ECONSTOR
Make Your Publications Visible.

A Service of
ZBW
Leibniz-Informationszentrum Wirtschaft
Leibniz Information Centre for Economics

de Sá e Silva, Fábio

Working Paper

Lawyers, governance, and globalization: The diverging paths of "public interest law" across the Americas

Discussion Paper, No. 223

Provided in Cooperation with:
Institute of Applied Economic Research (ipea), Brasília

Suggested Citation: de Sá e Silva, Fábio (2017) : Lawyers, governance, and globalization: The diverging paths of "public interest law" across the Americas, Discussion Paper, No. 223, Institute for Applied Economic Research (ipea), Brasília

This Version is available at:
https://hdl.handle.net/10419/220311

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

WWW.ECONSTOR.EU

Mitglied der Leibniz-Gemeinschaft

223

LAWYERS, GOVERNANCE, AND GLOBALIZATION: THE DIVERGING PATHS OF "PUBLIC INTEREST LAW" ACROSS THE AMERICAS

Fábio de Sá e Silva

DISCUSSION PAPER

ipea

223

DISCUSSION PAPER

Brasília, July 2017

LAWYERS, GOVERNANCE, AND GLOBALIZATION: THE DIVERGING PATHS OF "PUBLIC INTEREST LAW" ACROSS THE AMERICAS

Fábio de Sá e Silva[1]

1. Assistant Professor of International Studies and Wick Cary Professor of Brazilian Studies at the University of Oklahoma. Email: <fabio.desaesilva@ou.edu>. The author thanks the Institute for Applied Economic Research (Ipea) and the Capes Foundation, in Brazil, and the International Institute for the Sociology of Law, in the Basque Country, Spain, for their support during this research. A previous version of this article was published at *Oñati Sociolegal Series* 5 (5).

Federal Government of Brazil

Ministry of Planning, Development and Management
Minister Dyogo Henrique de Oliveira

ipea **Institute for Applied Economic Research**

A public foundation affiliated to the Ministry of Planning, Development and Management, Ipea provides technical and institutional support to government actions – enabling the formulation of numerous public policies and programs for Brazilian development – and makes research and studies conducted by its staff available to society.

President
Ernesto Lozardo

Director of Institutional Development
Rogério Boueri Miranda

Director of Studies and Policies of the State, Institutions and Democracy
Alexandre de Ávila Gomide

Director of Macroeconomic Studies and Policies
José Ronaldo de Castro Souza Júnior

Director of Regional, Urban and Environmental Studies and Policies
Alexandre Xavier Ywata de Carvalho

Director of Sectoral Studies and Policies of Innovation and Infrastructure
João Alberto De Negri

Director of Social Studies and Policies
Lenita Maria Turchi

Director of International Studies, Political and Economic Relations
Sérgio Augusto de Abreu e Lima Florêncio Sobrinho

Chief Press and Communications Officer
Regina Alvarez

URL: http://www.ipea.gov.br
Ombudsman: http://www.ipea.gov.br/ouvidoria

DISCUSSION PAPER

A publication to disseminate the findings of research directly or indirectly conducted by the Institute for Applied Economic Research (Ipea). Due to their relevance, they provide information to specialists and encourage contributions.

© Institute for Applied Economic Research – **ipea** 2017

Discussion paper / Institute for Applied Economic Research.- Brasília : Rio de Janeiro : Ipea, 1990-

ISSN 1415-4765

1. Brazil. 2. Economic Aspects. 3. Social Aspects. I. Institute for Applied Economic Research.

CDD 330.908

The opinions expressed in this publication are of exclusive responsibility of the authors, not necessarily expressing the official views of the Institute for Applied Economic Research and the Ministry of Planning, Development and Management.

Reproduction of this text and the data contained within is allowed as long as the source is cited. Reproduction for commercial purposes is prohibited.

JEL: P59

CONTENTS

ABSTRACT

SINOPSE

1 INTRODUCTION 7

2 DATA AND RESEARCH DESIGN 10

3 CLIENTS, METHODS, AND SOCIOPOLITICAL SIGNIFICANCE: DIFFERENCES IN THE SCOPE OF PIL BETWEEN THE US AND LA..... 11

4 FINAL REMARKS 30

REFERENCES.....32

ABSTRACT

In recent years, "public interest law" (PIL) has become a frequent component in conversations about law and policy around the globe. While this worldwide manifestation of a professional and political script that thus far seemed to be typically so American suggests a remarkable process of diffusion, its mechanics and significance are yet to be examined more deeply and systematically. The available account contends that this process has been one of "convergence" and "adaptation". Yet, there are good empirical and theoretical reasons to subject this account to further examination. Drawing from a comparative and international empirical research on the everyday lives of "public interest lawyers" in the United States and Latin America, this article stresses significant differences in the ways US and LA lawyers have structured "public interest law" – thus challenging the idea of convergence –, while also unveiling factors in the rich histories of professional and political development in the studied contexts, which initially account for such differentiation. These findings call for further research, but already speak to a variety of theories about institutional development in times of globalization, such as theories of institutional isomorphism and field constitution.

Keywords: lawyers; governance; globalization; public interest law; legal mobilization; access to justice.

SINOPSE

Nos últimos anos, o "direito de interesse público" (DIP) se tornou um componente cada vez mais frequente em discussões sobre direito e políticas públicas no mundo. Se, por um lado, essa manifestação global de um script profissional e político até agora visto como tipicamente norteamericano sugere um formidável processo de difusão, sua mecânica e significado ainda carecem de serem examinados de maneira mais profunda e sistemática. O argumento corrente é de que esse processo tem envolvido "convergência" e "adaptação". Não obstante, há boas razões empíricas e teóricas para submetê-lo a novos exames. Com base em pesquisa comparada e internacional sobre a vida cotidiana de "advogados de interesse público" nos Estados Unidos e na América Latina, este texto destaca diferenças significativas no modo pelo qual advogados em cada um desses contextos estrutura o "direito de interesse público" – desafiando, assim, a ideia de convergencia –, ao mesmo tempo em que indica fatores da rica história de desenvolvimento

profissional e político nos contextos estudados, os quais sugerem razões iniciais para essa diferenciação. Esses resultados demandam novas pesquisas, mas já dialogam com diversas teorias sobre desenvolvimento político-institucional em tempos de globalização, tais como as teorias de isomorfismo institucional e constituição de "campos".

Palavras-chave: advogados; governança; globalização; direito de interesse público; mobilização jurídica; acesso à justiça.

1 INTRODUCTION

In recent years, "public interest law" (PIL) has become a frequent component in conversations about law and policy around the globe.[1] In Latin America, a "network of "public interest law clinics" has emerged, with the mission of "strengthening public interest law programs" created in the 1990s in law schools in the region.[2] As Africa, Asia, and Eastern Europe have become the new frontier of development, their countries have also attracted considerable resources from organizations like the Open Society Institute (OSI) and the Ford Foundation (FF), a fair amount of which is helping support PIL centers and the training of PIL practitioners.[3]

This goes beyond the so-called developing world. In Ireland, a "Public Interest Law Alliance" (Pila) was established, "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", as concluded by participants of a PIL conference in Dublin, in October 2005.[4] And since the 1990s, numerous PIL clearinghouses were established in Australia, "modeled on similar organizations in the USA, in particular the New York Lawyers for the Public Interest Pro Bono Clearinghouse".[5]

1. In this article, PIL refers to a socioprofessional practice that developed in the US, particularly after the 1960s. The literature covering PIL's history and characteristics since its emergence is abundant and nuanced (for initial references in historical context, see Sa e Silva, 2012), but its core refers to PIL as a response to "relative disadvantages" in the "resources (money, expertise, social capital) that a constituency may mobilize to advance individual or collective group interests" (Cummings, 2012, p. 523). As such, accounts of PIL have presented two dimensions: an "access dimension", in response to 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 a "policy dimension", in response to disadvantages "of social groups or constituencies hindered in advancing collective interests through political channels" because of "poverty, minority status, discrimination, and impediments to collective action" (Cummings, 2012, p. 524).
2. About this network, see Red Lationamericana de Clínicas Jurídicas (2012).
3. The Public Interest Law Network (Pilnet, formerly Public Interest Law Institute or PILI) is an example of organizations participating in this global diffusion of PIL. Initially part of Columbia Law School, Pilnet became an independent NGO, which, relying on FF and OSI grants, provides training and other resources to individuals and organizations doing "public interest law" in developing countries. Pilnet's more recent emphasis has been on Eastern Europe, Africa, and Asia. Pilnet has both facilitated the establishment of a PIL community and encouraged the work of PIL NGOs outside the US. For more information about Pilnet and its work, see Pilnet (2015).
4. For information on this "Public Interest Law Alliance" in Ireland, see Pila (2015). But Pila is not the only source of "public interest law" in this country. The Public Interest Litigation Support (PILS) Project is another similar initiative. According to its website, PILS 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 The PILS Project (2015).
5. About one of these units, see Pilch New South Wales (2015).

This worldwide manifestation of a professional and political script that thus far seemed to be typically so American – lawyers engaged in promoting a vision of the good society, which in turn brings positive effects to democracy – is also reflected in scholarship. At the 2010 annual meeting of the Law and Society Association (LSA), the titles of eight accepted articles characterized their primary theme as being PIL. Interestingly, only two of them looked at things happening in the US (Thomson, 2010; Zaloznaya and Nielsen, 2010): the other six looked at things happening in Africa, Asia, and Latin America (Garderen, 2010; Handmaker, 2010; Tey, 2011; Bhuwania, 2010; Hoyos, 2010; Sa e Silva, 2010). Over time, this trend would get consolidated in the domain of articles and monographs as well.[6]

While these facts indicate a remarkable process of diffusion,[7] their mechanics and significance are yet to be examined more deeply and systematically. Cummings and Trubek (2008) have provided an initial contribution to such an effort. Drawing from secondary accounts gathered through an academic symposium, at the empirical level, and from moderate versions of institutional theory, at the conceptual level, these authors examined the construction of PIL in developing and transitional countries and found evidence that this process has been one of "convergence and adaptation". They maintained that "a common set of understandings and practices are spreading around the world", but noticed that these are "taking root in distinctive national political and economic environments, thus producing significant diversity across geographic space" (Cummings and Trubek, 2008, p. 27). They observed US-based forces driving "convergence",[8] but stressed that local structures of opportunities and constraints where PIL gets institutionalized lead to some degree of "variation".

These conclusions challenge accounts of globalization as a linear and in many ways inevitable propagation of Western "good values" and practices (Meyer, 2010;

6. For references available in the early 2010s, see Sa e Silva (2012).

7. The mere popularization of "public interest law" as a label for legal practices in the developing world, whether as a lawyers' native category or a scholarly-crafted concept, indicates this process of diffusion. People in these countries could be calling their experiences something else, like social justice or human rights lawyering. There must be a reason, conscious or not, why they are naming their experiences and themselves after a US tradition.

8. Authors are referring to the reemergence of law and development, now embracing the rule of law as a concept that marries open markets and respect for human rights, which has increased investments in the law by Northern donors and encouraged South lawyers to invest "in constructing and monitoring state institutions from the inside, rather than contesting them from the outside". The resulting "funding, technical assistance, and US-based legal education" would drive convergence.

Meyer *et al.*, 1997; Boyle and Meyer, 2002). But there are good empirical and theoretical reasons to subject them to further examination as well. Propagation of institutional *forms* – such as clinics, litigation, and pro bono, as Cummings and Trubek have encountered – does not necessarily equal to convergence: "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" (Halliday and Osinsky, 2006, p. 448). Many studies indeed present legal globalization, or globalization of cultural artifacts in general, as a process marked by resistance, selective appropriation, or even subversion of foreign norms or institutions by locals, thus foiling the expectations of exporters (Dezalay and Garth, 2002a; 2002b; Santos and Rodriguez-Garavito, 2006; Halliday and Caruthers, 2007; Inda and Rosaldo 2008). Couldn't something similar be in place with PIL as well?

This article seeks to contribute to such an inquiry. Drawing from a comparative and international empirical research on the everyday lives of "public interest lawyers" in the United States and Latin America and building on constitutive approaches to law and society scholarship, the article examines similarities and differences in accounts of PIL that circulate in those two contexts.[9] In addition, it addresses structural factors associated with these accounts, thus identifying explanatory insights and/or causal hypotheses for the observed pattern of PIL's diffusion.[10]

9. This "constitutive approach" results from critical shifts in the way social sciences have understood the law/society relationship. As part of these shifts, "law" and "society" were no longer seen as separate, but rather as more integrated spheres of social life. Moreover, the processes through which subjects produce "taken-for-granted *understandings* and *habits*" (Silbey, 2005, p. 324) towards the law were seen as core forces promoting that law/society integration, for these *understandings* and *habits* become "part of the material and discursive systems that limit and constrain" these subjects' lives (Silbey, 2005, p. 333-4). Those shifts had methodological implications as well. Accounts of law in the everyday lives – whether of ordinary citizens, or of professionals – became rich sources of information of how legal consciousness, ideology, and hegemony grow and operate (Silbey, 2005; Ewick and Silbey, 1998). Our focus on *accounts* and the *everyday lives* of practitioners is based on these insights.

10. This is similar to Marcus' use of multi-sited research to conduct ethnography in/of the "world system". In his words, "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" (Marcus, 1995, p. 96) In this approach, 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" (Marcus, 1995, p. 112).

The article is structured along five sections, including this introduction. Section 2 details the processes of data collection and analysis. Sections 3 and 4 report and discuss some of the main findings from the research. Finally, Section 5 presents a provisional conclusion and lays out some considerations for future research.

2 DATA AND RESEARCH DESIGN

Data collection began in March 2010 with computer assisted web interviews (Cawi) using a popular web-tool (surveymonkey.com). After weeks of Internet research, samples with the names and available contact information of public interest lawyers from the US and Latin American countries were generated.[11] An email invitation and at least one reminder were sent to each potential participant.

In addition to items that helped characterize respondents (and hence control the analysis) along variables such as race, gender, class, political/religion socialization, school/professional socialization, exposure to foreign cultures/legal traditions, and career preferences, the questionnaire included items on two substantive themes relevant for this article. The first related to factual aspects of respondents' everyday work, such as their *areas of practice*, their *clientele*, and the main *activities* they performed. The second related to how respondents *saw* their work, such as the *goals* they pursued and the criteria they used to measure *success.*

The last item in the questionnaire asked whether respondents would like to leave their contact information for an in-depth interview. These interviews were meant to supplement the data collected through Cawi, by providing *stories* that could both *detail* and *contextualize* their responses to the Cawi questionnaire. Seventy-one US lawyers (n=164) and 36 LA lawyers (n=72) responded. Forty interviews were then conducted in several US states (=20) and LA countries (=20).

11. In these sampling processes, I maintained an ambiguous relationship with the professional category of "public interest lawyer". Although I relied on this category to select potential participants, I was mindful of how contested that designation is among professionals themselves. I therefore included whoever was associated with "public interest law" that I could find through Internet listings: NGO lawyers, but also clinicians, private lawyers, government lawyers, etc. I also made sure to include ground-level lawyers – thus avoiding talking just to the elites –, as well as to contemplate variation along meaningful variables.

Findings from this first wave of data collection were subjected to further validation, which, for cost-related issues, was now fully conducted through Cawi. This second wave incorporated some of the open-ended questions used in the interviews, but continued to ask for the contact information of respondents, if follow up interviews were necessary.

In light of a more complex set of sampling techniques, a larger and more diverse sample was produced, which included the names and available contact information of eight hundred public interest lawyers from the United States and two hundred from Latin America.[12] These subjects were sent an email invitation and at least one reminder as well. This second wave of data collection led to a final dataset with responses from 221 US lawyers and 87 LA lawyers, with 120 lawyers providing rich responses to open-ended questions (US, N=80; LA, N=40), which were added to the existing transcripts of in-depth interviews as sources of qualitative information.[13]

In the process of data collection, findings generated through Cawi and interviews were permanently contrasted with available documents, such as Internet profiles and/or institutional materials of/about lawyers, law firms, and PIL organizations; as well as with academic articles and books describing the "public interest law" sector in the two studied contexts. Finally, the research process also involved participant observation in a Pro Bono conference in Santiago, Chile.

As this iterative triangulation of sources progressed, the accounts of PIL collected from interviewees and CAWI respondents were made increasingly understandable and saturated. At the end, the research was able to generate thick data at reasonable cost.

12. This second wave of data collection was sought to increase variation in both samples, so that potential biases in the sampling frames of the first wave could be avoided. This goal was attained: the second wave of data collection increased sample variation to a significant extent, especially along variables such as age/generation, areas of work, and practice setting. Given the nature and objectives of this research, this qualitative variation was more important than quantitative representativeness.

13. Given the impressive depth of online responses and the availability of Cawi respondents for follow up conversations that could clarify their responses, no further in-depth interviews were conducted.

3 CLIENTS, METHODS, AND SOCIOPOLITICAL SIGNIFICANCE: DIFFERENCES IN THE *SCOPE* OF PIL BETWEEN THE US AND LA

3.1 Clients

Instead of convergence, this research has encountered considerable differences in the accounts of public interest law that circulate among US lawyers, vis-à-vis their fellow LA counterparts. In this section we examine three of these differences. The first relates to the *clientele* "public interest lawyers" serve in each of the researched contexts. While in LA this clientele is primarily constituted of communities, groups, and social movements, in the US it includes and emphasizes individuals.

For example, as Alexander Jackson – a young lawyer from Philadelphia who works on labor law issues – was addressing his career perspectives, he said that before starting his current job at a legal services organization he thought he was going to work there "for, like, five years". During this time, he would "gain experience with people doing direct legal services […], have a really good idea of what the issues are […] and move to a policy organization". There, he would "work on high level issues at a government level; writing reports and talking to papers; doing big impact cases".[14] 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 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'.

A different scene emerges down South. Not only do LA lawyers focus on a clientele basis of larger scale (groups, communities, and social movements), but also their vast majority considers that work for individuals is *not* really PIL.

For instance, facing the question of what distinguishes a public interest lawyer from others in the profession, Fortunato Magallon – a Mexican NGO lawyer who works with human rights, criminal law, and minorities' rights – considered that "a

14. All names in this article are fictional, as agreed with the interviewees and established by IRB-approved research protocols.

public interest lawyer deals with cases that impact a number of people, while a traditional lawyer just focuses on redressing the rights of his 'client'". Likewise, as Valentina Martinez – a lawyer who works on disabilities issues at a leading law school clinic in Colombia – was explaining how she selects cases, she said that, "unlike another clinic – in the US they would consider it a clinic – at [her] law school, which takes individual cases – the so-called *consultorio jurídico –,* [she, as a *PIL* clinician] looks for cases that somehow will impact a large group of people".

LA lawyers occasionally accept to serve individual clients, but only insofar as they see this *directly* benefiting a larger group of people. As Celina Turner – a 36-years old Ecuadorian NGO lawyer who works with immigration and Human Rights issues –was accounting for her relationship with 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 to get involved in the criminal law case.

Similarly, as Angel Delafuente – a 46-years old Peruvian lawyer – was addressing this same issue of lawyer/client relationship, he mentioned the story of "a client who became disabled at the military and was additionally harmed by the way the military classified his disability". He told that as he and his colleagues were handling this case, they identified procedural avenues that could benefit either the client as a single individual or the client and others in the same situation. "After negotiation with the client", Delafuente reported, showing great satisfaction, "he chose to take the path that would benefit others as well". The lawsuit is underway but "(his clinic) continues to advise the client, suggesting that he disseminates his story through the media, and take action in concert with others who support him".

3.2 Methods

Another difference could be seen in the *methods* and *strategies* reported across the US / LA contexts of PIL work. US lawyers tend to consider direct services before courts and administrative agencies as legitimate and somewhat natural components of PIL, in addition, of course, to strategies of broader impact like litigation and lobbying. Some of the US interviewees also report using non-legal strategies, like community education, organizing, and media campaigns.

Accounts from these lawyers' everyday lives show how this wide range of methods, strategies, and levels of practice is constitutive of PIL in their context. For example, when I asked Olivia Jones – a young welfare benefits lawyer from Pennsylvania – whether there was anything she would like to do differently in her work, she said *"no",* for her current job provides her with enough possibilities to achieve what she envisions to be 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 training other public benefits lawyers on stuff that I happen to know. 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, on how to implement Obama's health care bill, so that it actually makes life better for people who are on Medicaid.

LA lawyers, in contrast, report a much *narrower,* but much more *aggressive* set of methods and strategies: they report *always* using strategies of broad impact; and *always* doing it in close connection with non-legal strategies with which they seek to broaden the overall impact of their work.

Impact litigation (both domestically and internationally) is the reigning method in these lawyers' accounts. In these accounts, impact litigation appears as a means to: *i*) generate transformative legal precedents; *ii*) create model arguments, which other lawyers can build on; or *iii*) open a window for subsequent initiatives in areas not yet subject to legal mobilization.

This importance of impact litigation in LA gets to affect even the circulating label for PIL in this region. PIL organizations are frequently presented as organizations of "PI litigation", "strategic litigation in PI", or "strategic litigation in Human Rights".[15] For example, as Juan Torres – a Mexican Human Rights lawyer – was reporting on his clientele, he explained that his NGO actually provides litigation services to other NGOs.

15. In Spanish, respectively: *i) litígio de interés publico, ii) litígio estratégico de interés publico, and iii) litígio estratégico en Derechos Humanos*. In Portuguese, respectively: *i) litígio de interesse público; ii) litígio estratégico de interesse público; and iii) litígio estratégico em direitos humanos*.

These other NGOs "work more with individual cases and attempt to solve problems of individuals facing trouble". As such, he argued further,

> These organizations provide a *first help* [They take] one case and that is not bad, that is already important [but] what [his organization does] is *to add the concept of strategic litigation in human rights;* [*i.e. to undertake*] *the public interest turn in search of collective results.*

But in addition to *litigation*, LA lawyers also rely quite heavily on *communication and education* strategies. This is to make sure that their actions and their outcomes will become widely known in their communities, countries, and even beyond. This combination is easily noticeable in the account of Valentina Martinez, cited supra. As Martinez was explaining the procedures for case selection at the clinics, she added that one of the criteria:

> Is that the case will help create mass consciousness about a given problem. (For example,) there was extensive newspaper coverage when we sued the mayor for not complying with norms of accessibility in the subway service**.** This 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].

Similarly, when explaining what she liked most about working as a public interest lawyer, Javiera García – an NGO lawyer working in inland 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 she can collect damages", her clinic addresses cases that will "resolve or at least alleviate a social problem", thus "adding to social change":

> Private litigation can give you the satisfaction of winning a case or helping an individual who was really in need, but that is where it ends. PIL is about affecting society. *Although many times we do not win the cases, the fact that we have put [an issue] onto the agenda, that we were able to debate it over the media, that somebody beyond the group who 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.

The Latin American literature on PIL corroborates these findings. For example, Correa-Montoya, a PIL scholar in Colombia, defines strategic litigation 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". He also stresses that this 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 (Montoya, 2008, p. 250).

As such, in his account, strategic litigation involves:

> *A juridical component* [i.e.] a kind of legal practice… that makes strategic use of judicial and administrative means in order to achieve the desired objectives; a *political component,* for direct or indirect intervention in discussions, as well as in decision making and implementation processes is also necessary; and a *communications component,* which consists in intervening in the public opinion with information about the lawsuit in search of a comprehensive solution. Much beyond giving publicity to activities, communications is a component in its own right (Montoya, 2008, p. 253-258).

3.3 Socio-political significance

The structural differences in PIL in the US and LA, which the previous sections have documented, further resonate in the way public interest lawyers account for the socio-political significance of their work in each of those contexts. LA lawyers understand that PIL comprises: *i*) giving *visibility* to *ii*) *structural problems* in the functioning of government and society, with the goal of *iii*) triggering *changes in policies or, more generally, in governance.*[16] For instance, when Cristobal Alvarez – an NGO lawyer from Argentina – was asked about his practices of client selection, he said that:

16. In another piece of Latin American scholarship: "Within the traditional canon, it is difficult to conceive citizens as plaintiffs in cases that address interests beyond their own. Yet and in spite of the limitations in legal structure and legal culture, there has been in LA legal strategies designed and deployed by public interest lawyers, 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 right, or of groups of citizens through entities created to demand the fulfillment of multiple social needs, which embodies the public interest" (González and Viveros, 1999, p. 13).

> [There are] two variables we consider to be important: on one hand, the person must come from a vulnerable segment in society, 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 it 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 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.

US lawyers naturally share the vision that PIL comprises improving government and market institutions, but they see this process as being much more iterative. Hence, Linda Ferguson – a 35-years old lawyer from Maryland working with environmental protection – 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.

From this perspective, acts of individual resistance can be as significant as acts of broad impact, for they empower individuals fighting against systemic injustices or for, sooner or later, they help curb these systemic injustices.[17] Facing the question of what her favorite part of being a "public interest lawyer" was, Texas immigration lawyer Chloe Garcia provided a compelling example of how PIL helps to empower individual clients. She said to believe that her practice:

> Sends a strong message that "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.

17. "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" (Jaffe, 1976, p. 11).

Given this iterative approach to law and change widely shared by US public interest lawyers, even when these lawyers use impact litigation they assign it with a different function than their LA counterparts: lawsuits that come to a settlement and/or benefit only individual clients are also seen as furthering the "public interest", as they discourage defendants from insisting in harmful conducts. 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 that:

> This was an individual homeowner who 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].*

Similarly, as Jacob Anderson – a young lawyer working with community economic development in New York City – was talking about what he finds challenging in his work, he provided 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.

All in all, the contrast between the accounts of PIL in the US and LA is revealing of a striking difference in *scope*. The clientele served by "public interest lawyers" in LA is chiefly constituted of communities, groups, and social movements; in the US it also includes individuals. The methods deployed by "public interest lawyers" in LA are

always of high impact, with much emphasis on impact litigation; in the US they are more diversified, including direct services before courts and the administration. PIL in LA is seen as a vehicle for structural change; in the US it is seen as a vehicle for more iterative change.

But what can possibly explain these differences? The next section explores some of these factors.

3.3.1 Professional struggles and political structures: initial reasons for variation

As "public interest lawyers" account for their everyday work, they reveal structural factors that might explain why PIL's global diffusion produces variation rather than convergence, as some of the literature would expect. These factors are located among professional struggles and political structures, as this section details.

3.3.2 PIL and professional systems: the social construction of distinctive forms of legal practice

Corporate law and large law firms are core features in the social organization of the US bar. Over more than two decades of survey research Heinz and his colleagues (Heinz and Laumann, 1994; Heinz *et al.*, 2005) encountered two hemispheres in the Chicago legal profession: one that works for large organizations (corporations, labor unions, or government); another that works for individuals and small businesses. They also stressed differences in status, with the "organizations" side of the profession having much more prestige than the "individual" one.

These hierarchies were widely evoked by interviewees in this research to sustain a *claim of distinction* between public interest lawyers and others in the profession. In the accounts of US lawyers, the meaning of public interest lawyering is constructed in a fundamental opposition to: *i*) corporate legal work; *ii*) undertaken at large law firms; and *iii*) 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 US civil rights attorney from Maryland – said it was:

> Getting to help people who need help, who are disadvantaged or disenfranchised and discriminated against; 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.

Similarly, as Madison Wilson – a women's rights lawyer at an NGO in Washington D.C. – was explaining how she became a public interest lawyer, she emphasized that "[her] parents' parents were 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

> 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, 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.*

Finally, facing the question of what distinguishes a public interest lawyer from others in the profession, Zachary Humphrey – a 64-years old private public interest lawyer[18] – working with disabilities, civil rights, and housing wrote that:

> I try to make sure my plate also contains 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.

The constitution of the PIL arena in the accounts of LA "public interest lawyers" also stems from a claim of distinction. But although PIL in LA is certainly distinct from high salaries, corporate work, and the large firm setting, these are not the factors that interviewees primarily emphasize. A more central divide in LA lies between PIL and a work-style that *fragments, privatizes, and depoliticizes* conflicts, since it has purely interpersonal implications. For instance, when describing what she takes into account in order to select cases and clients, Catalina Diaz – a Colombian PIL clinician in her 30s – said that she "will give preference to a person [who] has limited resources, has no way to defend his/her rights, because this is [her] job as a public interest lawyer, to help". But then she went on to say that:

18. "We define private public interest firms as for-profit legal practices structured around service to some vision of the public interest. They are organized as for-profit entities, but advancing the public interest is one of their primary purposes – a core mission rather than a secondary concern" (Cummings and Southworth, 2009, p. 186).

> I also examine whether the case is legally attractive and whether it is one of public interest, i.e., whether it encompasses *collective* rights or actions against the state or 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 PIL case.*

Similarly, facing the question of what distinguishes a public interest lawyer from others in the profession, Felix Garrido – an Argentinean lawyer 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.

Finally, as Nicolas Sousa – a Colombian lawyer in his 30s who runs a public interest law clinic at a law school – was giving details about how he selects students for the clinic, he explained that, by law, "every university must have a *consultorio juridico,* a practice setting in which students in the last year of law school provide free legal services to 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 juridico* and here we do litigation and other things that have, say, a broader impact in the community, such as constitutional actions and amicus curiae filed before the inter-American court or the national Supreme Court. We work with the idea that public interest law comprises cases in which the interest goes beyond the individual, i.e., 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 juridico,* which acts in cases of individual interest, the case of a woman who wants her 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 will produce change in Colombian law and the community.

And then he went on to provide illustrative examples, which culminated with a clear statement about the differences between public interest lawyers and others in the profession, as most LA lawyers see them:

For instance, we presented *amicus curiae* in a case of a transgender person who was beaten up. 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

new 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, who were being threatened by the government with removal) we are helping. The government argued 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 gets to a place and who will not be evicted because two years ago there was a census, or something like that. This is where the difference is; we create strategies not for an individual, but for a group; this is what we conceive as PIL.

The social organization of the bar in LA helps explain these distinctions. Corporate law is much less significant in LA than in the US. Although triggered by privatization in the 1990s and bolstered by recent economic advancement in LA countries, the presence and economic relevance of private owned corporations – and, therefore, the existence of a vibrant market for corporate legal services – have been relatively new facts in this region. Public interest lawyers have other hierarchies to face and challenge, like more senior and formalistic advocates.

But neither in the US nor in LA PIL is accounted for solely in relationship with forces internal to the legal profession. Governance structures also matter in the stories I was able to collect.

3.4 Lawyers and governance: speaking law to power in the US and LA

The US society is based on the utopia of having the *law, not men* rule (Tocqueville, 2000). Hence, US lawyers are members of a collectivity that is somewhat designed to participate in government affairs and speak to power – whether power lies in the hands of state officials or in the hands of private parties. Accounts of PIL among US interviewees often reflect this privileged position that they bear in their society.

For instance, as Nathan Kemp – a 44-years old lawyer working at a non-profit with family/children issues and women's rights/domestic violence – was talking about why he went to law school, he told that he "grew up poor but with very high grades in upstate New York and Central Florida [and] had thoughts about law school since undergrad". But after volunteering at a consumer protection center and nursing home, he was convinced that "he needed the esquire behind [his] name and the letterhead to truly be able to accomplish justice for most individuals".

This relevance of lawyers in the US context reappears when interviewees speak of their involvement in particular matters. Facing a question of what kind of difference he believes he can make as a public interest lawyer, Michael Thomas – a health law advocate in New York City – provided what he "guesses is a classic example":

> There is a kid with asthma, and the doctor can sort of figure out that the asthma relates to droppings in the 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 get better, and the asthma gets cleared up, and the kid can move forward in terms of his life and school*.

Also important in these accounts are *the specific ways* in which lawyers report their participation in governance, within that unique range of agency they have available. In their influential study about popular legal consciousness, Ewick and Silbey (1998) elaborated three schematic stories of how legality is constructed in the US 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. Yet, as the authors emphasize, "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 and Silbey, 1998, p. 131).

Among these constraints are "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 article, "players' different levels of skill and experience" (Ewick and Silbey, 1998, p. 131-2). In this respect, Ewick and Silbey report a "virtual agreement" among their interviewees about the importance of having a lawyer once, by choice or by fate, they found themselves playing the "game" through which legality is constructed.

All in all, it is fair to say that US lawyers appear as masters of a specialized body of knowledge and a distinct set of skills that are not widely available and that their legitimacy to handle governance affairs becomes highly enabled by their dominance over such relatively scarce resources, in a society that gives the "game" schema a central

place in governance.[19] Indeed, *expertise* is perhaps the main resource that US public interest lawyers in this research reported to rely on.

Although some US lawyers sound almost unconscious about the role of expertise in their ability to participate in governance, others have it very clear that what constitutes their work styles and identities is their capacity to "navigate bureaucratic webs" and develop "creative strategies" using a unique set of skills and body of knowledge. For instance, as Olivia Jones, cited supra, was describing her area of work and the main issues she faces in it, she 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*.

Further in the conversation, when asked how she believed that her work advanced the public interest, Olivia said that *"this 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, she continued to explain, 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",* for *"these programs are set up in such a way that you actually have to have a lawyer".*

19. "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 and Fortinsky, 1972, p. 15).

In this context, PIL appears as a conduit between the "arena" where the "game-facet" of legality takes place and the interests underrepresented in this "arena".[20] This is anything but a new characterization: foundational works of PIL scholarship in the US had long ago 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 and Benjamin, 1978, p. 28. Similarly, see Marks, Leswing and Fortinsky, 1972, p. 14; and Marshall, 1976, p. 7-8).

Decades after this passage was written, US public interest lawyers continue to embrace its ideology of "equal representation" in their accounts of their everyday work. For example, when William Harris – a welfare benefits lawyer in Florida – was asked what he liked most about being a "public interest lawyer", he 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 a 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.

20. In a book foreword that addresses the advent of public interest law in the US, 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, p. 7-8).

Quite a different scene emerges down South. In the LA 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. LA lawyers, instead, are struggling to establish a more central position for the law and themselves in governance. The "rule of law" itself becomes a "cause" that is in frequent overlap with the others these lawyers pursue.[21] For instance, when the Argentinean civil liberties lawyer Felipe Acosta was asked what he liked most in his work, he 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 [they] lose most of [their] cases, [they] really lose more than [they] win"*. Yet,

> There is 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 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.

This relationship between legal practices and institutional development, which turns out to be a building block of PIL in LA, can find elegant formulations in the accounts of "public interest lawyers" in this region. For example, when Matías López – one of the forerunners of PIL in Argentina – was addressing the socio-political significance of his practice, he 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 bring about a judicial case to impact public policy.*

The Latin American literature on PIL corroborates this interpretation yet again. For example, as the Foreword to a book on "Human Rights and the Public Interest",

21. About the rule of law itself as a "cause" that lawyers can act for, see Hilbnik (2004).

which is part of a series in which much of the memories of LA PIL have been recorded, González 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 to a broader notion of the "public" and includes both state and non-state interests, i.e., which welcomes civil society manifestations and citizens' participation. This has taken place in parallel with changes in the relationship between the "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 (González, 2001, p. 07).

However, exactly because the LA context is one of transition, legal strategies are not entirely sufficient to speak to power. As a result, LA PIL exhibits an inherently political dimension.[22] For example, when Celestino Ruiz – a 28-years old lawyer who works with Human Rights and civil rights in inland Argentina was asked to explain what kind of impact he expects to produce in society, he wrote that: "In the short run, *the main impact is to place the issues we are addressing onto 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". Juan Torres, cited supra, provides another interesting assessment of this close connection between the *legal* and the *political* in LA PIL:

22. In fact, in a book entitled *La lucha por el derecho: litigio estratégico 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 PIL 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 participants 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 CELS' activism historically relates to claims for truth and justice in the context of crimes committed during 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 to the possibility that litigation be also embraced by the needy social group, because it is 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).

> When we are analyzing potential cases, we are also having meetings with two or three external people, with specialists in various areas or themes, to see not only if we have enough evidence to take those cases to the judiciary, but also if those cases have *legal viability,* i.e., if judges can accept them and if they will have the impact we are expecting. *Moreover, we inquiry not just about legal viability, but also about political viability, that is, if the case's issue is on the agenda or if it is possible to put it onto the agenda.* For instance, migration is currently very strong in Mexico; it is daily and all over the media; it is on the agenda. *So we are always thinking of how to put cases on to the public, I am sorry the political agenda.* We call the best cases "noble cases", cases that will open us a door to, let us say, put an issue [onto the agenda] so we can have more room [to discuss it].

All of this helps explain why PIL in LA often involves media and political strategies, as well as collaboration with community leaders and NGOs. Public interest lawyers in LA often have to draw from these other sources of capital and expertise, such as social sciences research and communications: law is *one* component in an amalgam of social practices that connect around a transformative strategy. Perhaps for the same reason, the relationship among lawyers and these non-legal 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 an account illustrating the kind of impact he expects to produce in society, he mentioned the case of a *"rural community (which had been) affected by toxic garbage, after a judicial order was issued against a businessman for environmental contamination".* Angelo explained that, as *"the lawsuit was stuck at the Court, for the businessman had filed an appeal […], he advised the community to put pressure on the Ministry of Environment, given the implication [of the garbage] to their right to health".* The story ends with Angelo and the community together undertaking public pressure and writing public petitions, *"after which the Ministry did interfere and the garbage was removed".*

Hence, in accounts of LA interviewees, PIL is as a lively institutional experiment, typical of a transitional context, in which governance structures are somewhat unsettled and the "rule of law" only gradually appears like an avenue people can walk through. While US lawyers expect to *connect the people to the law,* LA lawyers expect to *connect the*

law to the people.[23] The paradox, however, is that when LA public interest lawyers try to make the law outshine politics in governance, they end up reinforcing the close connections between law and politics.

Of course, these divergent symbolizations of PIL also reflect the larger trajectory of legal and political institutions. For example, it is virtually impossible to understand current accounts of PIL in the US without considering the deep changes that have taken place in this country's political agenda, with direct effect over possibilities for law reform initiatives. PIL scholarship has made it clear that the more "aggressive" approach for the "pursuit of legal rights" (Handler, Hollingsworth and Erlanger, 1978) faces daunting times in that 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 and Eagly, 2006, p. 1.254).

By the way, this was obvious to several of my US interviewees. For example, when I was debriefing with Olivia Jones, cited supra, she said she would like to hear the preliminary findings of this research. We then had the following conversation:

23. See, for example, the report entitled La Corte y los Derechos (The Court and The Rights), produced by the Asociación por los Derechos Civiles (ADC), another leading "public interest law" NGO in LA. In the foreword of this report, the ADC leadership states that: "in 2005 [they] published this report for the first time, addressing the main important decisions by the Supreme Court in 2003-2004. At that time, [they] showed concern with the lack of interest by the press and citizens with respect to the decisions of the Argentinean Supreme Court. Two were the main reasons. First, there was a general lack of a critical understanding about the importance of the Court for the everyday lives of citizens. Second, there was a lack of legitimacy affecting the Court." But they consider that "it continues to be absolutely necessary that citizens learn about and criticize Supreme Court decisions about rights and institutions. [They were] convinced of the need for continuously monitoring the Supreme Court and articulating activities to publicly discuss the Court's interpretation of the Argentinean Constitution" (Saba and Herrero, 2008, p. 23-24).

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: Well, if you were doing this research in the 1970s you would probably find the same here.

The same case can be made for LA: collective mobilization appears not just as a vernacular characteristic in current accounts of LA public interest lawyers, but also as a hallmark of democratic restoration in this region, after which the first of these lawyers emerged as such. While creating a unique background for these lawyers to operate, these historical traits have also instilled their professional identities with practices and symbols typical of more "political" groups and communities, such as liberation theology.

4 FINAL REMARKS

Santos once suggested that, in "transition periods […] we must go back to simple things and ask simple questions […], questions that only children can ask, but that, once asked, shed a new light on our perplexities" (Santos, 1992, p. 10). As PIL's global diffusion has been documented and explained in terms of "convergence" and "adaptation", this article has turned to some of those simple questions: what does PIL entail in the different contexts where it has appeared? Does what people call PIL look the same everywhere? If not, what is the nature of that diffusion process and what does an investigation about it add to our discussions about law, lawyers, governance, and globalization?

Building on the constitutive approach to law and society studies and drawing from a comparative and international empirical research, this text examined accounts of PIL, which circulate among public interest lawyers in the US and LA. As a result, the study highlighted important differences in the *scope* of PIL in the accounts of US lawyers, vis-à-vis their fellow LA counterparts: variation in clients, methods, and the sociopolitical significance of PIL work express these differences.

All these differences are associated with rich professional and political histories that form each of the researched contexts. Here and there, the bar appears as a diverse

system, in which groups struggle for the legitimacy of their work styles and cultures of work: as the system varies, so do their circulating accounts of PIL. Here and there, the field of state power appears more or less open to legal expertise as a tool for participation in governance affairs: as these chances and circumstances vary, so do accounts what lawyering in the "public interest" is.

But this can sound both obvious and absurd. Differences in accounts of PIL among US lawyers vis-à-vis LA lawyers can always be "explained" because, after all, the US is different from LA: the courts are different, the laws are different, legal education is different, and even the definition of what a lawyer is may be different. And if this argument were taken to its extreme, no diffusion processes would ever have been successful, for they always take place across different contexts.

A rejection of convergence as a characterization of PIL's diffusion thus needs to be followed by more nuanced empirical investigations and theoretical formulations. This can be undertaken in at least three ways.

The first, which is consistent with the constitutive approach underlying this article, would continue to question whether and how different accounts of PIL get produced within and across different contexts of the global economy. Here, researchers can reveal many other mechanisms operating in the everyday lives of lawyers or within the inner workings of institutions, which generate opportunities and constraints for the practice and the reproduction of PIL.

The second way, which would be more consistent with theories of field constitution, would question whether and how diffusion and differentiation coexist and feed the aspiration of PIL becoming a "global institution" (Cummings and Trubek, 2008, p. 6). Here, researchers can reveal mechanisms that mediate between and eventually reconcile the differences among different PIL traditions.

The best example of this approach is in Dezalay and Garth (2002a; 2002b; 2010; 2011; 2012; see also Engelmann, 2004; 2006). In contrast to accounts of legal diffusion as a simple, one-way imposition of models from the center to the periphery, these authors situate this process in the context of collaborative relationships across those two ends, which help disseminate norm-based systems and law-like structures

of governance globally. But this collaboration is limited to the extent that it enhances those lawyers' position in their respective "palace wars", i.e., their local struggles in the field of state power.[24] The result is hybrid structures and what the authors call "half-succeeded, half-failed transplants", such as law school reforms in the South that empower a new intellectual elite, which, in turn, not only does not uphold the liberal values that reformers were expecting to see upheld, but also builds on its new status to reproduce oligarchical practices in the local legal field.

Finally, a third way, which would be more consistent with critical approaches, would actually *value* differentiation, which would be seen as a signal that, even if they take place in the context of hegemonic relationships, current processes of PIL's diffusion may allow forms of legal engagement that could take us beyond the strict canons of US liberal legalism. From this perspective, the compilation of multiple accounts of PIL that are taking shape in this "global village" should foster new exchanges and invite broader thinking about how law and lawyers can possibly help people.[25]

REFERENCES

BHUWANIA, A. The appellate court and its publics: public interest litigation in Delhi. *In*: Law and Society Association Annual Meeting, 2010, Chicago, IL. **Anais**... Chicago, IL, 2010.

BOYLE, E.; MEYER, J. W. Modern law as a secularized and global model: implications for the sociology of law. *In*: DEZALAY, Y.; GARTH, B. G. (Eds.). **Global prescriptions**: the production, exportation, and importation of a new legal orthodoxy. Ann Arbor: University of Michigan Press, p. 65-95, 2002.

CELS – CENTRO DE ESTUDIOS LEGALES Y SOCIALES. **La lucha por el derecho**: litigio estratégico y derechos humanos. Buenos Aires: Siglo XXI, 2008.

24. For example, facing the question of whether PIL's development in LA has been influenced by the US,, Matias Lopez said: "I think the difference this time, as compared to 'Law and Development', is that we do it with an own project. The difference between public interest law in LA is that, in contrast to public interest law in the US, 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 just marginally fixed, so that marginalized voices could be heard in some way. So we include the African Americans and the US will become just, after all. In LA, I think we never had this kind of perspective, we always thought that the system was entirely broken and we wanted to denounce that".

25. This shall not be incompatible with a sociology of law that is critical and self-critical, which does not overstate the role of law and official legal institutions in making people's lives better, and which is mindful that, when people face problems, it is perfectly legitimate that, rather than mobilizing the law, they prefer "doing nothing" (Sandefur, 2007; Garth, 2009).

CUMMINGS, S. L. The pursuit of legal rights-and beyond. **UCLA Law Review**, n. 59, p. 506-549. Available at: <https://goo.gl/jXkzRv>. Accessed on: 19 Dec. 2015, 2012.

CUMMINGS, S. L.; EAGLY, I. After public interest law. **Northwestern University Law Review**, n. 100, p. 1251-1295, 2006. Available at: <https://goo.gl/zdldjA>. Accessed on: 3 Nov. 2015.

CUMMINGS, S. L.; SOUTHWORTH, A. Between profit and principle: the private public interest firm. *In*: GRANFIELD, R.; MATHER, L. (Eds.). **Private lawyers and the public interest**: the evolving role of pro bono in the legal profession. Oxford University Press, p.183-210, 2009.

CUMMINGS, S. L.; TRUBEK, L. G. Globalizing Public Interest Law. **UCLA Journal of International Law and Foreign Affairs**, v. 13, p. 1-54. 2008.

DEZALAY, Y, GARTH, B. (Eds.). **Global prescriptions**: the production, exportation, and importation of a new legal Orthodoxy. Ann Arbor: University of Michigan Press. 2002a.

_____. **The internationalization of palace wars**: lawyers, economists, and the contest to transform Latin American States. Chicago University Press. 2002b.

_____. **Asian legal revivals**: lawyers in the shadow of empire. University of Chicago Press, 2010.

_____. Hegemonic battles, professional rivalries, and the international division of labor in the market for the import and export of state-governing expertise. **International Political Sociology**, v. 5, p. 276-293, 2011.

_____. Corporate Law Firms, NGOs, and Issues of Legitimacy for a Global Legal Order. **Fordham Law Review**, v. 80, p. 2309-2345. Available at: <https://goo.gl/l4wqyT>. Acessed on: 19 Dec. 2015, 2012.

ENGELMANN, F. **Diversificação do espaço juridico e lutas pela definição do direito no Rio Grande do Sul**. 2004. Thesis (PhD) – Federal University of Rio Grande do Sul, 2004.

_____. Internacionalização e ativismo judicial: as causas coletivas. **Lua Nova**, n. 69, p. 123-146. Available at: <https://goo.gl/SxsM7j> Accessed on: 3 Nov. 2015, 2006.

EWICK, P.; SILBEY, S. **The common place of law**: stories from everyday life. University of Chicago Press, 1998.

GARDEREN, J. Barriers and challenges to public interest litigation in South Africa. *In*: Law and Society Association Annual Meeting, 2010, Chicago, IL. **Anais**... Chicago, IL, 2010.

GARTH, B. Comment: a revival of access to justice research? *In*: SANDEFUR, R. L. (Ed.). **Access to Justice**. Bingley, UK: Emerald Jai, p. 255-260, 2009.

GONZÁLEZ, F. (Ed.). **Derechos humanos e interés público**. Santiago, Chile: Escuela de derecho, Universidad Diego Portales, 2001.

GONZÁLEZ, F.; VIVEROS, F. (Eds.). **Defensa jurídica del interés público**: enseñanza, estrategias, experiencias Santiago, Chile: Escuela de Derecho, Universidad Diego Portales, 1999. Available at: <https://goo.gl/06mEoh>. Accessed on: 19 Dec. 2015.

HALLIDAY, T. C.; CARUTHERS, B. G. Foiling the hegemons: limits to the globalization of corporate insolvency regimes in Indonesia, Korea and China. *In*: ANTONS, C.; GESSNER, V. (Eds.). **Globalisation and resistance**: law reform in Asia since the crisis. Oxford: Hart, p. 255–301, 2007.

HALLIDAY, T. C.; OSINSKY, P. Globalization of law. **Annual Review of Sociology**, n. 32, p. 447–470, 2006.

HANDLER, J. F.; HOLLINGSWORTH, E. J.; ERLANGER, H. **Lawyers and the pursuit of legal rights**. New York: Academic Press, 1978.

HANDMAKER, J. Public interest litigation in South Africa and the potential for structural change. **South African Journal on Human Rights**, v. 1, n. 27, p. 65-81, 2010.

HEINZ, J. et al. **Urban lawyers**: the new social structure of the bar. University of Chicago Press, 2005.

HEINZ, J.; LAUMANN, E. **Chicago lawyers**: the social structure of the bar. Evanston, Ill.: Northwestern University Press; Chicago, Ill.: American Bar Foundation, 1994.

HILBNIK, T. You know the type: categories of cause lawyering. **Law and Social Inquiry**, v. 3, n. 29, p. 657–698, 2004.

HOYOS, E. Interaction between Latin America and the United States on clinical legal education and public interest law. *In*: Law and Society Association Annual Meeting, 2010, Chicago, IL. **Anais**... Chicago, IL, 2010.

INDA, J. X.; ROSALDO, R. Tracking global flows. *In*: INDA, J. X. ; ROSALDO, R. (Eds.). **The anthropology of globalization**: a Reader. 2. ed. Malden, MA: Blackwell, p. 3-46, 2008.

JAFFE, S. M. **Public interest law**: five years later. Chicago: American Bar Association, Special Committee on Public Interest Practice, 1976.

MARCUS, G. E. Ethnography in/of the world system: the emergence of multi-sited ethnography. **Annual Review of Anthropology**, v. 24, p. 95-117, 1995.

MARKS, F. R.; LESWING, K.; FORTINSKY, B. A. **The lawyer, the public, and professional responsibility**. Chicago, IL: American Bar Foundation, 1972.

MARSHALL, T. Foreword. *In*: Jaffe, S. M. **Public interest law**: five years later. Chicago, IL: American Bar Association, p. 7-8, 1976.

MEYER, J. World society, institutional theories, and the actor. **Annual Review of Sociology**, v. 1-20, n. 36, 2010. Available at: <https://goo.gl/RaB3OJ>. Accessed on: 6 Nov. 2015.

MEYER, J. W. et al. World society and the nation-state. **American Journal of Sociology**, v. 1, n. 103, p. 144–181, 1997.

MONTOYA, L. C. Litigo de alto impacto. Estrategias alternativas de ejercer el derecho. **Revista de Derecho**, Universidad del Norte: Colombia, n. 30, p. 247-267, 2008. Available at: <https://goo.gl/s3f2Jb>. Accessed on: 2 Nov. 2015.

PILA – PUBLIC INTEREST LAW ALLIANCE. **Pila, Public Interest Law Alliance**: a project of FlAC. Available at: <http://www.pila.ie/>. Accessed on: 10 Nov. 2015.

PILCH NEW SOUTH WALES. **Pilch New South Wales**, 2015. Available at: <http://www.pilchnsw.org.au/>. Accessed on: 7 Dec. 2015.

PILNET. **The Global Network for Public Interest Law**, PILnet, The Global Network for Public Interest Law, 2015. Available at: <http://www.pilnet.org/>. Accessed on: 10 Nov. 2015.

RED LATIONAMERICANA DE CLÍNICAS JURÍDICAS. **Red latioamericana de clínicas jurídicas**, 2012. Available at: <http://www.clinicasjuridicas.org/>. Accessed on: 10 Nov. 2015.

SA E SILVA, F. Professional ideology and the global journey of public interest law: variation in the meaning of advocacy among public interest law practitioners in the US and LA. *In*: 2010 Law and Society Association Annual Meeting, 2010, Chicago, IL. **Anais**... Chicago, IL, 2010.

_____. **Lawyers and governance in a globalizing world**: narratives of "Public Interest Law" across the Americas, 2012. Dissertation (PhD) – Northeastern University, Boston, MA, 2012.

SABA, R.; HERRERO, A. Prólogo. *In*: ADC – ASOCIACIÓN POR LOS DERECHOS CIVILES. **La corte y los derechos civiles 2005/2007**: cómo impactan en la vida de los ciudadanos las decisiones del Máximo Tribunal. Buenos Aires: Siglo Veintiuno Editores, PP-PP, 2008.

SANDEFUR, R. L. Access to civil justice and race, class, and gender inequality. **Annual Review of Sociology**, n. 34, p. 339–358, 2008.

SANTOS, B. S. A Discourse on the sciences. **Review**, v. 1, n. 15, p. 9-47, 1992. Available at: <https://goo.gl/DQTzoy>. Accessed on: 10 Nov. 2015.

SANTOS, B. S.; RODRIGUEZ-GARAVITO, C. (Eds.). **Law and globalization from below**: toward a cosmopolitan legality. Cambridge University Press, 2006.

SILBEY, S. After legal consciousness. **Annual Review of Law and Social Science**, v. 1, n. 1, p. 323–368, 2005.

TEY, T. H. Limitations on public interest litigation in singapore: internalizing political ideology and institutionalizing judicial self-restraint. *In*: Yap, P. J.; LAU, H. (Eds.). **Public interest litigation in Asia**. London: Routledge, p. 99-114, 2011.

THE PILS PROJECT. **The PILS Project**: advancing human rights and equality through public

interest litigation, 2015. Available at: <http://www.pilsni.org/>. Accessed on: 10 Nov. 2015.

THOMSON, D. Cause lawyering, public interest activism, and the movement to end mass incarceration. *In*: Law and Society Association Annual Meeting, 2010, Chicago, IL. **Anais**... Chicago, IL, 2010.

TOCQUEVILLE, A. **Democracy in America**. New York: Perennial Classics, 2000.

WEISBROD, B. A.; BENJAMIN, C. B. Appendix: Some concepts of the public interest and public interest law. *In*: WEISBROD B. A., HANDLER J. F., KOMESAR N. K. (Eds.) **Public interest law**: an economic and institutional analysis. University of California Press, Berkeley, 1978.

ZALOZNAYA, M.; NIELSEN, L. The experience and consequences of professional marginality: the case of public interest lawyers. *In*: Law and Society Association Annual Meeting, 2010, Chicago, IL. **Anais**... Chicago, IL, 2010.

Ipea – Institute for Applied Economic Research

Press and Communications Office

PUBLISHING DEPARTMENT

Coordination
Cláudio Passos de Oliveira

Supervision
Everson da Silva Moura

Typesetting
Bernar José Vieira
Cristiano Ferreira de Araújo
Danilo Leite de Macedo Tavares
Herllyson da Silva Souza
Jeovah Herculano Szervinsk Junior
Leonardo Hideki Higa

Cover design
Danielle de Oliveira Ayres
Flaviane Dias de Sant'ana

Graphic design
Renato Rodrigues Buenos

The manuscripts in languages other than Portuguese published herein have not been proofread.

Ipea Bookstore

SBS – Quadra 1 – Bloco J – Ed. BNDES, Térreo
70076-900 – Brasília – DF
Brazil
Tel.: + 55 (61) 2026 5336
E-mail: livraria@ipea.gov.br

Composed in Adobe Garamond 11/13.2 (text)
Frutiger 47 (headings, graphs and tables)
Brasília – DF – Brazil

Ipea's mission
Enhance public policies that are essential to Brazilian development by producing and disseminating knowledge and by advising the state in its strategic decisions.

ipea Institute for Applied Economic Research

MINISTRY OF
PLANNING, DEVELOPMENT AND MANAGEMENT

BRASIL
BRAZILIAN GOVERNMENT

ISSN 1415-4765