The Political Economy of Legal Globalization: Juridification, Adversarial Legalism, and Responsive Regulation. A comment

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Abstract This article is a critique of Kelemen and Sibbitt's "The Globalization of American Law" (*International Organization*, Winter 2004). I first deal with the inconsistency of their treatment of their dependent variable, suggesting that they should have examined the interaction of three different diffusion processes. I then suggest that the explanations that they provide for the globalization of the American style are inadequate, and that the explanations that they reject require a second look. Consequently, their article conveys at best a partial picture of the process of change, its sources, and its outcomes. I highlight their inadequate treatment of the World Society Approach (WSA), the notion of regulatory competition, and the reduction of the role of ideas and agency, particularly the role of neoliberal ideas and big American and European business, to mere reflections of economic processes of globalization and liberalization. I also suggest that Kelemen and Sibbitt's did not lift their gaze beyond the boundaries of the political science discipline. In particular I argue that they do not examine the interaction of juridification, legalization, and judicialization on the one hand and adversarial legalism and responsive regulation on the other. I conclude with some suggestions for an interdisciplinary perspective on the study of global legal and regulatory change.

Ours is an era of change, and it is not surprising that change rather than stability nowadays attracts the attention of social scientists, comparativists, and scholars of international relations. R. Daniel Kelemen and Eric C. Sibbitt's "The Globalization of American Law" (*International Organization*, Winter 2004) is a recent important contribution to the literature on change. Theirs is a study of the political economy of the diffusion of the American legal style, particularly adversarial legalism. The context is the debate on the sources of diffusion and its outcomes,

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especially the convergence and divergence of legal systems. Law and legal change are an important and challenging subject that is largely marginalized in the political science discipline,[1] so Kelemen and Sibbitt's article represents a welcome contribution. Yet I doubt if theirs is the best way forward. In what follows, I discuss their findings and arguments and suggest that their theoretical and analytical frameworks suffer from some serious shortcomings. The first is the failure to distinguish among three different processes of diffusion, each with its own sources, dynamics, and effects on the process of the globalization of law. The second is the failure to distinguish between juridification, that is, the legalization of social and political life, and adversarial legalism, which is one of its forms.[2] The third shortcoming is the authors' reduction of the role of ideas, particularly neoliberal ideas, to a mere reflection of economic processes of globalization and liberalization. The fourth is their selective focus on American legal firms, which overlooks other business agents that have an interest in restraining adversarial legalism especially in product liabilities and securities. The fifth is the focus on the "exporters" of adversarial legalism, hence the disregard of the role of importers and the importance of localization in diffusion processes.[3] In sum, their article conveys at best a partial picture of the process of change, its sources, and its outcomes.

I summarize Kelemen and Sibbitt's arguments and findings only briefly. A substantial body of research, they claim, suggests that the U.S. legal and regulatory approach is distinctively adversarial.[4] This distinctive American legal style "manifests itself in detailed, prescriptive rules, substantial transparency and disclosure requirements, formal and adversarial procedures for resolving disputes, costly legal contestation involving many lawyers, and frequent judicial intervention in administrative affairs."[5] This distinctive style is contrasted to other advanced industrial democracies, which are claimed to be "more informal, cooperative, and opaque, and rely less on the involvement of lawyers and courts."[6] The authors ask whether and why the distinct American style is spreading to other parts of the world, and they examine these issues by reference to changes in two policy arenas (securities and product liabilities laws) in the European Union (EU) and Japan. Kelemen and Sibbitt find that the American legal style is spreading globally but with variations across countries and issue areas.[7] The political consequences of the diffusion of the American legal style are far-reaching. According to the authors,

1. Progress in this field is hampered by powerful but arcane and unproductive interdisciplinary boundaries, according to Stone Sweet 2000, 2. See Goldstein et al. 2001, for a major contribution to the issue.
2. Or the growth and expansion of law—the "legal explosion"—as they shape the political and social policies of the modern state (see Teubner 1987, 6), modern society, and the international system.
3. For a recent contribution on localization and diffusion, see Acharya 2004.
4. On adversarial legalism, see Kagan 2001.
5. Kelemen and Sibbitt 2004, 103 (after Kagan 2001)
6. Ibid., 103–4.
7. Ibid., 131–32.

these consequences may well erode the power of closed policy networks by increasing openness and transparency, and "by empowering a broader range of political interests to challenge bureaucratic malfeasance and corporate misconduct."[8] These effects, however, come at a high price: they "increase in the role of lawyers and costly, protracted litigation, while undermining traditions of trust and cooperative relationships between stakeholders in policymaking processes."[9] Unlike "predominant explanations," which attribute convergence to international regulatory competition and emulation, Kelemen and Sibbitt suggest that the legal changes that have undermined traditional approaches to regulation are mainly explained by three causes: economic liberalization, business interests (in the form of American law firms), and political fragmentation.

My doubts are not about the suggestion that adversarial legalism is spreading,[10] nor about its mixed blessings, but about the analytical, theoretical, and methodological framework that serves to support their analysis. I suggest that the authors fail to maintain their working definition throughout the article, so they do not distinguish among three diffusions, each with its own sources, dynamics, and effects.[11] This results in some serious flaws in their explanatory framework and their treatment of alternative theoretical explanations. I highlight their inadequate treatment of the World Society Approach (WSA), of the role of ideas, and of the role of European actors.[12] I also suggest that the authors do not lift their gaze beyond the boundaries of the political science discipline, and that they overlook especially theories of the autonomy of law and reflexive/responsive regulation. In particular I argue that they do not examine the interaction of juridification, legalization, and judicialization on the one hand and adversarial legalism and responsive regulation on the other. I start, however, with a discussion of their dependent variable.

What Is Being Globalized/Diffused?

Kelemen and Sibbitt suggest that what has been globalized is the American policy style, specifically American adversarial legalism. Yet a closer look at their argument reveals that their explanandum involves three different processes of diffusion: transparency, access to justice, and adversarial legalism. While the first two

8. Ibid., 132.
9. Ibid.
10. Kagan is certainly more skeptical than Kelemen and Sibbitt: "American-style adversarial legalism will not blossom all over Europe. The cultural soil, both legal and political, is not fully hospitable." Kagan 1997, 165–66.
11. Namely, adversarial legalism (legal style); transparency, and open access norms (legal software); and institutions of transparency and open access (legal hardware). As Kagan puts it: "It is more likely that European legal systems will adopt American *norms* than adversarial American enforcement methods." Kagan 1997, 183.
12. On the WSA, see Meyer et al. 1997; and Drori et al. 2003. Closely related are Finnemore 1996; and Finnemore and Sikkink 1998.

are best described as legal norms, the third—adversarial legalism—is best described as a legal style. While the first two are usually held to be desirable normative goals, the third seems to reflect some of the less desirable and less premeditated aspects of legal change. Kelemen and Sibbitt fail, however, to make a clear distinction among the three, and this result in unsatisfactory theoretical and explanatory frameworks for the globalization of law.

It all starts with a definition of the explanandum, which thereafter is not used as a criterion for evaluating their explanations:

> Our working definition of American legal style focuses on the two most fundamental distinguishing characteristics of American law: the emphasis on enforcing legal norms through (1) transparency and (2) broad empowerment of private actors to assert legal rights.[13]

It may well seem at this stage that Kelemen and Sibbitt are really after some of the components of adversarial legalism rather than "style" itself. Adversarial legalism, understood in terms of the theoretical rather than the working definition (see above), is after all a composite variable: that is, an outcome variable of several practices and norms. For example, the American legal style seems to include not only detailed and prescriptive rules (which limit executive discretion) but also proactive, highly responsive judiciary and transparency requirements. One can certainly choose to diffuse one or other of these components, and there is nothing that suggests that these components will be diffused in their totality or at the same time and in sequence. The authors thus had to choose among the different components, and they reasonably chose at the start of their article to focus on transparency and the broad empowerment of legal actors to assert legal rights.

This is not an unreasonable choice. Adversarialism, transparency, and access to justice are highly interrelated. Yet a study of their transfer or diffusion necessitates a closer look at the different degrees and process to which each of them is "diffusible." It is likely that the patterns of diffusion of transparency norms and institutions would differ from the patterns of diffusion of access to justice norms. Policy communities, policy networks, transnational networks, and degrees of "coupling" may differ greatly between these two sets of norms.[14] It is most likely that instead of one explanatory framework for adversarial legalism, one needs a different explanatory framework for each of the factors that govern the diffusion of access to justice and transparency. For example, to suggest that adversarial legalism is purposely exported by American law firms and their European and Japanese "compradors" requires one set of assumptions and explanations on the nature of the political process. To suggests that ideas on transparency and open access to justice are "explored" by Americans, and that these ideas fall on fertile ground in Europe and Japan, calls for a different set of assumptions and explanations of the

13. Kelemen and Sibbitt 2004, 106.
14. For the notion of coupling and "transferability" or diffusion patterns, see Teubner 2001.

nature of the political process. Kelemen and Sibbitt therefore have three different processes of the "globalization of law," each governed by its own logic, policy communities, and policy networks, and each resulting in its own outcomes. A study of legal change as a diffusion process would probably be more productive.

Explaining Transparency? Access? Or Adversarialism?

Kelemen and Sibbitt demonstrate convincingly that transparency requirements and open access to justice are characteristics of the American legal style in the two policy arenas that they investigate (securities law and product liability law), and that these two measures are increasingly evident in the EU and, to a lesser extent, in Japan. Yet I found their explanatory framework—where change is argued to be a product of economic liberalization, the globalization of American law firms, and political fragmentation—unconvincing in two ways.

First, it is not clear that alternative explanations are inferior to theirs. Especially problematic is the imprudent rejection of two explanations: regulatory competition and emulation.[15] Let me start with their notion of regulatory competition, which is characterized as competition between jurisdictions to attract "mobile targets of regulations," that is, corporate investment. But why should competition for corporate investment be the explanation for legal style? Where is it suggested in the literature? The theory of regulatory competition in this formulation is applied rather awkwardly to an issue that is hardly in its home court. If the authors were serious about regulatory competition, they should have formulated it as competition for more than material benefits. For example, in a recent paper Simmons and Elkins distinguished two types of regulatory competition: material and reputational.[16] Under this formulation, diffusion of transparency norms and legislation can certainly be motivated by reputational considerations.[17]

Equally unconvincing is their treatment of emulation theories based on sociological institutionalism. Here is Kelemen and Sibbitt's argument:

> Rooted in sociological institutionalism, emulation arguments suggest that convergence may occur as governments model their policies after those of salient global leaders or those advocated by international governmental organizations. These arguments do not provide a convincing explanation for the spread of American legal style . . . [since] governments throughout the Organization for Economic Cooperation and Development (OECD) have been eager to avoid adopting American legal style in a broader sense.[18]

15. Kelemen and Sibbitt 2004, 109.
16. Simmons and Elkins 2004, 172.
17. Braithwaite and Drahos 2000, 592.
18. Kelemen and Sibbitt 2004, 106.

Language is a tricky instrument of communication, and it may take more than one reading of the above paragraph to realize that while governments and individuals may not want to emulate adversarialism, they may want to emulate transparency and open access to justice. If this is the case (and one has no reason to believe that transparency and open access are highly valued), the emulation hypothesis of sociological institutionalism (or WSA) may provide a convincing explanation for the globalization of law. Yet for this to work, one needs to distinguish the reproduction of adversarial legalism in each polity they study from the diffusion of new norms. To sum up this issue, the two explanations that the authors forcefully reject certainly deserve a second look.

Second, beyond the critique of other approaches, their arguments are not convincing for several reasons. As argued before, missing is the link between economic liberalization and political fragmentation, on the one hand, and the diffusion of the norms of transparency and open access to the law, on the other. Without this link one is left in the dark regarding the real causes of the process of diffusion. Moreover, the American experience of the rise of adversarial legalism itself does not fit comfortably into Kelemen and Sibbitt's explanatory framework. Can economic liberalization, lawyering, and political fragmentation explain the rise of adversarial legalism in the United States? I doubt it. The rise of more stringent regulations in the fields of product liability and securities (as well as of social and economic regulation more generally) is best explained by the rise of social and political movements seeking to constrain the unchecked influence of big business and promoting political centralization rather than fragmentation of the American policy process.[19] The growth of adversarial legalism, while reflecting the American culture, was certainly stimulated significantly by the "rights revolution" and as such it was and still is a target of sustained attack from business and right-wing ideologies and interests.[20]

Let me now discuss the way the European and Japanese systems are treated. It would be misleading to say that Kelemen and Sibbitt treat the Europeans and the Japanese as passive actors. They give an account of some of the most important internal conflicts in Europe and Japan concerning securities and product liabilities laws. Yet neither the Europeans nor the Japanese appear as agents of diffusion or policy transfer. To the extent that agents of diffusion appear in the analysis, it is American law firms that play that role in Europe and Japan. The Europeans and the Japanese have a part in the process of change only to the extent that they are involved in conflict over other issues that touch only remotely on the subject of the article. The dilemmas of transparency and of more open access to law are not analyzed from the European and Japanese points of view, despite the recognition that "Governments in the EU and Japan continue to be eager to avoid the

19. See Vogel 1989; and Eisner 2000.

20. For the American sources of adversarial legalism, see Kagan 2001. On the rights revolution, see Sunstein 1990; and Epp 1998.

notorious excesses of the American system, and they are well positioned to do so."[21] Yet this recognition is no more than a mere caveat in the analysis. To some extent this is the outcome of a somewhat broader tendency to see agency and interest as reflections of economic structures, and institutional order, as in their treatment of the agency of American legal firms, as the outcome of economic liberalization.[22] With such a conception of agency, it is not surprising that the role of importers and compradors is not discussed. It is, however, surprising that the role of American and European big business in containing the rise of adversarial legalism is ignored. Neither American businesses in Europe nor European businesses themselves have any interest in promoting adversarial legalism, transparency, and/or open access to justice. Yet their role in the process is not discussed.

These explanatory gaps could have been filled if some attention had been paid to the literature on diffusion and policy transfer.[23] Global change is examined through the eyes of the exporters and "tutors" but not through the eyes of the importers. If governments in the EU and Japan are aware of the perils of adversarial legalism and are well positioned to be so, it makes sense to look at the role of agents of diffusion on the receiving end as well as on the transmitting end. In the policy transfer literature this is best done by Jacoby, who examines the process of transfer as one in which "imitation" is a strategic choice by some domestic elites, and the "imitators" have considerable room to maneuver over what to adopt and how.[24] Another way to go about it is offered by Braithwaite's distinction between five agents of diffusion:[25] on the exporters' side, diffusion missionaries and diffusion mercenaries; on the importers' side, model mongers, model misers, and model modernizers. In addition, Dezalay and Gareth emphasize the importance not only of "rule-doctors" and compradors as agents of diffusion but also state traditions and professional networks.[26] van Waarden emphasizes the work of economic liberalization and probably modernity itself on social trust and finds trust an important component of the rise of adversarial forms of law.[27] Morag-Levine suggests examining the rise of litigation as a reflection of the cultural transformation of state-civil society relations.[28] Finally, it is difficult to think about global legal change without paying attention to the role of transnational networks of judges, legislators, and regulators.[29]

21. Kelemen and Sibbitt 2004, 132.
22. "Economic liberalization has . . . unleashed a new set of transnational actors—U.S. law firms." Kelemen and Sibbitt 2004, 104–5.
23. On policy transfer, see Dolowitz and Marsh 2000. On diffusion, see Rogers 1995.
24. Jacoby 2000.
25. Braithwaite and Drahos 2000.
26. Dezalay and Garth 2002.
27. Waarden forthcoming.
28. Morag-Levine 2003.
29. Slaughter 2004.

Juridification, Adversarial Legalism, and Responsive Regulation

One's understanding of the growth and diffusion of adversarial legalism may be substantially improved if it is distinguished from the growth and diffusion of legal forms of social and political interaction in general and from more reflexive and responsive forms of law in particular.[30] One important advantage of such a distinction is that it may allow one to ask to what extent the rise of adversarial legalism in Europe is a reflection of the process of juridification itself. Take, for example, a recent report by Seymour Hersh of the *New Yorker*. At a certain moment in 2001, an unmanned American aircraft tracked an automobile convoy that, intelligence believed, contained Mullah Muhammad Omar, the Taliban leader. A lawyer on duty at the U.S. Central Command headquarters in Florida refused to authorize a strike. By the time an attack was approved, the target was out of range.[31] It may well be that the lawyer acted properly, but the presence of a lawyer at a veto point in the chain of command demonstrates the extent of the juridification of the public-policy process. There is nothing adversarial about bringing lawyers and law-like procedures of decision making into the heart of the civil service, and it is not only an American phenomenon. Indeed, a law degree was always one of the more common qualifications among state bureaucrats, especially on the European continent.

The courts, lawyers, and "the legal" are marching in and they are here to stay. Our options are, however, not limited in that that one can create different types of third-party dispute resolution (out of court), different types of lawyering (less adversarial), and different conceptions of "the legal" (more responsive). What one needs is a distinction between "adversarial legalism," on the one hand, and notions of the growth of "the legal" such as juridification, legalization, and judicialization, on the other.[32] Nothing is necessarily adversarial in the process of juridification, legalization, and judicialization. Adversarialism is a style of dispute resolution that may relate in multiple ways to the larger and more comprehensive processes of juridification, legalization, and judicialization. For example, legalization and judicialization may well be accompanied by pressures toward transparency and wider access to the court, but not necessarily. Transparency, for example, can be promoted through juridical, legal, and judicial means, but it can also be promoted outside of or in parallel with these mechanisms.

A second advantage of a distinction between juridification and adversarial legalism is that it may allow one to examine the extent to which the diffusion of

30. For example, Kagan distinguishes between "bureaucratic legalism" and "adversarial legalism." Kagan 1997, 167, and 2001, 10.

31. *New Yorker*, 17 May 2004.

32. On judicialization, see Tate and Vallinder 1995, 28, 13; on legalization, see Goldstein et al. 2001, 386.

adversarial legalism is accommodated by reflexive/responsive forms of law.[33] The basic idea here is that governments and law enforcers should be responsive to how effectively citizens or corporations regulate themselves before deciding whether to escalate intervention.[34] Responsive and reflexive forms of law are guided by the aim of subjecting social and economic activities to broader regulatory purposes rather than maximizing consistency in law enforcement. Enforced self-regulation and meta-regulation—that is, the regulation of self-regulation—are preferred legal styles.[35] The advantages of looking at responsive regulation as an alternative legal style are quite clear. If there is diffusion from the United States, it involves both hegemonic and antihegemonic practices. Efforts to control adversarial legalism at home may be diffused, so local agents may more willingly adopt responsive forms of law than the more adversarial forms. By implication, studies of global legal change should look at competition between legal norms and ask how different norms (the American legal system most probably projects and absorbs conflicting norms at the same time) compete and face different probabilities of success.

Adversarial Legalism in Foreign Jurisdictions: A Transplant or an Irritant

There were times, the 1960s and the 1970s for example, when it was stability rather than change that was the major focus of research. One conception of stability and resistance to change is "autopoiesis," which refers to the idea that law (and systems generally) reproduces itself according to its own norms and is therefore self-generating. The problem that the theory addresses is centrally concerned with the difficulties that politics, economics, society, and law have in communicating with each other. "Can legislatures create new legal rules and simply expect that they will be translated into laws which are effective in the legal system and which produce the desired changes in behavior by economic and social actors?"[36] The theory of autopoiesis suggests that this would be an overly optimistic expectation even in a domestic-national system. Grounded in systems theory, the theory of autopoiesis expects subsystems—the legal, the social and the economic—to be cognitively open but normatively and operatively closed.

The inherent problems of communications between subsystems and the autonomy of systems in general suggest that the idea of diffusion, in which "adversarial legalism," "transparency," and "access to justice" keep their own form and

33. On reflexive law, see Scheuerman 2001; on responsive law, see Braithwaite 2002; and Scott 2004.
34. Braithwaite 2002, 27.
35. Ibid., 29. On meta-regulation, see Parker 2002; Morgan 2003; and Braithwaite 2003.
36. Scott 2004, 151.

meaning in foreign jurisdictions, is disputable. To express this problem more forcefully, one may want to distinguish, following Teubner, legal transplant from legal irritant. The notion of legal transplant comes from studies of comparative law. It reflects the understanding that law was always "global," and those current national systems of law, including families of laws (such as common and civil law), were always attuned to developments in other systems.[37] In Kelemen and Sibbitt's study, norms such as "transparency" and "open access to justice," as well as legal or policy styles, are "transplants" and therefore one may expect them to be either "repulsed" or "integrated." The notion of "legal irritant" may suggest a different process of change and imply different outcomes. Let me introduce the notion in the original words of Teubner:

> I think "legal irritant" expresses things better than "legal transplant." To be sure, transplant makes sense in so far as it describes legal import/export in organismic, not in mechanistic, terms. Legal institutions need careful implementation and cultivation in the new environment. But transplant creates the wrong impression that after a difficult surgical operation the transferred material will remain identical with itself, playing its old role in the new organism. Accordingly, it comes down to the narrow alternative; repulsion or integration. However, when a foreign rule is imposed on a domestic culture, I submit, something else is happening. It is not transplanted into another organism, rather it works as fundamental irritation which triggers a whole series of new and unexpected events.[38]

In other words, the notion of "legal irritant" suggests that the expectations that norms such as "transparency" and "open access for justice" will have the same meaning and will serve the same functions and interests in different systems, domestic or international, is based on a misleading metaphor of a subsystem of the social order. Neither biological nor mechanistic, these subsystems have the ability to be cognitively open but normatively closed, and thus significantly to transform the legal norms, mechanisms, and institutions that they import.

Conclusion

To expect convergence of legal systems as a consequence of material processes (economic liberalization), institutional configuration (political fragmentation), and one type of "external" actor (American legal firms) is to suggest that the legal system is a by-product of other systems and, by extension, to reduce culture, norms, and ideas to mere reflections of other, superior, systems of human organization. At the same time, it is to ignore competition between norms in the process

37. See Watson 1974.

38. Teubner 2001, 418. For an extensive discussion of the issue, see Nelken and Feest 2001; and Nelken 2003.

of diffusion, the creation of new divergences amidst convergence, and the ability to adapt systems so as to transform legal irritants in unexpected ways. The alternative I propose suggests that change should be studied within the frameworks of diffusion and policy transfer, on the one hand, and the juridification of political and social life, on the other. This requires us to rethink both our theories of change and the boundaries of the discipline of political science. I hope these comments will contribute to both.

References

Acharya, Amitav. 2004. How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism. *International Organization* 58 (2):239–75.

Braithwaite, John. 2002. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

———. 2003. Meta-Regulation for Access to Justice. Paper presented to the General Aspects of Law (GALA) Seminar Series. Berkeley: University of California, November.

Braithwaite, John, and Peter Drahos. 2000. *Global Business Regulation*. Cambridge: Cambridge University Press.

Dezalay, Y., and G. B. Garth. 2002. *The Internationalization of Palace Wars, Lawyers, Economists and the Contest to Transform Latin American States*. Chicago: University of Chicago Press.

Dolowitz, David, and David Marsh. 2000. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making. *Governance* 13 (1):5–24.

Drori, S. Gilli, John W. Meyer, Francisco O. Ramirez, and Evan Schofer. 2003. *Science in the Modern World Polity: Institutionalization and Globalization*. Stanford, Calif.: Stanford University Press.

Eisner, Marc. 2000. *Regulatory Politics in Transition*. 2d ed. Baltimore, Md.: Johns Hopkins University Press.

Epp, R. Charles. 1998. *The Rights Revolution*. Chicago: Chicago University Press.

Finnemore, Martha. 1996. *National Interests in International Society*. Ithaca, N.Y.: Cornell University Press.

Finnemore, Martha, and Kathryn Sikkink. 1998. International Norm Dynamics and Political Change. *International Organization*, 52 (4):887–917.

Goldstein, Judith L., Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter. 2001. Legalization and World Politics. Special Issue of *International Organization* 54 (3).

Jacoby, Wade. 2000. *Imitation and Politics: Redesigning Modern Germany*. Ithaca, N.Y.: Cornell University Press.

Kagan, Robert. 1997. Should Europe Worry About Adversarial Legalism? *Oxford Journal of Legal Studies* 17 (2):165–84.

———. 2001. *Adversarial Legalism*. Cambridge, Mass.: Harvard University Press.

Kelemen, R. Daniel, and Eric C. Sibbitt. 2004. The Globalization of American Law. *International Organization* 58 (1):103–36.

Meyer, John W., John Boli, George M. Thomas, and Francisco O. Ramirez. 1997. World Society and the Nation-State. *American Journal of Sociology* 103 (1):144–81.

Morag-Levine, Noga. 2003. Partners No More: Relational Transformation and the Turn to Litigation in Two Conservationist Organizations. *Law & Society Review* 37 (2):457–509.

Morgan, Bronwen. 2003. *Social Citizenship in the Shadow of Competition: The Bureaucratic Politics of Regulatory Justification, Law, Justice, and Power*. Burlington, Vt.: Ashgate Dartmouth.

Nelken, David. 2003. Comparativists and Transferability. In *Comparative Legal Studies: Traditions and Transitions*, edited by Legrand Pierre and Munday Roderick, 437–66 Cambridge: Cambridge University Press.

Nelken, David, and Johannes Feest, eds. 2001. *Adapting Legal Cultures*. Oxford, England: Hart.
Parker, Christine. 2002. *The Open Corporation: Effective Self-Regulation and Democracy*. New York: Cambridge University Press.
Rogers, M. Everett. 1995. *The Diffusion of Innovations*. 5th ed. New York: Free Press.
Scheuerman, E. William. 2001. Reflexive Law and the Challenges of Globalization. *Journal of Political Philosophy* 9 (1):81–102.
Scott, Colin. 2004. Regulation in the Age of Governance: The Rise of the Post-Regulatory State. In *The Politics of Regulation in the Age of Governance*, edited by Jacint Jordana and David Levi-Faur, 145–74. Cheltenham, England: Edward Elgar.
Simmons A. Beth, and Zachary Elkins. 2004. The Globalization of Liberalization: Policy Diffusion in the International Political Economy. *American Political Science Review* 98 (1):171–89.
Slaughter, Anne-Marie. 2004. *A New World Order*. Princeton, N.J.: Princeton University Press.
Stone Sweet, Alec. 2000. *Governing with Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.
Sunstein, Cass. 1990. *After the Rights Revolution: Reconceiving the Regulatory State*. Cambridge, Mass.: Harvard University Press.
Tate, C. Neal, and Torbjorn Vallinder, eds. 1995. *The Global Expansion of Judicial Power*. New York: New York University Press.
Teubner, Gunther, ed. 1987. *Juridification of Social Spheres: A Comparative Analysis in the Areas of Labour, Corporate, Antitrust and Social Welfare Law*. New York: Walter de Gruyter.
———. 2001. Legal Irritants: How Unifying Law Ends Up in New Divergencies. In *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, edited by Peter A. Hall and David Soskice, 417–41. Oxford: Oxford University Press.
Vogel, David. 1989. *Fluctuating Fortune: The Political Power of Business in America*. New York: Basic Books.
Waarden, van Frans. Forthcoming, Does Deregulation Produce Lawyerocracy? Regulation and Litigation as Alternative Institutions for Reduction of Uncertainty in Economic Transactions. *Governance*.
Watson, Alan. 1974. *Legal Transplants: An Approach to Comparative Law*. Edinburgh, Scotland: Scottish Academic Press.