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Legal Mobilization on the Terrain of the State: Creating a Field of Immigrant Rights Lawyering in France and the United States

Leila Kavar

Scholarship on law and social movements has focused attention primarily on the United States, and secondarily on countries that share the Anglo-American legal tradition. The politics of law and social movements in other national legal contexts remains underexamined. The analysis in this article contrasts legal mobilizations for immigrant rights in France and the United States, and explores the relations between national fields of power and legal practices. I trace the institutionalization of immigrant rights legal organizations in each country and argue that the divergent organizational forms and litigation strategies adopted by professionalized movement organizations reflect the dynamics of the nationally distinct fields of power relations within which law reform has been conducted. My analysis links the material and symbolic resources available to law reformers to the relative authority of private and public juridical actors in each state.

The relationship between legal practice and collective action has been a central concern of sociolegal scholarship (McCann 2006, 2). American scholarship has emphasized the ways in which lawyers' socialized biases toward formalism and conceptualism result in the distancing of litigation goals from the needs of the nonelite core membership of social movements (Scheingold 2004). The extensive research on *cause lawyering* acknowledges this tension between professional and activist commitments. Yet cause lawyering studies have generally examined relations of power at the microlevel in terms of interactions between lawyers and clients (Sarat and Scheingold 1998). To the extent that these studies have analyzed the impact of larger structures of power, attention has centered on the development of transnational networks among legal professionals (Sarat and Scheingold 2001). However, national-level structures of power have not been extensively analyzed and are rarely examined in explicitly comparative perspective.

This is in part a reflection of the fact that sociolegal scholarship on law and social movements has focused primarily on the United States and secondarily on countries that share the Anglo-American legal tradition. The politics of legal mobilization in other national legal contexts remains relatively underexamined. McCann suggests that, because of American influence as a globalizing force, the American experience with legal mobilization may become increasingly familiar around the world, "rendering

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American scholarship on the subject increasingly relevant" (McCann 2006, xvii). Yet, there is also a risk that applying analytical categories from one sociolegal context risks fundamentally misunderstanding other contexts and, historically, Anglo-American studies of the legal profession have tended to assume the generalizability of their conclusions without first inquiring whether this assumption is warranted (Rueschmeyer 1989). For this reason, explicitly comparative studies are useful both for drawing out and for highlighting folk terms as well as for identifying analytical categories that provide a more appropriate basis for comparison. Moreover, comparative studies are now particularly relevant, since "emphasis on the diversity of legal landscape, rather than on absorption, unification and standardization" serves a counterhegemonic project in the face of American-centric globalism (Santos 1995, 273).

The analysis in this article draws on comparative fieldwork to delineate and contrast the politics of legal mobilization in the area of immigrant rights in two distinct national contexts: France and the United States. In these paradigmatically different national legal settings, the institutionalization and professionalization of immigrant rights legal activism presents a window for exploring the relations between national fields of power and legal practice in support of socially excluded groups. The comparison is illuminating because immigrant rights lawyering is a relatively recent development in both France and the United States: well-organized networks of legal professionals supporting immigrant rights came into existence only in the 1980s. Moreover, immigrant rights lawyering is an area of legal practice that has come to be characterized in both countries by a strong degree of professionalization. Indeed, jurists have provided the immigrant "movement" with a degree of institutional continuity it might not otherwise have possessed, as grassroots immigrant-led mobilizations have proved to be both spontaneous and short-lived (Gordon 2005).

This article, with its emphasis on national-level differences, highlights the relevance of large-scale and nationally distinct fields of power in shaping the practices of legal mobilization. It also fills an important gap by examining how legal mobilization operates outside the Anglo-American tradition. The case study of immigrant rights lawyering indicates that, in both the United States and France, it is too soon to speak of a global community of law replacing the nationally grounded affiliations of juridical communities. Rather, the organizational models adopted by movement lawyers in these two countries reflect the dynamics of the nationally distinct fields of power relations in which law reform has been conducted. In particular, I link the material and symbolic resources available for legal mobilization to the relative authority of private and public juridical actors in each state.

Part I presents a conceptual framework, inspired by the work of Pierre Bourdieu, that has been usefully applied in a number of comparative sociolegal studies—though not yet to a comparative study of legal mobilization—and then explains how this approach generated the research strategy for this specific study of immigrant rights legal mobilization. Part II briefly contextualizes the emergence of professionalized immigrant rights lawyering by describing the broadly similar politics of immigration and immigrant movements operating across both of the countries in this study since the 1970s. Part III then traces the institutional transformations of contemporary immigrant rights organizations and the shifts in how they mobilize law for immigrant rights. Applying a Bourdesian analysis to contrast the dynamics of the US and French legal fields, I argue

that the preeminent role of the private bar and of private foundations in shaping professionalized immigrant rights practice in the United States is absent in France. In contrast to their American counterparts, French immigrant rights practitioners have pioneered a relatively more state-centric model of lawyering in the public interest that reflects the dominant model of juridical practice their country.

I. LEGAL MOBILIZATION AND THE FIELD OF POWER

Studies of planned litigation and public interest law have documented the role of external support in enabling reform groups to pursue social change through the courts (Weisbrod 1978; O'Connor 1980; Epstein 1985; Wasby 1995; Epp 1998). This professionalized form of legal mobilization is central to the phenomenon of public interest litigation in the post-WWII period. Indeed, the attention garnered by the activities of public interest law firms, particularly during the 1970s, has given this form of legal mobilization an almost archetypal character,¹ making public interest law seem a natural standard against which legal mobilization in other countries should be compared (Weisbrod 1978). Although these studies acknowledge the importance of external funding in providing a support structure for law reform litigation, they do not explore how elite sponsors have influenced the manner in which law is mobilized.

As McCann (2006) points out, scholars of law and social movements have been more attentive to the ways in which movement lawyers are often caught in the middle of a tension-filled relationship between elites supportive of reform and more radical movements for social change generated by groups "excluded from routine access to decisions that affect them" (Gamson 1975, cited in McAdam 1982, 24). Drawing on social movement theory, this line of inquiry suggests that the extent to which legal mobilization practices become narrowly legalistic is related to the characteristics of social movement membership and the availability of external support. On the one hand, when organizations have a highly solidaristic grassroots constituency, lawyers are more closely tied to the movement's members, and they are more willing to play a supportive role, to develop strategies that do not privilege strictly legal calculations, and thus to diverge from professional norms (Olson 1984; McCann and Silverstein 1998). On the other hand, bureaucratic or professionalized organizations and litigation-centered strategies predominate when planned litigation is made financially possible by the availability of external support, particularly after initial victories in court have been achieved (Handler 1978; McCann 1986; Coglianese 2001; Levitsky 2006).

In sum, law and social movement studies have analyzed the way in which institutionalized mechanisms for distributing symbolic or material resources tend to ensure a reproduction of existing structures of capital and thus a reproduction of power relations. They have devoted particular attention to tracing the role of those elite supporters most closely linked to US reform litigation (McCann 1986; Teles 2008). Yet, while legal mobilization studies have attended to the dynamics of law, power, and activism as they

1. In the developing world, where public interest litigation appeared as a US export, the term has become synonymous with legal mobilization in general (Baxi 1989).

operate in the United States, they have rarely analyzed the relationship between state structures and legal mobilization practices in other national contexts.

Comparing Juridical Fields

This article extends this approach by examining legal mobilization practices and their relationship to structures of power in an explicitly comparative perspective. For this type of study, Pierre Bourdieu's concept of the *juridical field* provides a useful framework, which—for purposes of this article—can be seen as complimentary to the Gramscian perspective adopted by prior critically oriented studies of legal mobilization (McCann 1994). Bourdieu suggests that the production and reproduction of the structure of the relations of domination and dependence appears necessary and in the order of things when it operates within a relatively autonomous *field*, such as the field of law, where actors share a set of dispositions that orient their action (Bourdieu 1977). Participants in the juridical field act according to the field's distinct logic of pursuing rule of law, which provides the grounds for law's existence as a separate field. Yet because juridical fields are tied closely to hierarchically ordered social, economic, and political fields, they are influenced by, and their structures reflect, these relatively enduring and nationally grounded hierarchies of power (Bourdieu 1986, 7). For example, Bourdieu alludes to the varying relative authority of centralized administrative structures versus industrial/financial power centers in different national settings and the way these shape the practice of law (6).

This approach does not claim that legal institutions and legal actors are no more than an epiphenomenon of the relations of production (Bourdieu 1977, 184). Rather, a Bourdesian analytical framework refuses the reduction of professional work to external interests, yet insists that legal professionals, even movement lawyers, are implicated in relations of power. Elites will be more willing to bestow symbolic and material capital upon social actors who are judged (by elites) to be of high quality, meaning that they already possess significant symbolic and material capital.

This suggests that we should view legal mobilization as structured not just by the characteristics of legal professionals and the members of the movements they defend, but also by the logic of national fields of power. External funding, whether public or private, is not simply a source of money to be used by social movement organizations for public interest litigation, it is a central mechanism through which legal mobilization is structured by power. Moreover, these external resources flow through nationally distinct channels of actors and institutions. Likewise, alliances with elites in positions of power within each nationally distinct legal field are shaped by, and in turn reinforce, existing distributions of symbolic capital among activists competing for these resources. At the same time that the practices of movement lawyers are shaped by their elite supporters, the stock of resources controlled by these particular benefactors is itself dependent on the relative position of the legal profession within national fields of power, the operation of which varies from country to country and changes over time.

Bourdieu's approach lends itself to comparative analysis, since if there exists a relationship between legal mobilization and national fields of power, it is also the case that state-level differences in these structures and their effect on the practices of

institutionalized legal mobilization can be fruitfully explored. Bourdieu provides only a brief but suggestive sketch of the points of contrast between the contemporary US and French juridical fields (Bourdieu 1986, 6). But subsequent comparative sociolegal assessments have further elaborated some of these structural differences (Trubek et al. 1994; Dezalay and Garth 2005; Garcia-Villegas 2006). I briefly summarize the findings of these studies so as to highlight the dimensions that are most relevant to understanding the way in which national juridical fields structure the practice of public interest law in each country.

The distinguishing feature of the juridical field in the United States, according to this school of comparative sociolegal scholarship, is its domination by corporate practitioners. These jurists have successfully positioned themselves in proximity to political and economic power as specially equipped problem solvers (Garcia-Villegas 2006, 363). Law's relative autonomy from economic power structures is legitimated through "a cult of service to the law . . . and emphasis is placed on the obligation of the profession to ensure that the legal system operates on behalf of all, either through neutral 'reforms' or through the creation (and subsidy) of countervailing legal powers" (Trubek et al. 1994, 425). In this respect, public interest law provides a new form of symbolic capital, which gravitates toward the United States's powerful and relatively autonomous professional milieus (Dezalay and Garth 2005, 56).

By contrast, in France, there is argued to be a much closer relationship between the juridical field and the state. During France's Third Republic, law faculties and the *Conseil d'État* successfully presented themselves as "those who possess the *savoir d'État* (knowledge of the state)," while the liberal profession never acquired comparable political influence (Garcia-Villegas 2006, 369). Lawyers have at times played significant roles in the French state as elected legislators, but the profession itself has never exercised comparable political influence to the US corporate bar (Karpik 1999). The symbolic capital of the *Conseil d'État* was reinforced in the 1950s, after some discrediting during WWII, by its close relationship with the rising power of the *École Nationale d'Administration* (ENA) and the new Gaullist technocracy. Those at the top of the statist juridical hierarchy are characterized not only by their theoretical mastery of formal law, but also by their origin in France's social and economic elite and their ongoing personal ties to this class (Trubek et al. 1994, 422). Since the state provides the dominant symbolic bank from which legal professionals draw material and symbolic resources, those whose careers gain value through human rights activity gravitate toward statist institutions (Dezalay and Garth 2005, 56).

Comparative Bourdesian studies usefully point to the distinct dynamics of the juridical field and to the way in which power operates within this semiautonomous social universe. They also discuss the importance of national differences, although existing studies in this vein have focused their comparative inquiries primarily on areas of legal practice other than legal mobilization in support of social movements. The contribution of the current study lies in applying the theoretical framework of law and the juridical field to examine how even this type of legal work is structured by nationally distinct fields of power. In adopting this approach, I acknowledge that lawyers working on behalf of excluded groups may undergo alternative forms of professionalization that orient them away from the *habitus* of the juridical field. In particular, it is important to keep in mind that professional activists are no more monolithic than any other

occupational category and that their work “encompass[es] a broad and fluid spectrum of ideologies, interests and motivations” (Markowitz and Tice 2002, 951). However, following Bourdieu’s analysis of the opposition between official and subversive spheres of politics, and the hegemony of the former over public or collective structures (Bourdieu 1977, 41–42), I argue that movement lawyers who engage with their more institutionalized counterparts are never fully detached from, and are often absorbed by, the dispositions and interests of the juridical field.

Research Strategy

Because jurists and juridical knowledge are differently positioned within each state’s larger field of power, charting the interconnected web of practices that comprises immigrant rights legal mobilization in two distinct national contexts requires an inductive research process. In both France and the United States, my starting points for mapping the domain of legal mobilizations for immigrant rights were my contacts within legal academia. Not only was this a professional milieu that was relatively accessible to me, but elite universities are also institutionally central to the reproduction of state elites, including that portion of the elite that forms each state’s liberal reformist strata. Once my introductions to key actors in each national immigrant rights community had been facilitated, I conducted initial interviews with these individuals. In many cases, these initial contacts then generously assisted me in identifying and contacting other jurists engaged in similar work, so that a network of contacts was gradually amassed.

In practice, there was a large degree of consensus among my contacts about the immigrant rights community’s key players, many of whom it turned out had been active over a period of several decades. From these interviews, it became clear that immigrant rights legal mobilization as it exists today in both France and the United States traces its genealogy back to the rise of immigrant social movements and the turn to restrictionist immigration policies in the early 1970s. Subsequent immigrant and refugee movements have brought new generations of progressive jurists into the immigrant rights legal network, but there has been a relatively high degree of organizational continuity.

I carried out a total of eighty-six in-depth personal interviews: forty-six in the United States, and forty in France. I relied on informal dialogic interviews that focused on the shared narratives developed by those engaged in mobilizing law for immigrant rights. I asked each of my contacts to identify and discuss instances of legal mobilization to which they attached particular significance or importance, with the goal of eliciting “snapshots of significance” that embody the field for its adherents (Geertz 1968, 2). These interviews also probed how relations between immigrant rights organizations, and between these organizations and state institutions, were understood by the actors themselves as well as how they understood the relationships to have changed over time.

My initial interviews subsequently led to periods of on-site data collection in the offices of two organizations deeply involved in professionalized immigrant rights legal mobilization. I was invited to use the organizational archives at the New York office of the American Civil Liberties Union (ACLU) Immigrants’ Rights Project, and later on,

in France, I was given permission to view the archives of the French immigrant rights organization *Groupe d'Information et de Soutien des Immigrés* (Information and Support Group for Immigrants; GISTI). In each case, these periods in residence facilitated informal conversations with the staff and volunteers of these organizations who allowed me to gain access to further depth and complexity. Spending time on-site also allowed me extensive access to organizational correspondence, case files, and official reports, shedding light not only on the activities of these two organizations, but also on the activities of their coalition partners and external supporters.

Archival research contributed an important source of data about the fields of power navigated by movement lawyers. Having established the important role of external supporters in shaping immigrant rights legal mobilization in the United States and France, I sought more information about these liberal reformist benefactors. The main sources of this data were the archived papers of the Ford Foundation's Rights and Social Justice Program, the single most important funder of US immigrant rights legal mobilization, and the *Direction de la Population et des Migrations* (Direction of Population and Migrations; DPM) and the *Direction des Libertés Publiques et des Affaires Juridiques* (Direction of Public Liberties and Juridical Affairs; DPLAJ), the national administrative structures most strongly linked to French immigrant rights legal mobilization.²

A final source of data was provided by legal documents and media coverage. Jurists leave a lot of written traces, and since my informants had identified particular litigation campaigns as holding special significance, I focused on documentation and media reports related to these temporally bounded events. Legal documents proved to be a valuable source of information about both the organizational and symbolic dimensions of immigrant rights legal mobilization. Many legal documents are available in electronic form in the United States through the main legal search engines, and case-related documents are available in France, though with greater difficulty of access, through the internal electronic database of the *Conseil d'État*. In terms of media coverage, the major American and French newspapers are now electronically archived; however it was necessary to rely on the newspaper clippings contained in the *dossiers de presse numérisés* (indexed news media files) at the library of Sciences Po, Paris for French media coverage from the 1970s and 1980s.

By using a variety of research techniques to supplement one another, my research strategy aimed to supply an appropriately broad foundation for critical analysis of the interpretive constructions that constitute legal mobilization for immigrant rights in each country. This multidimensional "triangulation" approach (McCann 1994, 16) can more plausibly support arguments confirmed by common findings than reliance on any single measure alone. Although this study does not claim to be comprehensive, its

2. The Ford Foundation archives are catalogued by grant number, and I requested all files related to the "refugees and migrants rights" subject heading, although files related to grants that were ongoing or which had closed within the past ten years were not available for viewing. Journals and reports produced by the ABA and the AILA also provided useful data documenting the role played by the private bar as an additional benefactor of US immigrant rights lawyering. In France, at the National Archives at Fontainebleau, I was able to examine the 1972–1999 archived files of the DPLAJ concerning the regulation of residence for non-citizens as well as the 1984–1996 archived files of the DPM relating to immigration and asylum policy. In addition, at the *Archives d'Histoire Contemporaine* at Sciences Po, Paris, I examined the 1981–1984 archived papers of Patrick Weil, containing immigration-related files of the DPM.

multimethod approach does aim to provide a clear picture of how law is mobilized in both the United States and France in the evolving domain of immigrant rights.

II. THE POLITICAL CONTEXT OF IMMIGRANT MOBILIZATIONS

When legal mobilizations for immigrant rights first emerged in France and the United States in the early 1970s, they were embedded within immigrant-led social movements. It is therefore useful to describe the wave of social movements during the late 1960s and 1970s in which immigrant communities in the industrialized economies of Europe and North America mobilized to challenge their marginalization from the post-WWII prosperity to which they had contributed. The development of these immigrant-led social movements responded to a more general culture of protest that characterized this period and was subsequently fueled by the marked shift at the national policy level toward greater enforcement of border controls.

The late 1960s and early 1970s were a period of mass social movements in many Western industrialized states, and immigrant communities were not excluded from this protest-oriented politics. In the United States, Mexican immigrant *barrio* residents and a new generation of Mexican-American students together organized a social movement of Chicanos (Gutierrez 1995; Chavez 2002). Inspired by the rhetoric of the black-power movement, they emphasized cultural pride and ethnic solidarity in order to challenge their continued marginalization from the mainstream of American society. Similarly, immigrant communities in France were increasingly active in generating protest movements (Ginesy-Galano 1984; Grillo 1985; Zancarini-Fournel 2002). Immigrant-led factory strikes and hunger strikes by foreign students facing deportation were part of the events and aftermath of May 1968. In addition, residents of immigrant dormitories across France went on strike starting in 1973, forming a general coordinating committee and refusing to pay rent in protest against poor living conditions and disrespectful staff. Anticolonial struggles provided an important subtext for mobilizations on the part of migrant communities, many of whose members had until recently been colonial subjects.

Second, this period was characterized by a shift at the level of national policy away from the *de facto* open immigration policies that had resolved labor shortages in post-war Western industrialized economies. In particular, the 1973 oil shocks were a critical juncture that ushered in the contemporary period of immigration politics characterized in both Europe and North America by restrictive immigration policies (Cornelius 2004). Whereas in the preceding decade, US politicians had largely turned a blind eye to undocumented immigration, in the 1970s the US-Mexico border emerged as the theater of “an enforcement crisis” (De Genova 2002, 436). Enforcement efforts were increased and the “illegal immigrant” became a staple of populist political rhetoric (Calavita 1994). French immigration policy likewise shifted toward restrictionism. The government made it more difficult for unemployed immigrant workers to renew their residence permits, and responded to a public that was becoming increasingly hostile to foreign workers, a hostility that was visible in several incidents of racial violence in the south of France. Algerians, whose presence in France was a particular source of political sensitivity, were especially tempting targets (Weil 1991, 166). Concerns within the

administration over the social impact of large-scale immigration, particularly the growing presence of immigrant children in public schools, were reinforced after the 1973 oil crisis by economic rationales for restrictionism, leading to an official termination of France's post-WWII guest worker regime as well as to a series of administrative measures designed to prevent migrant family reunification and to induce voluntary repatriation.

The turn to restrictionist immigration policies served to galvanize activists and contributed to the further development of social movement activity. For immigrant associations in the midst of organizing a struggle for greater respect and better living conditions, the implementation of restrictionist immigration policies was an added grievance against the government. Repressive border enforcement policies also had the effect of attracting external supporters to the movement. As a result, politicized jurists joined together with social workers, church groups, and radical students to form a loose network of locally based immigrant defense coalitions and solidarity organizations. For most of the 1970s, in both the United States and France, legal mobilization was simply one of several forms of solidarity activism and it played a primarily supportive role within immigrant social movements.

III. INSTITUTIONALIZATION OF IMMIGRANT RIGHTS LEGAL PRACTICE

The transformation of solidarity organizations linked to social movements into professionalized immigrant rights organizations with institutionalized models of practice was a process that began at the end of the 1970s. The grassroots immigrant social movements of the 1970s, which had initially inspired jurists to mobilize law to advance immigrant rights, proved to be sporadic and short-lived. At the same time, and in part due to litigation activity they generated, mass mobilizations contributed both to a widespread politicization of immigration issues and to the creation of rights that could potentially be claimed by noncitizens. Moreover, beginning in the late 1970s, political elites were prompted to develop an interest in supporting a more professionalized organizational model, particularly since court victories had validated juridically oriented activity.

Many immigrant defenders who started their careers in grassroots solidarity groups were drawn into the orbit of professionalized organizations. Where professionalization occurred, full-time paid staff replaced volunteers, and legal expertise moved away from a primarily supportive role and became more important in determining organizational agendas. In this respect, the professionalization of immigrant rights lawyering is no different from similar processes of professionalization and institutionalization in a number of other social movement contexts (Fisher 1997; Alvarez 1998; Markowitz and Tice 2002; Tate 2007).

Yet it is important to emphasize that the move from grassroots solidarity organization to professional nongovernmental organization (NGO) does not operate in exactly the same way in every country. Using a comparative lens, we can see that professionalization has the effect of increasing the salience of hierarchies based on the "relative authority of different types of juridical capital" (Bourdieu 1986, 6), which are

different in each national context. Prior studies of social movement professionalization have not explicitly adopted a Bourdesian framework, even if the processes they describe are largely consonant, I would argue, with a Bourdesian analysis that situates legal practices within national-level fields of power.

Placing the case studies from two national contexts in direct comparison brings these divergences at the national level into sharp relief. My analysis emphasizes that immigrant rights legal mobilizations started from a similarly informal baseline in the early 1970s but that they have subsequently diverged. The *organizational models* (Clemens 1993) that have come to be representative of professionalized practice reflect the dynamics of the nationally distinct juridical fields in which legal mobilization has become increasingly embedded.

In what follows, I trace the historical trajectories of the actors and institutions that emerged from the immigrant defense coalitions of the 1970s and subsequently came to constitute each country's professionalized immigrant rights juridical community. Taking each country in turn, I explore how different organizational models arose from the particular features of the national juridical field. I argue that in the United States, immigrant rights practice reflects the corporate bar's dominance over legal activities. By contrast, in France, I argue that it is the power of statist elites that has shaped the practices of professionalized immigrant rights organizations. The analysis traces the path by which legal mobilization took on a progressively more institutionalized and professionalized form.

Professionalization of Immigrant Rights Organizations in the United States

In the United States, an organizational template for professionalized public interest lawyering preexisted the rise of contentious immigration politics in the early 1970s. Efforts to use the courts to bring about broad policy change had attracted two key benefactors: the Ford Foundation and the American Bar Association (ABA) (McCann 1986; Hilbink 2006; Teles 2008). During the 1960s, leaders of the ABA came to support a liberal reform agenda, including a greater juridicization of politics, as a responsible alternative to both political radicalism and authoritarianism. The ABA developed a standing committee on legal aid and a new Division on Individual Rights and Responsibilities, and the bar's support provided politically engaged lawyers with allies at the highest levels of the profession. The Ford Foundation's conversion to liberal legalism had begun a decade earlier when it awarded the first of several major grants to the National Legal Aid Association. Starting in 1962, the Ford Foundation provided support for the pioneers of urban civil legal services before these programs were incorporated into the Johnson administration's Office of Economic Opportunity. The Ford Foundation reinforced the growth of legal services by providing grants to law schools to increase their curriculum in poverty law and related areas. "Legal liberalism" was not a partisan project in its growth phase (Teles 2008, 56). Rather, it was a product of the groups that formed the post-New Deal US establishment.

For a time, private sector sponsorship of public interest law organizations was complemented by the federal government's encouragement of legal services programs. Federal programs were institutionalized first through the Office of Economic

Opportunity and then through the Legal Services Corporation (LSC). In the late 1970s, LSC went through a rapid period of expansion that included an effort to target groups, such as immigrant communities, which were difficult to reach with existing poverty law services (Dooley and Houseman 1984). However, beginning in the late 1970s and accelerating in the early 1980s, federal programs supporting legal mobilization steadily declined in strength. The role of public programs was seriously diminished in the early 1980s by the Reagan administration's hostility toward the LSC and its back-up centers in particular. Congressional restrictions on LSC programs, preventing them in 1979 from representing undocumented migrants, were followed in 1981 by a drastic cut in overall LSC funding, and restrictions on the ability of legal services attorneys to use public funds to conduct class-action suits.

In response to these public sector cutbacks, private foundations and the leadership of the US private bar further expanded their involvement in supporting legal mobilization activity. Earnings from Interest on Lawyers Trust Accounts (IOLTA) and the proceeds of lawyer fund drives became important to legal services work after 1981, especially in areas of practice—such as the representation of certain types of immigrants—where congressional restrictions prevented public funds from being used. The private bar likewise began to increase its involvement in pro bono legal services work, taking steps toward institutionalizing this form of practice within large corporate firms (Dooley and Houseman 1984, 54).

Thus, when elites developed an interest in immigration issues in the late 1970s, this engagement was filtered through an established organizational repertoire for legal mobilization activity in which the private sector played the dominant role. The professionalized immigrant rights legal organizations that emerged in the late 1970s and early 1980s can be understood as add-ons to this existing framework. In particular, professionalization of immigrant rights has been shaped by the dynamics of the US juridical field. As private sector actors propelled a professionalization of organizational practices, the public interest law firm provided an organizational model.

The Ford Foundation played a preeminent role in this process. At the end of the 1970s, the leaders of the Ford Foundation were interested in expanding the public interest law firm's organizational model into additional areas. Ford Foundation leaders were aware that immigration was becoming an increasingly politically salient issue, and by taking the initiative with a major funding program, they saw themselves as playing a role in structuring national immigration policy debates.³ The problem of large-scale refugee flows from Haiti and undocumented migration from Mexico fell within the Ford Foundation's existing concerns and, according to Ford Foundation leadership, made the Ford Foundation uniquely qualified to address them through a concerted Ford Foundation-wide effort. These factors resulted in the creation in 1982 of a separate program to fund immigration-related projects. During the 1980s alone, the Ford Foundation dispensed approximately \$25 million in funds as part of its newly created "immigration and refugees program" (McClymont and Golub 2000, 100).

3. Michael S. Teitelbaum, *A Proposed Foundation-Wide Program on Immigration and Refugees*, November 1979, Report # 76811, Ford Foundation Archives.

In the case of the National Center for Immigrant Rights (NCIR),⁴ the Ford Foundation took on major responsibility for an immigrant rights organization that had come into existence as part of the last wave of federal legal services expansion. In 1978, Los Angeles legal aid attorney Peter Schey had been able to persuade the LSC to fund an immigrant-focused back-up center using the Legal Aid Foundation of Los Angeles as a fiscal agent. But the newly created organization was almost immediately impacted by cutbacks and restrictions in the federal government's funding for legal services. Nevertheless, through support from the Ford Foundation's immigration program, in combination with the involvement of leaders of the private bar, NCIR more than tripled its budget during the 1980s.⁵ Starting in 1982, after Schey left the organization, the Ford Foundation provided financial assistance and also assisted in NCIR's institutionalization by helping to create an advisory board including prominent leaders of the private bar, such as the executive director of the American Immigration Lawyers Association (AILA). Support for immigrant rights from the private sector, which strongly influenced the subsequent institutionalization of this area of legal work, arrived just at the moment when publically funded law reform structures were running into serious problems.

In a similar manner, the development of the Haitian Refugee Center from a service- and solidarity-oriented charity into a professionalized immigrant rights organization was shaped by the growing role of the private bar in combination with support from the Ford Foundation. The organization, which had previously been attached to the Christian Community Service Agency of Miami, became a major independent recipient of Ford Foundation funding starting in 1982.⁶ Its New York-based advocate, Leonard Boudin, had recruited recent law school graduate Ira Kurzban in 1977 to direct the center's legal work, and Kurzban aspired to turn a service-oriented organization into a major player in the immigrant rights legal community. In addition to securing Ford Foundation funding, Kurzban drew on his connections, through the AILA, to attorneys at Fried, Frank, Harris, Shriver & Jacobson in New York, who arranged for the firm's corporate lawyers to provide pro bono assistance to the Haitian refugees.⁷ The Haitian Refugee Center's legal team expanded in the early 1980s to include Rick Swartz, who at the time was working for the Washington Lawyers' Committee for Civil Rights, Arthur Helton, who had recently joined the Lawyers' Committee for Civil Rights in New York, and Peter Schey, who was marketing his expertise in immigration law on a national scale.

In other instances, the availability of Ford Foundation funding for immigration law reform work contributed to the institutionalization of specialized projects within existing Ford Foundation grantees. This is particularly true of the creation of the ACLU Immigrants' Rights Project, which was propelled by the availability of Ford Foundation funding. The involvement of the ACLU's national office in immigration litigation had been extremely minimal throughout the 1970s, and immigration cases were viewed as

4. In 1990, the organization changed its name to the National Immigration Law Center.

5. Leah Wortham and Robert Dinerstein, "Report to the Ford Foundation on Legal Services Support Centers," November 1989, 20–21, Report #012588, Ford Foundation Archives.

6. Human Rights and Social Justice Program Refugee and Migrant Rights FY 1982-FY 1986 Grants List, June 1983, 2, 011006, Ford Foundation Archives.

7. Interview with Ira Kurzban, Esq., April 2006, by telephone.

existential work, meaning they held little hope of victories in court. As Burt Neuborne, the ACLU's legal director, put it, "After the bad precedents set in the 1950s McCarthy era cases, in which advocates were fighting the deportation of people who had been members of the Communist Party for three months in 1919 and they still lost in court, immigration was not seen as a civil rights issue. It was seen as a hopeless issue."⁸ The ACLU national office remained reluctant to devote a separate project to immigration work until it learned through contacts at the Ford Foundation that the Ford Foundation would be dedicating substantial funds to fund immigration-related legal work. In 1982, the ACLU submitted a proposal for an Immigration Task Force and received \$300,000 over the first two-year funding period of the Ford Foundation's immigration and refugee program.⁹

Similarly, Ford Foundation funding allowed the Mexican American Legal Defense and Educational Fund (MALDEF) to devote additional resources to immigration work. The organization had already been receiving Ford Foundation general program funding since 1968, when Jack Greenberg from the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund (LDF) put the Ford Foundation in touch with MALDEF's founder, San Antonio-based Mexican-American attorney Pete Tijerina (O'Connor and Epstein 1985, 284). In 1970, with pressure from the Ford Foundation, MALDEF placed greater focus on litigation before the Supreme Court, but it did not single out immigration as a program area until 1976, when it initiated a coordinated litigation campaign against a Texas law that barred undocumented migrants from receiving free public schooling. MALDEF became a major recipient of the Ford Foundation's immigration and refugee program in 1982, the same year that it won a landmark Supreme Court victory in the Texas school case, *Plyler v. Doe* (1982), and the organization subsequently enhanced its programs challenging discrimination against undocumented aliens in a variety of areas.¹⁰

The pull of Ford Foundation resources was so strong that even the antiestablishment organizers of the National Lawyers Guild's (Guild) National Immigration Project applied for funds from the Ford Foundation's immigration program. In 1973, the Guild had formed a National Immigration Project, which produced a quarterly newsletter, as well as an immigration law and defense manual, and which sponsored training sessions for progressive lawyers who might be interested in immigrant defense work. The project initially grew out of the work of a collective of young lawyers who supplied the legal arm of *El Centro de Acción Social Autónoma* (Center for Autonomous Social Action; CASA), a mutual aid society for Mexican workers, spearheaded in the early 1970s by labor activists Bert Corona and Soledad Alatorre.¹¹ Despite its origins in antiestablishment currents, by the end of the 1980s the Guild's Immigration Project had begun to seek elite external support. Moreover, its grant request for Ford Foundation funding implicitly acknowledged the Ford Foundation's aversion to radicalism and sought to downplay its association with "controversial" causes, emphasizing that the National

8. Interview with Burt Neuborne, ACLU Legal Director, June 2006, in New York.

9. Human Rights and Social Justice Program Refugee and Migrant Rights FY 1982-FY 1986 Grants List, June 1983, 2, 011006, Ford Foundation Archives.

10. "Human Rights and Social Justice Program Refugee and Migrant Rights FY 1982-FY 1986 Grants List," June 1983, 2, 011006, Ford Foundation Archives.

11. Interview with Gary Silbiger, Esq, September 2006, by telephone.

Immigration Project's board includes "prominent immigration practitioners" and that its full-time director is the coauthor of one of the leading immigration law treatises "recognized for its technical expertise."¹² This suggests that even a radical organization such as the Guild took some steps toward the model of the public interest law firm preferred by the Ford Foundation.

The organizational template for professionalized US immigrant rights lawyering became further institutionalized as private sector funders arranged an organizational division of labor among their grantees. The program staff of the Ford Foundation recognized that immigration law reform is a "polycentric" field in which no organization is preeminent.¹³ They therefore focused their efforts on rationalizing the division of labor among national legal organizations working on behalf of aliens and on ensuring that grantees did not duplicate each other's work. For example, because one of its grant recipients, the Lawyers Committee Refugee Rights Project, was focusing on legal issues surrounding refugees, the ACLU was told to focus its energies on nonrefugee issues if it wanted Ford Foundation start-up money for a new project. The Ford Foundation has similarly encouraged its other grantees to develop areas of expertise. The Farmworker Justice Fund was created to provide technical assistance to local organizations on the combined labor and immigration problems that plague H-2¹⁴ and undocumented agricultural workers. MALDEF is expected to carry primary responsibility for addressing immigrant civil rights issues. NCIR has been cultivated by the Ford Foundation as the expert on "public benefits issues" as they affect immigrants.¹⁵ The ACLU Immigrants' Rights Project has developed a specialization in due process issues. In short, specialties were developed in tandem with foundation funders.

Immigrant rights legal organizations were also urged by their benefactors to adopt the tactics previously developed in other law reform sectors. Following the public interest law organizational model, the Ford Foundation program officers encouraged immigrant rights groups to prioritize planned litigation: "[The Ford Foundation] deliberately channeled funds to national legal organizations . . . undertaking litigation activities that benefit from a national perspective."¹⁶ Rather than working at the grassroots to support social movements, these organizations were directed to attack the law directly. The ACLU Immigrants' Rights Project provides an example of this set of scripts. Staff attorneys in the ACLU's national office conceptualize suits to ensure consistency with issues in other suits and affirmatively to identify which issues raised by administrative practices are more susceptible to formal legal challenge, focusing on addressing complex constitutional questions through litigation.¹⁷ They aim to bring the

12. "Recommendation for Grant/FAP Action." January 4, 1990, 4, USIAP-81, Ford Foundation Archives.

13. Wortham, Leah, and Robert Dinerstein. "Report to the Ford Foundation on Legal Services Support Centers." November 1989, 16, 012588, Ford Foundation Archives.

14. The H-2 visa allows noncitizens to come to the United States temporarily to perform agricultural-related work if a US employer has shown that their services are needed on a temporary basis.

15. "Recommendation for Grant/FAP Action." July 2, 1987, 3, USIAP-193, 87-727, Ford Foundation Archives.

16. "Recommendation for Grant/FAP Action." April 23, 1987, 1, USIAP-124, Ford Foundation Archives.

17. ACLU Immigration and Aliens' Rights Task Force. "Interim Report: Ford Foundation Grant 830-0810," May 27, 1986, 87-727, Ford Foundation Archives.

tools and strategies that have been so successful in civil rights class action and impact litigation to immigrant rights. MALDEF likewise exemplifies the public interest law organizational model insofar as it has brought a juridical emphasis to immigration issues. Unlike other Mexican-American organizations, which resorted to litigation only after political mobilization had failed, MALDEF used the courts as the primary instrument to effect changes (San Miguel 1987, 172). These expert-led organizations also engage in lobbying and educational activities, but issue-driven appellate litigation is seen as a key tactic for challenging government actions in the name of immigrant rights.

Moreover, US immigrant rights legal organizations are pushed by the process of professionalization and by the structure of their field toward the businesslike and pragmatically oriented model of the public interest law firm. In particular, they are encouraged to pursue a form of litigation that can achieve some measure of success in the relatively short period of a foundation funding cycle. Funders, who are their primary constituents, are not satisfied with a report that a strategy is making progress but has not yet been successful. As Burt Neuborne, the ACLU's former legal director put it, "Organizations are keeping their ears open for what foundations are interested in and this leads into quick litigation, which is a way to show results and also to create a flash for additional funding."¹⁸ Rather than trying to build a grassroots movement, or even to undertake long-term litigation strategies on difficult legal issues, litigators face pressure to tackle minor issues that can more easily be reported as successes in grant reports.

Not only are US immigrant rights organizations explicitly modeled upon the public interest law firm, but the two communities are also organizationally linked insofar as lawyers groomed for elite careers in the juridical field dominate their professional staff. The director of the ACLU Immigrants' Rights Project, Lucas Guttentag, followed a career trajectory that, by the standards of the field, made him eminently qualified to work in any area of public interest law. After graduating from law school, he clerked and then worked on class action civil rights litigation, employment discrimination, and police abuse impact cases at the Center for Law in the Public Interest, one of the initial support centers funded by the Ford Foundation in the early 1970s. Having been recommended by the legal director of the NAACP LDF, he was invited by Harriet Rabb (who was a trustee on the Ford Foundation's board) to lead an immigrant rights legal clinic at Columbia Law School and to participate in the ACLU's efforts to create a specialized project. Although a summer spent reading up on immigration law served as the only immigration-specific preparation for this new position,¹⁹ Guttentag has developed a reputation as an expert in immigration due process issues and the defense of noncitizens' access to appellate review, demonstrating the importance of juridical expertise in professionalized activism.

Immigrant rights legal organizations have sought out lawyers with backgrounds in civil rights and federal court litigation, rather than looking exclusively for immigrant defenders to fill professional staff positions. This organizational model's affinity for appellate experience also explains how Rick Swartz, cocounsel for the litigation in the early 1980s on behalf of Haitian refugees, was able to transition into immigrant rights

18. Interview with Burt Neuborne, ACLU Legal Director, June 2006, in New York.

19. Interview with Lucas Guttentag, ACLU Immigrants' Rights Project Director, April 2006, by telephone.

practice with no prior experience in this area. Swartz, in his first years out of law school, had concentrated on his firm's pro bono appellate civil rights work, and had "dabbled" in a few pro bono asylum cases, but in 1978 he was offered the job of full-time staff attorney for the Washington Lawyers' Committee's Alien Rights Project and almost immediately began a sojourn in South Florida without any background in immigration law.²⁰

The commonalities between these career trajectories are not due to the nature of the work. Rather, the predominance of lawyers who have followed a professional path within the echelon of elite public interest law should be understood as the result of a patterned process whereby supporters favor credentials that fit within established modes of cultural capital. In the US juridical field, this has meant graduates of elite law schools with contacts in the broader field of public interest law, and talented young jurists tend to adopt professional strategies within the bounds of these constraints. These patterns can be seen in the record of the Ford Foundation's immigrant rights grant-making activity. While for several decades the ACLU Immigrants' Rights Project received several hundred thousand dollars per year from the Ford Foundation, the Guild's National Immigration Project was awarded significantly smaller Ford Foundation grants (e.g., \$15,000 in 1983 to sponsor a conference on Central American refugee defense, and \$50,000 in 1991 to develop a practical manual for migrants seeking Temporary Protected Status). There are many factors that account for this difference, such as the fact that the Guild has generally proposed much less ambitious projects than the ACLU. Nevertheless, there is at least some evidence that these groups' relative proximity to, or distance from, the establishment played a role in shaping the distribution of resources. On the ACLU Immigrants' Rights Project's requests for grant action, checkmarks and other approving notations appear next to the names of attorneys who had previously worked in organizations funded by the Public Interest Law Program.²¹

Not only are immigrant rights groups organizationally linked to the US liberal legal network as recipients of financial resources, but their professional staff have also developed strong personal relationships with leaders of the private bar and have participated actively in bar associations. In 1981, when the interception of Haitians on the high seas without procedural safeguards was the subject of litigation, both the ABA and the AILA issued press statements supporting the goals of immigrant rights law reform activity (AILA 1996). The following year, two of the litigators involved in the Haitian litigation, Ira Kurzban and Rick Swartz, joined the board of AILA. Swartz was also active in 1983 in pushing the ABA House of Delegates to establish a coordinating committee on immigration. Leaders of the corporate bar did not explicitly vet or supervise the recipients of Ford Foundation immigrant rights grants as they did with the Ford Foundation's Public Interest Law Program, yet the influence of the liberal establishment nevertheless left a visible trace on legal mobilizations for immigrant rights by

20. Interview with Dale (Rick) Swartz, Founder, National Immigration Coalition, June 2006, by telephone.

21. See, for example, the check marks next to the name of the Immigrants' Rights Project's director, Lucas Guttentag, who started his career at the Center for Law in the Public Interest. "Recommendation for Grant/FAP Action." July 2, 1987, 11, 87-727, Ford Foundation Archives.

strengthening the attachment of immigrant rights organizations to the associations of the private bar.

Like foundations, the legal profession has been a major supplier of both material and symbolic resources to the immigrant rights legal organizations it chooses to support, thereby fostering their institutionalization. Class action campaigns during the 1980s on behalf of Haitian refugees and, later, Central American refugees, relied on pro bono work to sift through enormous numbers of documents, and they institutionalized a working relationship between the corporate bar and immigrant rights legal organizations, particularly those defending asylum seekers.²² The involvement of pro bono attorneys has been a major factor in facilitating the resource-intensive class action cases that are a staple of immigrant rights litigation. The ACLU Immigrants' Rights Project's organizational records date to the mid-1980s and resemble the files of any prosperous US law firm, in that they are packed with multiple drafts of briefs, depositions, and other case-related materials, all neatly organized and labeled. These files preserve correspondence exchanged between pro bono attorneys and the key immigrant rights legal organizations in the field as they coordinated their work on various cases, testifying to the close working relationships that characterize the immigrant rights legal community.

Thus, in the United States, the basic outlines of institutionalized immigrant rights practice were clear by the end of the 1980s. However, the process of institutionalization has continued, and the field has expanded as demand for immigration law services has continued to rise. Legislation played a central role in creating this expanded demand. The Immigration Reform and Control Act (IRCA) of 1986 and the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) of 1996 are but the tip of the iceberg in a steady stream of legislative and administrative activity creating demand for legal services. The responses of policymakers to pressure from immigrant rights social movements and litigation campaigns are one part of this story, illustrating the way in which mobilizations can alter the political opportunities available for subsequent rounds of activism (Coutin 2006).

Ford Foundation funding and immigrant-centered bar programs have continued to expand in tandem with the rise in demand for legal services. For example, when the Immigration and Naturalization Service (INS) enlarged its immigration detention center in Florence, Arizona, local bar associations and foundations responded by creating the Florence Immigrant and Refugee Rights Project in 1989, which continues to supply legal services to migrant detainees. External supporters have sought to foster the expanded capacity and rationalized operations of community-based immigrant legal services. In 1987, the Ford Foundation provided NCIR with funds for a program to train

22. As early as 1982, the ABA created permanent staff positions to coordinate an immigrant rights pro bono program. With support from the Ford Foundation, the Washington Lawyers Committee for Civil Rights, the New York Lawyers Committee for Civil Rights, and the Lawyers Committee for Civil Rights of the San Francisco Bay Area all developed immigrant and refugee rights projects during the 1980s. In 1989, foundation support allowed the ABA to launch its Pro Bono Development and Bar Activation Project to train pro bono attorneys to assist immigrants and asylum seekers in the border area of Harlingen, Texas. This is part of a more general trend. According to one study, pro bono work by corporate firms grew exponentially starting in the early 1980s (Lardent 2000). Asylum emerged as a preferred area of pro bono work for large firms, who viewed these cases as politically safe and free from conflicts of interest (Cummins 2004, 123).

community-based immigrant legal services groups in (1) management, planning, and office systems; (2) finances and budgeting; (3) setting legal and social service priorities and case management; (4) ethical and malpractice problems; and (5) fundraising.²³ Other national funders, such as the Open Society Institute and the Carnegie Corporation, have followed the Ford Foundation's example by launching programs to support access to justice in the area of immigration law (Hing 2000). The organizations benefiting from these programs focus primarily on providing routine legal services to immigrant communities. However, they do enter into the juridical field more absorbingly when they contribute on occasion to planned litigation aimed at bringing about broad policy change, either alone or in coordination with immigrant rights legal support centers.

Moreover, steady demand from community-based legal services providers for information and training in immigration law has been an additional factor contributing to the institutionalization of the immigrant rights field as a whole. From their inception, organizations known for immigrant rights juridical expertise (the ACLU Immigrants' Rights Project, NCIR, MALDEF, and to some extent the Guild's Immigration Project) incorporated the provision of training sessions, pamphlets, and technical assistance hotlines for local immigration services providers into their core organizational mission. When they engage in training service providers in the nuances of immigration jurisprudence, the connection of immigrant rights legal experts to the juridical field is particularly visible, and their connection to grassroots movements seems more attenuated. At the same time, this expanding demand for expertise has played a significant role in the development of an organizational support structure that sustains immigrant rights legal organizations in the lulls between litigation campaigns.

By the late 1980s, Ford Foundation funders reported with satisfaction that the previously disparate and uncoordinated assortment of groups involved with immigrant causes had been "rationalized" and that an organizational division of labor was taking hold.²⁴ This institutionalization was due in large part to the Ford Foundation's own sustained involvement with immigration issues. The form of legal practice established during the 1980s, characterized by closeness to the private bar, and receiving relatively little public funding, has largely endured. Immigrant rights activity is now sufficiently institutionalized that recent changes in the availability of Ford Foundation funds²⁵ have had relatively little effect on US immigrant rights organizational repertoires. Staff-led immigrant rights legal organizations with largely paper memberships continue to replicate the organizational model of US public interest law. Private sector supporters have continued to encourage the institutionalization of this form of legal practice, mediating the division of labor between organizations and ensuring that immigrant rights practice does not overlap with other areas of public interest law.

23. "Recommendation for Grant Action, Legal Aid Foundation of Los Angeles," April 23, 1987, 2, 840-0827, Ford Foundation Archives.

24. Recommendation for Grant/FAP Action. April 23, 1987, 1. USIAP-124, Ford Foundation Archives.

25. These changes reflect a concession on the part of the Ford Foundation to the US government's post-9/11 security-related restrictions (Strom 2004).

Professionalization of Immigrant Rights Organizations in France

In France, like the United States, the contemporary immigrant rights legal community can locate its organizational roots in the wave of grassroots movements during the 1970s. This was a particularly dynamic moment in French political contestation. Historically, the French state has sought to co-opt and appropriate social movements rather than allowing them to be institutionalized outside of the state's officially recognized corporate structures (Rucht 1996; Kriesi 1996). However, amidst the heterogeneous dynamism of grassroots movements in the early 1970s, there was, at least initially, no initiative from France's establishment Left to incorporate social movements into existing structures. Left-wing institutions were in a state of disorganization in the years immediately after May 1968. The French Communist Party (PCF) and its closely associated union, the *Confédération Générale du Travail* (General Confederation of Labor; CGT), had both initially condemned the student and worker strikes, and their attempt to turn from condemnation of the events to annexation of them severely weakened their credibility (Sur 1982). For its part, François Mitterrand's initial coalition of non-Communist left-wing groups imploded after its disastrous defeat at the June 1968 legislative elections (Hanley 1987).

The absence of institutionalized liberal reform programs at this time did not mean that progressively oriented initiatives were lacking among members (or future members) of France's *classe dirigeante*. The government's repression of radical organizations in the years after 1968 was felt to be both excessive and potentially explosive by many who did not think of themselves as radicals (Sur 1982). Just as students at American elite law schools were attracted to the public interest and consumer movements at the end of the 1960s, a generation of students at France's best-known universities and professional schools were similarly moved toward political engagement (Leclerc 1994; Lascoumes 1996). Engaging in what they referred to as *contre-expertise* (counterexpertise), meaning expertise (by implication generated for service within the state) that was (paradoxically) turned against the state, these students started their professional lives by seeking out alliances within the post-1968 social movements (Artières 2008). This new front for leftist activism was given a theoretical patina by Michel Foucault's contemporaneous project of organizing a *Groupe d'Information sur les Prisons* that would reconceptualize the penal system in order to reform it. Seeking to associate their grassroots activist projects with this Foucauldian current, young jurists and medical professionals created *information groups* in the areas of psychiatry, architecture, medicine, social work, and legal practice. In their activities, they adopted the posture of what Foucault later theorized as the *intellectuel-spécifique* (specific intellectual), a politically engaged intellectual who would personally participate in concrete events in alliance with other political activists and in support of grassroots social movements.

This concept and its association with the notion of *contre-expertise*, laid the groundwork for institutionalizing a new model of leftist activism in France and of legal mobilization more specifically. In its conscious rejection of Leninist party-oriented leftism, the approach bears many resemblances to the Gramscian models popular among leftist in Italy, Spain, and Latin America during the 1970s (Rodriguez-Garavito 2006), and it also responded to French politics of the early 1970s by drawing a contrast with Jean-Paul Sartre's *intellectuel total*, who was seen as being too closely aligned with the

PCF (Groupe d'Information sur les Prisons 1973). Yet the model resonated with young French professionals who, regardless of whether they understood themselves as belonging to a theoretically oriented intelligentsia, were drawn to a posture that allowed them to maintain an intelligentsia-like position of relative autonomy, both from the state and from the traditional institutions of the working class.

During the early 1970s, as young professionals in several fields were experimenting with ways to use their position of knowledge and power to modify existing power structures, France's liberal establishment also came to view the reform of law and legal processes as a promising political project. Liberal legalism attracted an expanded following as the establishment Left reorganized under the banner of François Mitterrand's newly formed Socialist Party. During his 1974 presidential campaign, Mitterrand proposed the drafting of a charter of civil liberties (Becker and Ory 2002). Similar movements were visible elsewhere within the French establishment. The *Ligue des Droits de l'Homme*, a venerable institution of the French Left, experienced an influx of jurists beginning in 1975 when attorney Henri Noguères assumed the presidency (Crettiez and Sommer 2002, 361). In 1976, the Ligue formed a juridical commission, providing legal aid and also filing briefs in support of victims of racial discrimination (Agrikoliansky 2002). The resurrection of liberal legalism in France, which had not been a prominent feature of postwar Gaullist institutions, contributed significantly to shaping the dynamics of the contemporary French juridical field in which immigrant rights legal mobilizations are embedded.

The organizational history of GISTI, which pioneered immigrant rights lawyering in France, clearly illustrates an early application of the *contre-expertise* model in the area of legal mobilization as well as the gravitational pull that the juridical field exercises over this type of activity. Among GISTI's founders were graduates of France's elite civil servant training school, the ENA, who had been galvanized by the government's aggressive pursuit of post-1968 radicals. These young *énarques* (ENA graduates) searched for ways to apply their skills in order to bring government back to the "vision of how public service should be carried out" that they had acquired in their professional training (Marek 2002, 12). As "good technocrats" they were interested in "tackling particular issues that posed specific juridical challenges," and they selected the "theme" of immigrant workers as the focus of their work because the obstacles these communities faced seemed to exemplify the problem of *infra-droit* (an absence of law) that GISTI's organizers felt was at the heart of what was wrong with the government's current politics.²⁶

Following the *contre-expertise* model, GISTI's small circle of ENA-graduates appropriated the *groupe d'information* moniker for their association and gathered together a "cocktail" of left-wing civil servants, attorneys, magistrates and social workers.²⁷ The organization's two dozen members initially held their meetings in the living room of the group's founders and then moved their biweekly meetings in 1973 to the basement of the Paris offices of the *Cimade*, the social services arm of the French Protestant Federation (Israel 2003 provides a detailed account of the organization's early history). The involvement of legal professionals with immigrant causes was something that took place

26. "Transcript: Journée Histoire et Mémoire," 8 December 2000, conference held in Paris.

27. "Transcript: Journée Histoire et Mémoire," 8 December 2000, conference held in Paris.

elsewhere in France at this time. The *Association de Juristes pour la Reconnaissance des Droits Fondamentaux des Immigrés* (Association of Jurists for the Recognition of the Fundamental Rights of Immigrants) provided direct representation and distributed handbooks on immigrant rights to jurists in Marseilles, and the *Groupe d'Information Juridique d'Alsace* (Juridical Information Group of Alsace) brought together attorneys engaged with immigrant social movements in the northeast of France. GISTI's archives testify to the nascent organizational network formed among these groups, though no other organization so self-consciously adopted GISTI's posture of using a privileged group's knowledge of the field of power to denounce actions of the state.

Indeed, it was GISTI's proximity to the upper echelons of the juridical field that set it apart. While some of GISTI's diverse membership worked as grassroots organizers or attorneys within immigrant communities, its ENA-graduate founders experimented with more conceptually oriented techniques, drafting appeals to France's highest administrative court while moonlighting from their day jobs within the administration. GISTI's civil servant members worked within the *Conseil d'État*, the corps of magistrates, and the Ministries of Industry, Finance, and Education (Israel 2003, 121). They were already intimately familiar with the vocabulary and style of the *Conseil d'État*'s legal doctrine, having been trained in administrative law as part of their formation as future leaders of the administration. In addition, several of GISTI's founders had recently taken up junior positions within the *Conseil d'État*,²⁸ which gave them a privileged position from which to coordinate litigation against the government's restrictionist immigration policies. The *Conseil d'État*'s initial positive responses to these lawsuits encouraged GISTI to publicize its victories, most notably by taking upon itself the unprecedented role of contacting France's prefects and instructing them, in the style of an official circular, to modify their practices in keeping with the *Conseil d'État*'s decision.²⁹ This legally centered strategy was further validated in December 1978 when the *Conseil d'État* issued a precedent decision that discovered a right to family life in the Preamble to the French Constitution, a right that invalidated a 1977 decree restricting immigrant family reunification that GISTI had challenged.³⁰

These multiple victories before the *Conseil d'État* validated juridical expertise as a central organizational tactic and encouraged the adoption of a more professionalized organizational model. In GISTI's case, this organizational professionalization took the form of relocating from the basement of the *Cimade* to its own independent offices and creating a full-time paid staff position in 1978. This process was facilitated by a grant from the *Comité Catholique contre La Faim et pour Le Développement* (Catholic Committee Against Hunger and for Development), a Catholic charity with whom GISTI had close personal links through its staff director, André Legouy.³¹ Similarly, *France Terre d'Asile* (France Land of Asylum), an association formed in 1970 to assist political

28. "Transcript: Journée Histoire et Mémoire," 8 December 2000, conference held in Paris.

29. The Ministry of Interior responded to GISTI's presumption by reminding the prefects that the minister alone was authorized to instruct them in immigration administration. "Letter of Service Juridique du Ministre de l'Intérieur to the Prefectures," February 1979, Archives of Minister of Interior, Cote 19990260, box 1, Centre des Archives Contemporaines, Archives Nationales de France, Fontainebleau.

30. *Conseil d'État*, 11 December 1978, GISTI (RL.1978.458).

31. Prior to joining first the *Cimade* and then GISTI, Legouy had worked with immigrants as a Jesuit prison chaplain during the period of the Algerian War.

refugees, moved toward a more professionalized organizational model. Inspired by GISTI's success, and under the leadership of Philippe Waquet, an *avocat au Conseil d'État* with expertise in administrative law who also worked closely with GISTI, *France Terre d'Asile* began to experiment with litigation before the *Conseil d'État*. Supported by the availability of public funding for assisting arriving asylum seekers, the organization opened a permanent office in 1976 (Postel-Vilnay 1976). Like GISTI, *France Terre d'Asile* remained member-based and employed a miniscule staff, but it created its own newsletter and established a juridical commission that brought together representatives of GISTI, the *Cimade*, and the *Ligue des Droits de l'Homme*.³² During this period, immigrant rights organizations were not alone in turning to the courts. Other self-styled *contre-expertise* organizations experimented with legal mobilization in the areas of labor or consumer issues and took similar steps toward professionalization (Spanou 1989; Willemez 2003).

However, just at the moment when organizational professionalization and specialization was starting to gain momentum, the Socialist Party's electoral victory in 1981 threatened to cut short this movement by reincorporating juridical *contre-expertise* within the state. In the sphere of immigrant rights, as in other areas of legal practice, the Mitterrand government attracted France's new generation of young leaders (Vauchez and Willemez 2007, 14). GISTI witnessed the departure of its founding civil servant members, as their increased responsibilities within the new government absorbed their time and energy.³³ Moreover, the immigrant social movements of the preceding period either underwent a process of dissolution or transformed themselves into social assistance associations with the encouragement of the new Secretary of State for Immigration.³⁴ The early years of the Mitterrand government were thus a period of organizational uncertainty, as French immigrant movements and their advocates debated to what extent they would be critical of a government of the Left, and whether they should move in the direction of providing grassroots support or whether they should concentrate on specifically legal activism.³⁵

Passing through this period of retrenchment, during the 1980s, France's immigrant rights legal network was slowly reconstituted. GISTI's remaining members, having made the decision in 1982 to uphold a critical position toward the government, sought to build connections with jurists outside of Paris and to return to an adversarial strategy (GISTI 1982). *France Terre d'Asile* likewise expanded its network, most notably through its collaboration with GISTI and with the *Cimade* in an unsuccessful attempt to have asylum recognized by the *Conseil d'État* as a constitutional right. The association also

32. Interview with François Julien-Laferrrière, Professor of Public Law, March 2007, in Sceaux.

33. "Transcript: Journée Histoire et Mémoire," 8 December 2000, conference held in Paris.

34. This process followed legislation in September 1981 legalizing associations formed by noncitizens. Among those groups receiving funding through the government's "politics of prevention and social tranquility" were the *Office Dauphinois des Travailleurs Immigrés* (ODTI) and the *Collectif des Accidentés du Travail, Handicapés et Retraités pour l'Égalité des Droits* (CATRED), both founded by members of the committee of activists who had coordinated immigrant strikes against the *Société Nationale de Construction de Logements pour les Travailleurs* (National Society for Construction of Worker Hostels; SONACOTRA). "Meeting of Conseiller Technique, Secrétariat d'Etat Chargé des Immigrés, Ministère de la Solidarité Nationale with Mouvement des Travailleurs Immigrés (MTI)," October 1981, archives of Patrick Weil, box 22, Archives d'Histoire Contemporaine.

35. "Compte Rendu de la Réunion," February 25, 1982, GISTI Archives.

sponsored a year-long national campaign in 1986 for the right to asylum. Gradually, and through a process of trial and error, an organizational model for legal mobilization was institutionalized.

The emergent model for legal mobilization was strongly shaped by the dynamics of the French juridical field. In contrast to the United States, where the liberal legal network's funders have been located primarily outside of the government, French immigrant rights organizations have drawn much more heavily on public sources of support. In the case of GISTI, the government's commitment after 1981 to supporting liberal legalism played an important role in financing the organization's basic operations. Starting in 1986, GISTI began receiving public funding in the form of a contract to organize regular legal training sessions for government-employed social workers.³⁶ Revenues from the publication of a journal, *Plein Droit*, in addition to membership fees and project-specific support from private charities, have complemented government funding. However, the process of coordinating public financing, which involves multiple trips back and forth to the relevant public agency for in-person discussions, has become a seminal annual ritual for the organization.³⁷ In the case of *France Terre d'Asile*, its campaigns to publicize asylum rights have been funded through individual private donations as well as through substantial donations from the Ministry of Social Affairs's Direction for Population and Migrations (DPM).³⁸ Though both organizations continued to rely on member dues and volunteer legal work by their *avocats amis*, public funds have served to stabilize organizational finances and have facilitated professionalization, particularly the hiring of specialized staff.

Changes in the law contributed to this process of professionalization and institutionalization, as the heightened demand for immigration-related legal services resulting from new immigration enforcement legislation pushed immigrant assistance associations to create legal divisions and to seek the specialized knowledge of expert organizations such as GISTI and *France Terre d'Asile*. In 1984, the *Cimade* bolstered its *service juridique* when it accepted the newly created role of assisting migrants detained pending deportation. Although the Mitterrand government had initially envisioned the association as playing an "arbitrage" role,³⁹ new regulations governing detention created opportunities for judicial challenges, and public officials continued to fund the *Cimade*'s work, even as it became increasingly adversarial in nature. GISTI's training sessions played a central role in preparing social workers and NGO volunteers, from the *Cimade* and elsewhere, to navigate the judicial process, and in turn provided a justification for GISTI's own move toward further specialization.

The process of working collaboratively itself became a basis for organizational professionalization. During the 1980s, immigrant rights organizations collaborated in

36. "Compte Rendu de la Réunion," February 27, 1986, GISTI Archives.

37. "Transcript: Journée Histoire et Mémoire," 8 December 2000, conference held in Paris.

38. Letter to Gerard Moreau from Gerold de Wangen. 3 February 1986, Archives of Minister of Interior, Cote 19990260, box 26, Centre des Archives Contemporaines, Archives Nationales de France, Fontainebleau.

39. Note from Christian Nguyen to P. Faure, Cabinet du Ministre, Ministère des Affaires Sociales et de la Solidarité Nationale. "Centre d'hébergement pour les étrangers en instance de reconduite à la frontière." 15 February 1985, archives of Patrick Weil, box 23, Archives d'Histoire Contemporaine, Centre d'Histoire de Sciences Po, Paris.

litigating asylum rights jointly before the *Conseil d'État*, organizing a year-long campaign for asylum and operating an information and solidarity network known as the *Coordination Française pour le Droit d'Asile* to support hunger strikes by asylum seekers.⁴⁰ In 1989, a new association, *L'Association Nationale d'Assistance aux Frontières pour les Etrangers* (the National Association for Assistance for Foreigners at the Borders; ANAFE), was created to provide legal assistance to immigrants held at the border in airport *zones d'attentes*, having emerged from a collective of rights-oriented associations such as *France Terre d'Asile*, GISTI, and the *Cimade*, in collaboration with transit industry unions.

This process repeated itself in the early 1990s, as legal changes again created an increased demand for immigration-related legal services and a corresponding organizational professionalization. Immigrant rights advocates had themselves propelled some of the changes in the law. When a government of the Left returned to power in 1988, after a two-year period of cohabitation that had been characterized by a sharp turn toward enforcement oriented immigration policies, GISTI and the *Cimade* successfully lobbied for new legislation creating an opportunity for suspensive appeal of deportation orders (Marek 2001). The effect of this legislation was enhanced by the initiation in 1989 of a new line of funding through the Ministry of Social Affairs for associations involved in activities assisting immigrant integration, a hot topic in the debate over whether France's immigrants were insufficiently assimilated.

The 1989 reforms in turn propelled the further professionalization of the immigrant rights legal network and the institutionalization of organizational models developed in the previous decade. GISTI and the *Cimade* expanded their full-time staff and reinforced an already established organizational model for legal mobilization. Their responses to the government's regularization program in 1997 illustrate this common approach. The staff of these organizations worked to supply a new demand for legal services at the same time that their jurist members brought cases challenging the administrative regulations implementing the program. In addition, both groups eventually adopted a strongly critical position against the government, calling for "*liberté de circulation*" (open borders) and later on coordinating a campaign against "disposable" immigration policies (Ferré 2006). The strident tone of both campaigns highlights the symbolic significance that French organizations attach to demonstrating their independence from the state.

Organizational strategies and structures developed by French immigrant rights advocates were also reinforced by legal changes originating in the courts. In 1989, the application of the jurisprudence of the European Court of Human Rights (ECHR) in French courts, following its acceptance by the *Conseil d'État*, fostered an increased juridicization in all aspects of French political life (Commaille, Demoulin, and Robert 2000). This phenomenon became particularly important in the area of immigration law starting in 1991, when the ECHR's jurisprudence limiting expulsions in the name of a right to family life was officially endorsed by the *Conseil d'État* (Malabre 2000). It is important to emphasize that the vast majority of immigration-related cases do not reach the ECHR, meaning that the effects of this new jurisprudence are felt largely through

40. The *Coordination* resulted from the merging of two existing groups, the *Commission de Sauvegarde du Droit d'Asile* and *Documentation Réfugiés*.

its influence on the decisions of national courts in France. Rather than supplanting the French juridical field with a European one, the ECHR case law has reinforced the activities of nationally based immigrant rights legal organizations, which now operate in an increasingly juridicized policy context.

As a result of this increased demand for immigration services, litigation has come to be viewed by French NGOs as the preferred method for advancing immigrant rights. GISTI litigated more than twice as many cases before the *Conseil d'État* in the 1990s as it did in the previous two decades, and the litigation rate doubled again after 2000 (Lochak 2009, 44). Airport detention centers, new restrictions on asylum, and new obstacles to family reunification all provided motivation to use the courts. The legal divisions of existing civil rights and immigrant services organizations such as the *Ligue des Droits de l'Homme*, *SOS-Racisme*, the *Mouvement contre le Racisme et Pour l'Amitié entre les Peuples* (Movement against Racism and for Friendship among Peoples; MRAP), Amnesty International France, and the *Comité Médical pour les Exilés* (Medical Committee for Exiles; COMEDE) have all been drawn into an immigrant rights organizational network as immigration case-work comes to occupy an increasing share of their activities. This network has also come to include associations of solo practitioner lawyers specialized in immigration-related work, including the *Syndicat des Avocats de France*, *Avocats pour la Défense du Droit des Etrangers* (Advocates for the Defense of the Rights of Foreigners; ADDE), *Droits d'Urgence* (Emergency Rights), and *Tibérius Claudius*, a Lyon-based legal collective formed in 1995 and specializing in refugee advocacy.

While legal mobilization has often simply been incorporated into established professionalized organizations, grassroots mobilizations within immigrant communities during the 1990s and 2000s have also generated new immigrant solidarity groups that have mobilized the courts for immigrant rights. The vulnerability of noncitizen second-generation youth with records of juvenile delinquency to expulsion from France as immigrant criminals motivated the creation of a *Comité contre la Double Peine* (Committee against Double Punishment) in the late 1980s. Similarly, the sit-ins and squats associated with a grassroots mobilization of African migrants in the early 1990s motivated the emergence of a new group, *Droits devant!!* (Rights First). Both of these organizations have on occasion relied upon juridically based advocacy to support their campaigns. While they are significantly less legalistic in their approach, these organizations have to some extent consciously appropriated the *contre-expertise* posture of guarding a neutral position between the state and grassroots movements.

Just as in the United States, organizations defending the rights of immigrants in France have drawn on a repertoire of strategies and structures shaped by the dynamics of the French political context. Some mobilize law primarily to fill individualized legal needs. Others are drawn more strongly toward the juridical field, establishing themselves as experts in mobilizing the courts to shape the law in a manner that expands the range of rights available to noncitizens. These juridical experts, who sometimes describe themselves as *sapiteurs* (specialist advisors),⁴¹ are most often found within professionalized organizational structures, though they do not necessarily occupy staff positions

41. Interview with Gerard Sadik, CIMADE National Bureau Staff Member, July 2009, in Paris.

and may simply be affiliated as committed members. Just as in the United States, French immigrant rights organizations operate along a spectrum of legalization and professionalization, and over time a particular pattern of organizational strategies and interorganizational dynamics has become institutionalized. The characteristics of the distinctly French immigrant rights legal community that distinguish it from its US counterpart can be summarized as follows.

First, public funding remains a central component of the support structure for French immigrant rights litigation. While religious charities are significant supporters of immigrant rights associations, France's community of corporate-sponsored private foundations remains both small and largely uninvolved in progressive causes.⁴² Examination of the annual reports of GISTI, the *Cimade*, ANAFE, MRAP, and *France Terre d'Asile* since 1990 reveals that French organizations that engage in immigrant rights litigation on a systematic basis and through institutionalized structures do so thanks to consistent and substantial funding from the government. French jurists acknowledge that public support has allowed them to do more than their colleagues in other European countries, such as Italy, where government funding for rights-oriented activity is less available.⁴³ However, access to this public sector source of organizational support is unequal. GISTI and *France Terre d'Asile* benefit from personal connections with public officials, particularly the Direction of Population and Migrations, which have contributed to giving this line of funding a "semi-ritualized" quality.⁴⁴ By contrast, immigrant rights organizations that draw their membership primarily from a more marginal milieu, such as the association *Droits devant!!*, have had less success in securing state funding, and their capacity for institutionalized juridical activity is more limited.⁴⁵

Second, at the same time that the role of public funding, while not hegemonic, has been relatively more prominent in France, the role of the leaders of the French private bar has been markedly less pronounced compared to the strong involvement of US bar associations in supporting immigrant rights legal activity. In general, France's large law firms remain few in number and those that do exist have not yet taken up the practice of underwriting pro bono representation (Boigeol 1988; Karpik 1999). Professional conservatism remains characteristic of the official French bar associations, and the bar's leadership has generally not embraced immigrant rights litigation or any other form of legal mobilization activity. Indeed, immigrant rights advocates have had to justify their efforts against accusations that it harms the profession's credibility (Waquet 2009). While associations of progressive lawyers have supported legal mobilization, and a small group of expert solo practitioners has been at the center of this work, there is no counterpart in France to the pro bono lawyering by large US corporate firms that is so strongly linked to legal mobilization in the United States.

Third, the relationships between immigrant rights organizations that choose to operate inside the French legal field are characterized by a hierarchy of prestige linked both to legal conceptualism and to nationally specific structures of power. GISTI is distinguished by the brand name it has obtained within the legal field; the vice president

42. Interview with Jean-Pierre Alaux, GISTI Staff Member, January 2007, in Paris.

43. Interview with Claire Rodier, GISTI Staff Member, June 2007, in Paris.

44. "Transcript: Journée Histoire et Mémoire," 8 December 2000, conference held in Paris.

45. http://www.droitsdevant.org/article.php?id_article=186 (accessed April 21, 2010).

of the *Conseil d'État*, Marceau Long, himself contributed a preface to one of GISTI's juridical guidebooks on immigrant rights (GISTI 1992). The association has steadily moved further away from individual representation and has focused increasing attention on litigation before *Conseil d'État*. Strikingly, the *Conseil d'État* has granted an audience to every case that GISTI has brought (Genevois 2009, 68). Other French organizations, such as the *Cimade*, the *Ligue des Droits de l'Homme*, *France Terre d'Asile*, and *Tibérius Claudius*, have at times engaged in planned litigation seeking to reform immigration law. However, in jointly coordinated litigation, it is GISTI that takes the lead in writing the legal briefs and organizing litigation strategy.⁴⁶ A similar hierarchy appears in the results of a survey of activists associated with other immigrant rights organizations, who consistently admire GISTI's strong reputation and organizational credentials (Simeant 1998).

GISTI's historic proximity to the French legal field's repositories of symbolic capital, particularly its close relationship with the *Conseil d'État*, has allowed it to assume this strong position. Its landmark 1978 victory was achieved in part because the case served as a catalyst of initial signs of change in the *Conseil d'État*'s position on immigrant rights, signals that were already perceptible to GISTI jurists working within that institution, though they were not made public (Genevois 2009, 71). Later on, GISTI President Danièle Lochak's renowned legal scholarship and close relationship with the *Ligue des Droits de l'Homme* further strengthened the group's reputation within the legal field. The litigation successes facilitated by these social relationships had a reinforcing effect, creating a dynamic whereby jurists who developed expertise in immigration law were invited to join GISTI's selective membership and were generally eager to become associated with such a prestigious group.

Finally, French immigrant rights associations adhere to an advocacy ideal that resists what they view as an overly professionalized American-style legal practice. Immigrant rights associations have historically cultivated strong ties with prominent French intellectuals, and they routinely make a point of linking immigration issues to larger political debates. GISTI's journal, *Plein Droit*, regularly publishes short essays by historians, sociologists, anthropologists, and philosophers. Similarly, *Droits devant!!* and *Tibérius Claudius* both identify themselves as practicing a form of *contre-expertise* (Franguiadakis and Peroni 2004; Pechu 2006). Advocates are in general reluctant to take on activity that appears too close to lobbying, and they insist that their associations should be distinguished from interest groups.⁴⁷ GISTI's former president worries that her association might become accustomed to money and might find itself distracted by having to support the enhanced operations that more funding would allow.⁴⁸ Similarly, the leader of the immigrant rights legal collective *Tibérius Claudius* speaks of trying to avoid structural rigidity (Franguiadakis and Peroni 2004).

Although the relatively artisanal approach to legal mobilization is partially a product of scarce resources, this style also reflects wariness on the part of French

46. A search of all *Conseil d'État* cases since 1972 revealed only six in which the court heard cases related to immigration issues that were brought by other associations without the participation of GISTI.

47. Interview with Serge Slama, Professor of Public Law, February 2007, in Paris. See also previously cited interviews with Jean-Pierre Alaux and Gerard Sadik.

48. "Transcript: Journée Histoire et Mémoire," 8 December 2000, conference held in Paris.

advocates of losing their independence. Working a system where sources of support and legitimation are closely connected to the state, it is harder for French immigrant rights advocates to escape the tension between legal expertise and social change. The *contre-expertise* approach can be understood as a posture that both reflects and reproduces these dynamics.

In sum, the professionalization of organizations seeking to mobilize law for immigrant rights occurred more gradually and organically in France than in the United States. In contrast to the situation in the United States, an organizational model for a professionalized legal back-up center was not preformed and ready for replication. Moreover, political contestation in general has not been as juridicized in France as in the United States, although over the course of the last several decades, significant juridicization has taken place (Spanou 1989; Stone 1992; Commaille, Demoulin, and Robert 2000).

Yet, while this process may not have been as rapid and dramatic, it is clear that French immigrant defenders, who were initially grounded in immigrant social movements, have taken significant steps toward professionalizing their organizations. In the process, an organizational model for juridically oriented activism has been more or less institutionalized. This follows a pattern observed in the development of the US immigrant rights organizations, yet French organizations operate in a field with its own dynamics and the form of their legal practices reflect and reinforce these relationships.

CONCLUSION

This article has explored the possibilities for applying the framework of *legal fields* to the study of legal mobilization. A Bourdesian perspective suggests that we examine not only the intraorganizational relationships between legal professionals and social movements, but also relationships of power that operate at the national scale. Similar to the relational analysis provided in studies of international commercial arbitration and international development assistance (Dezalay and Garth 1996; Dezalay and Garth 2005), the institutionalization of legal mobilization practices is understood as contextually dependent and structured by unequal access to material and symbolic resources. Studies in this tradition have emphasized the role of international or transnational legal fields. Yet, as critics point out, cross-national Bourdesian analyses have tended to discount the relevance of national legal traditions, incorrectly assuming that the international context exerts itself equally strongly in all areas of law (Santos 1995; Garcia-Villegas 2006).

Taking legal mobilizations for immigrant rights in France and the United States as case studies, the analysis in the previous section traced the process of professionalization and institutionalization in each country. Drawing on the concept of *organizational models*, the analysis focused on the development of templates for arranging relationships within organizations as well as the emergence of sets of scripts for legal mobilization activity. It identified key moments in this process, and highlighted the most salient distinctions between French and US organizational practices, which, I have argued, are produced by the differential dynamics of the juridical field in each country.

This tracing of the institutionalization of immigrant rights legal organizations contributes to the study of law and social relations by highlighting the *differences* between legal mobilization practices in distinct national contexts. In the United States, immigrant rights legal work has been structured by a field of power that places high value on the autonomous legal profession and on private sources of capital. Success within this system requires extensive resources and support from the powerful corporate bar, but these resources flow to those organizations that already possess significant banks of symbolic capital, and that play by the rules of the field. In the case of France, the success of immigrant rights lawyering is in multiple respects due to the involvement of experts who have been trained and supported by the state, yet who insist on their independence from the state. Although legal mobilization is not monopolized by the state's technicians, prestige and influence are forms of symbolic capital that originate in structures linked to the state. As Bourdieu writes, "the relative authority of different types of juridical capital within different traditions is related to the general position of the state within the broader field of power" (Bourdieu 1986, 6). The notion of *contre-expertise* captures the powerful pull of, and reactions against, France's relatively more statist structures.

Certainly, the state is not absent in legitimizing US legal mobilization practices. Courts and legislatures grant standing to bring class action lawsuits, and allow for the collection of attorney's fees. Government attorneys within the Department of Justice have also played important roles in supporting immigrant rights litigation (Landsberg 1997). Nevertheless, in the United States, the dominant group responsible for supporting legal mobilization on behalf of immigrant movements is located institutionally in the private sector. Professionalized immigrant rights organizations in the United States receive their material and symbolic authority through association with private foundations and the private bar, while professionalized immigrant rights organizations in France remain institutionally attached to the governmental institutions.

This conclusion should not be interpreted as adopting the position that understanding national institutional structures, which are themselves historically contingent, will tell us everything about legal practice. Despite the different organizational forms adopted by immigrant rights lawyers in the two countries, conceptually oriented jurists occupy relatively dominant positions within both the French and American juridical fields. This primacy of legalism should not be surprising since, as Bourdieu suggests, the power of the juridical field stems from its monopolization of the technical competence to interpret a corpus of texts governing appropriation of society's resources and by its ability to make the exercise of power seem eternal and universal (Bourdieu 1986). Although, in each country, issue-driven litigation takes place through different organizational forms and draws on different sets of alliances, it remains the most prestigious form of legal practice even among jurists who identify themselves as participating in a movement for social change.

Thus, in spite of the obvious institutional differences, which have been the focus of this article, the similarities between the liberal legal approaches to immigration policy promoted by the supporters of immigrant rights litigation in France and the United States are striking. On both sides of the Atlantic, liberal elite benefactors have aimed to handle or manage immigration, rather than solving this new social issue, and have encouraged a deployment of juridical expertise that results in relatively modest

and incomplete realizations of rights.⁴⁹ This is equally true in the United States, where legal mobilization has nongovernmental support, as it is in the more statist French system. Although the present analysis does not explore this question in any depth, its findings suggest that it is not only professional categories that are called into question by the comparative perspective, but also understandings of state boundaries.

REFERENCES

- Agrikoliansky, Eric. 2002. *La Ligue Française des Droits de l'Homme et du Citoyen depuis 1945: Sociologie d'Un Engagement Civique* [The Ligue Française des Droits de l'Homme et du Citoyen since 1945: Sociology of a Civic Engagement]. Paris: Harmattan.
- American Immigration Lawyers Association (AILA). 1996. *AILA Celebrates 50 Years: Reflections of Past Presidents*. Washington, DC: American Immigration Lawyers Association.
- Alvarez, Sonia. 1998. Latin American Feminisms Go Global: Trends and Challenges for the New Millenium. In *Cultures of Politics, Politics of Cultures*, ed. Sonia Alvarez, Evelina Dagnino, and Arturo Escobar, 293–324. Boulder, CO: Westview.
- Artières, Philippe. 2008. 1968, *Années Politiques* [1968, Political Years]. Paris: Magnier.
- Baxi, Upendra. 1989. Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India. In *Law and Poverty: Critical Essays*, ed. Upendra Baxi, 357–415. Mumbai, India: Tripathi.
- Becker, Jean-Jacques, and Pascal Ory. 2002. *Crise et Alternances 1974–2000* [Crisis and Alternations 1974–2000]. Paris: Seuil.
- Boigeol, Anne. 1988. The French Bar: The Difficulties of Unifying a Divided Profession. In *Lawyers in Society Volume Two: The Civil Law World*, ed. Richard L. Abel, and Philip S. C. Lewis, 258–94. Berkeley: University of California Press.
- Bourdieu, Pierre. 1977. *Outline of a Theory of Practice*. Trans. Richard Nice. New York: Cambridge University Press.
- . 1986. La Force du Droit [The Force of Law]. *Actes de la Recherche en Sciences Sociales* [Acts of Research in Social Sciences] 64 (September): 3–19.
- Calavita, Kitty. 1994. U.S. Immigration and Policy Responses. In *Controlling Immigration: A Global Perspective*, ed. Wayne A. Cornelius. Stanford, CA: Stanford University Press.
- Chavez, Ernesto. 2002. “Mi Raza Primero!”: *Nationalism, Identity, and Insurgency in the Chicano Movement in Los Angeles, 1966–1978*. Berkeley: University of California Press.
- Clemens, Elizabeth S. 1993. From Organizational Repertoires to Institutional Change: Women’s Groups and the Transformation of U.S. Politics, 1890–1920. *American Journal of Sociology* 98 (4): 755–98.
- Coglianesse, Cary. 2001. Social Movements, Law, and Society: The Institutionalization of the Environmental Movement. *University of Pennsylvania Law Review* 150:85–118.
- Commaille, Jacques, Laurence Demoulin, and Cécile Robert. 2000. *La Juridicisation du Politique: Leçons Scientifiques* [The Juridicization of Politics: Scientific Lessons]. Paris: LGDJ.
- Cornelius, Wayne A. 2004. *Controlling Immigration: A Global Perspective*, 2nd ed. Stanford, CA: Stanford University Press.
- Coutin, Susan. 2006. Cause Lawyering and Political Advocacy: Moving Law on Behalf of Central American Refugees. In *Cause Lawyers and Social Movements*, ed. Austin Sarat and Stuart A. Scheingold, 101–19. Stanford, CA: Stanford University Press.
- Crettiez, Xavier, and Isabelle Sommier. 2002. *La France Rebelle* [Rebellious France]. Paris: Editions Michalon.
- Cummings, Scott L. 2004. The Politics of Pro Bono. *U.C.L.A. Law Review* 52 (1): 3–149.
- De Genova, Nicholas. 2002. Migrant Illegality and Deportability in Everyday Life. *Annual Review of Anthropology* 31:419–47.

49. I credit one of the anonymous reviewers of this article for suggesting this analysis.

- Dezalay, Yves, and Bryant G. Garth. 1996. *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. Chicago: University of Chicago Press.
- . 2005. *The Internationalization of the Palace Wars*. Chicago: University of Chicago Press.
- Dooley, John A., and Alan W. Houseman. 1984. *Legal Services History*. Washington, DC: Management Project of the NLADA.
- Epp, Charles R. 1998. *The Rights Revolution*. Chicago: University of Chicago Press.
- Epstein, Lee. 1985. *Conservatives in Court*. Knoxville, TN: University of Tennessee Press.
- Ferré, Natalie. 2006. Résistance à l'Immigration Jetable [Resistance to Disposable Immigration]. *Plein Droit* 71 (December): 3–6.
- Fisher, William F. 1997. Doing Good? The Politics and Anti-Politics of NGO Practices. *Annual Review of Anthropology* 26:439–64.
- Franguiadakis, Spyros, and Michel Peroni. 2004. Tibérius Claudius; ou Entretenir le Mirage de l'Individu Collectif [Tiberius Claudius; or Upholding the Mirage of the Collective Individual]. In *Ce Qui Nous Relie [That Which Draws Us Together]*, ed. André Micoud and Michel Peroni, 333–69. Paris: Editions de l'Aube.
- Gamson, William A. 1975. *The Strategy of Social Protest*. Homewood, IL: Dorsey Press.
- Garcia-Villegas, Mauricio. 2006. Comparative Sociology of Law: Legal Fields, Legal Scholarships, and Social Sciences in Europe and the United States. *Law & Social Inquiry* 31 (Spring): 343–82.
- Geertz, Clifford. 1968. *Islam Observed*. Chicago: University of Chicago Press.
- Genevois, Bruno. 2009. Le GISTI: Requéant d'Habitude? La Vision du Conseil d'Etat [GISTI: A Repeat Litigator? The Vision from the Conseil d'Etat]. In *Défendre la Cause des Etrangers en Justice [Defending the Cause of Foreigners in the Courts]*, ed. GISTI, 65–79. Paris: Dalloz.
- Ginesy-Galano, Mireille. 1984. *Les Immigrés Hors La Cité: Le Système d'Encadrement Dans Les Foyers* [Immigrants Outside the City: The System of Supervision in the Immigrant Worker Dormitories]. Paris: Editions l'Harmattan.
- Gordon, Jennifer. 2005. *Suburban Sweatshops: The Fight for Immigrant Rights*. Cambridge, MA: Harvard University Press.
- Grillo, R.D. 1985. *Ideologies and Institutions in Urban France: The Representation of Immigrants*. New York: Cambridge University Press.
- Groupe d'Information sur les Prisons. 1973. *Suicides de Prison* [Prison Suicides]. Paris: Gallimard.
- Groupe d'Information et de Soutien des Immigrés (GISTI). 1992. *Guide de la Nationalité Française* [Guide to French Nationality]. Paris: La Découverte.
- Gutierrez, David G. 1995. *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity*. Berkeley: University of California Press.
- Handler, Joel. 1978. *Social Movements and the Legal System: A Theory of Law Reform and Social Change*. New York: Academic Press.
- Hanley, David. 1987. The Parti Socialiste Français: Socialist Synthesis or Ambiguous Compromise? In *Mitterrand's France*, ed. Sonia Mazey and Michael Newman, 7–32. London: Croom Helm.
- Hilbink, Thomas. 2006. *Constructing Cause Lawyering: Professionalism, Politics, and Social Change in 1960s America*. New York: Institute for Law and Society, New York University.
- Hing, Bill Ong. 2000. The Emma Lazarus Effect: A Case Study in Philanthropic Revitalization of the Immigrant Rights Community. *Georgetown Immigration Law Journal* 15 (Fall): 47–97.
- Israel, Liora. 2003. Faire Emerger le Droit des Etrangers en le Contestant, ou L'Histoire Paradoxe des Premières Années du GISTI [Making Immigration Law Emerge by Contesting It, or the Paradoxical History of GISTI's First Years]. *Politix* 16 (62): 1–21.
- Karpik, Lucien. 1999. *French Lawyers: A Study in Collective Action*. New York: Clarendon Press.
- Kriesi, Hanspeter. 1996. The Organizational Structure of New Social Movements in Political Context. In *Comparative Perspectives on Social Movements*, ed. Doug McAdam, John D. McCarthy, and Mayer Zald, 152–84. New York: Cambridge University Press.
- Landsberg, Brian K. 1997. *Enforcing Civil Rights: Race Discrimination and the Department of Justice*. Lawrence: University Press of Kansas.
- Lardent, Esther F. 2000. Making the Business Case for Pro Bono. In *Law Firm Pro Bono Project*. Washington, DC: Pro Bono Institute.

- Lascombes, Pierre. 1996. De le Cité d'Urgence à l'Association Aides [From the Cité d'Urgence to AIDES]. *Les Temps Modernes* 587:344–56.
- Leclerc, Henri. 1994. *Un Combat pour la Justice* [A Battle for Justice]. Paris: La Découverte.
- Levitsky, Sandra R. 2006. To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements. In *Cause Lawyers and Social Movements*, ed. Austin Sarat and Stuart A. Scheingold, 145–63. Stanford, CA: Stanford University Press.
- Lochak, Danièle. 2009. Trente Ans de Contentieux à l'Initiative du GISTI [Thirty Years of GISTI Litigation]. In *Défendre la Cause des Etrangers en Justice*, ed. GISTI, 43–64. Paris: Dalloz.
- Malabre, Jean Eric. 2000. The French Experience. In *Security of Residence and Expulsion: Protection of Aliens in Europe*, ed. Elspeth Guild and Paul E. Minderhoud, 125–39. Cambridge, MA: Kluwer Law International.
- Marek, Anna. 2001. Le GISTI ou L'Expertise Militante: Une Analyse du Répertoire d'Action de l'Association [GISTI or Activist Expertise: An Analysis of the Activist Repertoire of the Association]. (D.E.A. thesis, Institut d'Etudes Politique, Paris).
- . 2002. Des “Anciens” Témoignent [The “Alumni” Testify] *Plein Droit* 53–54 (June): 12–17.
- Markowitz, Lisa, and Karen Tice. 2002. Paradoxes of Professionalization: Parallel Dilemmas in Women's Organizations in the Americas. *Gender and Society* 16 (9): 941–58.
- McAdam, Doug. 1982. *Political Process and the Development of Black Insurgency, 1930–1970*. Chicago: University of Chicago Press.
- McCann, Michael W. 1986. *Taking Reform Seriously: Perspectives on Public Interest Liberalism*. Ithaca, NY: Cornell University Press.
- . 1994. *Rights At Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- . 2006. *Law and Social Movements*. Aldershot, UK: Ashgate.
- McCann, Michael W., and Helena Silverstein. 1998. Rethinking Law's “Allurements”: A Relational Analysis of Social Movement Lawyers in the United States. In *Cause Lawyering: Political Commitments and Professional Responsibilities*, ed. Austin Sarat and Stuart A. Scheingold, 261–90. New York: Oxford University Press.
- McClymont, Mary, and Stephen Golub. 2000. *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World*. New York: Ford Foundation.
- O'Connor, Karen. 1980. *Women's Organizations' Use of the Courts*. Lexington, MA: Lexington Books.
- O'Connor, Karen, and Lee Epstein. 1985. A Legal Voice for the Chicano Community: The Mexican American Legal Defense and Education Fund, 1968–1982. *Social Science Quarterly* 65 (2): 245–56.
- Olson, Susan M. 1984. *Clients and Lawyers: Securing the Rights of Disabled Persons*. Westport, CT: Greenwood Press.
- Pechu, Cécile. 2006. *Droit au Logement: Genèse et Sociologie d'une Mobilization* [Droit au Logement: Genesis and Sociology of a Mobilization]. Paris: Dalloz.
- Postel-Vilnay, Olivier. 1976. La France, Terre d'Asile [France, a Land of Asylum]. *Le Monde*, November 26.
- Rodriguez-Garavito, César A. 2006. Alternative Law. In *Encyclopedia of Law and Society: American and Global Perspectives*, ed. David Clark, 56–58. Thousand Oaks, CA: Sage.
- Rucht, Dieter. 1996. The Impact of National Contexts on Social Movement Structures: A Cross-Movement and Cross-National Comparison. In *Comparative Perspectives on Social Movements*, ed. Doug McAdam, John D. McCarthy, and Mayer Zald, 185–204. New York: Cambridge University Press.
- Rueschemeyer, Dietrich. 1989. Comparing Legal Professions: A State-Centered Approach. In *Lawyers in Society Volume Three: Comparative Theories*, ed. Richard L. Abel and Philip S. C. Lewis, 289–321. Berkeley: University of California Press.
- San Miguel, Guadalupe. 1987. *Let All of Them Take Heed*. Austin: University of Texas Press.
- Santos, Boaventura de Sousa. 1995. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. New York: Routledge.

- Sarat, Austin, and Stuart A. Scheingold, eds. 1998. *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Cambridge University Press.
- . 2001. *Cause Lawyering and the State in a Global Era*. New York: Oxford University Press.
- Scheingold, Stuart A. 2004. *The Politics of Rights: Lawyers, Public Policy, and Political Change*, 2nd ed. New Haven, CT: Yale University Press.
- Simeant, Johanna. 1998. *La Cause des Sans-Papiers* [The Cause of the Sans-Papiers]. Paris: Presses de Sciences Po.
- Spanou, Calliope. 1989. Le Droit Instrument de la Contestation Sociale? Les Nouveaux Mouvements Sociaux Face Au Droit [Law as an Instrument of Social Contestation? The New Social Movements and the Law] In *Les Usages Sociaux du Droit* [The Social Usages of Law], ed. C.U.R.A.P.P., 32–43. Paris: Presses Universitaires de France.
- Stone, Alec. 1992. *The Birth of Judicial Politics in France*. New York: Oxford University Press.
- Strom, Stephanie. 2004. ACLU's Search for Data on Donors Stirs Privacy Fears. *New York Times*, December 18. <http://www.nytimes.com/2004/12/18/national/18aclu.html#> (accessed February 7, 2010).
- Sur, Serge. 1982. *La Vie Politique en France sous la V^e République* [French Political Life Under the Fifth Republic]. Paris: Montchrestien.
- Tate, Winifred. 2007. *Counting the Dead: The Culture and Politics of Human Rights Activism in Colombia*. Berkeley: University of California Press.
- Teles, Steven. 2008. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, NJ: Princeton University Press.
- Trubek, David M., Yves Dezalay, Ruth Buchanan, and John R. Davis. 1994. Global Restructuring and the Law: Studies of the Internationalization of the Legal Fields and the Creation of Transnational Arenas. *Case Western Reserve Law Review* 44 (2): 407–97.
- Vauchez, Antoine, and Laurent Willemetz. 2007. *La Justice Face à Ses Réformateurs* [The Judiciary Faced with Its Reformers]. Paris: PUF.
- Waquet, Philippe. 2009. Retour Sur Deux Combats Pour Le Droit Des Etrangers [A Review of Two Immigration Law Battles]. In *Défendre La Cause des Etrangers en Justice* [Defending the Cause of Foreigners in the Courts], ed. GISTI, 15–23. Paris: Dalloz.
- Wasby, Stephen. 1995. *Race Relations Litigation in an Age of Complexity*. Charlottesville: University of Virginia Press.
- Weil, Patrick. 1991. *La France et Ses Etrangers: l'Aventure d'Une Politique de l'Immigration, de 1938 à Nos Jours* [France and her Foreigners: The Adventure of Immigration Politics, 1938 to the Present]. Paris: Calmann-Lévy.
- Weisbrod, Burton. 1978. *Public Interest Law: An Economic and Institutional Analysis*. Berkeley: University of California Press.
- Willemetz, Laurent. 2003. Quand les Syndicats se Saisissent du Droit [When the Unions Turn to the Courts]. *Sociétés Contemporaines* [Contemporary Societies] 4 (52): 17–38.
- Zancarini-Fournel, Michelle. 2002. La Question Immigrée Après 68 [The Immigration Question After 68]. *Plein Droit* 53–54 (June): 3–7.

ARCHIVAL DOCUMENTS

United States

Ford Foundation Archives, NY, New York.

France

Archives d'Histoire Contemporaine, Centre d'Histoire de Sciences Po, Paris.

Centre des Archives Contemporaines, Archives Nationales de France, Fontainebleau.

GISTI, Private Organizational Archives, 3 Villa Marcès, Paris.

CASES CITED

United States

Plyler v. Doe, 457 U.S. 202 (1982).

France

Conseil d'Etat. 11 December 1978, *GISTI* (RL.1978.458).