

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

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In recent years, “public interest law” (PIL) has become a frequent component in conversations about law and policy around the globe. 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. 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.

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. 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”.

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: the other six looked at things happening in Africa, Asia, and Latin America. Over time, this trend would get consolidated in the domain of articles and monographs as well.

While these facts indicate a remarkable process of diffusion, 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”, 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, 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

believe 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. 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.

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.

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