Lost in Translation? Nonstate Actors and the Transnational Movement of Procedural Law

Benjamin Brake and Peter J. Katzenstein

Abstract In recent years U.S. legal norms and practices reconfigured important elements of how law is thought of and practiced in both common and civil law countries around the world. With specific focus on the spread of American procedural practices (class action and pretrial discovery), this article applies a transactional view of law that emphasizes the private practice of law and nonstate actors. Such an approach highlights important aspects of world politics overlooked by traditional analyses of international legalization, conventionally understood as the direct spread of law by and among states. We find that the movement of law is a dynamic process involving diffusion, translation, and the repeated transnational exchanges of legal actors. Through our examination of this process, we offer insights into how aspects of American law moved into unlikely jurisdictions to reshape legal theory, pedagogy, procedure, and the organizing structure of the legal profession.

In recent years the spread of American legal practices has reconfigured how law is thought of and practiced in common and civil law countries around the world. Focusing specifically on the spread of American procedural practices, this article argues that the movement and translation of law is a dynamic process involving diffusion and translation. U.S. legal norms and practices have shown considerable influence over foreign legal systems across a broad range of issues, including legal

The views expressed in this article are the authors' own and do not necessarily reflect those of the U.S. Department of State or the U.S. government. We are indebted to insightful comments and cogent criticisms provided by Alan Alexandroff, Karen Alter, Alfred C. Aman Jr., Jack Barcelo, Hannah Buxbaum, Matthew Evangelista, Martha Finnemore, Peter Gourevitch, Suzanne Katzenstein, Dan Kelemen, Robert Keohane, Judith Kelly, Sarah Kreps, Maximo Langer, Jens Meierhenrich, Anne Peters, Kim Scheppele, Kathryn Sikkink, Arthur Stinchcomb, Alec Stone Sweet, Sidney Tarrow, and Yu Xingzhong. We also benefited enormously from stimulating seminar discussions in law schools at Cornell, Indiana University, New York University, Northwestern University, the University of California, Los Angeles, and the Social Science Center Berlin; on panels convened by the American Political Science Association (2011) and the International Studies Association (2012); and the trenchant comments by several anonymous reviewers and the helpful guidance by the editors of *International Organization*. Peter Katzenstein acknowledges with enormous gratitude Louise and John Steffens whose Founders' Circle Membership at the Institute for Advanced Study at Princeton supported his work during the academic year 2009–10.

International Organization 67, Fall 2013, pp. 725–57

doi:10.1017/S002081831300026X

theory, pedagogy, procedural rules, as well as the organizing structure of the legal profession itself.[1] This phenomenon is a highly contested political process that engenders various forms of opposition, ranging from rhetorical hyperbole to legislation prohibiting cooperation with U.S. litigation.

Scholars of international relations concentrate most of their attention on international legalization as it is conventionally understood: the direct spread of law by and among state actors.[2] We examine instead the indirect spread of domestic law and legal procedures through the repeated transnational exchanges of numerous nonstate actors.[3] Our analysis suggests a complex landscape in which nonstate actors serve as crucial conveyers of law.[4] We thus seek to open an avenue of research into an area of political significance that has been largely overlooked.

The transnational movement and translation of law is grounded in asymmetries of power[5] that are rooted in different resource endowments that give some actors compulsory power over others. Asymmetries are found also in social structures and systems of knowledge that endow actors with different institutional and structural capacities to define, defend, and promote their interests and ideals. Law's transnational movement and translation reveal asymmetries in productive power in the diffuse creation of systems of shared meaning.[6]

Kelemen and Sibbitt catalogue various attempts to explain the movement and translation of American law.[7] Although they lament the lack of parsimony in this field of scholarship, the transnational movement and translation of American law emphasizes the importance of power and fit. American procedural law, this explanation holds, spreads more readily among common than civil law systems because institutional and productive power is more easily exercised within, rather than across, legal families. Borrowing from another legal family is a more arduous process than borrowing from a legal system that shares a conceptual language to facilitate the movement and translation of norms and practices. Although intuitively plausible, a static picture of legal families provides limited insight into the transnational movement and translation of law. It assumes the existence of unchanging legal norms and practices in a world defined by cross-fertilization. For example, the United States in the nineteenth century imported multiple European legal traditions that eventually blended into its distinctive approach to law.

1. Langer 2004, 1–3.
2. See Simmons 2009; Abbott and Snidal 2000; and Abbott et al. 2000.
3. "Transnational" is understood here as Keohane and Nye described: "regular interactions across national boundaries when at least one actor is a nonstate agent." Keohane and Nye 1971, xii–xvi. Our analysis of the transnational political forces involved in the movement of law focuses primarily on domestic law and, except for a few examples, leaves for another day an examination of transnational law, a specialized field of law encompassing both public and private law. Jessup 1956, 2.
4. For similar phenomena in the spread of public international law, see Sikkink 2011.
5. Because it is explicitly relational and incorporates diffuse power relations, Barnett and Duvall's (2005) conceptualization is preferable to the concept of soft power that Nye (2011) has developed in the past two decades.
6. Here we do not distinguish further between institutional and structural forms of power.
7. Kelemen and Sibbitt 2004, 104.

The syncretism common then is almost universal today. In recent years, common law countries have adopted many regulatory statutes that resemble the codes of civil law systems and many civil law countries now operate with precedents.[8] Profoundly affected by the transnational movement and translation of law, contemporary legal systems typically derive from various sources and are intertwined with one another. Static taxonomies do not capture well processes created by practices that produce and reproduce ever-changing behavioral and symbolic boundaries. Political and legal scholarship remains torn on this fundamental point, too often drawing a sharp distinction between legal families while simultaneously showing this division to be less relevant in reality.

Drawing on comparative and international legal scholarship, we examine the proto-typically American legal procedures governing class action—a device wherein a single person can represent the interests of a group—and pretrial discovery—the mandatory disclosure of information related to litigation—to better understand how adversarial procedures of the U.S. common law system are diffused and translated into the inquisitorial systems of civil law states.[9] Since the movement and translation of law is a complex phenomenon and since we examine only two areas of law, these case studies are no more than plausibility probes aiming to opening a door for future work on this underattended area of international politics. We then discuss coercion, competition, emulation, and learning in the movement and translation of law. We conclude by relating the discussion to what we regard as complementary styles of analysis in international relations and international and comparative legal scholarship and by placing the movement and translation of law in the context of other processes that define a broad global ecumene.[10]

The Movement of Law and Legal Translation

Horizontal "migration," "transplanting," "borrowing," and vertical "standardization" are all processes by which laws move.[11] These movements occur around nodes of power and prestige. At the turn of the last century, states looked to German law for an institutional catalyst to speed development from agrarian to industrialized society.[12] In recent decades, American procedural law has emerged as an

8. See Mattei 1994b, 198; and Shapiro 1986, 134–35.

9. As Langer (2005, 838–47) explains, the adversarial common law system focuses on dispute in a coordinate model, whereas the inquisitorial civil law system relies on official investigation in a hierarchical model.

10. Lack of space and knowledge makes us pay less attention than is desirable to transnational legal processes outside of the United States and Europe, including the effects these processes have on Europe and the United States.

11. Scheppele 2010.

12. Mommsen and de Moor 1992.

attractive alternative.[13] In this way, legal norms and practices co-evolve and co-mingle with those of other states. This process is not adequately captured by concepts such as legalization (since the process does not necessarily involve the movement of issues from the political to the legal domain, as civil procedure law is already law), judicialization (since the process does not necessarily lead to an increasing reliance on judges), or rule of law (since developments that change the content of existing law and institutions can be attributable to many factors and lead to a range of outcomes, from fascism to constitutional democracy).[14]

In the era of American primacy the movement and translation of law is reflected in developments like the increasing number of foreign students pursuing a master of laws (LL.M.) degree in the United States, the attraction of the oral tradition in the common law for civil law lawyers, the expansion of American law firms abroad, the reach of American laws into other jurisdictions, and the direct and indirect effect of American jurisprudence and scholarship. Such developments influence lawyers who act in, and are shaped by, multiple institutional arenas, including law firms, professional associations, standing conferences, transnational tribunals, and the growing use of U.S. civil litigation as a tool in the transnational regulatory system.[15]

Legal Translation

The movement of law into a new system requires overcoming significant obstacles. In common law systems, the meaning of law can often be determined only through close examination of the extensive case law cited in support of a court's holding. In civil law systems, lawyers are schooled in deductive methods, with law supplied by abstract rules stated in statutory codes. Legal studies in civil law countries have thus been described as social science, whereas legal study in common law systems more closely resembles social engineering—law is a flexible tool to address social ills.[16] In short, the fundamental differences between civil and common law traditions can exist "more in the area of mental processes, in styles of argumentation, and in the organization and methodology of law, than in positive legal norms."[17]

The divergent epistemologies that distinguish civil and common law systems can facilitate or impede the transnational movement and translation of law.[18] Insti-

13. Mattei 1994a.
14. Thanks to Suzanne Katzenstein and Anne Peters for this clarification. Modeled after the concept of intersectionality in feminist studies, Twining's (2006) concept of "interlegality" covers similar conceptual terrain. Slaughter (2000, 1104) describes the cognate concept of judicial globalization as a "diverse and messy process of judicial interaction across, above and below borders" driven by various causal factors.
15. Buxbaum 2006, 267.
16. Merryman 1974, 870.
17. Glendon, Gordon, and Osakwe 1994, 51.
18. Legrand 1997, 45.

tutional complementarities, language, professional and educational ties, and membership within the same geopolitical sphere of influence are some of the factors that facilitate law's circulation within legal families. Watson was among the first of many to note that a law's viable spread and reception requires a reasonable fit between transplanted and local laws.[19] The success of any transplant, these scholars argue, depends in part on the characteristics of the transplanted law itself and on its ability to graft onto existing legal norms and practices.[20] Without necessarily adopting the conceptual language of "transplants," subsequent analyses of the transnational movement and translation of law have supported this central insight. These analyses direct our attention to the processual character of the movement and translation of law.[21] International transactions inevitably give rise to disputes, argumentation, and dispute resolution that generate normatively infused structures and practices before the onset of future interactions repeats the same pattern. In this view, states, corporations, international governmental and nongovernmental organizations (NGOs), and individuals interact in various arenas to make, unmake, and remake law.[22]

Highlighting the importance of interaction, Koh stresses that transnational legal processes are nontraditional in breaking down the distinction between domestic and international realms of action; nonstatist in focusing also on nonstate actors; dynamic in percolating upward, downward, and sideways among different arenas and actor types; and normative in allowing for the emergence and internalization of new legal norms that propel the process in recursively and self-reflexively into new directions.[23] Interaction creates law, and law shapes and guides future interactions. Stone Sweet provides a similarly convincing model that focuses on three elements in the emergence of what he calls the judicialization of global governance. Transnational exchanges embed dyadic contracting that evolves into triadic dispute-resolution mechanisms. These mechanisms in turn create and perpetuate a discourse that over time gets absorbed into the reasoning process and repertoires of action of political actors. While the empirical application of Stone Sweet's model is primarily in Europe, the general model highlights the logics of utility-maximizing strategic action that is embedded within slowly evolving normative structures.[24] In contrast to Koh, Stone Sweet avoids the language of internalization, viewing law instead as an evolving structure of managing conflict in which actors contract, dispute, and argue with one another. Finally, Brunnée and Toope offer an interactional account that views the movement and translation of law as occurring in decentralized communities of legal practice grounded in shared social understandings rather than codified norms legislated by states. Of particular interest are fea-

19. Watson 1976.
20. Merry 2006.
21. Dezalay and Garth 1998.
22. We are indebted to Alec Stone Sweet for clarifying this point for us.
23. See Koh 1996, 185–86, 1998, and 2003, 1501–3; and Slaughter 2000.
24. Stone Sweet 1999.

tures internal to law,—for example, criteria of legality that create legal obligation and promote adherence.[25] Though different in emphasis, Koh, Stone Sweet, and Brunnée and Toope's analyses all highlight how the movement and translation of law generates legal normativity. And while they attach different weights to self-interest and norms, their different analyses encompass both.[26]

Building on the conceptual innovations of Koh, Stone Sweet, and Brunnée and Toope, we seek to capture the movement of law as a process of translation that combines new, imported with old, established concepts and practices. It is shaped by institutional conditions that enable or constrain translation and the resources, strategies, and relationships among political actors.[27] It entails the translation of international and foreign law into domestic law. Translation is a useful metaphor that corrects and complements the insights of conceptual formulations highlighting the interaction among legal systems. This is true, for example, of how Langer views the relationship between legal translation and studies of "legal transplants."[28] The influence of American legal practices on other systems, he argues, is not simply a "transplant," whereby a transplanted organ continues to function as it did in the original body. Instead, "translation" evokes the uncertainty of the outcome and the notion that a law's actual practice depends in part on the receiving country's legal language and the decisions of the legal translator.[29] Law's movement is thus more like the translation of "texts" from "one language"—such as the adversarial system of the United States—to another "language"—such as the inquisitorial systems of civil law states.[30] Furthermore, the languages of law, legal doctrine, and legal practice all have generative power. Like diplomacy, the transnational movement of law records and creates ongoing conversations and negotiations among legal actors in search of workable translations. It thus establishes contingent and evolving systems of shared reference. Ultimately, domestic practice reveals whether, and to what extent, transnational legal translation is actually feasible.

The term *legal translation* invokes both conceptual and linguistic considerations. The rise in American legal influence has undoubtedly been helped by the ubiquity of the English language. Today, native speakers and foreign-language users

25. Brunnée and Toope 2010. Similar to Koh and Stone Sweet, Brunnée and Toope do not focus on the difficulties of translating law.

26. The theory of transnational legal processes resembles the transnational-relations perspective that has been a staple of international relations theory over the past three decades. Risse-Kappen 1995. Empirical analyses suggested that the "high politics" of state-to-state interactions were increasingly matched by the "low politics" of complex interdependence in which trans-state and trans-national politics complemented or sidelined diplomacy. Subsequently this analytical perspective came to incorporate transnational social movements. See Tarrow 2005; Keck and Sikkink 1998; and Finnemore and Sikkink 1998. It now encompasses not only economic questions but also broader social and environmental issues touching on human security understood in the most basic and comprehensive sense.

27. See Campbell 2004; and Maman 2006, 117–19.

28. Langer 2004.

29. Knop 2000, 506.

30. Langer 2004, 33, 6.

of English total about one-fifth of the world's population.[31] English has displaced French as the language of diplomacy and German as the language of science. As the language of the educated class around the world, it has become the global medium of communication. In the legal community, this is reinforced by the ubiquity and accessibility of English-language legal resources that facilitate access to American legal scholarship. European lawyers, judges, and academics cannot ignore the currents of thought in American law and scholarship.[32] Despite the spread of English, however, the transnational movement of law remains always an exercise in conceptual translation because the differences between civil and common law systems are found not only in language but also their "structures of interpretation and meaning" socialized among legal actors through legal education and repeated interactions within the legal community, the courts, and the polity at large.[33]

We can distinguish several types of translation that illustrate the central role legal actors play in shaping the spread of American law: strict literalism that matches word for word; faithful but autonomous restatement wherein the translator composes a text that is equally powerful in the target as in the original language; and substantial recreation, wherein the translator aims to create an appealing text.[34] In law, where many terms lack functional English equivalents, true legal translation requires translators to serve as linguists, legal scholars, and hermeneuts engaging in a selective, agent-driven communicative process.[35] Legal meaning can vary even when the language is identical. For example, even though American and British legal systems share many important similarities, legal standards and burdens of proof can differ substantially.[36] Legal translators are thus information brokers acting also as cultural intermediaries.[37] Stated metaphorically, a legal system that translates in order to coerce, compete, learn, and emulate "is a system that makes choices."[38]

Governments and NGOs

Different fields of law orbit around different influential nodes, with law flowing in various directions. Recent decades have revealed how the global movement and translation of law cannot be characterized simply as an "Americanization" of law coerced by the American hegemon. American legal norms have actually spread in the shadow of unsuccessful state-led legal development programs. Throughout the 1950s and 1960s, the U.S. government established various law and development

31. Crystal 1997, 9.
32. Posner 1997, 5.
33. See Langer 2004, 10; and Damaška 1997, 839–40.
34. Langer 2004, 33.
35. Kahaner 2006.
36. Prosser 1992, 342.
37. Obenaus 1995, 250.
38. Vespaziani 2008, 564.

programs to export law to countries engaged in nation-building. Despite local realities and domestic power structures that frustrated the adoption of foreign legal norms, U.S. programs focused on the direct export of American legal theory, practice, and structure. Few of the actors involved had any training in comparative or international law, and many participants consider their efforts to have been failures.[39]

Subsequent scholars similarly highlight the failures of past and present rule-of-law programs, observing that the approaches used by the U.S. government and others were and remain, as Carothers notes, derived from the American experience and "almost everywhere ... strikingly similar."[40] Just as the United States struggles to supply law to states in periods of political transition, so too do international governmental organizations (IGOs). As Wilde notes, tasked with administering criminal law, contract and tort, constitutional and administrative law, commercial law, and immigration and asylum law, IGO officials are "performing a role for which they may have little preparation."[41]

The failure of government-led rule-of-law programs contrasts sharply with legal-reform efforts spearheaded by NGOs operating under the auspices or in the shadow of the American state. They include hallmarks of the American polity such as the Ford and Rockefeller Foundations, the Asia Foundation, the American Bar Association (ABA), and the Fulbright Commission.[42] Often operating with government funding or tax exemptions, nonstate legal experts serve as influential conveyers of expertise, including commenting on and delivering drafts of legislation to foreign states. Among the largest agents of legal reform is the ABA's Central European and Eurasia Institute (CEELI), a project of the ABA directed from more than twenty liaison offices in the former Soviet Union's successor states. CEELI maintains a list of thousands of U.S.-based lawyer-volunteers willing to comment on drafts and stands as the largest voluntary association of lawyers in the United States. In just its first five years, CEELI volunteers provided more than $50 million in *pro bono* services—that sum increased to $130 million in the next five years.[43]

U.S. law schools have also served as important shadow actors facilitating the movement and translation of U.S. law. The role of these schools extends beyond merely training foreign lawyers in LL.M. programs, and includes the sponsoring of visits by U.S. lawyers and professors overseas. Relying heavily on government support, CEELI, for instance, oversaw the creation of more than 100 sister relationships between law schools in Central Europe and the United States.[44]

The emphasis on legal development in organizations such as CEELI accompanied the emerging notion of the post-Washington consensus that judicial integrity and poverty are linked, as Sen elaborated in a paper at the World Bank in 2000,

39. See Larson-Rabin 2007; and Trubek and Galanter 1974.
40. Carothers 1999, 160.
41. Wilde 2001, 253.
42. Maisel 2008, 465.
43. Reitz 2003.
44. Maisel 2008.

arguing that multiple aspects of development, including law, should be pursued in tandem.[45] This argument triggered an important shift in thinking at the bank, which quickly embraced legal reform through programs designed to: raise the salaries of judges, prosecutors, and public defenders; improve the transparency of judicial processes; and minimize delay of judicial proceedings.[46]

In this new phase of American interest in exporting legal norms and practices, the legal landscape is populated by a more "complex, varied, and fragmented" array of actors that is not traceable to any single point of agency.[47] Rather, a transnational cast of attorneys, often trained in U.S. law schools, has become a primary conveyer of American legal knowledge and practices. U.S.-trained lawyers have become especially central in the work of multilateral development agencies and banks.[48] Though situated in a wide variety of institutions from a large number of countries, these lawyers are overwhelmingly influenced by the American Law and Economics movement, which largely favors common law.[49] Of the seventy lawyers who participated in the World Bank's legal associate program between 2004 and 2011, for example, 83 percent acquired an advanced law degree from U.S. institutions, even though only one is an American citizen (a dual citizen from Peru).[50] Only six studied outside the Anglo-American tradition, and more than half received degrees from just five U.S. schools: Yale, Harvard, New York University, Georgetown, and the University of Pennsylvania. Given the billions of dollars the bank directed at judicial reform, the ascendancy of common law in states served by the World Bank reveals much about the global influence of U.S.-trained lawyers.[51] Similar favoring of U.S.-trained attorneys can be found elsewhere. At the World Trade Organization (WTO) Appellate Body, for example, five of seven current members received a law degree in the United States. The educations of former members suggest a similar preference for U.S. legal training.[52]

45. See Sen 2000; and Trubek and Santos 2006.
46. Larson-Rabin 2007.
47. deLisle 1999, 200.
48. Perelman 2006, 531.
49. Kennedy 2008, 829.
50. World Bank Legal Associates Program. Available at ⟨http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:20720418~menuPK:1899631~pagePK:148956~piPK:216618~theSitePK:445634,00.html⟩, accessed 14 April 2013.
51. Though lawyers acquire much of their legal reasoning skills while pursuing their first legal degree, it is revealing that the World Bank rewards those attorneys who pursued an advanced legal degree in the United States.
52. Our thanks to Alan Alexandroff, Ilana Hosios and Mona Pinchis who provided these data. As they note, however, the preference for U.S.-trained attorneys does not extend to all institutions. At the International Tribunal for the Law of the Sea (ITLOS), a judicial body established to adjudicate disputes arising out of the interpretation and application of the United Nations Convention on the Law of the Sea (UNCLOS), only four of the twenty-one members received a legal degree in the United States. While instructive, the weaker, though still significant, preference of U.S.-trained attorneys at ITLOS may be a consequence of political reasons lying outside our analysis, such as the United States not being a ratifying member of the UNCLOS.

Law Schools, Mega-law Firms, and the Power of American Law

Without denying the relevance of state actors, nonstate actors are vital to facilitating the movement and selecting the content of law. American legal practices, products, and values circulate globally through nonstate actors involved in private market transactions and epistemic networks, as well as through the strategic actions of corporations, lobbyists, and NGOs. These players, in turn, translate—and thus transform—the American legal norms and practices they encounter.[53] This process brings together a large cast: state and nonstate actors; American and non-American lawyers and their common and civil law practices; exporters or "teachers" involved in the production of law; and importers or "students" receiving law.[54] Recognizing the need to look beyond governmental actors to understand the global spread of law, Trubek and his colleagues distinguish between practitioners, law appliers, guardians of doctrine, educators, and moral regulators.[55] Through various activities—teaching, studying, publishing, attending conferences, writing briefs and opinions, and litigating—these nonstate actors facilitate American law's spread to institutions such as law firms, professional associations, law schools, and transnational tribunals.

Lawyers are generally elites adhering to the status quo, but when compelled to innovate, they often turn to foreign legal systems with prestige over radical domestic solutions.[56] With the growing prestige of U.S. law schools, for example, American legal scholars have become prestigious players in the movement and translation of procedural law through teaching foreign students attending elite American law schools and the extensive publication and accessibility of American legal journals.[57] Foreign lawyers continue to flock to American law schools because of the high quality of legal education and U.S. esteem in many intellectual, artistic, and economic domains.[58] Once exposed to American law, these students display, especially on economic questions, what Watson called a "transplant bias."[59] The attractiveness of the United States as a destination for foreign law students is due in part to the country's exceptionalism offering primary legal education as a graduate degree, a feature that enhances the global marketability of U.S.-trained lawyers.[60] Such an instrumental explanation does not, however, undermine the claim that the education these lawyers receive also facilitates the diffusion of U.S. law. Though U.S. law schools are sites of exciting legal debates

53. Trubek et al. 1994, 411.
54. See Reed and Sutcliffe 2001; Levi-Faur 2005, 457; Dezalay and Garth 2002; and Slaughter 2004.
55. Trubek et al. 1994, 416–17.
56. Ewald 1995, 499.
57. Wiegand 1991, 238, 246.
58. Mattei 1994b, 207, Alford 2003.
59. Watson 1978, 327.
60. Phillips 2007, 940.

and incubators of new ideas and strategies, they operate with an increasingly narrow, U.S.-centric pedagogy. In 2007–8, a mere fifteen of the 200 schools accredited by the ABA produced half of the law professors in the United States, and just two schools—Harvard and Yale—produced more than 20 percent.[61] Though the size of the ten largest international law faculties at European law schools and research institutes is often larger than those of American law schools, the concentration of high-quality legal talent in a handful of select American law schools biases the transnational epistemic legal community in favor of the United States and powers the transnational movement and translation of American legal norms.

The Law and Economics movement in American legal scholarship deserves special mention for its palpable influence.[62] Law and Economics offers a coherent body of theory that looks to efficiency as the mainspring of legal change. In this framework laws are—or should be—the outcome of cost-benefit analysis and Pareto-optimality. Put simply, laws are evaluated according to whether they are wealth-maximizing or wealth-enhancing. Whatever its merits, the popularity of this approach among legal scholars is "paving the way to scholarly Americanization" by requiring judges to think more like legislators, matching means to ends and taking costs and benefits into account.[63]

Trained in American schools, an increasing number of foreign students return home as intellectual leaders and policymakers. They come to the United States because "they feel the leadership [of American law],"[64] and introducing their newfound knowledge to their home countries prepares the ground for legal innovation. Many who join American-owned mega-law firms end up playing the role of entrepreneurial missionaries for common law practices. After graduation, the gravitational pull of American firms and legal practices tends to diminish the prestige of their home legal traditions and replaces existing networks of intellectual production with a U.S.-inflected transnational network of legal actors. As Trubek and colleagues describe, these students are "pulled out of the orbit" of their domestic legal culture and "into the sphere of influence of the large multinational law firms."[65] Those who return to teach law return as brokers more likely to select from the broad array of legal reasoning and practices they were exposed to at American law schools.

The rise of the mega-law firm in the 1980s and 1990s was synonymous with the rise of American legal practices.[66] Between 1986 and 1996, the export of Ameri-

61. Gordon 2009, 149.
62. Teles, 2008, 90–134, 181–219.
63. Mattei 2003, 411–12. For a classic American case illustrating this role, see *In re T. J. Hooper*, 60 F.2d 737 (2d. Cir. 1932), finding tugboat owners negligent for not equipping their boats with radio equipment that had become customary in the industry.
64. Mattei 1994b, 207.
65. Trubek et al. 1994, 407, 455.
66. Faulconbridge et al. 2008, 505.

can legal services grew almost twenty-fold, reaching a level roughly four times that of the import of legal services.[67] American lawyering moved to the center of the global economy not only because of changes in market demand and the engine of growth embedded within the American model (partners endowed with capital interests in the firm and the "eat what you kill" remuneration scheme), but also because of changing regulations. American firms lobbied extensively abroad for legislation allowing foreign lawyers to practice locally.[68] The success of their efforts is reflected in the increased U.S. (and to a lesser extent UK) dominance of corporate and mergers and acquisitions (M&A) legal work. By 2007, only three of the top twenty-eight ranked firms in the China and Hong Kong markets were local. Within capital markets none of the top fifteen legal firms in China were domestic. In Japan none of the top eighteen firms doing M&A were domestic. A similar weakness in local legal knowledge is widespread in Europe, especially in Germany, where, as Sokol notes, only five local firms constituted the top twenty corporate M&A practices, one of ten capital-market-debt practices, and one of nine capital-market-equity practices. UK firms were similarly besieged by U.S.-based competitors. By 2007, only nine of the top twenty firms involved in medium-resourced deals were U.K.-based, with U.S. firms comprising the remainder. In sharp contrast, in the United States all of the top-ranked corporate M&A and capital markets firms in 2007 were U.S.-based.[69] With the rise of mega-law firms at crucial switch points of the global economy, the stability and lowering of transaction costs economic actors seek has been provided not by the state but by the work of American global law firms that provide internationally uniform contract provisions, arbitration tribunals, and other private-governance solutions to common problems.[70]

The spread of the mega-law firm model—large, multipurpose, commercially oriented law firms—rests on the foundations of a liberalized global economy that advantages the complex legal services that large American firms can provide.[71] In the UK, Germany, and Japan, the shift to more U.S.-style firms occurred after the deregulation of financial markets and before the deregulation of the legal market. By now even large European firms, which tended to resist the American lawyering model, provide stable economic solutions by offering services that follow the principles and widely accepted practices of American law.[72] Across the common and civil law divide, the interaction of legal cultures in the global marketplace is creating a common style that in important legal domains resembles the U.S. model.[73] U.S. firms may have experienced some difficulties in bridging the gulf between their legal culture and legal practices on the European continent, as

67. Kaszak 2001.
68. Ibid.
69. Sokol 2007.
70. Flood 2007.
71. Martin 2007.
72. Flood 2007.
73. Bisom-Rapp 2004.

well as challenges in sustaining their expansion in the face of a global recession, yet American-style "mega-lawyering" is now an institutional feature common to both sides of the Atlantic and other parts of the world.[74]

The Transnational Movement and Translation of American Procedural Law

Procedural laws prescribe the steps an individual must take to have a right or duty judicially enforced. Substantive laws, by contrast, create, define, and regulate those rights and duties. Where substantive rights are often similar among states, differences in procedure often distinguish otherwise similar polities, thus making them useful indicators of law's movement.[75] As Merryman, Clark, and Haley observed, "substantive rules often appear similar but they are brought to bear in such a strikingly different manner that contrary results in otherwise similar cases are a constant possibility."[76] The right to be free from wrongful injury, for example, may be similar across systems, but how one remedies such a loss may vary greatly. The procedural rules by which actors raise substantive rights claims, rather than the substantive rights themselves, are thus the most basic features of legal systems.[77] In addition, the study of procedural law, a body of rules that gives shape to the roles and functions of lawyers, provides a useful perspective into how a transnational community of nonstate actors serves as an engine in the movement of ideas and practices. Transnational legal actors, even when litigating a case involving a shared substantive norm, are often confronted by norms and practices that are not shared, many of them procedural.[78]

The diffusion of U.S.-style procedure is illustrated clearly in the transnational movement and translation of two procedural devices: class-action litigation and pretrial discovery. The former device is grudgingly acknowledged as furthering the idea of access to justice and the efficiency of mass adjudication;[79] the latter is "almost universally regard[ed] … as excessive" in both common[80] and civil law countries alike.[81] Not long ago, both of these procedural tools were criticized as the manifestation of everything wrong with American lawyering. Even when adopting a form of class action, a device more palatable to continental lawyers than

74. Faulconbridge et al. 2008, 483.
75. Helmer 2003.
76. Merryman, Clark, and Haley 1994, 651.
77. Damaška 1991.
78. Buxbaum 2006, 296.
79. Kelemen 2011, 74–79.
80. *Lord Advocate, Petitioner, Extra Division*, 1998 SC 87 (10 October 1997) (UK).
81. Hazard 1998, 1022.

expanded pretrial discovery, Europeans resisted American terminology, translating them as "collective redress" or some other variant.[82]

In the United States, one or more plaintiffs can bring a claim on behalf of a proposed class of persons who have all suffered similar harms. The political implications of such a tool are immense: class actions empower an individual with a relatively small claim that would otherwise be impractical to litigate to join forces and seek redress, dramatically empowering the "have-nots" against the "haves."[83] Until recently, outside U.S. courtrooms individuals who had suffered similar harms could not aggregate their claims in the form of a class-action suit in order to share the burdensome cost of litigation. In civil law states, class actions as a tool of mass justice were opposed, with many civilian jurists deeming them to violate the principle of individual litigation control by binding those not party to the case.[84]

Like class actions, the U.S. system of pretrial discovery has been fiercely opposed, with some likening it to the MX missile: "When first conceived, it seemed like a good way to limit the possibility of a surprise attack by one's opponent at trial... As the years pass, however, there are deep but distant rumbles that suggest something is awry."[85] Critics of discovery focus mainly on the room it leaves for abuse by the more powerful party. With just a few exceptions, a litigant can compel an opposing party to collect and share evidence that might be relevant to the case. During the pretrial discovery phase in the United States, where the common law system allocates much of the evidence-gathering responsibilities to the attorneys rather than the court, parties can request answers to interrogatories, depositions, the production of documents, and admissions. Though these procedural devices can result in the disclosure of information that results in the more efficient allocation of resources than if the information was not shared by both parties, they can also be easily modified into costly weapons used either by a party to impose immense legal costs on an opponent to force a settlement, or by a lawyer to increase the number of hours billed. In sharp contrast, most civil law systems have generally imposed few burdens on litigants to admit adverse facts, turn over evidence, or otherwise help adversaries develop a case. Despite their erstwhile unpopularity, U.S.-style discovery has nonetheless cropped up in unlikely settings.[86]

We offer next for illustrative purposes an examination of class-action suits and pretrial discovery procedures and identify the mechanisms that appear to operate in these legal domains. Due to seeming incompatibility of the procedures with civil law systems, the spread of these procedures presents two hard cases for the transnational movement of law. Together, the forms the U.S. models take in each

82. Kelemen 2011, 77.
83. For an account of the development of American class action, see Yeazell 1987.
84. Cappalli and Consolo 1992, 233.
85. Setear 1989, 569.
86. Helmer 2003.

country also illustrate the centrality of nonstate legal translators involved in the process. The spread of these procedures across different world regions and legal families suggests an outcome not of mere convergence caused by common problems, but true reception.[87]

U.S.-Style Class-Action Suits

For many years class-action suits were a distinctive feature of U.S. procedure and widely considered incompatible with civil law systems, even to the point of being "inconceivable" in the mind of one civil law jurist.[88] "Europe neither needs nor wants U.S.-style class action litigation," one observer asserted.[89] This incompatibility stemmed from the ideational foundation of law: civil law systems apply law through logical, abstract legal principles and concepts rather than common law, ends-based devices. As such, a civil law system would more likely turn to legislative and governmental administrative actions to solve the collective injuries than it would the "private attorneys general" solution characteristic of American class-action law. The principle of civil law systems that stood as the greatest obstacle to class-action litigation is the notion of "subjective right."[90] If one applied strictly the logic of Kantian civil law reasoning, the representation and pursuit of group rights could not coexist alongside the traditional individual right model.

Recent experience, however, suggests otherwise.[91] As recently as 1992, legal scholars asserted that no comparable procedures existed outside the common law family.[92] One lone exception was Brazil. After being introduced to the concept by Italian scholars of U.S. law in the 1970s, Brazil introduced procedural reforms allowing for class actions.[93] Soon after, a flirtation with the procedure spread to other corners of the civil law world. Various comparable procedural reforms arose to serve similar functions, including the so-called "associational action" adopted in many European civil law systems.[94] In recent years thirteen of the EU's twenty-seven members have taken steps to strengthen collective redress mechanisms; and at the EU level the commission has made it a priority to expand such rights and is exploring introduction of such mechanisms in consumer protection, competition policy, and other fields.[95] Such reforms have succeeded, unhindered by the fact

87. Wiegand 1996.
88. Cappalli and Consolo 1992, 264.
89. Hodges 2001, 20.
90. Gidi 2003, 312.
91. See Deguchi and Storme 2008; Gidi 2003, 402; and Hodges 2009.
92. Cappalli and Consolo 1992, 218.
93. Gidi (2003, 324, 326) notes that the idea did not gain momentum in Italy and was roundly dismissed as "an eccentric fancy of 'left-wing' scholars." He speculates that the practice gained support in Brazil because of the recent end of military dictatorship and the openness to new ways of expanding access to justice.
94. Gidi 2003, 335.
95. See Kelemen 2011, 75–77; and Buxbaum 2006, 295.

that officials in those states rejected the adoption of U.S.-style litigation.[96] In the most recent comprehensive study of class actions, eighteen countries were found to have adopted at least some form of the device, with an additional four on the cusp of following suit. The rate of adoption has also proved especially quick, with most of the procedures adopted in the past few years. The adoption's breadth defies traditional explanations that confine the reach of legal circulation to within legal families. Jurisdictions adopting the device include both common and civil law and, among the latter, countries that derive from Napoleonic, German, and Roman law traditions.[97] In each, the relative efficiency of mass adjudication, backed by the access-to-justice norm that powers the human rights revolution, overcame the ontological contradictions of collective redress.[98] Europe's adoption of class-action devices likely would not have occurred without consideration of both efficiency and access to justice concerns. Advocates of class action had for decades proclaimed the device's efficiency benefits, but it was not until after a European Court of Justice decision in 2001 raised the issues of access to justice that the efficiency argument gained traction.[99]

Pretrial Discovery

Global distaste for U.S.-style class actions has not been as pronounced as the widespread disapproval of American pretrial discovery practices. The clearest expression of disapproval took the form of blocking statutes that created penalties for cooperating with U.S.-style discovery procedures. These statutes apply generally and serve multiple purposes, including protection against the reach of certain U.S. laws and the potential compromise of trade secrets, but they emerged in large part to prevent cooperation with U.S.-style litigation. They typically carry a penal sanction for the disclosure, copying, inspection, or removal of documents for the purposes of aiding pretrial evidence gathering in foreign states. In 1947, Canada introduced the first such statute in response to a U.S. federal court order. Countries facing similar requests responded with comparable statutory obstructions to prevent the encroachment of U.S. litigation practices. When the U.S. Department of Justice investigated suspected oil cartelization in the 1950s, for example, Great Britain, the Netherlands, France, and Italy all issued similar orders prohibiting the removal of documents for the purposes of foreign litigation. As U.S. litigators came looking for documents related to anticompetitive international shipping practices, similar blocking statutes soon appeared in Germany, Norway, Belgium, and Sweden. Foreign disapproval continued after a 1987 U.S. Supreme Court decision that ruled the international Hague Evidence Convention was neither the exclusive means

96. Baumgartner 2007, 309.
97. See Hensler 2009, 13; and Hodges 2008 and 2009.
98. Kelemen 2011, 77–78.
99. *Courage Lid v. Bernard Crehan*, ECJ Case C-453/99 (2001) ECR I-6297.

nor the first resort by which U.S. litigators could pursue evidence in the hands of foreign parties.[100] To protect against the anticipated onslaught of American discovery requests, many states erected their own blocking statutes and parties to the Hague Evidence Convention ratified with the reservation that their courts would not enforce pretrial discovery requests for documents.

Despite this unified front against U.S.-style litigation, there has been an erosion of opposition to pretrial discovery, a legal practice with greater transnational dimensions than class-action suits. U.S.-style discovery practices have spread in part through the powerful position of U.S. mega-law firms in cross-border litigation, but also through a mechanism that we call "unobtrusive persuasion." The development of arbitration and mediation usefully illustrates how iterative exposure to American procedural practices facilitates the movement of law. Though modern international commercial arbitration originated in continental Europe and was viewed with hostility by U.S. courts, American influence on the practice began to spread gradually after the first teams of U.S. lawyers arrived to participate in petroleum arbitrations after the United States ratified the UN Convention on the Enforcement and Recognition of Foreign Arbitral Awards in 1970.[101] After U.S. courts began honoring agreements to arbitrate more than they had previously and American lawyers began adjusting themselves to European practices such as the neutrality and independence of arbitrators, American lawyers delved into the practice with fervor, treating arbitration as a type of U.S.-style litigation, displacing less-acrimonious European practices and introducing familiar American procedural techniques.[102] Over time, the litigational character of U.S. arbitration familiarized European counterparts with American practices and laid the groundwork for acceptance of pretrial discovery. The tendency against compromise has been reinforced further by the growing number of high-value transactions submitted to arbitration. With more money at stake, a greater number of higher-paid—and often U.S.-trained—attorneys are joining the fray and reducing opportunities for compromise.

To illustrate how rapidly resistance to U.S.-style pretrial has abated, it is instructive to turn to the best practices of present-day global civil procedure embodied in the combined intellectual efforts of the American Law Institute (ALI) and the International Institute for the Unification of Private Law (UNIDROIT) *Principles of Transnational Procedure*.[103] For nearly a decade, these two groups assembled leading practitioners and scholars of civil procedure to draft a consensus on what would serve as a model code of procedure for transnational cases—cases involving enterprises or litigants from different legal systems. The principles and rules that participants ultimately agreed to reflect how far foreign legal practices have come to resemble some of the formerly less-admired, even despised, pretrial discovery pro-

100. *Societe Nationale Industrielle Aerospatiale v. U.S. District Court for the Southern District of Iowa*, 482 U.S. 522 (1987).
101. Wiegand 1996, 140–42.
102. Helmer 2003, 47.
103. ALI and UNIDROIT 2006.

cedures in the United States. For example, although almost two-thirds of the group hails from civil law systems and countries as varied as Bermuda, Japan, Scotland, and Russia, the authors nonetheless praise the fact that civil procedures around the world increasingly deviate from the tradition of holding multiple short hearing sessions for the receipt of evidence and are approaching instead the common law practice of single-episode trials, noting that, "civil law systems have tended to consolidate the interchanges between court and parties into fewer and more encompassing hearings."[104] A comment to one proposed rule explicitly notes that the authors favor such a "unitary final hearing," which in turn requires a preliminary phase much like the U.S. system of discovery in order to prepare for a "concentrated presentation" of the evidence.[105] Another codifies this shift, requiring, "so far as practicable," that the final hearing be concentrated in a way consistent with common law trials, an outcome that reflects both the practicality of arbitrating a multijurisdictional dispute as well as the gradual familiarity and acceptance of U.S.-style litigation.[106] This shift toward U.S. practices was far from inevitable, as the American practice of discovery developed in large part due to the presence of the jury system, also largely an American phenomenon. As Gidi describes, "the structural division of proceedings into pretrial and trial phases allowed development of a system of discovery, which, in turn, justified the relaxation of the rules of pleading."[107] The adoption of discovery practices into systems that lack juries comes with not only the substantial transaction costs associated with any procedural reform, but also the unnecessary inefficiency associated with the adoption of procedural rules that provided efficient solutions to the unique set of institutional constraints of the legal system of origin.

The final product of the ALI/UNIDROIT project includes additional comments that suggest a gradual acceptance of U.S. discovery processes, even amidst critiques of the U.S. legal system. For instance, the group identified discovery as the least attractive parts of the U.S. system. In most civil law countries, either a disputing party has a substantive right to a particular document in another's possession, or the court exercises its authority to require the production of such evidence once its existence and relevance is known. In the United States, by contrast, federal rules insist on the disclosure of any material that "appears *reasonably calculated* to lead to the discovery of admissible evidence."[108] This broad scope is the aspect of U.S. pretrial discovery that the authors most dislike. In the shadow of its criticism, however, the commentary to the rules articulates the group's desire for a middle ground, citing *Peruvian Guano*, an English colonial decision from 1882 concerning the discoverability of evidence. In that case, which rings familiar to U.S. practitioners, the court held that litigants have an obligation to disclose every

104. Ibid., li.
105. Ibid., 131.
106. Ibid., 144.
107. Gidi 2003, 316–17.
108. U.S. House 2010, 36 (Rule 26(b)(1), emphasis added).

document that "relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is *reasonable to suppose*, contains information which may—not which must—either directly or indirectly enable the party . . . to advance his own case or to damage the case of his adversary."[109] [sic] The authors of the *Principles* call instead for the disclosure of "documents . . . which, it is *not unreasonable to suppose*, . . . contain information which may, either directly or indirectly enable the party . . . either to advance his own case or to damage the case of his adversary."[110] The gulf between the U.S. standard of "reasonably calculated" and the ALI/UNIDROIT standard of "not unreasonable to suppose" is certainly not as great as the authors maintain, and suggests a substantial shift of continental procedure toward U.S.-style legal practices.

A related step toward American-style evidence gathering included in the *Principles* is a provision allowing parties to request documents directly from the other party rather than through a judge. Moving further still toward U.S.-style discovery procedures, the model rules include rights to depositions, which are "regarded as improper in many civil law systems."[111] Driving the point home that the ALI/UNIDROIT rules call for a method of discovery far closer to the U.S. model than that practiced on the European continent, the authors note explicitly that discovery in civil law systems is "more restricted" or, as they concede, "nonexistent."[112] The group thus appears to have struggled to locate the sought-after middle ground between common law and civil law pretrial procedures. Instead, unobtrusive persuasion appears to have generated civil law jurists more comfortable with adversarial American procedural law.

Implications

One swallow does not a summer make; and two legal issues do not clinch an argument.[113] The movement and translation of these two American legal procedures does, however, suggest a different mode of inquiry than the approaches most scholars of international and comparative politics take. The focus on nonstate actors and indirect processes of diffusion opens up new areas of research beyond the confines of conventional realist or statist perspectives. The cases illustrate that Americanization reflects different features of the United States. Backed by the access-to-justice norm, the competitive efficiency gains of U.S.-style class action have entered into civil law systems. Similarly, the high costs of discovery have not deterred civil lawyers from adopting the device in part because, through American legal training and participation in legal proceedings involving American law

109. *Compagnie Financière du Pacifique v. Peruvian Guano Company*, (1882) 11 QBD 55 (CA).
110. ALI and UNIDROIT 2006, 9.
111. Hazard, Taruffo, Sturner, and Gidi 2001, 776.
112. ALI and UNIDROIT 2004, 118 (rule 22, comment R-22E).
113. We are following here Cartwright's (2007, 24–42) pluralist understanding of how social and legal analysis warrants causal claims by both broadly vouching and narrowly clinching arguments.

firms abroad, they have, over time, been unobtrusively persuaded by this procedural innovation.

In their study of the Japanese and European law, Kelemen and Sibbitt likewise observe the spread of American law. For them, the demand for U.S.-style law emerged primarily because of the growing utility of legal representation in an increasingly liberalized marketplace.[114] By treating this liberalization as an exogenous factor, they overlook important mechanisms that vary in their capacity to explain the spread of different legal norms and practices. For example, our discussion shows how the spread of American procedure came after years of failed state-led programs. After 1945 American policymakers had limited success exporting law, despite the hegemonic position the United States enjoyed in different parts of the world. Unilateralism did not establish a focal point. By contrast, during the past two decades U.S.-style litigation spread even though it was often despised and belittled abroad. Causal mechanisms such as efficiency, access to justice, and unobtrusive persuasion varied by issue and jurisdiction. Operative mechanisms were of different types, involved scale shifts, and operated at different levels of abstraction.[115] Gambetta's analysis of the concatenations of different mechanisms is particularly relevant to our findings.[116] Legal systems and their reforms are elastic traditions of practice and discourse, the result of political battles fought by lawyers, intellectuals, politicians, and bureaucrats.[117] It follows that local and global legal norms and practices are not fated to converge on a single developmental trajectory modeled on the American system. Rather, in complex processes of interaction, legal practices and discourses evolve that reflect and justify different strategies, including maintaining, adapting, or transforming domestic law.

Rationalist explanations push toward premature closure of analysis. Our two cases, whereby the efficiency gains of class action and the high costs of pretrial discovery both penetrated civil legal systems, uncover a mix of mechanisms that place parsimonious explanations of efficiency in relation to other mechanisms such as access-to-justice norms and unobtrusive persuasion. Concatenation gives us better leverage on the data than parsimony.

Our analysis invites one final reflection on the unresolved tension that exists in international legal and political scholarship about the difference between common and civil law systems. Economically inclined theories of the movement of legal norms and practices point to efficiency as the force behind the dynamic expansion of American law. Sociologically inclined theories point to differences in legal systems' receptivity to new norms and practices and the different meanings they acquire in the process of translation into a new legal ecology. Numerous studies provide adherents of both perspectives with ample data to support their claims. Imagine

114. Kelemen and Sibbitt 2004, 109.
115. Tarrow 2005, 120–24.
116. See Gambetta 1998, 103–5, 121; and Twining 2005, 205–6, 213–14.
117. Leheny and Liu 2010.

the transnational movement of law as an ocean wave, with different legal systems marked by differently colored corks floating on top. Americanization moves the wave in one direction, while Europeanization, Islamicization, Sinicization, Indianization, or Japanization might have moved it in another. The corks bob up and down, with some drifting closer together, others further apart. Whether standing on solid ground on the shore or floating on a raft among the corks, after the wave passes observers will report, in good faith and based on accurate observation, different conclusions about whether the relation among the corks was changed by the ocean swell. In a similar fashion, legal scholarship has not reached a consensus in the analysis of the movement of procedural law. Zekoll,[118] Kerameus,[119] and others observe a notable trend toward convergence of civil procedures, at least within Europe. Others argue that while many countries have adopted procedural reforms, they have done so without serious comparative study, creating further divergence between them.[120] Since there are many ocean waves and many corks, no single scholar or research program is in a position to offer a comprehensive and definitive assessment of the ocean's swell and the corks' movements. And so it is in the field of comparative and international law when it grapples with the transnational movement and translation of law.

Mechanisms in the Transnational Movement and Translation of Law

Diffusion—the process of adopting or borrowing various devices, implements, institutions, or beliefs—offers one plausible way of capturing the processual character of the movement and translation of law.[121] We know that diffusion does not necessarily lead to convergence because the objects of diffusion can vary across time and space. Inquiring into the specific mechanisms to gain a better understanding of those sources of variation is often as important as understanding the dynamic of the diffusion process itself.

Mechanisms help specify the causal relationships among situation, actor, discourse, practice, and the emergent structural properties of different contexts. Over time, we may be able to generate a preliminary inventory of mechanisms to connect processes to practices, as well as identify plausible hypotheses to aggregate disparate practices at the individual level and to discern observable uniformities at the collective level.[122] Operating at both levels, legal analysis highlights the causal

118. Zekoll 2006.
119. Kerameus 1997.
120. See Jolowicz 2004; and Damaška 1991.
121. Simmons, Dobbin, and Garrett 2007, 9.
122. See Gerring 2010; George and Bennett 2005, 137, 141–42; and Hedström 2005, 11, 25–26, 33.

complexity of the transnational movement and translation of law and its attendant practices.[123]

Diffusion can occur through multiple overlapping mechanisms that operate in and across the different domains of law.[124] Legal translation is an active process that is less evident in emulation than in mechanisms of competition or learning. Emulation operates by scripts that follow from models judged to have legitimate ends and appropriate means. Emulation evokes prestige-seeking and follow-the-leader rhetoric that trump evidence-based comparison. In law's movement and translation, the articulation of hegemonic ideas or the creation of focal points through unilateral action are measures of prestigious or powerful actors' legal leadership. One measure is the capacity of legal concepts like the procedural rules we described to exert influence within and across legal families. A system is a leader when, either in whole or in part, its laws are discussed and adapted by more legal systems than any other. Leading ideas become hegemonic and influence others when they are presented and discussed as broad social phenomena not tied to the concrete experience of a specific context, country, or actor.[125] The role of leader or hegemon can fall to either a civil or common law system, as it did for France and then Germany in the nineteenth century and the United States since the mid-twentieth century.

A second mechanism, competition, typically operates in a less hierarchical and more decentralized manner, thus creating grounds more favorable for legal translation. Competition highlights actors' strategic interdependence and considerations of relative efficiency, as reflected in the gradual adoption of class-action devices by legal systems that previously denied litigants the opportunity to aggregate claims. Although competition often points to a competitor's policy reforms as a proximate cause for the movement of law, it alone does not reveal the deeper beliefs that explain how and why a specific competitive challenge is met in a particular way, or why some policies are adopted despite their recognized costs, such as U.S.-style pretrial discovery. Such beliefs come into play in some areas of law more often than in others. As illustrated by the two legal procedures examined here, costs and benefits interact with and nest amidst other mechanisms such as access-to-justice norms and unobtrusive persuasion.

Though few would consider American law superior to other legal systems, Wiegand argues that competition and efficiency have enhanced the perception of American legal approaches as useful in the construction of legal environments conducive to economic growth.[126] Under such beliefs, many legal provisions first developed in the United States, such as leasing, factoring, and franchising, spread to Europe after World War II, despite considerable doctrinal legal difficulties posed by European conceptions rooted in Roman legal traditions. Because the efficiency

123. Bunge 2004, 193.

124. Simmons, Dobbin, and Garrett 2007. Our discussion builds on this far-ranging exposition of diffusion mechanisms.

125. See Mattei 1994a and 1994b, 195.

126. Wiegand 1991 and 1996.

gains of American-style trusteeship were smaller, such devices did not spread as readily. Other areas of law associated with the efficiency of the American economy such as corporations, banking, and bankruptcy law also made great inroads into Europe, as did American legal norms and practices observable in other areas of economic law, including the protection of minority shareholders, the prohibition of insider trading, and various other legal protections. In the second half of the twentieth century, the United States took the lead in developing such norms—their export to foreign jurisdictions soon followed.[127]

An important consequence of competition is law's politicization in which more lawyers, litigation, and laws blur boundaries within the legal world as well as between the world of law and other sociopolitical domains.[128] This boundary blurring is illustrated by the popularity of Law and Economics, in which the role of judges is expanded, as well as the increasing international reception of American-style alternative dispute resolution measures outside the courtroom as in international commercial arbitration.[129] Negotiation, once the domain of politics, "has been embraced as part of the legal realm."[130]

Learning is another mechanism relevant to legal translation. We learn when we change beliefs or alter our confidence in those beliefs because of new observations, interpretations, or repertoires of practice. Simple learning refers to the choice of means for a given end; complex learning a change in ends.[131] Learning is very much affected by the sources that channel it, in particular the actors, networks, or institutions that validate what is to be learned. Epistemic communities of professional experts such as lawyers steeped in the arcana of procedural law are often important in developing ostensibly theoretical solutions for presumed problems, as illustrated by the unobtrusive persuasion in the case of pretrial discovery, an unwieldy and often costly procedural reform that gradually earned foreign adherents through exposure in U.S. law schools, work with U.S. mega-law firms, and by example and experience in transnational litigation.

Laws translate more readily when the target legal system belongs to the same legal family.[132] This readiness holds for the colonial period and its coercive imposition of law, as well as the postcolonial period when various channels of exchange diffused legal institutions and practices along legal family lines through emulation, competition, and learning. Legal family correlates with a range of important outcomes, including financial development, government ownership of banks, entry regulations, incidence of military conscription, government ownership of the media, formalism of judicial procedures, and judicial independence.[133] Pervasive pro-

127. See Galanter 1992; and Kelemen and Sibbitt, 2004.
128. Galanter 1992, 17–22.
129. Dezalay and Garth 1998.
130. Galanter 1992, 22.
131. Haas 1990.
132. See La Porta, Lopez-de-Silanes, and Shleifer 2008; and Damaška 1997.
133. La Porta, Lopez-de-Silanes, and Shleifer 2008, 286, 307–8.

cesses of legal movement and translation, however, tend to erode differences between legal cultures. It is not intrinsic differences between legal families but distinct processes and practices that explain the readiness for or resistance to the transnational movement and translation of law.

Emulation, competition, and learning exist in the complex web of complementary and sometimes contradictory processes of reasoning that develop in different legal systems. Persuasive argumentation operates differently in legal systems that require different modes of presentation, for example, in American and European domestic trials, WTO dispute-settlement proceedings, and truth and reconciliation commissions. In these settings, the social sources of authority to which persuasive strategies appeal differ. The instrumental logic taken for granted by American actors lacks the sense of being "normal" for actors inhabiting other legal systems. Norm-governed legal and social institutions require different argumentative strategies, even when rules appear identical. Indeed, "the similarity of rules," Merryman notes, "is in most cases an unreliable indicator of the convergence or divergence of legal systems."[134] Emulation, competition, and learning alert us to commonalities and differences revealed and obscured, at one and the same time, by civil and common law systems. Civil law systems, for example, incorporate various common law techniques in the form of judges clarifying ambiguities and incomplete aspects of judicial codes.[135] Although common law countries are not direct descendents of Roman law, elements of it were nonetheless affected by the Roman tradition. The Napoleonic civil law code has similarly had a discernible impact on numerous common law countries.[136]

In brief, competition and learning have been more vital than emulation or coercion in the transnational movement and translation of laws such as class action and pretrial discovery, both of which emerged within one legal family and were then adopted by another. These mechanisms operate across different domains of power and law, as well as within and across common and civil law systems. Imparted through legal education, repeated interactions among legal professionals, court proceedings, and other legal practices, they help us track the transnational movement and translation of law.

Conclusion: A Social Optic for Analyzing Law's Transnational Movement

Although the abundant compulsory power of the United States did little to promote the export of formal rule-of-law reforms, U.S. institutional, structural, and productive power each contributed greatly to the spread of American procedural

134. Merryman 1981, 385.
135. David and Brierley 1978, 59–66.
136. See, for example, Fairgrieve 2007.

law. American law does not get lost in translation. Whatever their successes or failures, American law and legal practices have been a very important node in the transnational movement and translation of law. But in the judicialization of global politics the United States has been profoundly ambivalent—unable to stop this process—or, at best, a reluctant bystander.[137] Alter has documented what can only be described as a revolution in the judicialization of world politics during the past forty years.[138] With Europe leading the way, more than 100 quasi-legal and ad hoc systems as well as twenty-six permanent international courts have emerged to assess compliance with international law. Many have compulsory jurisdiction and grant access to nonstate actors. These tribunals—both global and regional—are thus closer to the ideal of a transnational than a traditional interstate dispute resolution mechanism. Since at least the end of the Cold War the European Court of Justice and the European Court of Human Rights (ECtHR) have served as a template for constructing strong economic, criminal, and human rights courts embedded in regional contexts. The ECtHR has also emerged as a node around which substantive rights norms have developed and spread, as illustrated when the U.S. Supreme Court's majority opinion decriminalizing sodomy referred to the ECtHR decision doing the same twenty-two years earlier.[139] U.S. status as a constitutional hegemon has waned along with the rise of Europe as a global leader in substantive rights protections. But whereas clear leaders are emerging in the realm of particular substantive rights, world constitutions have shifted away from the U.S.-model document toward no model in particular, suggesting instead the emergence of a global constitutional order that is polycentric and multipolar with no dominant leader.[140] World constitutions now orbit multiple nodes, including regional and international templates like the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, as well as novel updates to constitutions in smaller states such as Canada.[141]

Like its leadership in the development of substantive rights, the creation of liberal legal rules of global finance, as Abdelal has shown, is also very much a European project.[142] The United States favored unilateral or bilateral approaches to create an ad hoc international order. The true champions of a rule-based, multilateral liberal order for finance were French and German. The 1988 European liberalization directive brought France a giant step closer to an integrated European monetary policy at the price of swallowing the German insistence for the *erga omnes* principle—full liberalization of capital accounts among EU members as well as between EU members and all other states. With EU enlargement and a

137. Romano 2009.
138. Alter 2011 and 2013.
139. See *Dudgeon v. United Kingdom* (1981) 4 EHRR 149; and *Lawrence v. Texas*, 539 U.S. 558 (2003).
140. Law and Versteeg 2011, 77.
141. Ibid., 8.
142. Abdelal 2007, 69–70, 208.

proliferation of treaties that the EU signed with other states, this provision spread quickly through the international system. Led in the 1980s and 1990s by a remarkable group of French politicians and bureaucrats, the EU, Organisation for Economic Cooperation and Development (OECD), and International Monetary Fund (IMF) consolidated this legal order. For better and for worse, France, Germany, and the EU thus became a legal center of the global financial order.

The overlapping of national, regional, and international jurisdictions has also propelled the development of national security laws. In this field, the movement of law is vertical rather than horizontal.[143] After 9/11 many states saw their security as threatened by both international terrorism and a possible break between the United Nations and a wounded, go-it-alone United States. UN Security Council Resolution 1373 thus came to provide a template for counterterror legislation. Around the world, regional organizations and states with different legal systems moved to adopt an international standard that radiated out from the United Nations. Compliance was not tightly coordinated, leading to variegated legal outcomes. Since the laws were often broad and vague, their implementation introduced further variability. Despite widespread compliance with Resolution 1373, national and regional customization left law's international movement without a common legal framework. International law thus created legal obligations that prompted domestic legal change, yet in the absence of a legal leader the variety of domestic frameworks reproduced a spectrum of local standards rather than a single international one. Deploying an apt metaphor, Scheppele compares the outcome to the parallel play rather than coordinated games of preschool children. In short, these examples paint a legal landscape organized around multiple nodes and inhabited by a diverse cast of actors.[144] Their efforts to export, import, and ultimately translate laws illustrate nonstate actors' ability to alter balances of practice between citizens and the state and to transmit ideas of law and procedural rights across legal families.

We have assumed that the spread of American law is a process legal systems incorporate in different ways. For practical reasons, we have not provided empirical support for this claim.[145] It remains for future scholarship to establish the extent to which the transnational movement and translation of law transforms other legal systems, increases or decreases convergence around shared legal norms and practices, and encourages or discourages legal convergence or pluralization. We expect that the movement of law reconfigures rather than erodes local traditions. Due in part to the enabling and constraining effects of institutions and the generative role of language, legal imports are processed differently by different legal

143. See Scheppele 2010; and Buxbaum 2006.

144. Space prevents us from describing other nodes such as constitutional, criminal, or international trade law.

145. See Langer 2004 and 2007; and Teubner 1998. As Maman (2006, 116) observes in his case study of Israeli corporate law, "examining the translation process is only possible via a detailed case study that engages in thick description and process tracing."

systems, often eliminating some differences while creating new ones.[146] Langer's case studies, for example, include reforms in several civil law systems that moved them toward American-style civil and criminal procedures.[147] Importing the same American-style procedures, Langer shows, affected legal systems differently because of the different structures of meaning already present in the receiving countries, even when the recipient countries were all civil law countries. The transnational movement of law is similarly affected profoundly by different translations processes, suggesting that it does not lead to a mere duplication of American institutions and practices.[148]

Our discussion of law's transnational movement and translation builds on a sizable theoretical literature. Class-action and pretrial discovery procedures support our perspective's plausibility. And the analysis of mechanisms spans discrete empirical issues. Our hope is to focus international relations scholars' attention on an underattended though politically consequential domain of international law—nonstate actors and procedural law. Scholars of international relations generally view law in world politics from rationalist-formalist and social perspectives.[149] The first highlights the importance of states, international governmental organizations, efficiency, and regulatory norms; the second inquires into the context in which states and international organizations operate and examines how available choices and repertoires of action are constituted in the first place.[150] The broader, second perspective incorporates into the analysis nonstate actors, constitutive norms, and legal process.[151] Analyses of public international law that assume an asocial international system as the relevant context are therefore especially useful when they are embedded in the broader social perspective. Only then can we analyze fully how and why law is shaped by both state and nonstate actors, the regulatory and constitutive aspects of law, and static attributes and interactive dynamics.

Law's movement and translation occur around and between different nodes and, depending on the context, merit different labels: Americanization, Europeanization, Sinicization, Indianization, Japanization, or Islamicization.[152] Law is only one domain where such processes can be observed. To acknowledge the existence of other nodes or cognate processes is not to belittle the importance of either the United States or law. Rather it puts both in a broader perspective worthy of systematic analysis by scholars of world politics and international and comparative

146. Ajani 1995, 95.
147. Langer 2004.
148. Kahaner 2006.
149. Both are included in Ratner and Slaughter's (1999) review of seven different schools of thought in international law. They speak to an intellectual tension discernible in many social sciences, between "moving outward into the grand historical machinations of class and cash, power and privilege, or moving inward to the nubs and slubs in the fabric of meaning and belief." Just 1992, 376.
150. See Goldstein et al. 2000; Abbott et al. 2000; and Abbott and Snidal 2000.
151. See Finnemore and Toope 2001; Goldstein et al. 2000; Brunnée and Toope 2010; and Reus-Smit 2011.
152. See Katzenstein 2010, 2012a, and 2012b.

law who are willing to trade in their snug and comfortable American- and Eurocentric suits for unfamiliar, looser garments. The transnational movement and translation of law does not crystallize around the limited visions of even the most powerful, competitive, and prestigious actors or legal systems in world politics. Particular claims to universal validity remain just that, claims that always remain open to political challenge and reinterpretation. At the onset of the twenty-first century the transnational movement of law is helping reconstitute a dynamic global polity. The United States and Americanization do not define this movement by themselves; they do, however, comprise important facets of that ecumenical process.

References

Abbott, Kenneth W., and Duncan Snidal. 2000. Hard and Soft Law in International Governance. *International Organization* 54 (3):421–56.

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. The Concept of Legalization. *International Organization* 54 (3):401–19.

Abdelal, Rawi. 2007. *Capital Rules: The Construction of Global Finance*. Cambridge, Mass.: Harvard University Press.

Ajani, Gianmaria. 1995. By Chance and Prestige: Legal Transplants in Russia and Eastern Europe. *American Journal of Comparative Law* 43 (1):93–117.

Alford, Roger P. 2003. The American Influence on International Arbitration. *Ohio State Journal on Dispute Resolution* 19:69–88.

Alter, Karen J. 2011. The Evolving International Judiciary. Research Paper No. 11–16. Northwestern Law and Economics Series. Evanston, Ill.: Department of Political Science, Northwestern University.

———. 2013. The New Terrain of International Law: Courts, Politics, Rights. Research Paper No. 13-11. Northwestern Law and Economics Series. Evanston, Ill.: Department of Political Science, Northwestern University.

American Law Institute (ALI) and International Institute for the Unification of Private Law (UNIDROIT). 2004. *Principles and Rules of Transnational Civil Procedure: Proposed Final Draft*. New York: American Law Institute.

———. 2006. *Principles of Transnational Civil Procedure*. New York: Cambridge University Press.

Barnett, Michael, and Raymond Duvall. 2005. Power in International Politics. *International Organization* 59 (1):39–77.

Baumgartner, Samuel P. 2007. Class Actions and Group Litigation in Switzerland. *Northwestern Journal of International Law and Business* 27 (2):301–49.

Bisom-Rapp, Susan. 2004. Exceeding Our Boundaries: Transnational Employment Law Practice and the Export of American Lawyering Styles to the Global Worksite. *Comparative Labor Law and Policy Journal* 25 (2):257–338.

Brunnée, Jutta, and Stephen J. Toope. 2010. *Legitimacy and Legality in International Law: An International Account*. Cambridge: Cambridge University Press.

Bunge, Mario. 2004. How Does It Work? The Search for Explanatory Mechanisms. *Philosophy of the Social Sciences* 34 (2):182–210.

Buxbaum, Hannah. 2006. Transnational Regulatory Litigation. *Virginia Journal of International Law* 46 (2):251–317.

Campbell, John L. 2004. *Institutional Change and Globalization*. Princeton, N.J.: Princeton University Press.

Cappalli, Richard. B., and Claudio Consolo. 1992. Class Actions for Continental Europe? A Preliminary Inquiry. *Temple International and Comparative Law Journal* 6 (2):217–92.

Carothers, Thomas. 1999. *Aiding Democracy Abroad: The Learning Curve*. Washington, D.C.: Carnegie Endowment for International Peace.

Cartwright, Nancy. 2007. *Hunting Causes and Using Them: Approaches in Philosophy and Economics*. Cambridge: Cambridge University Press.

Crystal, David. 1997. *English as a Global Language*. Cambridge: Cambridge University Press.

Damaška, Mirjan. 1991. *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*. New Haven, Conn.: Yale University Press.

———. 1997. The Uncertain Fate of Evidentiary Transplants: Anglo-American and Continental Experiments. *American Journal of Comparative Law* 45 (4):839–52.

David, René, and John E.C. Brierley. 1978. *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*. New York: Free Press.

Deguchi, Masahisa, and Marcel Storme. 2008. *The Reception and Transmission of Civil Procedural Law in the Global Society: Legislative and Legal Educational Assistance to Other Countries in Procedural Law*. Antwerp, Belgium: Maklu.

deLisle, Jacques. 1999. Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond. *University of Pennsylvania Journal of International Economic Law* 20 (2):179–308.

Dezalay, Yves, and Bryant G. Garth, eds. 1998. *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. Chicago: University of Chicago Press.

———, eds. 2002. *Global Prescriptions: The Production, Exportation, and Importation of a New Legal Orthodoxy*. Ann Arbor: University of Michigan Press.

Ewald, William. 1995. Comparative Jurisprudence (II): The Logic of Legal Transplants. *American Journal of Comparative Law* 43 (4):489–510.

Fairgrieve, Duncan, ed. 2007. *The Influence of the French Civil Code on the Common Law and Beyond*. London: British Institute of International and Comparative Law.

Faulconbridge, James R., Jonathan V. Beaverstock, Daniel Muzio, and Peter J. Taylor. 2008. Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work. *Northwestern Journal of International Law and Business* 28 (3):455–88.

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

Finnemore, Martha, and Stephen J. Toope. 2001. Alternatives to "Legalization": Richer Views of Law and Politics. *International Organization* 55 (3):743–58.

Flood, John. 2007. Partnership and Professionalism in Global Law Firms: Resurgent Professionalism? In *Redirections in the Study of Expert Labour: Established Professions and New Export Occupations*, edited by Daniel Muzio, and Stephen Ackroyd, and Jean-Francois Chanlat, 52–74. Basingstoke, UK: Palgrave Macmillan.

Galanter, Marc. 1992. Law Abounding: Legalisation Around the North Atlantic. *Modern Law Review* 55 (1):1–24.

Gambetta, Diego. 1998. Concatenations of Mechanisms. In *Social Mechanisms: An Analytical Approach to Social Theory*, edited by Peter Hedström and Richard Swedberg, 102–24. Cambridge: Cambridge University Press.

George, Alexander L., and Andrew Bennett. 2005. *Case Studies and Theory Development in the Social Sciences*. Cambridge, Mass.: MIT Press.

Gerring, John. 2010. Causal Mechanisms: Yes, But . . . *Comparative Political Studies* 43 (11):1499–526.

Gidi, Antonio. 2003. Class Actions in Brazil: A Model for Civil Law Countries. *American Journal of Comparative Law* 51 (2):311–408.

Glendon, Mary Ann, Michael W. Gordon, and Christopher Osakwe. 1994. *Comparative Legal Traditions: Text, Materials, and Cases on the Civil and Common Law Traditions, with Special Reference to French, German, English, and European Law*. 2nd ed. St. Paul, Minn.: West.

Goldstein, Judith, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter. 2000. Introduction: Legalization and World Politics. *International Organization* 54 (3):385–99.

Gordon, Daniel. 2009. Hiring Law Professors: Breaking the Back of American Plutocratic Oligarchy. *Widener Law Journal* 19 (1):137–58.

Haas, Ernst B. 1990. *When Knowledge Is Power: Three Models of Change in International Organizations*. Berkeley: University of California Press.
Hazard, Geoffrey C., Jr. 1998. Discovery and the Role of the Judge in Civil Law Jurisdictions. *Notre Dame Law Review* 73 (4):1017–28.
Hazard, Geoffrey C., Jr., Michele Taruffo, Rolf Sturner, and Antonio Gidi. 2001. Introduction to the Principles and Rules of Transnational Civil Procedure. *New York University Journal of International Law and Politics* 33 (3):769–84.
Hedström, Peter. 2005. *Dissecting the Social. On the Principles of Analytical Sociology*. Cambridge: Cambridge University Press.
Helmer, Elena V. 2003. International Commercial Arbitration: Americanized, "Civilized," or Harmonized? *Ohio State Journal on Dispute Resolution* 19 (1):35–68.
Hensler, Deborah R. 2009. The Globalization of Class Actions: An Overview. *Annals of the American Academy of Political and Social Sciences* 622 (1):7–29.
Hodges, Christopher. 2001. Multi-Party Actions: A European Approach. *Duke Journal of Comparative and International Law* 11 (2):321–54.
———. 2008. *The Reform of Class and Representative Actions in European Legal Systems: A New Framework for Collective Redress in Europe*. Portland, Ore.: Hart.
———. 2009. What Are People Trying to Do in Resolving Mass Issues, How Is It Going, and Where Are We Headed? *Annals of the American Academy of Political and Social Sciences* 622 (1):330–45.
Jessup, Philip. 1956. *Transnational Law*. New Haven: Yale University Press.
Jolowicz, John A. 2004. Civil Procedure and the Common and Civil Law. In *Law and Legal Culture in Comparative Perspective*, edited by Guenther Doeker-Mach and Klaus A. Ziegart, 25–49. Stuttgart, Germany: Franz Steiner Verlag.
Just, Peter. 1992. History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law. *Law and Society Review* 26 (2):373–412.
Kahaner, Steven M. 2006. Legal Translation Today: Toward a Healthier State of Reality. *International Law Practicum* 19 (1):80–83.
Kaszak, Nancy L. 2001. Practicing Law in the Global Economy. *Northern Illinois University Law Review* 22 (1):1–17.
Katzenstein, Peter J., ed. 2010. *Civilizations in World Politics: Plural and Pluralist Perspectives*. New York: Routledge.
———, ed. 2012a. *Anglo-America and Its Discontents: Civilizational Identities Beyond West and East*. New York: Routledge.
———, ed. 2012b. *Sinicization and the Rise of China: Civilizational Processes Beyond East and West*. New York: Routledge.
Keck, Margaret, and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, N.Y.: Cornell University Press.
Kelemen, R. Daniel. 2011. *Eurolegalism: The Transformation of Law and Regulation in the European Union*. Cambridge, Mass.: Harvard University Press.
Kelemen, R. Daniel, and Eric C. Sibbitt. 2004. The Globalization of American Law. *International Organization* 58 (1):103–36.
Kennedy, David. 2008. The Mystery of Global Governance. *Ohio Northern University Law Review* 34 (3):827–60.
Keohane, Robert O., and Joseph S. Nye Jr. 1971. Transnational Relations and World Politics: An Introduction. In *Transnational Relations and World Politics*, edited by Robert O. Keohane and Joseph S. Nye Jr., ix–xxix. Cambridge, Mass.: Harvard University Press.
Kerameus, Konstantinos D. 1997. Political Integration and Procedural Convergence in the European Union. *American Journal of Comparative Law* 45 (4):919–30.
Knop, Karen. 2000. Here and There: International Law in Domestic Courts. *New York University Journal of International Law and Politics* 32 (2):501–35.
Koh, Harold H. 1996. Transnational Legal Process. *Nebraska Law Review* 75 (1):181–207.
———. 1998. The 1998 Frankel Lecture: Bringing International Law Home. *Houston Law Review* 35 (3):623–81.

———. 2003. On American Exceptionalism. *Stanford Law Review* 55 (5):1479–527.
Langer, Máximo. 2004. From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure. *Harvard International Law Journal* 45 (1):1–64.
———. 2005. The Rise of Managerial Judging in International Criminal Law. *American Journal of Comparative Law* 53 (4):835–909.
———. 2007. Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery. *American Journal of Comparative Law* 55:617–76.
La Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer. 2008. The Economic Consequences of Legal Origins. *Journal of Economic Literature* 46 (2):285–332.
Larson-Rabin, Leah. 2007. Happenstance and Memory: A Legacy of Law and Development Scholarship and Policy in Legal Education. *Wisconsin International Law Journal* 25 (2):209–33.
Law, David S., and Mila Versteeg. 2011. The Declining Influence of the United States Constitution. Research Paper No. 2011-39. Virginia Public Law and Legal Theory. Charlottesville: Law School, University of Virginia.
Legrand, Pierre. 1997. Against a European Civil Code. *Modern Law Review* 60 (1):44–63.
Leheny, David, and Sida Liu. 2010. The Politics of Crime, Punishment, and Social Order in East Asia. *Annual Review of Law and Social Science* 6:239–58.
Levi-Faur, David. 2005. The Political Economy of Legal Globalization: Juridification, Adversarial Legalism, and Responsive Regulation. A Comment. *International Organization* 59 (2):451–62.
Maisel, Peggy. 2008. The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross Cultural Collaboration. *Clinical Law Review* 14 (2):465–507.
Maman, Daniel. 2006. Diffusion and Translation: Business Groups in the New Israeli Corporate Law. *Sociological Perspectives* 49 (1):115–35.
Martin, Eric L. 2007. Liberalization and Cravathism: How Liberalization Triggered the Reorganization of the Legal Profession in Germany and Japan. *Stanford Journal of International Law* 43 (1):169–200.
Mattei, Ugo. 1994a. Efficiency in Legal Transplants: An Essay in Comparative Law and Economics. *International Review of Law and Economics* 14 (1):3–19.
———. 1994b. Why the Wind Changed: Intellectual Leadership in Western Law. *American Journal of Comparative Law* 42 (1):195–218.
———. 2003. A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance. *Indiana Journal of Global Legal Studies* 10 (1):383–448.
Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.
Merryman, John H. 1974. Legal Education There and Here: A Comparison. *Stanford Law Review* 27 (3):859–78.
———. 1981. On the Convergence (and Divergence) of the Civil Law and the Common Law. *Stanford Journal of International Law* 17 (2):357–88.
Merryman, John H., David S. Clark, and John O. Haley. 1994. *The Civil Law Tradition: Europe, Latin America, and East Asia*. Charlottesville, Va.: Michie.
Mommsen, Wolfgang J., and Jaap A. de Moor, eds. 1992. *European Expansion and Law: The Encounter of European and Indigenous Law in Nineteenth- and Twentieth-Century Africa and Asia*. London: Berg.
Nye, Joseph S., Jr. 2011. *The Future of Power*. New York: Public Affairs.
Obenaus, Gerhard. 1995. The Legal Translator as Information Broker. In *Translation and the Law*, edited by Marshall Moriss, 247–59. Philadelphia: John Benjamins.
Perelman, Jeremy. 2006. Book Review: Beyond Common Knowledge: Empirical Approaches to the Rule of Law. *Harvard International Law Review* 47 (2):531–46.
Phillips, Emma. 2007. The War on Civil Law? The Common Law as a Proxy for the Global Ambition of Law and Economics. *Wisconsin International Law Journal* 24 (4):915–60.
Posner, Richard A. 1997. The Future of the Law and Economics Movement in Europe. *International Review of Law and Economics* 17 (1):3–14.
Prosser, Sean Thomas. 1992. The English Libel Crisis: A *Sullivan* Appellate Review Standard Is Needed. *New York Law School Journal of International and Comparative Law* 13 (2):337–58.

Ratner, Steven R., and Anne-Marie Slaughter. 1999. Appraising the Methods of International Law: A Prospectus for Readers. *American Journal of International Law* 93 (2):291–423.
Reed, Lucy, and Jonathan Sutcliffe. 2001. The "Americanization" of International Arbitration: Lessons from ICSID. *Mealey's International Arbitration Report* 16 (4):37–47.
Reitz, John C. 2003. Export of the Rule of Law. *Transnational Law and Contemporary Problems* 13 (1):429–86.
Reus-Smit, Christian. 2011. Struggles for Individual Rights and the Expansion of the International System. *International Organization* 65 (2):207–42.
Risse-Kappen, Thomas, ed. 1995. *Bringing Transnational Relations Back in: Non-State Actors, Domestic Structures, and International Institutions*. Cambridge: Cambridge University Press.
Romano, Cesare P. R., ed. 2009. *The Sword and the Scales: The United States and International Courts and Tribunals*. Cambridge: Cambridge University Press.
Scheppele, Kim Lane. 2010. The International Standardization of National Security Law. *Journal of National Security Law and Policy* 4 (2):437–53.
Sen, Amartya. 2000. What Is the Role of Legal and Judicial Reform in the Development Process? Lecture delivered at the World Bank, Washington, D.C., 5 June.
Setear, John K. 1989. The Barrister and the Bomb: The Dynamics of Cooperation, Nuclear Deterrence, and Discovery Abuse. *Boston University Law Review* 69 (3):569–634.
Shapiro, Martin. 1986. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press.
Sikkink, Kathryn. 2011. *Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York: Norton.
Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge University Press.
Simmons, Beth A., Frank Dobbin, and Geoffrey Garrett. 2007. *The Global Diffusion of Markets and Democracy*. Cambridge: Cambridge University Press.
Slaughter, Anne-Marie. 2000. Judicial Globalization. *Virginia Journal of International Law* 40 (4):1103–24.
———. 2004. *A New World Order*. Princeton, N.J.: Princeton University Press.
Sokol, D. Daniel. 2007. Globalization of Law Firms: A Survey of the Literature and a Research Agenda for Future Study. *Indiana Journal of Global Legal Studies* 14 (1):5–28.
Stone Sweet, Alec. 1999. Judicialization and the Construction of Governance. *Comparative Political Studies* 32 (2):147–84.
Tarrow, Sidney. 2005. *The New Transnational Activism*. Cambridge: Cambridge University Press.
Teles, Steven M. 2008. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, N.J.: Princeton University Press.
Teubner, Gunther. 1998. Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences. *Modern Law Review* 61 (1):11–32.
Trubek, David M., and Alvaro Santos. 2006. Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice. In *The New Law and Economic Development: A Critical Appraisal*, edited by David M. Trubeck and Alvaro Santos, 1–18. Cambridge: Cambridge University Press.
Trubek, David M., and Marc Galanter. 1974. Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States. *Wisconsin Law Review* 1974 (4):1062–103.
Trubek, David, Yves Dezalay, Ruth Buchanan, and John R. Davis. 1994. Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas. *Case Western Law Review* 44 (2):407–98.
Twining, William. 2005. Social Science and Diffusion of Law. *Journal of Law and Society* 32 (2):203–40.
———. 2006. Diffusion and Globalization Discourse. *Harvard International Law Journal* 47 (2):507–16.
U.S. House. 2010. Committee on the Judiciary. *Federal Rules of Civil Procedure*. 111th Cong., 2nd sess., 1 December.

Vespaziani, Alberto. 2008. Comparison, Translation and the Making of a Common European Constitutional Culture. *German Law Journal* 9 (5):547–74.

Watson, Alan. 1976. Legal Transplants and Law Reform. *Law Quarterly Review* 92 (1):79–84.

———. 1978. Comparative Law and Legal Change. *Cambridge Law Journal* 37 (2):313–36.

Wiegand, Wolfgang. 1991. The Reception of American Law in Europe. *American Journal of Comparative Law* 39 (2):229–48.

———. 1996. Americanization of Law: Reception or Convergence? In *Legal Culture and the Legal Profession*, edited by Lawrence M. Friedman and Harry N. Schreiber, 137–52. Boulder, Colo.: Westview Press.

Wilde, Ralph. 2001. The Complex Role of the Legal Adviser When International Organizations Administer Territory. *Proceedings of the Annual Meeting (American Society of International Law)* 95:251–61.

Yeazell, Stephen C. 1987. *From Medieval Group Litigation to the Modern Class Action*. New Haven, Conn.: Yale University Press.

Zekoll, Joachim. 2006. Comparative Civil Procedure. In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 1327–62. Oxford, UK: Oxford University Press.