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## The Future of Public Interest Law

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## THE FUTURE OF PUBLIC INTEREST LAW

Scott L. Cummings\*

### INTRODUCTION

The public interest law movement is at the end of its first generation—part of a broader changing of the guard in the legal profession.<sup>1</sup> Although its roots date back to the turn of the twentieth century, public interest law's institutionalization began in earnest in the 1960s and 1970s with the establishment of the federal legal services program<sup>2</sup> and the launch of the Ford Foundation's public interest law initiative.<sup>3</sup> Both of these projects transformed the field, creating new opportunities for the wave of entering law students aligned with the social movements of the day and committed to using their legal training to "speak law to power."<sup>4</sup> Looking back, the founding liberal wing of the movement failed to achieve its most ambitious goals, and questions remain about how much of this failure can be blamed on the limits of liberal legalism versus the power of its opposition.<sup>5</sup> As the movement pivots from vanguard to new guard, there has been a resurgence of scholarly interest in charting the organization, practice, and meaning of public interest law in the contemporary era.<sup>6</sup> Drawing upon this literature, this essay appraises public interest law's professional inheritance, identifying

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1. See Marc Galanter, "Old and In the Way": *The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081.

2. See EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM* (1974).

3. See THE FORD FOUNDATION, *MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD* 91 (2000).

4. See Richard Abel, *Speaking Law to Power: Occasions for Cause Lawyering*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 69 (Austin Sarat & Stuart Scheingold eds., 1998).

5. Orly Lobel, *The Paradox of Extra-Legal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 973 (2007).

6. See, e.g., DEBORAH L. RHODE, *ACCESS TO JUSTICE* (2004); Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975-2004*, 84 N.C. L. REV. 1591 (2006); Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 (2008); Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 L. & SOC'Y REV. 79 (2007); Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of "Public Interest Law"*, 52 UCLA L. REV. 1223 (2005); Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the "New Public Interest Law"*, 2005 WIS. L. REV. 455.

four critical developments in the field—professionalization, privatization, conservatism, and globalization—and suggesting the challenges they pose for the future of public interest law.

### I. PROFESSIONALIZATION

Although the federal legal services program built upon a pre-existing foundation of legal aid organizations,<sup>7</sup> public interest law was for the most part a professional upstart. That meant that many lawyers who entered the field at its inception had to create their own organizational forms and test uncharted career paths.<sup>8</sup> In so doing, they also had to confront the resistance of the organized bar, with Southern states attacking the National Association for the Advancement of Colored People Legal Defense Fund's impact strategy on ethics grounds,<sup>9</sup> while many local bar associations opposed the market threat of federally funded legal services for the poor.<sup>10</sup>

Forty years later, public interest law occupies a radically different place within the profession. No longer in "fragile alliance" with the organized bar,<sup>11</sup> public interest law in the United States now enjoys the status of a stable and strongly supported occupational category within the legal profession. From an organizational perspective, the field has shown impressive expansion. Although direct historical comparisons are not possible, the available data points to significant growth in both the number and size of public interest law groups over the movement's lifespan. In 1975, Handler, Ginsberg, and Snow identified 576 lawyer positions in eighty-six public interest law organizations nationwide (excluding legal aid organizations), yielding an average of approximately seven attorneys per group.<sup>12</sup> In addition, Johnson reported that in 1972 there were 2660 lawyers in roughly 850 federally funded legal services offices (for an average of three attorneys per office).<sup>13</sup> Taken together, these public interest lawyers (3236 in all) were approximately 0.7% of the total bar at the time.<sup>14</sup> According to Nielsen and

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7. JOHNSON, *supra* note 2, at 74.

8. See, e.g., Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069 (1970).

9. See Susan D. Carle, *From Buchanan to Button: Legal Ethics and the NAACP (Part II)*, 8 U. CHI. L. SCH. ROUNDTABLE 281, 282 (2001).

10. See JOEL F. HANDLER, ELLEN JANE HOLLINGSWORTH & HOWARD S. ERLANGER, *LAWYERS AND THE PURSUIT OF LEGAL RIGHTS* 32 (1978).

11. STUART SCHEINGOLD & AUSTIN SARAT, *SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING* 44 (2004).

12. Joel F. Handler, Betsy Ginsberg & Arthur Snow, *The Public Interest Law Industry*, in *PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS* 42, 51 (Burton A. Weisbrod et al. eds., 1978).

13. JOHNSON, *supra* note 2, at 188.

14. To arrive at this figure, I estimated the total size of the bar as of 1975 by averaging the total lawyer population size in 1971 and 1980, which resulted in a total of 448,724 law-

Albiston's 2004 survey data, there were slightly more than one thousand public interest law organizations (including legal aid organizations) with an average of thirteen lawyers per group, for an estimated total of 13,715 attorneys in the field<sup>15</sup>—approximately 1.3% of the total bar.<sup>16</sup> Although the 1975 and 2004 data are not directly comparable<sup>17</sup>—and it is clear that public interest lawyers remain a tiny fraction of the overall bar—it does seem likely that significant growth has occurred, with these figures suggesting a rough doubling of the public interest sector relative to the total bar. And this figure does not include public interest lawyers working in other sites, such as government, small firms, or clinical programs. What are the consequences of this growth?

One question is how professionalization has influenced the opportunities for public interest practice. Opportunity is a function of both the demand for public interest lawyers and their supply. The growth in the proportion of public interest lawyers relative to the total bar suggests that opportunity may have expanded. However, it is difficult to estimate the demand for public interest lawyers since it is not clear how many jobs are open in a given year. One very rough metric is to compare the number of graduating law students to the size of the public interest field (cause-oriented plus legal aid). By this standard, the ratio of public interest jobs to law school graduates increased from 1975 (1:10) to 2004 (3.5:10),<sup>18</sup> although the 2008 recession has surely challenged this growth.

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yers. See CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 1995* 1 (1999). I then divided the number of public interest lawyers by the total bar:  $(576 + 2660)/448,724 = .007$  (0.7%).

15. Nielsen & Albiston, *supra* note 6, at 1618 n.85. The Legal Services Corporation reported that in 2002, there were 3845 lawyers in LSC-funded programs and an estimated 2736 lawyers in non-LSC funded legal aid programs. LEGAL SERVICES CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 15 (2d ed. 2007), available at <http://www.lsc.gov/justicegap.pdf>.

16. *2004 National Lawyer Population by State*, AM. BAR ASS'N (2004), <http://www.abanet.org/marketresearch/2004nbrolawyersbystate.pdf> (reporting 1,058,662 total lawyers).

17. Handler, Ginsberg, and Snow, *supra* note 12, did not purport to identify all public interest law organizations in 1975 and thus we do not know the total universe of such organizations. However, their research did build upon an exhaustive study by the Council for Public Interest Law, which found ninety-two public interest law firms in 1976. COUNCIL OF PUB. INTEREST LAW, *BALANCING THE SCALES OF JUSTICE: FINANCING PUBLIC INTEREST LAW IN AMERICA* 81 (1976). Based on this data and their own research, Handler and his colleagues stated that there were “probably fewer than 100 firms in the core of the PIL industry.” Handler, Ginsberg & Snow, *supra* note 12, at 50. Assuming this is accurate, the difference between the number of public interest lawyers in 1975 reported here and the actual number would be quite small and would not materially change my analysis.

18. I arrived at these ratios by using the total public interest lawyer figures for 1975 and 2004 reported above and comparing them to the law school graduate statistics compiled by the American Bar Association. *Enrollment and Degrees Awarded, 1963-2009*, AM. BAR

What about the supply of public interest lawyers? As the field has expanded, there appears to be more institutional support for the development of public interest law careers, which may promote supply—and increase competitive pressures within the field. Granfield’s study of Harvard and Northeastern law students in the 1980s documented the socialization pressures that led to public interest “drift.”<sup>19</sup> Since that time, there have been new investments of resources in law schools devoted to “nurturing” public interest law.<sup>20</sup> According to Equal Justice Works (EJW) in 2007, thirty-one law schools reported offering public interest certificates and concentrations, while twenty-one provided public interest scholarships.<sup>21</sup> Granfield’s research suggests that institutional commitments to public interest law may nonetheless be overwhelmed by the dominant pedagogical style of law school and the availability of elite firm jobs for graduates. Public interest specializations are designed to counteract these influences to some degree by selecting students with experience that predicts future commitment, while also fostering a sub-community of ideological resistance.<sup>22</sup>

In a similar sign of law school commitment to public service, Rhode reports that one-fifth of law schools mandate pro bono or public service requirements as a condition of graduation, while half have formally administered voluntary programs.<sup>23</sup> In the race to attract the best students and provide secure opportunities for summer employment, it has also become commonplace for top schools to offer summer funding for public interest jobs through some combination of law school financial support and student fundraising. Hiring processes, too, have become more systematic and “firm-like.” At UCLA, for instance, there is a formalized Public Interest Career Day that organizes interviewing and hiring, and attracts public interest-minded law students from around Southern California. There has been no research on the impact of law school public interest programs, however, and therefore it is not yet possible to identify the extent to which they have supply-promoting effects or what specific factors are most relevant to public interest career building.

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ASS’N (2010), [http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats\\_1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_1.authcheckdam.pdf).

19. See ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* (1992).

20. See Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 *FORDHAM L. REV.* 1563, 1566–69 (2002).

21. *Law Schools with Public Interest Curricular Specialization or Scholarship Programs, As Reported in The E-Guide, 2006-07 Edition*, EQUAL JUSTICE WORKS (2007), <http://www.equaljusticeworks.org/sites/default/files/PIScholarsProgram.pdf> (last visited July 6, 2011).

22. Abel, *supra* note 20, at 1564–66.

23. DEBORAH L. RHODE, *PRO BONO IN PRINCIPLE AND IN PRACTICE* 154 (2005).

A major issue affecting entry into public interest practice is quality of life. New public interest lawyers are relatively happy with their job settings, the substance of their work, and their engagement in social issues, but report sharply lower satisfaction levels when it comes to salary and opportunities for professional mobility.<sup>24</sup> At \$38,500, average entry-level salaries of public interest lawyers are the lowest of any practice setting according to the *After the JD* research.<sup>25</sup> And, what is more, the disparity between public interest and law firm salaries has grown significantly. In the early 1970s, the ratio of private firm to public interest salaries was 1.5:1.<sup>26</sup> In 2004, the ratio of private firm (over twenty lawyers) to public interest salaries was roughly 3:1; the ratio of big firm (over 250) to public interest salaries was 3.6:1.<sup>27</sup> Scholars point to this disparity as an important factor influencing students away from taking public interest jobs.<sup>28</sup> Law school debt has also increased—climbing sharply over the past several years—to \$100,000 for private school graduates and over \$60,000 for public school graduates as of 2009.<sup>29</sup> The combination of stagnating salaries and rising debt would be expected to affect the supply as well as the potential quality of public interest lawyers, as those with opportunities to take high-paying jobs may do so despite a commitment to public interest practice.

The development and expansion of law school Loan Repayment Assistance Programs (and now the enactment of a federal LRAP) are designed to alleviate the debt burden (and thus close the salary gap) by subsidizing loan repayment for law school graduates in public interest jobs earning low salaries. Though the number of LRAPs at law schools doubled between 2000 and 2006, from forty-seven to one hundred,<sup>30</sup> there is debate over whether such programs are better at producing public interest lawyers than up-front scholarships.<sup>31</sup> Analyzing data from the NYU School of Law, one recent study found that students who were given tuition subsidies, which

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24. RONIT DINOVIETZ ET AL., *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 50 (2004).

25. *Id.* at 43.

26. Neil K. Komesar & Burton A. Weisbrod, *The Public Interest Law Firm: A Behavioral Analysis*, in *PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTION ANALYSIS*, *supra* note 12, at 80, 83.

27. DINOVIETZ ET AL., *supra* note 24, at 43.

28. Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 L. & SOC. INQUIRY 677, 704 (2006).

29. Philip G. Schrag & Charles W. Priette, *Coordinating Loan Repayment Assistance Programs with New Federal Legislation*, 60 J. LEGAL ED. 583, 586 (2011).

30. HEATHER JARVIS, EQUAL JUSTICE WORKS, *FINANCING THE FUTURE: RESPONSES TO THE RISING DEBT OF LAW STUDENTS* 6 (2d ed. 2005), available at <http://www.equaljusticeworks.org/sites/default/files/financing-the-future2006.pdf>.

31. See Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829 (1995).

were repayable if the students did not go into public interest jobs upon graduation, were significantly more likely to enter public interest careers than recipients of LRAP assistance.<sup>32</sup> The study's conclusion was that requiring students to finance law school through debt led to irrational risk aversion that reduced the willingness to enter public interest jobs. Though this highlights the potential benefits of up-front scholarships, there are risks to such programs as well. Many of the most prominent scholarship programs, like NYU's Root Tilden Fellowship, require only a "moral" repayment obligation, which does not penalize graduates who decide to transition (debt-free) into the private sector. Moreover, to the extent that schools use scholarships to recruit "high number" students for *U.S. News and World Report* ranking purposes, the money may be targeting students with weaker predictors of long-term public interest commitment. This is an important question for future research.

Fellowship programs have also played a significant role in producing public interest lawyers—at least at the elite end of the public interest bar. The Reggie program funded roughly 2000 fellows between 1967 and 1985 to enter legal services practice. The contemporary counterparts are the Skadden Fellowship and the EJW Fellowship programs. Both have been responsible for providing opportunities for elite law school graduates with demonstrated commitment to enter public interest practice by providing full salary and loan assistance. The impact of these programs has also not been studied, but one would expect that they have had a profound influence on the public interest sector, both in terms of staffing needed programs and promoting innovation. Skadden funded over 500 fellows in the program's first twenty years; EJW added another approximately 500 between 1992 and 2008. One question relates to the type of work promoted by the fellowship programs based on their funding sources (large firms). Skadden has explicit restrictions: It does not fund environmental or immigration projects. EJW does not have stated restrictions, but its movement toward big firm sponsorship after 1998 may also place limits on the type of projects that it is willing to fund. Fellowships also raise questions of stratification within the public interest bar and career mobility. One would predict fellowship recipients to have more career options and to exercise them to maximize income and prestige. As one rough indicator of the scope of career opportunities for elite public interest lawyers, as of 2008, there were thirty-four former Skadden Fellows listed in the Association of American Law Schools (AALS) law school faculty directory.

Professionalization also raises questions about the work lives and ideology of contemporary public interest lawyers. As public interest law

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32. See Erica Field, *Educational Debt Burden and Career Choice: Evidence from a Financial Aid Experiment at NYU Law School*, 1 AM. ECON. J.: APPLIED ECON. 1 (2009).

becomes a conventional occupation, it provides greater career stability and clearer professional ladders. The reduction of career risk may promote long-term investments in the field through training and the acquisition of expertise, and may give lawyers a secure base from which to challenge injustice. The development of formalized networks, regular conferences, websites, and listservs also facilitates inter-organizational exchange and promotes the dissemination of best practices. However, there are also potential downsides to professionalization. Nielsen and Albiston report that contemporary public interest lawyers practice in larger organizational settings and thus operate in more bureaucratized environments with higher proportions of non-lawyers on staff to deal with administration and fundraising.<sup>33</sup> How organizational change impacts workloads, division of labor, and career patterns are important questions. For example, as funding streams are diversified, the multiplication of reporting requirements and the distribution of administrative functions related to fundraising might be dispersed throughout organizations.<sup>34</sup> In addition, one consequence of the emphasis on pro bono collaboration may be to increase the amount of time public interest lawyers spend on coordination as opposed to substantive legal work. Moreover, there are broader political questions at stake with professionalization. Lawyers have long been criticized as too invested in the system to challenge its fundamental principles. The comforts of professionalization may contribute to deradicalization.

## II. PRIVATIZATION

Who pays for public interest law determines the shape of the field—both in terms of size and, crucially, content. Public interest law has always been “privatized” in the sense that its services have been dispensed through nongovernmental organizations (NGOs) rather than state entities. Yet changes in funding patterns and organizational relationships have influenced the nature and scope of private sector involvement in public interest practice in ways that require a reappraisal of opportunities and constraints. What work gets priority and what are the gaps in service? This section offers a preliminary sketch of the relation between public interest practice and the private market, focusing on the range of practice sites in which public interest lawyering occurs and the tradeoffs presented in each.

Public interest law organizations were catalyzed by an infusion of funding from the Ford Foundation and other philanthropic institutions. In the early phase of public interest law, it was foundation funding that consti-

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33. Nielsen & Albiston, *supra* note 6, at 1068.

34. Rhode, *supra* note 6, at 2058–59 (finding that most surveyed public interest groups involved lawyers in fundraising).



tuted the most significant source at over 40% of total income as of 1975.<sup>35</sup> Recent research suggests that foundations play a less significant funding role—though still important overall. In their survey of public interest law organizations, Nielsen and Albiston reported that foundation funding had decreased to 21% of total income by 2004, while state and local funding had increased to 28%.<sup>36</sup> However, part of this reported decrease may be due to the fact that the study included legal aid organizations relatively more dependent on governmental funds. Rhode, in contrast, found that for the prominent public interest groups that she surveyed, foundation funding constituted an average of 37% of organizational budgets, while government funds represented only 1%.<sup>37</sup> In addition, Rhode found that individual donations represented an average of 28% of total income, with corporate donations constituting another 14%.<sup>38</sup> This suggests that elite public interest groups may be as dependent—or even more dependent—on private individuals and corporations for financial support (42% of total income) than foundations. What does this mean for organizational governance and programmatic content? One interpretation might be that such private donations reflect significant law firm financial involvement in these organizations. And one would expect such involvement to be accompanied by law firm representation on the groups' boards of directors. How far such financial relationships extend and how much they influence organizational policy are questions that have troubled observers of public interest law since Bell charged the Legal Defense Fund with "serving two masters" in its pursuit of school desegregation.<sup>39</sup> If it is the case that law firms and other private sector actors are exercising more financial control over public interest law organizations, business considerations may compete with ideology in shaping their dockets.

Perhaps no public interest institution has been as politicized as the legal services program, which began in 1965 with federal funding as its primary source.<sup>40</sup> The political backlash to its liberal agenda resulted in efforts to privatize the program and brought significant federal budget cuts that forced legal services offices to rely more heavily on foundations, law firms, individuals, and state and local government funding. In 1981, the Legal Services Corporation (LSC) mandated that its grantees make a "substantial amount" of funds available for Private Attorney Involvement (PAI). Although the PAI program resulted in some direct payments to private practi-

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35. Nielsen & Albiston, *supra* note 6, at 1616.

36. *Id.*

37. Rhode, *supra* note 6, at 2055.

38. *Id.*

39. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 489-91 (1976).

40. JOHNSON, *supra* note 2, at 188.

tioners, its major effect was to stimulate the expansion of programs designed to recruit, train, and connect pro bono volunteers with low-income clients. Spurred by the PAI mandate, the number of pro bono programs rose from about fifty in 1980 to over five hundred in 1985.<sup>41</sup> By the early 1990s, there were approximately nine hundred pro bono programs,<sup>42</sup> and in 2004 there were roughly one thousand.<sup>43</sup> In terms of funding, LSC financial support declined just under 50% (in real terms) between 1980 and 2009.<sup>44</sup> Overall legal services funding has held relatively steady, but has been diversified. As of 2005, LSC funds constituted only about one-third of the total legal services budget in the United States, with state and local government funds contributing about one-third, IOLTA about 10%, foundations about 7%, and private lawyer contributions roughly 4%.<sup>45</sup> Have these funding changes had any impact on content? We know that groups that receive LSC funds are prohibited, among other things, from undertaking class actions, collecting attorney's fees, and representing most undocumented immigrants. But there is little information on the nature of the constraints imposed by diversified funding. What types of mandates do foundations impose? Are there formal or informal constraints that come with reliance on private firm donations?

The constraints are much clearer in the context of big firm pro bono, which has grown in institutional scope and constitutes an important vehicle for delivering legal services to the poor. Pro bono's institutional ascendance occurred against the backdrop of several trends: declining federal support for legal aid, which prompted the organized bar to promote pro bono as a complement to state-sponsored legal aid; the growth of big firms, which permitted the large-scale mobilization of pro bono resources through centralized planning; the advent of law firm rankings, which focused attention on pro bono as a recruitment strategy; and pressure from attorneys to give back in the face of law firm financial success.<sup>46</sup> As pro bono has become institutionalized, it has also emerged as a significant component of U.S. civil

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41. See Meredith McBurney, *The Impact of Legal Services Program Reconfiguration on Pro Bono*, at 1 (Minn. Bar Ass'n 2003), available at <http://www.mnbar.org/committees/lad/impact-reconfiguration.pdf> (last visited May 19, 2011).

42. See Ester F. Lardent, *Structuring Law Firm Pro Bono Programs: A Community Service Typology*, in *THE LAW FIRM AND THE PUBLIC GOOD* 59, 75 (Robert A. Katzmann ed., 1995).

43. See *Directory of Pro Bono Programs*, AM. BAR ASS'N (2007), <http://apps.americanbar.org/legalservices/probono/directory.html> (last visited June 25, 2011).

44. Alan W. Houseman, Ctr. for Law & Soc. Policy, *Civil Legal Aid in the United States: An Update for 2009*, at 12–13 (2009), available at <http://www.clasp.org/admin/site/publications/files/0527.pdf>.

45. Alan W. Houseman, Ctr. for Law & Soc. Policy, *Civil Legal Aid in the United States: An Overview of the Program in 2005*, at 23–25 (2005), available at [http://www.clasp.org/admin/site/publications\\_archive/files/0181.pdf](http://www.clasp.org/admin/site/publications_archive/files/0181.pdf).

46. See Scott L. Cummings, *The Politics of Pro Bono*, 52 *UCLA L. REV.* 1 (2004).

legal assistance. Sandefur reports that in 1997, lawyer pro bono work constituted “more than one-quarter of the full-time equivalent lawyer staff providing civil legal assistance.”<sup>47</sup> In addition, pro bono co-counseling is commonplace in public interest impact litigation, with Rhode finding that “almost all of the large national organizations relied heavily on pro bono counsel for impact litigation, and involved them in at least half of their major cases.”<sup>48</sup>

From a quality perspective, the rise of pro bono means that there are more attorneys working on public interest cases episodically—as part-time relief from their billable client work. This has implications for commitment and expertise. Some public interest attorneys complain about the need to closely monitor the quality of the work of pro bono volunteers, who at times are not closely supervised and are pulled away from pro bono work by their billable commitments.<sup>49</sup> In addition, non-expert pro bono lawyers may miss opportunities for connecting cases to broader law reform or political organizing efforts, and may be less likely to take risks to advance larger-scale social change agendas. From the perspective of institutional design, increased reliance on pro bono for the delivery of legal services to the poor may mean that certain categories of cases are less likely to receive attention. Positional conflicts and other business constraints make big firms reluctant to take on cases that strike at the heart of their business clients’ interests.<sup>50</sup> Thus, labor and employment law cases are less likely to receive significant support from firms that regularly defend business clients.<sup>51</sup> Legal services groups may, in turn, organize their in-house programs around their appeal to private firm volunteers who will ultimately help staff the cases.<sup>52</sup> Similar business constraints affect the ability of public interest groups to find pro bono counsel in impact cases against corporate defendants.

When public interest groups are unable to find big firm co-counsel in impact cases, they frequently turn to small plaintiff-side firms, for which the motivation is not “giving back” through pro bono service, but rather the opportunity to collect attorney’s fees. These “private” public interest firms have been held out as an alternative site for “doing well” and “doing good,” allowing lawyers to take on large-scale social change litigation that non-profit groups cannot because of resource limits—and big-firm pro bono pro-

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47. Sandefur, *supra* note 6, at 85.

48. Rhode, *supra* note 6, at 28.

49. Cummings, *supra* note 46, at 143.

50. *Id.* at 116–21; see also Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflicts in Service Pro Bono Publico*, 50 STAN. L. REV. 1395 (1998).

51. See Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357, 2393 tbl.8 (2010).

52. See Stephen Daniels & Joanne Martin, *Legal Services for the Poor: Access, Self-Interest, and Pro Bono*, in 12 SOCIOLOGY OF CRIME, LAW AND DEVIANCE 145, 157–59 (Rebecca L. Sandefur ed., 2009).

grams will not because of business conflicts—while also addressing other deficits associated with NGO practice, such as low salaries, lack of training, and high turnover. There are no systematic data on these firms, but the available evidence suggests that such firms have grown in number. Handler and his colleagues estimated that there were sixty-six “mixed” private public interest law firms in the mid-1970s.<sup>53</sup> My preliminary compilation of private public interest law firms, drawn from lists in which private lawyers are identified as practicing in the public interest, put the number at over six hundred.<sup>54</sup> Although this recent list includes firms engaged in activity such as securities and mass tort litigation, the majority are firms that undertake civil rights, human rights, and environmental litigation that have analogues in the NGO sector.

There is little research on how such firms operationalize their conception of public interest advocacy and what constraints are imposed by the need to generate attorney’s fees. Some private public interest firms only work on cause-oriented cases, while others supplement their public interest docket with cases taken on solely to generate fees. An example of the latter is Hadsell & Stormer, an influential civil rights firm in the Los Angeles area. My study of that firm suggests some of the tensions produced by the public-private hybrid form.<sup>55</sup> First, because the profit-motive is salient, coherent conceptions of firm mission give way to more diffuse notions of practicing in the “public interest” as a way to create space for different types of fee-generating work. Second, the firm’s effort to merge politics and profits produces a dual notion of professionalism, in which macro-obligations to society, such as pro bono, are rejected as inconsistent with firm radicalism, while micro-obligations to clients, such as zealousness, are embraced as part of the firm’s commitment to litigation excellence. Third, in order to finance its public interest docket, the firm cross-subsidizes its riskier cause-oriented work, like international human rights cases, with low-risk, high-yield civil rights and non-public interest cases with predictable fee outcomes. Fourth, firm governance tracks the public-private divide, with broad decisions relating to firm politics, such as whether to pursue new categories of cases for political impact, made in accord with the firm’s democratic ideals, and specific questions relating to firm economics, such as staffing and case management, made in a more hierarchical manner. Finally, with respect to political ideology, one consequence of the firm’s private form is that tight ac-

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53. Handler, Ginsberg & Snow, *supra* note 12, at 61.

54. These lists are taken from the National Lawyers Guild Referral Directory, PSLawNet, and the Harvard Law School 2008-2009 Public Service Job Search Guide.

55. Scott L. Cummings, *Privatizing Public Interest Law*, 25 GEO. J. OF LEGAL ETHICS (forthcoming 2011).

countability to a broader political constituency is sacrificed in the name of individual lawyer autonomy.

The law school clinic constitutes another important (and under-explored) site of public interest practice—embedded within legal academia—that is characterized by distinct lawyering tradeoffs. The clinical movement, which began in tandem with public interest law in the 1970s when Ford granted over \$10 million to the Council on Legal Education for Professional Responsibility (CLEPR) to promote clinical education, occupies a paradoxical space within law schools: radically institutionalized and yet profoundly marginalized. Its institutional presence is powerful: In 1999, the AALS Section on Clinical Legal Education’s database showed 183 law schools with clinics staffed by over 1700 clinicians—80% of whom reported teaching in live-client clinics.<sup>56</sup> Despite these numbers, lower institutional status is a pervasive complaint among clinicians, who regularly do not enjoy the security and prestige of academic tenure and its attendant benefits. Of nearly 800 clinicians reporting on their status in 1999, slightly more than 40% stated that they either had tenure or were on the tenure track.<sup>57</sup> Roughly half reported that they were hired on either a long- or short-term contract.<sup>58</sup>

The reasons for the status disparity are mixed. Clinical scholarship is generally viewed as less rigorous and thus less tenurable. There are also cost constraints that drive schools to outsource clinical teaching instead of dedicating more expensive ladder-track lines for clinicians. After the closure of CLEPR, federal Department of Education funding in the 1980s and 1990s brought nearly \$90 million to support the expansion of clinical education.<sup>59</sup> As that money dried up, clinical programs have been forced to rely on a combination of “hard” law school funding and “soft” grants from foundations, corporations, and individual donors. Law schools are eager to promote clinics, since law students report that clinics are among the most “helpful” of law school experiences and thus constitute an important recruitment draw.<sup>60</sup> However, because students may not distinguish between ladder-track and non-ladder faculty, law schools have a financial incentive to cut clinical programming costs by hiring lecturers, adjuncts, and short-term fellows. Often, these clinical instructors are ex-public interest attorneys drawn to clinical teaching by the pursuit of more prestige, better pay, and improved working conditions. As they enter clinical teaching, they can end up staffing what amount to public interest offices within law schools. Indeed, some law school clinics have staffs that rival their public interest law counterparts. At

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56. Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 30 (2000).

57. *Id.* at 31.

58. *Id.*

59. *Id.* at 19–20.

60. DINOVIETZ ET AL., *supra* note 24, at 81.

Georgetown, for instance, the clinical program includes fourteen free standing clinics with seventeen full-time faculty, twenty-six graduate student fellows, and several adjunct instructors.<sup>61</sup>

In line with its original mission of client service, law school clinics now constitute a significant force in public interest law, yet we know very little about how clinics select cases, what tradeoffs they face, and how their work relates to that of the broader NGO community. There are some obvious and well-documented limitations. Clinicians must select cases based in part on pedagogical value and, as the Tulane and Maryland environmental law clinic cases have underscored,<sup>62</sup> the representation of controversial clients or causes may place clinical programs in political (and financial) risk. Particularly as the conservative movement focuses on clinics as part of its broader attack on liberal public interest law,<sup>63</sup> more information on the operational context of clinical programming and its impact on service delivery is necessary to provide an accurate picture of its relation to the broader public interest field.

### III. CONSERVATISM

At its inception, the public interest law movement was explicitly a progressive one. Its “public” was composed of those whose voices were deemed underrepresented in American politics:<sup>64</sup> blacks, women, the poor, consumers, environmentalists, and other marginalized groups. And its “law” was mainly that of the federal judiciary, to which liberal lawyers turned to protect minority rights and promote (their version of) the collective good.

Political conservatism has reshaped the field of public interest law in three related ways: politically, organizationally, and ideologically. Politically, conservatism has transformed the “social context” of public interest law.<sup>65</sup> From an advocacy perspective, the major change has been the declining role of the federal government as the guarantor of legal rights associated with political liberalism. While deregulation and decentralization have

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61. *Law Ctr. Clinical Program*, GEORGETOWN UNIVERSITY LAW CTR., <http://www.law.georgetown.edu/clinics/> (last visited Feb. 22, 2011).

62. See Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235, 235–44 (1999); Karen Sloan, *Independence of Maryland Law School Clinic Is Challenged by Lawmakers*, NATIONAL L.J., Mar. 29, 2010.

63. See Heather Mac Donald, *This Is the Legal Mainstream?*, 16 CITY J. (2006), available at [http://www.city-journal.org/html/16\\_1\\_law\\_schools.html](http://www.city-journal.org/html/16_1_law_schools.html) (last visited July 6, 2011); see also David Luban, *Taking Out the Adversary: The Assault on Progressive Public Interest Lawyers*, 91 CAL. L. REV. 209 (2003).

64. Komesar & Weisbrod, *supra* note 26.

65. Michael McCann & Jeffrey Dudas, *Retrenchment . . . and Resurgence? Mapping the Changing Context of Movement Lawyering in the United States*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 37 (Austin Sarat & Stuart A. Scheingold eds., 2006).

weakened administrative agency oversight,<sup>66</sup> the most striking change has come in the judicial arena, where the struggle over the ideological composition of the federal bench has moved the weight of the judiciary toward a constitutional vision skeptical of economic regulation and minority rights. Republican control of the presidency for seven of the ten terms before the 2008 election of Barak Obama reversed majorities of Democratically appointed judges at both the circuit and district court levels, and solidified the conservative majority on the U.S. Supreme Court. This has produced profound jurisprudential changes at the federal level, moving the weight of the federal judiciary toward a constitutional vision skeptical of economic regulation and claims of minority rights.<sup>67</sup> The federal court, deemed the final arbiter of liberal claims to social justice during the civil rights period, has thus been transformed into, at best, an unreliable ally and, at worst, a hostile enemy to be avoided. This change has not been uniform and there have been important recent victories for liberal groups in the Supreme Court on non-citizen detention and climate change. However, liberal groups are more circumspect about turning to the federal courts. This reticence was on prominent display in South Dakota in 2006, when women's rights groups refused to bring a legal challenge to a state law enacted by the legislature that prohibited nearly all abortions (and was passed with the aim of provoking a lawsuit enabling the Supreme Court to revisit *Roe v. Wade*) and instead organized to successfully reverse the ban through a statewide ballot initiative.

The South Dakota example suggests that liberal public interest lawyers are adapting their strategies to respond to the political realities—a trend that appears supported by the limited empirical evidence available. Although public interest groups continue to focus on filing lawsuits, Rhode reports that “it is with a more realistic vision of how they will serve long-term goals.”<sup>68</sup> While the mean percentage of legal work at public interest groups has remained constant since 1975, more groups are doing little or no legal work and spending more time on research, education, and outreach.<sup>69</sup> It is also not clear how much of the current litigation is focused on state versus federal court. At the elite end of the public interest bar, there is also evidence to suggest that groups are engaged in more legislative work than in the early public interest law phase.<sup>70</sup>

Organizationally, conservatism has both challenged public interest groups on the left and strengthened groups on the right. There have been well-documented attacks on liberal public interest lawyers, most notably in

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66. See Trubek, *supra* note 6.

67. McCann & Dudas, *supra* note 65, at 43–46.

68. Rhode, *supra* note 6, at 2046.

69. Nielsen & Albiston, *supra* note 6, at 1612.

70. Rhode, *supra* note 6, at 2047–48.

the successful effort to restrict the scope of advocacy that can be undertaken by legal aid lawyers to the most routine individual service cases. In another example, Albiston and Nielsen found that the U.S. Supreme Court's 2001 decision in *Buckhannon v. West Virginia*, which repealed the "catalyst theory" for attorney's fee awards, has discouraged public interest groups from undertaking civil rights enforcement actions, particularly when the remedies are limited to injunctive relief.<sup>71</sup> On the right, as Southworth has demonstrated, conservative groups have also contested public interest law from "inside" the movement by establishing a countervailing set of legal organizations dedicated to advancing a right-wing political agenda under the rubric of serving the public interest.<sup>72</sup> As a result, on the most contentious sociopolitical issues of the day, liberal public interest groups—standing for economic regulation, redistributive social welfare, the separation of church and state, the rights of criminal defendants, and protections for minority groups—have found themselves pitted against their conservative counterparts advocating a mirror-image agenda—free markets, small government, a prominent role for religion in public life, law and order, and an end to affirmative action.

Ideologically, one impact of the rise of the right has been to undermine the very meaning of "public interest law."<sup>73</sup> As a result, scholars have searched for alternative concepts. "Cause lawyering" emerged in the 1990s as the most prominent scholarly effort in this regard, transforming the field of sociological research on public interest law by redefining legal activism on the basis of lawyer motivation rather than a particular conception of the good society or a specific political agenda.<sup>74</sup> In so doing, the cause lawyering project has sought to sidestep the politics of terminology. Thus, instead of debating the imponderable question—just what *is* the public interest?—the cause lawyering project asks: Does the lawyer pursue ends that transcend client service?<sup>75</sup> This focus on service to cause offers a "big tent" approach that encompasses lawyers from the left and the right. Yet the shift to cause lawyering raises its own tensions. A key issue is just how ample the notion of "cause" is. Do plaintiffs' lawyers who believe that they are on the side of the people against corporate greed qualify as cause lawyers? Do law firm lawyers who believe that their work advances a beneficial version of market capitalism? Of legal professionalism? The slipperiness of the con-

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71. Catherine R. Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 UCLA L. REV. 1087, 1130 (2007).

72. Southworth, *supra* note 6.

73. *See id.*

74. See Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority*, in CAUSE LAWYERING, *supra* note 4, at 3, 3–4.

75. SCHEINGOLD & SARAT, *supra* note 11, at 3.



cept runs the risk that “cause” lawyering is the exception that swallows the rule. It may also shift the discussion away from the social legitimacy of particular legal advocacy groups by suggesting their moral equivalence. Should groups that promote deregulation and are supported by corporations that benefit from the legal positions espoused be placed in the same category as groups that promote regulation to benefit the poor?

There are also questions about how conservatism has influenced beliefs about the role of law in social change. It is instructive to compare views on the left and the right. The left has been generally skeptical of the efficacy of law as a social change tool, with scholars arguing that legal decisions cannot change action on the ground,<sup>76</sup> that law deradicalizes and co-opts movements,<sup>77</sup> and that lawyers are prone to dominate clients, particularly poor clients of color.<sup>78</sup> Recent scholarship has focused on combining law and organizing to promote more targeted social change goals and has suggested a scholarly movement beyond critique toward a more pragmatic view of the role of lawyers and law in social change.<sup>79</sup> Contributing to this literature, Simon has described the emergence of an experimentalist approach to public interest lawyering on the left that eschews rights strategies in favor of greater collaboration between stakeholders confronting difficult social problems.<sup>80</sup> In contrast, conservatives have invested heavily in building a rights-claiming network and using the opening provided by the changed composition of the federal courts to litigate their issues to the highest levels. Thus, rather than emphasize collaboration, some conservative groups have prioritized impact litigation integrated into broader political strategies. As an example, Rosen reported that the Chamber of Commerce’s litigation center, which was launched in the 1970s to counteract liberal groups like Public Citizen, filed amicus briefs in fifteen cases before the Supreme Court in the 2007 term and won thirteen.<sup>81</sup> It may be that the right has similar reserva-

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76. JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* (1978); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008); STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (1974).

77. Lobel, *supra* note 5, at 942-58.

78. See Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 *YALE L.J.* 2107 (1991); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 *BUFF. L. REV.* 1 (1990).

79. See, e.g., MICHAEL W. MCCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* (1994); Austin Sarat & Stuart Scheingold, *What Cause Lawyers Do For, and To, Social Movements: An Introduction*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 65, at 1.

80. See generally William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 *WM. & MARY L. REV.* 127 (2004).

81. Jeffrey Rosen, *Supreme Court Inc.*, *N.Y. TIMES MAGAZINE*, Mar. 16, 2008, available at <http://www.nytimes.com/2008/03/16/magazine/16supreme-t.html>.

tions about law-based social change but has not yet articulated them with the same force as scholars on the left. Or it may be that the right is not as concerned about movement co-optation, which raises the question: Why not? Perhaps the left's different relationship to principles of democratic accountability and grassroots empowerment produces a greater anxiety about the law as an elitist tool and a greater affinity for collaborative approaches. Yet given the rise of legalism within the conservative movement, it is worth probing the differences in legal consciousness between lawyers on the right and the left, and comparing their efforts at legal mobilization.

#### IV. GLOBALIZATION

Public interest law, like its private sector counterpart, has also experienced the impact of global forces. This has been evident in two directions: from the outside-in, with the influence of globalization on U.S.-based public interest practice, and from the inside-out, with the interaction between U.S. public interest law models and legal activism around the world.

Within the United States, global interdependence has produced a greater degree of internationalization within the domestic public interest law field.<sup>82</sup> There have been three key transnational processes—immigration, market integration, and human rights—that have influenced U.S. practice. With respect to immigration, since the 1980s there has been a quantitative increase in migration to the United States combined with a qualitative change in both its pattern (more geographically dispersed) and composition (more undocumented entrants). These changes have redefined immigrant advocacy, transforming it from an ancillary part of public interest practice into a distinctive field. Significantly, the influx of undocumented immigrants seeking employment in the exploitative low-wage sector has focused public interest resources on enforcing legal protections in the workplace, leading to the development of new organizational investments promoting “immigrant worker rights.”<sup>83</sup>

As immigration has brought market integration home, the outflow of U.S. corporations in search of investment opportunities and low-cost production locales has extended it to developing countries abroad. Within these new arenas of U.S. economic activity, the main focus of public interest law has become upgrading systems of legal governance and regulatory enforcement outside of U.S. borders. This has involved advocating new theories of U.S. jurisdiction under the Alien Tort Statute; entering new venues of global economic governance, such as the NAFTA system and the WTO; and build-

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82. See Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891 (2008).

83. *Id.* at 912–23.

ing alliances with new partners, both transnational activist networks challenging market integration from below, and governmental and philanthropic institutions promoting the rule of law from above.

Domestic practice has also been influenced by the movement to “bring human rights home.” Whereas the international human rights system promoted in the Cold War era was, in part, a way to export American-style public interest law to activists in foreign countries resisting authoritarian regimes, the U.S. human rights movement represents an effort by public interest lawyers to import the very norms and methods built through international struggle to contest what they view as the erosion of domestic legal standards resulting from new American policy imperatives: market integration, conservatism, and the War on Terror. Accordingly, there have been significant efforts by mainstream public interest law groups to deploy human rights strategies to advance domestic agendas in the areas of criminal justice, immigrant rights, women rights, worker rights, and the environment.

Globalization has therefore influenced what public interest lawyers do inside the U.S. legal system (which clients they represent and which causes they pursue) as well as what types of activities they undertake outside of American borders (which international venues they enter and which networks they support). As such, it raises important questions about the nature of contemporary practice and its effectiveness. From a tactical perspective, for example, lawyering within the international arena embraces a broad range of nontraditional techniques such as lobbying, reporting, and organizing. It also operates across institutional contexts, moving from U.S. courts to institutional venues—like the UN and Inter-American Commission on Human Rights—where lawyers think that they can amplify their claims and have political impact.

These global trends highlight the reversals of fortune, strategic adaptations, and deep tensions that characterize the American public interest movement in the contemporary era. The international turn is itself a product of domestic political realignment: Inside the United States, the liberal public interest law movement, built upon a symbiotic relationship with the federal government, has found itself in opposition to the main levers of federal power. It has, therefore, looked outside U.S. borders—not just for legal resources—but also for connections with international struggles to infuse it with a renewed sense of movement energy and political mission. And it is there that U.S. lawyers have found new political allies, as well as opportunities to engage in large-scale reforms that seem only a dim possibility at home. Particularly on issues of labor rights and environmental justice, U.S. lawyers have found global partners eager to assert social standards within the regime of free trade. U.S. lawyers have similarly invested in rule-of-law reforms in developing countries, not out of an impulse to remake the world in the American image, but rather drawn by the lure of enormous possibilities for profound legal and political change. Back at home, lawyers have

also tapped into international movements to promote domestic reforms, taking up the banner of immigrant rights and enlisting the legal and rhetorical power of human rights in the service of domestic causes. In contrast to the self-confident insularity of public interest law during its early phase, these movements suggest that U.S. lawyers now perceive that the rest of the world has political lessons to teach and legal models to emulate.

Whether this global receptivity will translate into enduring change, however, is less clear. Though public interest lawyers have tried to deploy human rights to counteract the erosion of regulatory and social welfare systems at home and abroad, the effort has been largely limited to using international venues to publicize U.S. actions. To the extent that legal enforcement against corporations has been sought through domestic human rights litigation, the result has been individual recovery, but also political backlash, evident in efforts by business groups to lobby for the repeal of the Alien Tort Statute. The immigrant rights movement has provoked similar political opposition focused on increased border enforcement. Though there has been discussion of comprehensive immigration reform, its central feature—a guest worker program—risks perpetuating labor abuse to the extent that it makes immigrants dependent on their employers to remain in the country. These developments raise questions about whether rights-based advocacy can effectively stem abuses in the marketplace. In the political arena, human rights have gained more traction post-9/11, but even here, the potential for political reversal is significant. One example was the case of *Hamdan v. Rumsfeld*,<sup>84</sup> in which the U.S. Supreme Court held that military commissions as then structured violated the Uniform Code of Military Justice and the Geneva Conventions. Congress, in response, passed the Military Commissions Act of 2006 reestablishing military commissions and precluding judicial enforcement of the Geneva Conventions.<sup>85</sup> Although an amendment to the Act, signed by President Obama in 2009, generally reasserts the application of the Geneva Conventions to the commissions,<sup>86</sup> Human Rights First (which filed an amicus brief in *Hamdan*) has continued to argue that the commission structure violates international law.<sup>87</sup>

When one looks outside of the United States, the questions for public interest law are different. Key issues concern why public interest law is de-

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84. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

85. See Military Commissions Act of 2006, Pub. L. No. 109-366, 20 Stat. 2600 (codified at 42 U.S.C. § 10, 18, 28, and 42 U.S.C.).

86. Military Commissions Act of 2009, Pub. L. No. 111-84, 123 Stat. 2574 (codified at 10 U.S.C. § 948a et seq.). The Act makes clear, however, that the Geneva Conventions do not establish a private right of action. *Id.* at § 948b(e) (2009).

87. Human Rights First, Submission to the Office of the High Commissioner for Human Rights 4 (Nov. 26, 2010), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-UPR-2010-submission-final.pdf>.

veloping abroad and the degree to which foreign public interest law resembles—or resists—U.S. models. With respect to the spread of public interest law, three developments are important: (1) the rise of the “new” law and development movement beginning in the 1980s,<sup>88</sup> which has promoted legal aid, clinical education, and pro bono as part of a broader set of market-friendly rule-of-law reforms supported by international financial institutions like the World Bank and IMF, as well as foundations like Ford and the Open Society Institute; (2) the emergence of constitutional democracies in places like Central and Eastern Europe, which provide new opportunities to use domestic courts to advance political ends, thus allowing activists to shift away from prior reliance on the human rights system;<sup>89</sup> and (3) the development of organic movements to resist neoliberal globalization through the deployment of domestic and international law in coordination with indigenous organizing groups.<sup>90</sup> Scholars are beginning to focus on the shape and meaning of this advocacy and its relation to the U.S. model of public interest law. One question concerns the degree to which legal organizations abroad receive external funding and technical assistance that may connect them to public interest networks in the global North. Such foreign influence shapes the types of cases brought and strategies deployed. On the other hand, foreign public interest law systems must adapt to local legal, political, and professional environments, which create distinct advocacy opportunities and constraints. Because these hybrid systems combine elements of the global and local, there are inevitable struggles over authorship and power, with resistance to the notion of outside intervention, even while it leaves a distinctive imprint. As the interaction between foreign transmission and local adaptation plays out, global public interest lawyers will play leading roles in their own countries’ movements for democratic reform in the global era—providing new perspectives on the evolving role of law in social change across a diverse range of political and economic systems.

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88. See David M. Trubek, *The “Rule of Law” in Development Assistance: Past, Present, and Future*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* 74 (David M. Trubek & Alvaro Santos eds., 2006).

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

90. Boaventura de Sousa Santos & César A. Rodríguez-Garavito, *Law, Politics, and the Subaltern in Counter-Hegemonic Globalization*, in *LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY* 1 (Boaventura de Sousa Santos & César A. Rodríguez-Garavito eds., 2005).

## CONCLUSION

So what is the future of public interest law? The answer, of course, cannot be stated with great certainty. But one thing is sure: When the story is ultimately penned, it will be authored by those who take the mantle of public interest law's rich legacy and use it to fight injustice wherever it occurs. While many of these fights will resemble those started by public interest law's founding generation, they will take place in an environment that is sharply different—shaped by the forces of professionalization, privatization, conservatism, and globalization. This new context will demand many of the same skills and strategies developed by public interest law's vanguard. But it will also require lawyers to learn from past failures and to adapt to new realities. The contours of next-generation public interest lawyering are already taking shape, as advocates—in both the domestic and global arenas—deploy multidimensional approaches to redressing social problems: engaging in activism across policy domains (courts, legislatures, media), spanning different levels (international, federal, state, local), and deploying different tactics (litigation, legislative advocacy, public education).<sup>91</sup> A key challenge is to investigate the impact of these contemporary advocacy approaches, to build upon successful campaigns, and to teach new cohorts of public interest law aspirants both the concepts and concrete skills to achieve future gains. Perhaps the most important lesson to be taken from public interest law's founding generation is that law is a crucial means—but never an end—in the ongoing quest for social justice. For public interest lawyers to make a positive impact on our collective future, they will have to embrace new skills beyond traditional law in order to protect the equal justice to which law aspires.

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91. See Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235, 1242 (2010).

