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Lawyers, Governance, and Globalization: the Diverging Paths of "Public Interest Law" across the Americas

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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.

Key words

Lawyers; governance; globalization; "public interest law"; legal mobilization; access to justice

Resumen

En los últimos años, el "derecho de interés público" (DIP) se ha convertido en un componente frecuente en las conversaciones sobre derecho y política a lo largo y ancho del globo. Mientras que esta manifestación a nivel mundial de un discurso profesional y político que hasta ahora parecía ser típicamente americano sugiere un notable proceso de difusión, sus mecanismos y significado todavía se deben examinar más profunda y sistemáticamente. La teoría disponible sostiene que este

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proceso ha sido de “convergencia” y “adaptación”. Sin embargo, hay buenas razones empíricas y teóricas para someter esta afirmación a un examen más profundo. A partir de una investigación comparativa empírica e internacional del día a día de los “abogados de derecho público” desarrollada en Estados Unidos y América Latina, este artículo hace hincapié en las importantes diferencias que hay en la forma en la que los abogados de Estados Unidos y América Latina han estructurado el “derecho de interés público” –poniendo así en duda la idea de convergencia–, y además revela nuevos factores en las ricas historias del desarrollo profesional y político de los contextos analizados, que a priori dan cuenta de esa diferenciación. Estos descubrimientos piden nuevas investigaciones, pero ya hablan de una variedad de teorías sobre el desarrollo institucional en tiempos de globalización, como teorías de isomorfismo institucional y constitución de campo.

Palabras clave

Abogados; gobierno; globalización; derecho de interés público; movilización legal; acceso a la justicia

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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, they have also attracted considerable resources from organizations like the Open Society Institute (OSI) and the Ford Foundation (FF). A fair amount of these resources 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].

This worldwide manifestation of a professional and political script (lawyers engaged in promoting a vision of the good society, while at the same time contributing to democracy), which thus far seemed to be typically so American, 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 personal communication 2010[6], Zaloznaya and Nielsen personal communication 2010[7]): the other six looked at things happening in Africa, Asia, and Latin America (Garderen personal communication 2010[8], Handmaker 2010, Tey 2011, Bhuwania personal communication 2010[9], Hoyos personal communication 2010[10], Sa e Silva

[1] In this article, PIL means a socioprofessional practice that developed in the US, particularly after the 1960s. The literature covering PIL's history and characteristics since its emergence is extensive 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 has 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) in an example of organizations participating in this global diffusion of PIL. Initially part of Columbia Law School, PILNET became an independent NGO that, relying on FF and OSI grants, provides training and other resources to individuals and organizations doing "public interest law" in developing countries. Its 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).

[6] D. Thomson. Cause Lawyering, Public Interest Activism, and the Movement to End Mass Incarceration. *In*: *2010 Law and Society Association Annual Meeting*, Chicago, IL.

[7] M. Zaloznaya, L. Nielsen. The Experience and Consequences of Professional Marginality: The Case of Public Interest Lawyers. *In*: *2010 Law and Society Association Annual Meeting*, Chicago, IL.

[8] J. Garderen. Barriers and Challenges to Public Interest Litigation in South Africa. *In*: *2010 Law and Society Association Annual Meeting*, Chicago, IL.

[9] A. Bhuwania. The Appellate Court and its Publics: Public Interest Litigation in Delhi. *In*: *2010 Law and Society Association Annual Meeting*, Chicago, IL.

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personal communication 2010[11]). Over time, this trend would get consolidated in the domain of articles and monographs as well[12].

While these facts indicate a remarkable process of diffusion[13], 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, they 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" [14], 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… 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 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?

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, it examines similarities and differences in accounts of PIL that circulate in those two contexts[15]. In addition, it addresses structural factors

[10] E. Hoyos. Interaction between Latin America and the United States on Clinical Legal Education and Public Interest Law. *In*: *2010 Law and Society Association Annual Meeting*, Chicago, IL.

[11] F. de Sá e Silva, 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, Chicago, IL.*

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

[13] The mere popularization of "public interest law" as a to name 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 calling their experiences and themselves after a US tradition.

[14] 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" drives convergence.

[15] This "constitutive approach" results from analytical shifts, which led scholars to consider that law and society are not separate, but more integrated spheres in social life. As part of those shifts, scholars also came to understand that "ideologies" – i.e., chains of meaning-making processes that mediate people's relationships with the law –, are core forces promoting that law/society integration. Accounts of anything, like everyday experiences of "public interest law", are rich sources of these meanings, as well as of the circumstances in which they are produced. As such, accounts matter, for they convey taken for granted assumptions to everyday life, which, in this capacity, are "part of the material and discursive

associated with these accounts, thus identifying explanatory insights and/or causal hypotheses for PIL's global diffusion[16].

The article has 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[17]. 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. 71 US lawyers (n=164) and 36 LA lawyers (n=72) responded. 40 interviews were then conducted in several US states (=20) and LA countries (=20).

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 800 public interest lawyers from the US and 200 from LA[18]. This second wave of data collection led to a final dataset with responses from 221 US lawyers and 87 LA lawyers. Responses in this dataset were analyzed along with transcripts of those 40

systems that limit and constrain future meaning making" as well (Silbey 2005, p. 333-334, see also Ewick and Silbey 1998).

[16] 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).

[17] 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, and to contemplate variation along meaningful variables.

[18] 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 the objectives of this research, this qualitative variation was more important than quantitative representativeness.

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in-depth interviews and additional 120 CAWI records with rich responses to open-ended questions (US, N=80; LA, N=40)[19].

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 were made increasingly understandable and saturated. At the end, the research was able to generate thick data at reasonable cost.

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 legal services lawyer from Philadelphia who works on labor law issues was talking about 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" [20]. However, he said, "(he doesn't) believe that anymore…" He just:

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

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 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 public interest cases, she said that, unlike another existing "clinic – in the US they would call it a clinic – that does individual cases, which is called *consultorio jurídico,* (she, as a public interest lawyer,) looks for cases that somehow will impact a large group of people".

[19] Given the depth of these online responses, no further in-depth interviews were conducted. Also, a lot of back and forth contact was maintained via email with these CAWI respondents, so that some aspects of their responses could be clarified.

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

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 further 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 concerted action 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. Indeed:

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

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. Through impact litigation, they seek to: (i) generate transformative legal precedents; (ii) create model arguments, which other lawyers can further utilize; 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"[21]. 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. These "work more with individual cases and attempt to solve problems of individuals who face trouble at some point". As such, he argued further,

> These organizations provide a *first help* (… They take) one concrete case and that is not bad, that is already important (but) what (his organization does) with them 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. As she 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. Nobody cares that, let us say, no media vehicle will report that Joaquin wants to change his name… But there was extensive newspaper coverage when we sued the mayor for not complying with norms of accessibility in the (subway service). This 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 the countryside of Argentina said that: "(Unlike) a private lawyer", who accepts a case "if (it) sounds economically profitable" or "reframes the case as one of private interest so that she can collect damages", her clinic addresses cases that will "resolve a social problem or at least produce a palliative solution", thus "adding to social change":

> Private litigation can give you the satisfaction of winning a case or of helping an individual who was really in need, but that is where it ends. PIL has to do with 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 that is being affected (by the issue) may have had the chance to interfere in it, all of that, that is the most gratifying [aspect of her practice].* If we win the case, much better, but it is good to feel that one can add to social change.

The local literature on PIL in LA 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 (Correa 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

[21] In Spanish: (i) *litigio de interes publico,* (ii) *litigio estrategico de interes publico,* and (iii) *litigio estrategico en Derechos Humanos.*

> in processes of decision making and implementation 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 (…) This is not just about giving publicity to activities (…), it is a component justifiable in its own right (Correa 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 sociopolitical significance of their work in each of those contexts. Hence, 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*[22]*.* For instance, when Cristobal Alvarez was asked about his practices of client selection, he said that:

> (There are) two variables we consider to be important: on one hand, the person needs to belong to 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 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 understanding 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[23]. 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.

[22] In another local work: "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).

[23] "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).

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Given this iterative approach to law and change that US public interest lawyers hold, even when these lawyers use impact litigation they assign it with a different role than their LA counterparts: lawsuits that come to a settlement and/or that 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:

> This was an individual homeowner who was going to lose out, was going to lose his home. And, it took quite a bit of my time, but I am fairly certain that they actually were successful and able to save his home… I don't remember if they settled the case or if they went all the way through litigation. *In cases like that, I feel really strongly it is important for as many people as possible to have representation, because then the underrepresented people are less likely to be mistreated.* This guy was one homeowner out of many, many who had these loans. But, *if just a few of them are able to find relief, then the bank will probably, first of all, stop using this kind of loan (chuckles). But secondly, they'll be a lot more likely to settle quickly or do something to help out the remaining people so that they don't get sued by them, too. So, it actually has a ripple effect. Representing individual clients helps out all the people that can't have a lawyer, which is most people [laughs]*.

Similarly, as Jacob Anderson, a young lawyer who works 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. These factors are located among professional struggles and political structures, as this section addresses.

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. Heinz and Laumann (1994) and 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 "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. The meaning of public interest lawyering in accounts of US lawyers is constructed in a fundamental opposition to: (i) corporate legal work; (ii) undertook 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 a non-profit in Washington D.C. was explaining how she became a public interest lawyer, she emphasized that "(her) parents' parents were all kinds of working class folks and (her) grandfather was very involved in the labor movement; (her) parents were also very liberal (…so) she just kind of grew up with a sort of innate sense of responsibility for just kind of the things that the world could be more just, more fair for people". And although she had gone to a "private prep school" and had a "kind of sheltered life", she still

> Kind of had the sense that (her) parents had worked really hard to do what they had done and she could continue it and become a corporate lawyer and make a lot of money whatever, but (she) felt like she wanted to do something more than just continue to amass money: (she) wanted to do something meaningful with (her) life.

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[24] working with disabilities, civil rights, and housing wrote that:

> I try to make sure my plate also contains some clients who are corporations or rascals and that some of the cases are without social significance because I worry about being too self-righteous or about demonizing my adversaries and I see that as a cure. Maybe that is a way of saying that I see a public interest lawyer as one who attempts to use his or her skills in service of a particular set of clients.

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, i.e., one that has purely interpersonal implications. For instance, when describing what she takes into account in order 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:

> 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.*

[24] "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).

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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 for the inter-American court or the national Supreme Court … We work with the idea that public interest law comprises actions in which the interest goes beyond the individual, that is, cases that will produce benefits for the community and the country and that do not… let us say, this is the difference we have with the *consultorio juridico,* which acts in cases of individual interest, the case of a woman who wants the husband to pay for child support, the case of the worker who needs an evaluation of how much his employer owes to him, but these are all individual interests. Ours can be a case that grows from an individual, but we know that the lawsuit we present will produce change in Colombian law and in the community.

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 that gets to a place and that 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 explains 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 progress 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, perhaps the 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 we were 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 public interest law 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 his reasons for going 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, but":

> You know, 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 gets better, and the asthma gets cleared up, and the kid can, you know, 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. But, as 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 find 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[25]. 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 it is their capacity to "navigate bureaucratic webs" and to develop "creative strategies" using a unique set of skills and body of knowledge that constitutes their work styles and identities. For instance, as Olivia Jones was describing her area of work and the main issues she faces in it, she said that:

[25] "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 *et al*. 1972, p. 15).

> 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".*

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"[26]. 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 *et al*. 1972, p. 14 and Marshall 1976, p. 7-8).

Decades after these passages were written, US public interest lawyers continue to embrace their ideology of "equal representation" in their accounts of their everyday work. For example, when William Harris, a welfare benefits lawyer in Florida was asked about 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 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.

[26] 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 for themselves in governance. The rule of law itself becomes a "cause" that is in frequent overlap with the others that these lawyers pursue[27]. For instance, when the Argentinean civil liberties lawyer Felipe Acosta was asked about 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 that (they) lose most of (their) cases, (they) really lose more than (they) win".* Yet,

> There is a conviction that the justice system can work in a different way, that lawyers can behave in a different way, that the law can be used in a different way, and that judges can work in a different way. There is a satisfaction in working with this conviction and using the courts for something different than asking for damages, as it happens in the practice of most lawyers.

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

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

The local literature on PIL in LA corroborates this interpretation once again. For example, as a Foreword to a book on "Human Rights and the Public Interest", 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 with 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 a change in the relationship between "public interest" and the exercise of rights, so that the former does not limit the latter, instead it has become associated with the protection of such rights (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[28]. For example, when Celestino Ruiz, a 28-years old lawyer who

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

[28] 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 "public interest law" organization states that: "The cases presented in this volume are also an important part of the recent history in human rights activism. The relevance of this activism, whose most visible participants are lawyers and courts, is in that the

works with Human Rights and civil rights in the countryside of Argentina was asked to explain what kind of impact he expects to produce in society, he wrote that: "In the short 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 provides another interesting assessment of this close connection between the *legal* and the *political* in LA PIL:

> 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 if we are to present those cases to the judiciary, but also if it has *legal viability,* that is, if a judge can accept it and if it will have the impact we are expecting. *Moreover, we inquiry not just about legal viability, but also about political viability, that is, if a theme is in 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 in the agenda. *So we are always thinking of how to put cases in 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 is somewhat unsettled and the "rule of law" only gradually appears like an avenue that people can walk through. While US lawyers expect to *connect the people with the law,* LA lawyers expect to *connect the law with the people*[29]*.* The paradox, however, is that when LA public

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 with the possibility that litigation be also embraced by the needy social group, because in it 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]).

[29] 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

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 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. PIL scholarship has made it clear that the more "aggressive" approach for the "pursuit of legal rights" (Handler *et al*. 1978) faces daunting times there 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. 1254).

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

> *Interviewer:* You know, it is still too early to make claims, but I feel like there is one big difference. LA lawyers are generally more aggressive than US lawyers.
>
> *Respondent:* What do you mean?
>
> *Interviewer:* Their cases are all of broad impact and their clients are only groups and communities.
>
> *Respondent:* If you were doing this research in the 1970s you would probably find the same here.

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 these 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?

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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)".

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Building on the constitutive approach to law and society studies, and drawing from a comparative and international empirical research, this article examined accounts of PIL, which circulate among public interest lawyers in the US and LA, with the purpose of addressing those "simple questions". As a result, the article highlighted important differences in the *scope* of PIL in the accounts of US lawyers, vis-à-vis their fellow LA lawyers: variation in clients, methods, and sociopolitical significance 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 segments struggle for the legitimacy of their working styles and cultures of work: as the system varies, so do 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 way, which is consistent with the constitutive approach that underlay this article, would question whether and how could those different accounts of PIL be synthesized into some form global consciousness. Here, researchers would focus on mechanisms that mediate between and eventually reconcile the differences, in the everyday lives of lawyers or within the inner workings of institutions.

The second way, which would be more consistent with theories of field constitution, would question whether and how may diffusion and differentiation coexist. 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 cross these 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[30]. 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 it would see 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

[30] 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".

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[31].

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[31] This shall not be incompatible with a sociology of law that is critical and self-critical, that does not overstate the role of law and official legal institutions in making people's lives better, and that is mindful that, when people face problems, it is perfectly legitimate that, instead of mobilizing the law, they prefer "doing nothing" (Sandefur 2008, Garth 2009).

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