elite corporate lawyers regarding these “joint ventures” (Almeida & Nassar, 2012). Many of the lawyers who are establishing these “joint ventures” actually come from more traditional corporate firms, which they have left in search for better salaries and more promising career paths. As a male mid-40s partner in one of these “joint ventures” argues, “despite the ‘modern’ appearance, these [pure-breed Brazilian] firms still function as family-based law firms, with just a few lawyers (if any of them) having the chance to become partners” (Personal interview, notes on file with the author). As such, these lawyers articulate an intriguing counter-hegemonic discourse, arguing that established corporate firms in Brazil are forging a “nationalist cause” just in order to uphold the hierarchies that they have benefited from. “The bar must acknowledge and regulate this phenomenon, but it needs to observe the constitutional rights and guarantees [of the joint firms and their lawyers], as well as to clearly separate what is actually in interest of lawyers as professionals and what is the mere defense of the commercial interests of a handful of people” wrote Ivan Tauil, partner of a law firm in Rio de Janeiro that is a pioneer in these ‘joint ventures’.

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151 http://www.estadao.com.br/noticias/impresso,o-cerco-aos-escritorios-estrangeiros,691486,0.htm
The entry of foreign firms in developing countries and the intra-professional conflicts it raises are issues that deserve research in their own right. Of more interest to this dissertation is the impact of these conflicts over the development of organized pro bono. Elite corporate law firms gathered around CESA had been both a central focus and the primary source of support (as donors) of the Instituto Pro Bono work. However, as these firms face an external threat and resort to the bar in search of protection, there has been a fracture in their historical stance towards the bar’s policies (and politics) about organized pro bono. Although some maintain their endorsement to the Instituto Pro Bono against the bar, others are taking a step back. The role of mid-sized firms and even individual lawyers in providing pro bono work has grown considerably, and the Instituto’s leadership has had to search for external support in order to (re)sensitize big firms. A staff member of the Instituto Pro Bono said that:

What I did recently was to invite for a lunch my old law school friend [Lawyers’ name], who just became the General Counsel of [cites a multinational] in Brazil, and tell her about these issues. She left the conversation saying that she was going to issue a letter to the corporate law firms she hires showing her commitment to the pro bono agenda in Brazil and stating that, in line with what happens to be the corporate policy, by the way, she was no longer going to hire lawyers from law firms that do not provide a minimum amount of pro bono work (personal interview, notes on file with the author).

For all these reasons, the pro bono movement in Brazil (and its principal basis, the Instituto pro Bono) is currently at a crossroads, which is illustrated in the Figure 15 below. Bar politics and the international competition of law firms are functioning as hindering factors for the agenda of organized pro bono, whether by generating increased constraints for the provision of pro bono work in law firms or (at least for the present moment) by discouraging historical allies of the movement from confronting the bar and forcing it to review its orientation towards pro
bono. However, precisely for the strong opposition raised by the bar, the *Instituto Pro Bono* has developed very strong ties with the *Defensoria Publica in Sao Paulo*, litigation-oriented NGOs like *Conectas Direitos Humanos*, and Human Rights advocacy groups beyond the bar, which pro bono lawyers have helped. All of these institutions have been partners of the *Instituto Pro Bono* in its ventures.

![Diagram](image_url)

**Figure 15: The social construction of organized pro bono in Sao Paulo**

*Source: author’s elaboration*

The alliances with these groups, all of which have a relatively radical approach to legal mobilization, can be helpful to sustain the legitimacy of pro bono practices against the wills of the bar and the discouragement of big law firms. But the more the *Instituto Pro Bono* becomes part of such radical strand, the less it may be able to mobilize big law firms and the corporate
clients it has relied on, in order to keep sustaining the objective of making organized pro bono a widespread practice among lawyers and law firms. “I can see the Instituto pro Bono becoming an NGO like Conectas”, said a specialist in the Brazilian legal profession that I interviewed, “taking a few impact cases, on the basis of a small staff and network of lawyers. This will be already a good contribution for the diversification of the legal profession and the democratization of access to justice, but it was certainly not the main objective of the founders of the Instituto pro Bono back in the early-2000s” (in-person interview, notes on file with the author).

In addition to providing an interesting story, a study on the institutionalization of organized pro bono in Brazil provides good insights for a further reflection about the issues that have been discussed throughout this dissertation. First, this process follows the basic script of institutional propagation that accounts for the so-called “globalization of public interest law”, by involving people with a U.S. background (Vieira as the figurehead), expertise from U.S.-based professionals (the inspirational presences of Grunfeld and Chapnik), and resources from U.S.-based organizations (the continuous support from the Ford Foundation and the Open Society Institute).

Second – useful to at least contextualize the putative effectiveness of pro bono propagation –, it seems that organized pro bono only came to be institutionalized in Brazil because it matched with the views of (even though just a segment of) the local legal elite, amidst which, in fact, it has been framed as a continuity in the tradition of the “grand liberal lawyers”153.

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153 “Although there was a long tradition […] of voluntary services and public interest law in the Brazilian legal profession, a new rubric began to be used to designate these services” (Vieira, 2008:257) Although this frame generates opportunities it may also generate constraints to the institutionalization of pro bono among more modern corporate firms: lawyers from these firms may not necessarily have the project of becoming prominent public figures such as the grand liberal lawyers; they may be satisfied enough with making money and doing well in the
Third, even though the institutionalization of organized pro bono in Brazil was clearly and directly inspired by the U.S. tradition, there seems to be a “gap” between the way pro bono work relates to “public interest law” in each of these two contexts. Consistently with the dominant ideology in Latin America, representatives of the pro bono movement in Brazil tend to consider that some pro bono practices (the practices that produce higher impact and that benefit groups and communities) are more “in the public interest” than others. For instance, when describing the kind of work that the Instituto Pro Bono has undertaken, Vieira mentioned, in a somewhat apologetic way, that

Even though the Brazilian legal experience has produced several public interest initiatives throughout its history, there is still some skepticism about whether private lawyers from the corporate world are fit to represent human rights and public interest cases. Therefore, most of the requests IPB receives from NGOs for pro bono legal assistance deal with internal administrative, tax or labor concerns, rather than the use of legal strategies to advance their missions and the interests of their constituents. (2008: 258, emphasis added)\(^{154}\).

Fourth – and finally, given other competing interests at the bar and beyond (the opposition of the bar on the grounds of unfair market competition; the bar’s resolution that restricted pro bono work to NGO legal support; the recent drawback in corporate firms support; and the increasing proximity between the Instituto Pro Bono and more radical segments of the Brazilian legal profession such as NGOs, the Defensoria Publica in Sao Paulo, and advocacy groups), the “gap” is expanding: the “meaning” of pro bono in Brazil has become even more different from the U.S. Instead of a supplement to the legal aid system with voluntary legal work

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\(^{154}\) Similarly: “Since the right to a free attorney is not limited to specific areas of law or kinds of cases, most of these attorneys’ time is consumed by ordinary individual cases (divorce, evictions, and criminal cases), and not by public interest or human rights cases” (Vieira, 2008:243, emphasis added).
on the grounds of professional responsibility (Sandefur [2007]; Cummings [2004]; essays in Granfield & Mather [2009]), the Instituto Pro Bono increasingly looks like a center of activism, whether by filing amicus briefs in selected cases, by developing connections with Human Rights groups to advance specific agendas, by advocating against restrictions to Defensorias Publicas, or simply by promoting the “cause” of voluntary legal services in the hostile ambiance of the Sao Paulo bar. The bottom line is that, if in some places in Latin America organized pro bono might serve to blur the line between two visions of “public interest law” (L.A.= impact litigation on behalf of groups and communities with the purpose of producing structural change; U.S.= activities along multiple scales [including individuals] and using multiple methods [including direct services before courts and administrative agencies] in order to produce iterative change), in the case of Brazil one should not expect that.

c) Clinics

As seen in the previous Chapter, law schools clinics are both an organizational form of intense propagation and a major conduit of the label, practices, and ideologies of “public interest law” across the U.S. and L.A. divide (to the limited extent that such features are able to travel from one context to another). The Brazilian case presents a different story. There are only a handful of “law school clinics” in this country and, incredibly enough, none of these clinics is reportedly a “public interest law clinic”\footnote{In alphabetic order, according to the data collected for this research, law school clinics were documented at the following institutions: Federal University of Para (UFPA=Human Rights Clinics); Fundacao Getulio Vargas School of Law (Direito GV) in Rio de Janeiro and Sao Paulo (several kinds of clinics); State University of Feira de Santana (UEFS=Human Rights Clinics); University Center of Para (CESUPA=Human Rights Clinics); University Center Ritter dos Reis (UNIRITTER=Human Rights Clinics); University of Sao Paulo (USP=Human Rights Clinics); and University of the Joinville Region (UNIVILLE=Human Rights Clinics).}.
There can be many reasons for this additional “gap” between the Brazilian and the larger Latin American (as well as the U.S.) experience. The first one, which relates more to the general propagation of clinics in Brazil, is the existence of a strong indigenous tradition of *critique and reform* in legal education in this country\(^\text{156}\). Such tradition has produced particular models of “access to justice” or “legal mobilization” in Brazilian law schools, such as AJUP groups and the nuclei for legal practice. These organizational forms serve as functional equivalents to clinics both as agents of change in legal education and as interfaces between law students and communities\(^\text{157}\).

Perhaps for this very reason, the circulation of people, resources, and ideas around “law school clinics” (both within and across the national borders) is much less intense and systematic in Brazil than in the rest of Latin America. A lively example is in the agenda of the Ford Foundation, which has been more focused on supporting (already existing) advocacy groups and *advogados populares* than on pushing for changes in law school pedagogies. In Brazil, Ford’s role in legal education has taken place more at the post-graduate level, by granting scholarships for minorities and, more recently, by supporting the constitution of post-graduate programs (Masters and Doctorates) focused on Human Rights. Interestingly enough, most of the existing clinics in Brazil display this “Human Rights” focus and work in connection with the Human


\(^{157}\) In this respect, if clinics were to perform in Brazil similar functions as they perform either in other L.A countries, they might overlap not only with AJUP groups, nuclei for legal practice, and even “traditional legal aid offices”, but also with *Defensorias Publicas*, the *Ministerio Publico*, and litigation-oriented NGOs.
Rights programs supported by Ford\textsuperscript{158}. In April, 2012, these clinics gathered in the “I National Meeting of Brazilian Human Rights Clinics”, having Harvard Professor and International Human Rights activist James Cavallaro as the keynote speaker\textsuperscript{159}.

All of this is suggestive that, although the institutionalization of law school clinics has happened to a lesser extent in Brazil than in the larger Latin American context, it operates through the same basic mechanisms and with similar outcomes observed in these other countries: preference for cases of higher impact and reliance in the more politicized approach that characterizes Human Rights lawyering. Then again, as Brazilian clinics are developing with this focus, they are not likely to serve as conduits for a specific claim of legal practice “in” or “for the public interest” as it has happened in other countries: for these clinics to operate, a consolidated label (Human Rights) is already in place.

Also of extreme importance can be the conflicts with bar regulations, similar to what has happened to law school “traditional legal aid offices”. This has been true at least in the case of Fundacao Getulio Vargas School of Law in Sao Paulo, whose clinics are not focused on the broad field of “Human Rights”, but in more specific areas such as criminal law, community economic development, and even business law. The school’s original intent of providing direct services through these clinics faced considerable resistance from the Sao Paulo state bar. In the sporadic cases in which the clinics provide actual services to the public, the school has been careful about meeting bar regulations, such as the Pro Bono Resolution that limits the clientele of

\textsuperscript{158} The main exceptions are the clinics established at the Fundacao Getulio Vargas School of Law in Sao Paulo and Rio de Janeiro, which will be addressed shortly.

\textsuperscript{159} http://www.uniritter.edu.br/?noticia=2712
free-of-charge services to non-profits lacking resources to pay for legal services. In most cases, students address only fictional or semi-fictional cases, thus emphasizing skills transfer.

Much like pro bono, when it comes to serving as a conduit for the label, the practices, and the ideology of “public interest law”, Brazilian clinics are in a singular position, with many roads ahead. They may embrace the Brazilian tradition of “extension”, in which case they will departure from the U.S. tradition (of skills transfer) and look more like AJUP groups (undertaking “aggressive” legal services; doing politics by other means). They can become more research-oriented institutions, in which case they will play an innovative role, but will departure from both the U.S. (provision of service) and the larger L.A. traditions (impact work). In none of these cases, however, they are likely to help to institutionalize “public interest law” both as a distinct “kind”, “style” or “sector” of professional practice and as a technique of democratic governance in Brazil, like they have done elsewhere.

6.4. Final remarks
In view of the complexities involved in the Brazilian case, this Chapter took a different perspective than the prior ones in order to assess the “globalization of public interest law”. The preceding sections have conducted both a panoramic overview of the institutional organization of “access to justice” and “legal mobilization” in Brazil and an analysis of the role of international circulation of people, resources, and ideas in shaping these respective camps in the country.

The image that emerges from this exercise has the following contours: from an initial perspective, the pattern of influence that U.S.-based “public interest law” has had over the Brazilian legal profession is similar to what is observed in the larger Latin American context: clinics, NGOs, and pro bono are the mainly “imported” organizational forms; and “impact
“public interest law” (a very specific subset of “public interest law” practices in the U.S.) is the mainly, if not the only “imported” method across the U.S.-Brazil divide. Moreover, the basic means that foster this process are similar to the ones observed in the larger Latin American region: in both cases, funding, technical assistance, and advanced legal training are the primary ways through which organizational forms propagate.

Yet, even if a process of propagation is in place, “public interest law” – as both a technique of governance and a “style”, “kind” or “sector” of legal practice – has not been strongly institutionalized in Brazil as it has been in other Latin American countries. Even in the experiences that are closest to foreign traditions of “public interest law”, such as litigation-oriented NGOs (which resemble their Latin American “public interest litigation” counterpart organizations), there has been no adherence to the label “public interest law”. Thus far, “Human Rights lawyering” seems to be the most successful expression for naming practices that are, at least to some extent, correlate with foreign traditions of lawyering “in the public interest”.

What accounts for these similarities and differences among Brazil, other L.A. countries, and the U.S.? An obvious factor is the “not-for-beginners” institutional organization of “access to justice” and “legal mobilization” in Brazil160, in which two structural elements seem to be of more special importance: the prominence of state agencies (Defensorias Publicas and the Ministerio Publico) and the existence of strong indigenous traditions, some of which emphasize not the interests of the “public,” but the interests of “the people” (such as advocacia popular and AJUP groups). These elements and their intricate relationship leave little room for the

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160 This expression was drawn from Tom Jobim, the songwriter, who wrote “The Girl from Ipanema,” who once observed: “Brazil is not for beginners.” As readers will see in the conclusion, this expression seeks to highlight the complex organization of the Brazilian legal profession landscape, much more than to imply any kind of Brazilian “exceptionalism”.

institutionalization of a “style”, “kind”, or “sector” of legal practice that claims to work “in/for the public interest”. These “symbolic limits” are similar to what had been noticed in post-Soviet countries, wherein “public interest” was seen as a synonym to the wills of state officials (Rekosh, 2005).

However, the comparison among Brazil, L.A., and the U.S. displays not just differences: even if to a limited extent, the emergence of litigation-oriented NGOs in Brazil resembles the institutionalized experiences of “public interest law” in L.A. Then again, at least for the Brazilian case, this import may end up displacing, if not fully replacing a longstanding indigenous tradition of advocacy that is much more radical and socially embedded than impact litigation, such as the model of advocacia popular (Lawyering for the people). From this perspective, the “globalization of public interest law” may lead to a remarkable process of “de-radicalization”, which threatens to drive Brazilian advocates towards a much more conventional kind of practice and ideology than they used to have: what was once “alternative” may soon become pure “liberal legalism”. The consequences of these findings will be discussed in the following Conclusion.
Conclusion

In a landmark speech given at the opening of the 1986 academic year at the University of Coimbra, Santos argued that in “transition periods, which we understand and traverse with difficulty, we must go back to simple things and ask simple questions. Einstein used to say that there are questions that only children can ask, but that, once asked, shed a new light on our perplexities” (1992:10). In view of a strong claim that the emergence of “public interest law” systems in transitional and developing countries has taken place through a process of convergence, this dissertation did not do much more than raising some of these simple questions: What do these practices of “public interest law” within and beyond the U.S. entail? Is what people call “public interest law” the same everywhere?

As in Santos’ prediction, these questions have served as windows to much bigger issues, in both the domains of social sciences theory and of international development, considered in social, political, and institutional terms. In the realm of social sciences theory, a pivotal issue was whether or not, in a context of a speeded up circulation of people, resources, and ideas – i.e. “globalization”, institutions tend to propagate according to a model of convergence towards U.S.-based models (and why). Whereas the so-called “world-society theory” (an influential strand of social sciences) predicts that the irresistible appeal of an “overarching world culture” will inevitably lead to such convergence, the predominant account about the “globalization of public interest law” in socio-legal scholarship already subscribes to a more moderate perspective, in which U.S. forces promote convergence but local structures often require adaptation. Yet, other scholarly perspectives are suggestive of different outcomes (ranging from divergence to cross-fertilization), as well as of other motivating factors leading to these outcomes (rather than
the appeal of a cultural framework). In the realm of international development, in social, political, and institutional terms, the biggest issue was whether a scheme of governance in which law is an effective tool to challenge power will be widely disseminated, or whether (democratic) systems of governance (everywhere) will increasingly rely on the mediation of legal professionals.

In order to address these issues, this research mobilized: (i) an “interpretive” framework, in which institutionalized professional practices were considered as amalgams of “labels”, “practices”, and “meanings”\textsuperscript{161}; and (ii) a comparative and international design and strategy, which consisted in a “contrast of contexts” involving the U.S., L.A., and, as a separate “case study”, Brazil. Table 17 below conveys the empirical findings that emerged from this research enterprise.

\textsuperscript{161} “Nelson and Trubek argue that the profession itself is differentiated, ‘professionalism’ is a fracture and contested, and therefore to understand its means and practice, it is necessary to attend to lawyers’ ideology in addition to the exogenous political and economic structures in which they work […] This interpretive framework has led to a proliferation of ‘bottom-up’ studies that focus on the construction of professional ideology across various professional arenas and practice sites, the factors that shape it, and the ways in which it may be mobilized to promote ethical and public-spirited lawyering” (Cummings, 2011:18)
<table>
<thead>
<tr>
<th></th>
<th>U.S.</th>
<th>L.A.</th>
<th>Brazil</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Degree of institutionalization</strong></td>
<td>Extreme</td>
<td>Strong</td>
<td>Weak</td>
</tr>
<tr>
<td><strong>Label</strong></td>
<td>Public interest Law</td>
<td>Strategic litigation</td>
<td>--</td>
</tr>
<tr>
<td></td>
<td>Strategic litigation in human rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Practices</strong></td>
<td>Includes service to individual clients</td>
<td>Generally excludes services to individual clients</td>
<td>Generally excludes services to individual clients</td>
</tr>
<tr>
<td></td>
<td>Includes direct services</td>
<td>Generally excludes direct services</td>
<td>Generally excludes direct services</td>
</tr>
<tr>
<td></td>
<td>Distinguishes from corporate, big firm lawyering, and work for monetary compensation</td>
<td>Distinguishes from interpersonal lawyering</td>
<td>Distinguishes from interpersonal lawyering</td>
</tr>
<tr>
<td></td>
<td>Includes but does not emphasize litigation</td>
<td>Includes and emphasizes litigation</td>
<td>Includes and emphasizes litigation</td>
</tr>
<tr>
<td></td>
<td>Does not include litigation before international human rights systems</td>
<td>Includes and emphasizes litigation before international human rights systems</td>
<td>Includes litigation before international human rights systems</td>
</tr>
<tr>
<td></td>
<td>Includes non-legal legal strategies, but emphasizes expertise</td>
<td>Includes and emphasizes non-legal, political strategies</td>
<td>Includes and emphasizes non-legal, political strategies</td>
</tr>
<tr>
<td><strong>Meanings</strong></td>
<td>Representing the underrepresented</td>
<td>Producing structural changes in public policies or governance systems</td>
<td>Producing structural changes in public policies or governance systems</td>
</tr>
<tr>
<td><strong>Intensity and direction of exchange with foreign models</strong></td>
<td>Strong Unidirectional</td>
<td>Strong Multidirectional</td>
<td>Weak Multidirectional</td>
</tr>
</tbody>
</table>

Table 19: Public interest law across the Americas (a comparative synthesis)
For the purpose of concatenating a coherent story, let’s focus first on the U.S. /L.A. divide. Drawing from a metaphor by Santos’ (1987), the outcomes of this specific comparison were reported as a *symbolic map*, which revealed several and important *differences* in terms of the *scale, projection, and symbolization* of “public interest law” among U.S. and L.A. lawyers. The clientele served by “public interest lawyers” in L.A. is chiefly constituted of communities, groups, and social movements; whereas the clientele served by “public interest lawyers” in the U.S. also includes individuals. The methods deployed by “public interest lawyers” in L.A. are always of high impact, with much emphasis on impact litigation; whereas the methods deployed by “public interest lawyers” in the U.S. are more diversified, including direct services before courts and administrative agencies. “Public interest law” in L.A. is construed in opposition to individual-oriented legal practices; whereas “public interest law” in the U.S. is construed in opposition to corporate-oriented legal practices. “Public interest law” in L.A. is chiefly seen as a political enterprise; whereas “public interest law” in the U.S. is chiefly seen as a professional or technical enterprise. L.A. “Public interest law” in L.A. is seen as a vehicle for structural change; whereas “public interest law” in the U.S. is seen as a vehicle for more iterative change.

In short, although a relatively intense circulation of people, resources, and ideas has taken place across the U.S. /L.A. divide, and although L.A. lawyers are getting to adopt *institutional forms* that are usually associated with the U.S. tradition of “public interest law” – clinics, organized pro bono, and litigation –, they are infusing these forms with visions, practices, and even labels that are *qualitatively distinct from the one that dominates the U.S. scene*. These findings allow a refusal of the idea that “public interest law” in the U.S. and L.A. is converging.
Consistent with both the “interpretive” and “institutional” perspectives used in this research, all these differences were fairly associated with underlying (and often rich) histories of the profession and of schemes of governance in each of the contexts under study. Here and there, the legal profession appears as a diversified system, in which particular segments of the bar struggle for the legitimacy of their working styles and cultures of work. As the system varies within and across national contexts – whether because the groups that circulate in it vary or because the struggles that take place within it vary –, so does “public interest law”: fractures in the legal profession and the “public interest law” arena are mutually constitutive. And so are the ways in which law and lawyers relate to broader structures of governance: as the chances and circumstances that lawyers have to participate in governance affairs vary across countries, so do their practices and visions of what lawyering in the “public interest” is.

Besides providing evidence contrary to theories of convergence, the fieldwork also revealed some of the possible mechanisms driving the relative differentiation that it entails. In many ways, these mechanisms also appear to be consistent with institutional theory, emphasizing the role of local actors and local institutions in processing foreign influence (“intra” institutional factors), such as the need to build legitimacy around imports and the emergence of local, even regional frames, as well as transnational struggles for power and hegemony (“inter” institutional factors), such as in the inequality of flows of influence and in the relative malaise among L.A. lawyers about the U.S. academy.

The Brazilian case fortunately helped enrich this narrative. On the one hand, the pattern of influence of U.S.-based “public interest law” over the Brazilian legal profession was similar to what is observed in L.A. countries: clinics, NGOs, and pro bono were the mainly “imported”
organizational forms; and “impact litigation” (a very specific subset of “public interest law” practices in the U.S.) was the mainly, if not the only “imported” method across the U.S.-Brazil divide. Moreover, the basic means fostering this process were similar to the ones observed in the larger L.A. context: in both cases, funding, technical assistance, and advanced legal training were the primary ways through which organizational forms propagate. On the other hand, even if a process of propagation is in place in Brazil, “public interest law” – as both a technique of governance and a “style”, “kind” or “sector” of professional practice – has not been strongly institutionalized in this country as it has been in other L.A. countries. Even in the experiences that are closest to foreign traditions of “public interest law”, such as litigation-oriented NGOs (which resemble their Latin American “public interest litigation” organizations), there has been no adherence to the label “public interest law”.

What accounts for these similarities and differences among Brazil, other L.A. countries, and the U.S.? As previously stated, an obvious factor is the institutional organization of “access to justice” and “legal mobilization” in Brazil, in which two structural elements seem to be of more special importance: the prominence of state agencies and the existence of strong indigenous traditions, some of which emphasize not the interests of the public, but the interests of the people. These elements and their intricate relationships leave little room for the institutionalization of a “style”, “kind”, or “sector” of legal practice that claims to work “in/for the public interest”. These “symbolic limits” are similar to what had been noticed in post-Soviet countries, wherein “public interest” was seen as a synonym to the wills of state officials (Rekosh, 2005).
And how do these encountered similarities and differences among Brazil, L.A. countries, and the U.S. impact efforts to theorize about the “globalization of [public interest] law”? Well, this is certainly a more complex question. In previous studies about legal globalization – and generally on the basis of a Bourdieu perspective, the institutionalization of legal practices similar to “public interest law” was seen as a process in which legal professionals “reconvert” some of their (inherited and/or acquired) capitals of professional, political, or social nature, in the context of 

and the international flows of people, resources, and ideas (Dezalay & Garth, 2002; Engelman, 2004; 2006).

In many ways, the comparative analysis including Brazil, L.A., and the U.S. undertaken throughout this dissertation confirms and enriches this narrative. Differentiation – whether in the characteristics of pro bono practices or the NGO approach, when the contrast lies between Brazil and the U.S.; or in the institutionalization of the public interest law label, when the contrast lies between Brazil and the L.A. – appears as a function of domestic struggles for professional and political power and the coalitions it generates among lawyers and others. Foreign capital such as law school credentials, financial resources, and network support is mobilized to the extent it meets the strategic considerations of the capital holders in these struggles. This somewhat broader framework, which tries to combine the virtues of (an enriched version of) “gap” studies with the virtues of historical sociology of professions (as in Dezalay & Garth), can be useful to

162 For example, in addressing a question about whether the development of “public interest law” in L.A. has drawn influenced by the U.S., Matias Lopez said that: “I think the difference this time, as compared to the times of ‘Law and Development’, is that now we do it with an own project… The difference between public interest law in L.A. is that, in contrast to public interest law in the U.S., I am not talking about poverty law, none of that, I am talking about strategic litigation, that type of thing, is that Americans dealt with a relatively effective system that needed to be fixed more marginally, so that the marginalized voices ought to be heard in some way. So we include the African Americans and the U.S. will become just, after all. In L.A., I think we never had this kind of perspective, we always thought that the system was entirely broken and we wanted to denounce that” (in-person interview, transcript on file with the author)
chart the development of professional practices in times of globalization – especially of the more unsettled forms that have been identified in this dissertation, such as pro bono (in L.A.) and “radical lawyering” (in the U.S.).

However, the comparison among Brazil, L.A., and the U.S. displays not just differences: even if to a limited extent, the emergence of litigation-oriented NGOs in Brazil resembles the institutionalized experiences of “public interest law” in L.A. Then again, at least for the Brazilian case, the advent of such imports may end up displacing, if not replacing a longstanding indigenous tradition of advocacy, which is much more radical and socially embedded than impact litigation, such as *advocacia popular* (Lawyering for the people). From this perspective, the “globalization of public interest law” may lead to a remarkable process of “de-radicalization”, which threatens to drive Brazilian advocates towards a much more conventional kind of practice and ideology than they used to have: what was once “alternative” may soon become pure “liberal legalism”.

In light of this diagnosis, two sets of additional questions remain useful for further studies and reflection. *First*, one can ask, is Brazil a *jabuticaba* in terms of the way it experiences the so-called “globalization of public interest law”?

In other words, does Brazil really differ so much from the larger Latin America in this respect? It would require much further knowledge about the *camps* of “access to justice” and “legal mobilization” in L.A. countries to provide a definitive response, but the available evidence does not suggest so. For one, the more radical approach to “public interest law” in L.A. may

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163 *Jabuticaba* is a small, black berry that, by all the accounts, only grows in Brazilian soil. The expression is used with some frequency in informal conversations (and most of the times with a critical tone) to refer to things that are claimed to be specific of the Brazilian context, whether in culture, politics, institutions, law, and so on.
stem from a process of “reconversion” of capitals by the progressive legal elite and pre-existing alternative law movements, similar to what has happened in Brazil – although, of course, there may be differences in the social organization of the profession between the two contexts, which have led the label “public interest law” to be more strongly institutionalized in L.A. than in Brazil. For another, just like in Brazil, it may well be that indigenous and more radical modes of legal advocacy are also being displaced or even replaced elsewhere in Latin America as the institutionalization of “public interest law systems” progresses.

This leads to the second question, which is: are the approaches that are more consistent with liberal legalism the “manifest fate” for “access to justice” and “legal mobilization” in southern countries? Do world-society theory and its prediction of inevitable convergence make sense at this more abstract level? Will globalization dilute longstanding local traditions such as *advocacia popular* and, consequently, promote the epistemicide that Santos has so strongly warned against?  

164 These are, nonetheless, questions for the *longue durée* of law and globalization studies, one that this research leaves open for the iterative conversation in which it seeks to participate.

164 “In the name of modern science, many alternative knowledges and sciences have been destroyed, and the social groups that used these systems to support their own autonomous paths of development have been humiliated. In the name of science, epistemicide has been committed, and with this, the imperial power has gained strength to disarm the resistance of the conquered peoples and social groups” (Santos, 2005: xviii).
Appendix I

IRB-approved CAWI questionnaire (Consolidated)

Dear practitioner of Public Interest Law [PIL],

Thanks for your interest in participating in this web-based online survey. The survey is part of a research study whose purpose is to better understand the global development of public interest law, based on the everyday experiences of public interest lawyers. It should take about 40 minutes for you to complete the survey. You must be at least 18 years old to take this survey. The decision to participate in this research project is voluntary. You do not have to participate and you can refuse to answer any question. Even if you begin the survey, you can stop at any time.

There are no foreseeable risks or discomforts to you for taking part in this study. You will not receive any direct benefit or payment from participating in this study either. However, your responses may help us learn more about the kinds of PIL practices that are in order around the world and the ways in which globalization may be impacting those practices.

Your part in this study is anonymous to the researchers. However, because of the nature of web based surveys, it is possible that respondents could be identified by the IP address or other electronic record associated with the response. Neither the researcher nor anyone involved with this survey will be capturing those data. Any reports or publications based on this research will use only group data and will not identify you or any individual as being affiliated with this project.

If you have any questions regarding electronic privacy, please feel free to contact Mark Nardone, IT Security Analyst via phone at 617-373-7901, or via email at privacy@neu.edu. If you have any questions regarding your rights as a research participant, please contact Nan C. Regina, Director, Human Subject Research Protection, 960 Renaissance Park, Northeastern University, Boston, MA 02115. Tel: 617.373.7570, Email: irb@neu.edu. You may call anonymously if you wish.

If you have any other questions about this study, please feel free to contact Fabio de Sa e Silva [desaesilva.f@husky.neu.edu], the person mainly responsible for the research. You can also contact Thomas Koenig [t.koenig@neu.edu], the Principal Investigator.

By moving forward to the next page you are indicating that you consent to participate in this study. Please print out a copy of this consent form for your records.

Thank you for your time and consideration.

Fabio de Sa e Silva, PhD Candidate, Law, Policy, and Society
Northeastern University, Boston, MA, USA
Work information

1. What is the practice setting in which you work?

   <Drop down menu>
   - Nonprofit public interest organization – Client oriented/Legal Aid
   - Nonprofit public interest organization – Policy oriented
   - Public defender’s office
   - Prosecutor’s office
   - Government (Executive/Administrative agency)
   - Legislature
   - Court
   - International public interest organization
   - Private public interest law firm
   - Small law firm performing Pro Bono work (fewer than 35 attorneys)
   - Medium law firm Performing Pro Bono work (35-100 attorneys)
   - Large law firm performing Pro Bono work (+100 attorneys)
   - Other (Please specify)

2. Please select the three main area(s) that your practice involves, according to the list below:

   <List-Main area>
   <List-Second main area>
   <List-Third main area>
   - Civil Rights/Civil Liberties
   - Environmental Protection
   - Consumer Protection
   - Employment/Labor
   - Education
   - Media Reform
Health Care
AIDS/HIV
Welfare Benefits/Poverty
Housing/Homeless
Zoning and Land Use
Voting Rights
Occupational Health and Safety
Criminal
Immigration
Disability
Community Economic Development
Women's/Reproductive Rights
Family/Children
Domestic/Intimate Partner Violence
Prisoners' Rights
Gay/Lesbian/Transgender Rights
Human Rights
Racial Justice
Government Transparency and Accountability
Elder Law
Native Americans/Indigenous Peoples' Rights
3. The drop down menus below present lists of activities that public interest lawyers commonly perform. Please indicate the three main activities in your practice, given the average time you spend on each of them:

<Drop down menu-Main activity>
<Drop down menu-Second main activity>
<Drop down menu-Third main activity>

Test-case litigation
Direct services before courts
Direct services before administrative agencies
Direct services before third, private parties
Policy work before legislative bodies
Policy work before administrative bodies
Community education, training
Research/reports
Community organizing, political mobilization

4. As a general estimate, in what percentage of your cases do you advocate for...

Individuals?
Groups/communities?
Social movements?
The general public?
Principles, such as freedom of speech or the right to choice?
Other (Please specify)

5. As a general estimate, in what percentage of your cases do you advocate against...

Local/state government?
Federal/national government?
Local businesses?
Big national corporations?
Big, international or transnational corporations?
Other (Please specify)
6. Please tell us the degree to which you have collaborative or confrontational relationships with the following actors as part of your PIL practice. Check one box in each row that best describes your situation.

<table>
<thead>
<tr>
<th></th>
<th>We collaborate successfully with one another</th>
<th>We collaborate with one another with some minor disagreements</th>
<th>We have some relevant disagreements</th>
<th>The relationship is absolutely confrontational</th>
<th>Is not relevant/Does not apply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other public interest organizations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other nonprofit organizations</td>
<td></td>
<td></td>
<td></td>
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<td>Foundations and other donors</td>
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<td></td>
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<td>Local movements, grassroots organizations or networks</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>National movements, grassroots organizations or networks</td>
<td></td>
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<tr>
<td>International or transnational movements, grassroots organizations or networks</td>
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</tbody>
</table>
7. How much, in your PIL practice, do you have direct contact to…?

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<thead>
<tr>
<th></th>
<th>A great deal</th>
<th>Some</th>
<th>Little</th>
<th>None</th>
<th>Don't know/Not Applicable</th>
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</thead>
<tbody>
<tr>
<td>Local political leaders</td>
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<tr>
<td>Regional political leaders</td>
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<tr>
<td>National political leaders</td>
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<tr>
<td>International political leaders</td>
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<tr>
<td>Local judges</td>
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<tr>
<td>State Supreme Court Justices</td>
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<td>Supreme Court Justices</td>
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<tr>
<td>Exponent members of the national legal academy</td>
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<tr>
<td>Exponent members of the international legal academy</td>
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<tr>
<td>Relevant representatives of the local media</td>
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<tr>
<td>Relevant representatives of the regional media</td>
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<tr>
<td>Relevant representatives of the national media</td>
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</tbody>
</table>

8. While the information you have given in this section is very useful, we are sure it does not describe your practice in details. So we can fully understand your experience as a PIL advocate, please provide concrete examples or stories that illustrate the main components, methods, and interactions that constitute it.
9. As a general estimate, in what percentage of the clients that you serve do you...

- Expect that clients come to you?
- Actively look for clients?
- Have previous alliances with your clients?
- Have alliances with organizations or communities with which you and the clients are connected?
- Have other clients or former clients recommending you to new clients?
- Have other public interest lawyers or organizations recommending you to new clients?
- Other (please specify)

10. When it comes to making decisions in PIL advocacy, lawyers and clients can interact in many ways. Please check the alternative below that best describes the interaction that takes place between you and your clients

- The lawyer makes the decisions using all that he/she knows about the client's problem.
- The lawyer makes the decisions but strongly considers the client's opinion.
- The lawyer and the client make the decisions together on an equal basis.
- The client makes the decisions, but strongly considers the lawyer's opinion.
- The client makes the decisions using all that he/she knows or learns about his/her problem.
- Other (Please specify)

11. While the information you have given in previous questions is very useful, we are sure it does not fully describe your clientele and the relationship you both maintain. So we can understand your experience as a PIL advocate, please provide concrete examples or stories that illustrate your everyday interactions with clients

12. What do you like most about working as a public interest lawyer?

13. What do you find most challenging about working as a public interest lawyer?
14. Please indicate what you see as the main factors enabling and constraining your practice as a PIL advocate. You can mention anything, from characteristics of your practice setting to characteristics of your area of work, the legal system or even the political environment.

Vision and trajectory of PIL advocacy

1. What is the kind of change or impact that you expect to produce in society in your everyday practice as a public interest lawyer? Please provide one or more stories in which you were successful in producing such change or impact.

2. In your opinion, what distinguishes a public interest lawyer from a non-public interest lawyer, if anything?

3. Given your experience, how would you characterize the relationship between corporate lawyers doing pro bono work and other kinds of public interest lawyers? Please provide examples of whether and how that relationship can be collaborative or confrontational.

4. In your opinion, what is or what can be the role of corporate lawyers doing pro bono work in advancing the public interest?

5. What do you see as the main opportunities and constraints for the practice of PIL in your country?

6. Please help us better understand your trajectory in the PIL sector: When did you first hear about PIL and why did decide you were going to do that? How has your career developed since you had your first contact with PIL? Is there anybody that has served as your mentor or to whom you ask for advice in your career as a public interest lawyer? Did you change topics, approaches, or levels of engagement to PIL over time? If possible, please provide one or more stories that illustrate your PIL career.
7. When did you graduate? __________

8. How would you characterize the law school from which you graduated?
   - An elite school
   - A major school in the country you studied
   - A major school in the region you studied
   - A school that has more of a local reputation where you studied

9. Please tell us how much emphasis your law school training placed in each of the aspects below, with 1 being “no emphasis at all” and 5 being “extreme emphasis”

<table>
<thead>
<tr>
<th>How emphasis did your law school training place in…</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
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<tbody>
<tr>
<td>Teaching about substantive issues or areas of PIL?</td>
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<tr>
<td>Teaching about avenues of work in PIL?</td>
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<tr>
<td>Providing practical training in PIL?</td>
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<tr>
<td>Connecting students with people working or providing opportunities to work in PIL?</td>
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</table>

10. How did your law school experience influence your vision of PIL advocacy and/or your choices in the PIL terrain?


11. Please indicate the experiences in your legal training – for example, basic and/or advanced courses, clinics, mandatory and/or voluntary pro bono, internships and/and summer jobs, and so on – that were most important in your development as a PIL advocate; and explain how they were important.


12. Did you have any experience living, studying or working outside of the US that had an influence in your vision or practice of PIL?
   - No
   - Yes (Please specify the country, the experience, and the way it was influential to you)
13. We live at a time of unprecedented circulation of people, resources, and ideas in the world – or, in a single work, at a time of globalization. Some people argue that this context fosters exchange between individuals and groups from different countries or cultures. Is your vision or practice as a public interest lawyer a product of that phenomenon? Do you influence PIL advocates or practices of PIL advocacy in other parts of the world? Are you influenced by PIL advocates or practices of PIL advocacy from other parts of the world? Please provide one or more stories that illustrate whether, how, and to what extent your vision or practice as a public interest lawyer can be seen as a product of so-called globalization.

14. Some analysts argue, more specifically, that along with globalization advocates around the world are importing the US tradition of PIL advocacy. Based on your knowledge and experience, to what extent is this account true? If possible, please provide concrete examples to illustrate your answer.

15. What about the other way around? Based on your knowledge and experience, would you say that US advocates are importing from other traditions of PIL in the world? If so, by what means and to what extent are they doing that? If possible, please provide concrete examples to illustrate your answer.

Background Information

1. Please help us better understand your individual trajectory. Where and in what conditions did you grow up? What relevant experiences did you have before going to law school? Why did you decide to become a lawyer, after all?

2. When were you born?

3. What is your gender?
   Male
   Female

4. Of what country are you a permanent resident?
   State:
5. Would you describe yourself as:
   - American Indian / Native American
   - Asian
   - Bi/Multiracial
   - Black / African American
   - Hispanic / Latino
   - Middle Eastern
   - Pacific Islander
   - White / Caucasian
   - Other (Please Specify)

6. How would you describe your family’s economic situation when you were growing up?
   - Very bad
   - Bad
   - Neither bad, nor good
   - Good
   - Very good

7. How would you describe your economic situation now, as compared to when you were growing up?
   - Much worse
   - Worse
   - About the same
   - Better
   - Much better
8. What is the highest level of education your parents have completed?

<table>
<thead>
<tr>
<th></th>
<th>Mother</th>
<th>Father</th>
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<tr>
<td>Grade school</td>
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<tr>
<td>Some high school</td>
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<td>High school diploma or</td>
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<tr>
<td>equivalent</td>
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<tr>
<td>Some college or vocational training</td>
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<tr>
<td>Bachelor’s or four-year degree</td>
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<tr>
<td>Some postgraduate work</td>
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<tr>
<td>Post-graduate degree</td>
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<td>Don’t know/Not Applicable</td>
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</table>

9. Was either parent active in politics?
   - Neither
   - Father
   - Mother
   - Both
   - Don’t know/Not Applicable

10. How important was politics in your household when you were growing up?
    - Very important
    - Somewhat important
    - Not important at all
    - Don’t know/Not Applicable
11. To what extent were your parents active in social reform or service organizations when you were growing up?
A great deal
Some
Little
None
Don’t know/Not Applicable

12. What is your religious affiliation?
Mainline Protestant
Evangelical Protestant
Baptist
Roman Catholic
Eastern Orthodox
Jewish
Buddhist
Muslim
Hindu
Non-religious
Other (Please Specify)

13. When you were growing up, how important were religious beliefs in your family?
Very important
Somewhat important
Unimportant
Don’t know/Not Applicable
14. How important are your personal religious beliefs to you now?
   Very important
   Somewhat important
   Unimportant

15. What is your current marital status?
   Single, Never Married
   Married
   Domestic partnership
   Divorced or Separated
   Widowed

16. Do you have any children?
   Yes, one
   Yes, two
   Yes, three or more
   No

17. How would you describe your position in the political spectrum?
   Very liberal/left-wing
   Liberal/left-wing
   Center
   Conservative/right-wing
   Very conservative/right-wing
Information for future contact and follow up

1. We very much appreciate the time you have given to participate in this research. However, we may still have some few other questions about your everyday practice as a public interest lawyer. If you would be willing to help us further, would you please leave your contact information so that we can set up a time for a brief interview or a follow up conversation?

Sure, please find it below
No, thanks

2. Contact information:

Name
Email address
Phone number or Skype user
Best days/times for contact

NOTE: This study will draw some insights for the one-on-one interview from your responses to the online survey. Thus, if you agree to participate in the interview, the researchers will need to link your responses to your contact information. However, right after the interview all identifiers will be removed and all responses will be coded. Any reports or publications based on this research will use only group data and will not identify you or any individual as being part of this project. Likewise, if for some reason you decide not to participate in the one-on-one interview after providing us with your contact information, or if we are unable to conduct it, all identifiers to your online survey responses will be destroyed.

-- Alright, now it is our time to thank you! Please move on to the next screen to find a cherishing note!

Thank you very much!
Appendix II

IRB-approved interviews protocol (1st Phase, consolidated)

1. Can you give me some sense of your background – where you grew up, what was your household like, where you went to college, what activities or jobs were important to you – before going to law school?

2. How was your experience in law school?

3. When did you hear about “public interest law” for the first time? What did you hear? When and how were you drawn into it?

4. How has your understanding of “public interest law” changed since you first encountered it – in law school and after that?

5. Do you find anything difficult about being a public interest lawyer? And what do you find good about it, on the other hand? How do you compare being a public interest lawyer with other occupations in the legal profession?

6. (U.S. only) How did you learn about this “public interest law” fellowship? What encouraged you to apply?

7. How did you work to write the project? How did you decide to focus on what you focused and take the approach that you took? How did you think this can impact society? Can you give me an example of that impact?

8. Can you give me a snapshot of your daily work? What is the main component of it – and how does it operate? How do you compare your approach to the approach that other advocates may take towards the same issue?

9. Can you give me more details about the way you selects clients?

10. How does your relationship with clients look like? What do they ask or expect you to do? Is it what you think you should be doing?

11. What kinds of disagreements do you have with…? In what sense? (Question in connection to closed-ended questions in the electronic questionnaire)
12. How is it that you collaborate with...? Can you give me an example? (Question in connection to closed-ended questions in the electronic questionnaire)

13. Please tell me about a good/bad experience you have had in your practice as a “public interest lawyer” – or one thing you have enjoyed/do not have enjoyed about your practice as a “public interest lawyer”.

14. Do you consider that your work is informed by experiences from outside of the U.S./L.A. that you participated in or heard about? In what ways? Do you know of “public interest lawyers” who have drawn from foreign experiences while structuring their practices? Can you tell me about that?

15. If you were to start your career over again, would you do anything differently?

16. What plans do you have for the future? What do you expect your career to look?

17. Do you want to say anything else?
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