

Dan Danielsen

d.danielsen@neu.edu

Teaching Experience

Associate Professor, Northeastern University School of Law, Boston, MA
May 2004-present

I teach Corporations, Conflict of Laws, International Business Regulation, International Law and Law and Economic Development. My current research brings an interdisciplinary approach to the study of multinational corporations and their role in shaping transnational regulation and governance. My work also explores the impact of multinational corporations on social welfare, violent conflict and poverty in the developing world. Another field of scholarship and research explores some of the interconnections between law and the social meanings of sexuality and identity. A more detailed description of my teaching approach and philosophy and my current scholarship and research is attached to this resume as an Annex.

I have played an active role in a number of important initiatives at the School of Law including serving on the Curriculum Committee and the International Studies Working Group, convening and running a faculty reading group on comparative global and local approaches to economic development and working to create a transactional law clinic for students focused on offering assistance to micro-entrepreneurs in inner-city Boston. I currently serve as a faculty Co-Director of the Program on Human Rights and the Global Economy, a two-year old initiative focused on exploring economic and social rights and the distributional consequences of legal regimes in the context of global economic and social policy. I am also facilitating efforts to establish an interdisciplinary institute with the Northeastern University School of Business on globalization and governance and discussions with the Program on Sustainable Development at the Heller School at Brandeis University regarding the establishment of a joint degree program, cross-registration opportunities for students and the creation on an LL.M. degree in Law and Sustainable Development Northeastern School of Law.

Visiting Professor, Northeastern University School of Law, Boston, MA
May 2002-May 2004

I taught Corporations, Conflict of Laws, International Business Regulation and International Law.

Adjunct Professor, Northeastern University School of Law, Boston, MA
Periodically from 1993-2002

I taught Corporations, Torts, International Law and Modern Legal Theory.

Lecturer on Law, Harvard Law School, Cambridge, MA
1994 and 1995

I taught a course called Law, Sex and Identity that sought to expand the legal study of identity beyond the anti-discrimination paradigm by developing an interdisciplinary approach that brought together the study of legal cases implicating sex, race, class and gender issues with readings from jurisprudence, literary theory, psychoanalytic theory, sociology, political theory, anthropology, economics and literature.

Other Professional Experience

Advisor, Service Employees International Union, Washington, D.C.
November 2005 – Present

I provide strategic advice to the Service Workers Union regarding international law, corporate law, governance and transnational organizing strategies. My work so far has involved advising the SEIU on corporate issues in Spain and Brazil and assisting with the organization of a multinational conference hosted by the SEIU and Columbia Law School bringing together trade unionists, academics and lawyers from around the world to discuss strategies for organizing workers and enforcing workers rights and protections against individual multinationals operating in multiple countries. I also assisted in the organization of conference on Corporate Governance and Labor in Europe involving union leaders, heads of international labor federations, academics and business leaders to explore ways to make use of corporate governance regulation in the context of broader organizing efforts in Europe.

Consultant, Library of Congress of Chile, Valparaiso and Santiago, Chile
January 2006

I was part of a delegation of eight scholars from around the world invited to assist the staff of the Chilean Library of Congress and various members of the Chilean legislature in analytic techniques of comparative law. The team of scholars offered a series of training sessions and then a formal conference on techniques of comparative law that focused on highlighting legislative choices rather than particular legal traditions or national “solutions” and identifying the effects of those choices on different political and social constituencies in Chile.

**Advisor, Foreign Minister of Thailand, Bangkok, Thailand
September 2004 – January 2005**

I was one of four member of the core planning group asked by Dr. Surakiart Sathirathai, then Foreign Minister of Thailand and a leading candidate to be Secretary General of the United Nations, to convene a working group of international expert to help develop a vision for more accountable and humane global governance and to explore innovative opportunities for the United Nations in the context of a broader global governance regime. The core planning group identified a body of international experts from law, economics, political science, sociology and the private sector to participate in the project. The meeting of the full advisory group took place in Bangkok, Thailand on January 7 – 9, 2005. In addition to the core planning group, participants included the Hon. Mary Robinson, former president of the Republic of Ireland and U.N. High Commissioner for Human Rights, Prof. Joseph Stiglitz, Nobel Laureate, former Chief Economist of the World Bank, Judge Dennis Davis, High Court Judge from South Africa, Prof. John Braithwaite of Australian National University, a leading expert on global business regulation, Prof. Zhiyuan Cui, Chairman of the Department of Political Science, Shanghai Jiaotong University, and Dr. Leopold Specht of Jarolim Singer Specht Rechtsanwälte GmbH, a leading expert on privatization, business and politics in Eastern Europe and Russia.

**Of Counsel, Feinberg & Associates, Newton, MA
September 2002 – Present**

This small firm, founded by one of my former partners at Foley, Hoag, specializes in the representation of start-ups and young companies. I consult from time to time on corporate law and intellectual property management and protection.

**Founder, Bull's Eye Entertainment, Los Angeles, CA/Cambridge, MA
August 2001 – June 2002**

Bull's Eye Entertainment is a media consulting, marketing and production company created to facilitate relationships between entertainment content producers and national advertisers in the fields of television, motion pictures, music and theater. I served as general partner and ran the advertising relations side of the business.

**Executive Vice President—General Counsel and Corporate Secretary
Europe Online Networks S.A., Luxembourg**

November 1999 – March 2001

Europe Online Networks S.A. was a Luxembourg-based pan-European provider of enhanced broadband Internet and multimedia entertainment services to consumers' homes via satellite. As General Counsel I was responsible for all legal and corporate aspects of the company's business in 27 countries. I also served as Executive Vice President—Content and Product Development and was in charge of deals with entertainment companies and other content providers, as well as product, design and development from a creative perspective. In this capacity I supervised a staff of about 100 people.

Partner, Foley, Hoag & Eliot LLP, Boston, MA

January 1998 – October 1999 (Partner)

September 1991 – December 1997 (Associate)

Foley, Hoag is a full-service law firm with about 250 lawyers in Boston and Washington, D.C. My practice focused on the representation of technology, media and telecommunications companies in international business ventures. I specialized in corporate finance, mergers and acquisitions, licensing and distribution arrangements and intellectual property management and protection.

**Law Clerk, U.S. Court of Appeals, Sixth Circuit, Cincinnati, OH
Honorable Nathaniel R. Jones**

August 1990 – September 1991

Stagiaire, Commission of the European Union, Brussels, Belgium

August 1989 – July 1990

I worked as a legal counsel in the Cabinet of President Jacques Delors advising on comparative federalism issues, in the Directorate General Competition on airline deregulation and in the Directorate General Information Society on issues relating to the legal protection of software.

Education

Harvard Law School, J. D. cum laude, 1989

**University of California, Los Angeles, B.A. English Literature, Phi Beta
Kappa, magna cum laude, 1984**

Publications

Book Review, Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press (2005), 100 A.J.I.L. 757 (2006).

“Corporate Governance and Global Governance: Progressive Possibilities in a Globalized World,” in *Progressive Lawyering, Globalization and Markets: Rethinking Ideology and Strategy* (Clare Dalton, ed.) William S. Hein & Co. (2007) (forthcoming).

“Corporate Power and Global Order,” in *International Law and Its Others* (Anne Orford, ed.), Cambridge University Press (2006).

“How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance,” 46 Harv. Int’l L.J. 411 (2005).

Remarks, “Roundtable II: Outsourcing, Working Borders: Linking Debates about Insourcing and Outsourcing of Capital and Labor,” 40 Texas Int’l L.J. 755 (2005).

“What’s in a Name? Stakes and Consequences in Defining Feminism(s),” in “Gender, Sexuality and Power—Is Feminist Theory Enough?,” 12 Colum. J. Gender & L. 624 (2003).

Book Review, “James Boyle, *Shamans, Software and Spleens Law and the Construction of the Information Society*,” 16 Leiden J. Int’l. L. 399 (2003).

After Identity: A Reader in Law and Culture (D. Danielsen and K. Engle, eds.), Routledge (1995).

“Law and Violence,” 1994 Utah L. Rev. 247 (1994).

“Representing Identities: Legal Treatment of Pregnancy and Homosexuality,” 26 New England L. Rev. 1453 (1992).

Book Review, “Feminism Unmodified” by Catharine A. MacKinnon, 23 Harv. Civ. Rts. Civ. Lib. L. Rev. 610 (1988).

Selected Talks and Lectures

Recent Talks and Lectures

Panelist, The Place of the State in the World panel, International Law After the Age of the Three Worlds conference, Washington College of Law, American University, September 15, 2006.

Lecturer, “Introduction to Development Economics for Labor Lawyers,” INTELL 8 Does Globalization Make Labor Law Obsolete? Work-Law and Economic Transformation conference, Cuernavaca, Mexico, June 28-30, 2006.

Panelist, “Development and the State of the Exception” panel, Law and Development Today conference, American University Cairo, May 27-28, 2006.

Panel Chair, “The Privatization of International Law” panel, and Panelist, “Reason, Resistance and Possibilities in International Economic Law” panel, Third Workshop at Birkbeck Law School on Critical Approaches to International Law: The Force of International Law, Birkbeck Law School, London, May 15-17, 2006.

Co-organizer and Participant, SEIU/UNITE HERE Strategic Planning Meeting on European Capital Markets, London, May 15, 2006.

Commentator, “The Private” panel, Rethinking the Private in Private International Law conference, Cornell Law School, April 7-8, 2006.

Lecturer, “New Governance Techniques for War and Poverty,” Friday Speakers Series, Sustainable International Development Program, The Heller School of Social Policy and Management, Brandeis University, March 31, 2006.

Panelist, Commercial Law panel, Diffusion of Law in the 21st Century: Interaction and Influence conference, a symposium of the Harvard International Law Journal, Harvard Law School, March 4, 2006.

Co-organizer and Participant, Columbia Law School/Service Employees International Union workshop on New Strategies for Transnational Organizing, Columbia Law School, February 11-12, 2006.

Lecturer, Panelist and Participant, Workshop on Convergence and Divergence in Comparative Law Analysis, Library of Congress of Chile, Valparaíso and Santiago, Chile, January 22-27, 2006.

Panelist, “Regulating Foreign Direct Investment and Conflict in Developing Countries or Regulating Developing Countries through Foreign Direct Investment and Conflict,” War and Trade conference, Brooklyn Law School, September 22-23, 2005.

Participant, New Approaches to the Family, Market and the State workshop, The Program on Law and Social Thought, Harvard Law School, August 19, 2005.

Panelist and Roundtable Co-Organizer, “Human Rights Law and the Challenges of Contemporary Development,” Realizing Economic, Social and Cultural Rights: Communities, Courts and the Academy conference of the Program and Human Rights and the Global Economy, Northeastern University School of Law, June 17, 2005.

Participant, Putin’s Russia in International Affairs workshop, European Law Research Center, Harvard Law School, March 7, 2005.

Panelist and Plenary Speaker, “Comparative Visions of Transnational Regulation and Governance,” Comparative Visions of Global Public Order conference, a symposium of the Harvard International Law Journal, Harvard Law School, March 5 – 6, 2005.

Panelist, “Regulating Firms and Regulating Workers: Production and Labor Markets as Sites for New Governance,” WCFIA U.S.—Canada Conference New Governance in a Globalized World: A Critical Evaluation of Soft Law and Non-State Norms and Regulation, Weatherhead Center for International Affairs, Harvard University, February 25 – 26, 2005.

Panelist and Panel Organizer, “Roundtable II: Outsourcing,” Working Borders: Linking Debates about Insourcing and Outsourcing of Capital and Labor conference, Bernard and Audre Rapoport Center for Human Rights and Justice, The University of Texas School of Law, February 10 – 11, 2005.

Expert and Organizer, “Meeting of Experts on Globalization, International Institutions and Human Security,” Ministry of Foreign Affairs, Bangkok, Thailand, January 7 – 9, 2005.

Panelist, “The Poetics of Shame,” The Law of Dignity/ The Politics of Shame: An Inquiry into the State of Art, Sex, Sexuality, Gender and the Family conference, sponsored by The Program on Law and Social Thought, Harvard Law School and Women’s Studies at Duke University in collaboration with Northeastern University School of Law, Harvard Law School, November 19 – 20, 2004.

Panelist, “Corporate Governance as Global Governance,” Wisconsin-Harvard Workshop on International Economic Law and Transnational Regulation, University of Wisconsin Law School, November 13 – 14, 2004.

Guest Lecturer, “Rethinking Private Ordering: Opportunities for Progressive Policymaking,” Byse Workshop: Transnational Identity, Governance and International Law, Harvard Law School, November 10, 2004.

Guest Lecturer and Parsons Visitor, “Corporate Actors in Global Governance: A Progressive Assessment of Private Ordering,” Faculty of Law, University of Sydney, June 15 – 18, 2004.

Panelist, “Explicating Global Governance: The Role of Private Economic Actors,” International Law and Its Others conference, Melbourne Legal Theory Workshop, University of Melbourne, Faculty of Law, June 8 – 10, 2004.

Panelist, “Ordering Law: Customization and Private Legal Orders,” New World Legal Orders conference, University of Toronto, Faculty of Law, April 23 – 24, 2004.

Panelist and Organizer, “New Strategies of Governance: An Interdisciplinary Approach” panel, Rethinking Ideology and Strategy: Globalization and Markets conference, Northeastern University School of Law, November 6 – 7, 2003.

Participant, “Globalization and Development,” IMEMO Institute Workshop on Globalization and Development, Moscow, Russia, October 30, 2003.

Panelist, “Conceptualizing Global Governance,” Reflecting Critically on Global Governance conference, Harvard Law School, October 3 – 4, 2003.

Co-Lecturer, “Catfish: A Case Study in Problems for International Trade, Labor and Development” at Law and Economic Development: Critiques and Beyond conference, Harvard Law School, April 12 – 13, 2003.

Panelist, “Gender, Sexuality and Power—Is Feminist Theory Enough?,” Symposium: Why a Feminist Law Journal?, Columbia Law School, April 4, 2003.

Lecturer, “Fundamentals of U.S. Securities Law,” Harvard University/Real Complutense University of Spain Seminar on Business Law, Harvard University, March 17 – 18, 2003.

Panelist, “Gendered Internationalisms,” Subversive Legacies: Learning from History/Constructing the Future conference, The University of Texas School of Law, November 22 – 23, 2002.

Selected Past Talks and Lectures

Lecturer, “Regulating the New Economy: Notes from the Cyber-Trenches,” New Scholarship in International Public and Private Law conference, Hague Academy of International Law, The Hague, Netherlands, July 22 – 23, 2000.

Panelist, “Law and Violence,” Symposium: Law and Violence, University of Utah College of Law, March 13, 1994.

Panelist, “Outness Interrogated or the Closet Reconsidered,” 40 Years After: The Rosenberg Case and the McCarthy Era conference, Center for Literary and Cultural Studies, Harvard University, May 8 – 9, 1993.

Panelist, “Reproductive Policy,” Critical Networks Conference, Harvard Law School/Northeastern University School of Law, April 10 – 12, 1992.

Panelist and Panel Organizer, “Outness/Outing/Outonomy,” Critical Networks Conference, Harvard Law School/Northeastern University School of Law, April 10 – 12, 1992.

Lecturer, “Regulating Markets: The Case of European Competition Law,” Alternative Models for Structuring and Regulating Markets conference, Moscow Bar Association, Moscow, U.S.S.R., June 7, 1990.

Practice-Related Talks

I was a panelist at a number of seminars and Continuing Legal Education workshops between 1992 and 1999 sponsored by the Boston Bar Association, the Massachusetts Bar Association, the American Law Institute/American Bar Association (ALI/ABA), Massachusetts Continuing Legal Education (MCLE), and the International Bar Association on topics related to international business including European Community Law, international licensing and distribution, international business structuring and intellectual property management and protection.

Professional Affiliations

Admitted to the Bar in the Commonwealth of Massachusetts and admitted to appear in the United States Court of Appeals, 6th Circuit.

See Annex for detailed description of Scholarship and Teaching Approach and Philosophy.

Dan Danielsen

9 McTernan Street, Cambridge, MA 02139
(617) 331-6866 tel (617) 876-0143 fax
d.danielsen@neu.edu

Resume Annex Scholarship and Teaching

To provide a more complete sense of my teaching philosophy and scholarly agenda, I am including this annex which discusses these matters in more detail than would normally be possible in a resume format.

Scholarship and Research

Scholarship in Law and Identity Studies

In the 1980s and 1990s, my work focused on law and identity studies. During that period, my teaching and scholarship provided me with an engaging diversion from my practice life focused on transnational business deals. For a variety of reasons, I found thinking about identity in light of then-current innovations in political and social theory as well as a number of setbacks in the courts based on traditional civil rights paradigms both challenging intellectually and important politically. I also found that identity studies tended to be a very segmented enterprise with scholars focusing on one identity group or category and insights rarely being shared amongst the diverse identity projects. My work sought to break down these boundaries and by treating “identity” as a field of study which presented both differences and commonalities between identity groups that were important to understand and explore. In my early work I was particularly interested in how an emerging discourse on sexuality could learn from as well as challenge and enrich a much more developed set of discourses on gender.

My early work on identity culminated in the book *After Identity: A Reader in Law and Culture* (Routledge Press: New York, 1995). In that book, my co-editor and I collected and edited diverse and very new works of scholarship from scholars who would not necessarily have seen their work as related, and situated it in the context of a broader argument, developed in our introductions to each section of the collection, for rethinking the way identity was conceptualized in law.

One of the things that originally drew me to law and identity studies in the 80s and 90s was the fact that there was no clear progressive line and space for “thinking outside the box” about identity issues and the debate amongst scholars, activists and practitioners felt both vast and vibrant. My publications in this field to date, as well as a selective list of presentations, can be found in my resume.

Scholarship regarding Corporate Power, Transnational Governance and Global Social Welfare

Drawing on my experience as a transnational corporate lawyer, I have been more recently exploring a series of hypotheses regarding the role of multinational corporations in transnational regulation and governance by rethinking current understandings about the private, non-regulatory, and generally beneficial nature of transnational corporate activity for global social welfare. The nearly 20 year consensus on free trade and neo-liberal market reform as the dominant global prescription for enhanced global social welfare has broken down and there is considerable debate amongst lawyers, economists, political scientists, and political economists about what to do next. Further, as we have seen through the last 20 years of neo-liberal policy reform, the real world consequence of misunderstandings and policy errors can lead to catastrophic social consequences. Thus, scholarly focus on the role of private economic actors in the transnational governance regime seems important at this historical moment both as a matter of scholarly understanding and also as a matter identifying new theoretical and regulatory tools to assist policy makers in generating economic development and improving social welfare across the developing world.

In addition, from the perspective of methodology, my new work on transnational business, like my identity scholarship, seeks to bring together diverse fields and bodies of scholarship to produce new ways of thinking. By drawing together theoretical and doctrinal insights from corporate law, public international law, international economic law, trade law and the legal institutional frameworks used to implement economic development policy, as well as from political science, political economy and economics, I try to illuminate some of the insights as well as the gaps and blind spots that the traditional disciplinary approach to understanding transnational economic life has wrought. By working across legal as well as social science disciplines, I hope to suggest a more dynamic and richer sense of transnational regulation and governance practices as well as to highlight the contributions of private as well as public institutions to the contours and effects of those practices.

My research and scholarship in this field so far has focused on the role of multinational corporations in shaping transnational regulation and social welfare, particularly in the context of developing countries. While I think it is a common assumption among transnational lawyers and policy-makers that multinational corporations have a significant impact on the transnational regulatory regime, legal scholars have not focused on trying to describe in concrete terms how everyday corporate business activity effects global governance, transnational economic regulation and social welfare.

For example, in my article “How Corporations Govern” I take up the issue of the governance activities of corporate actors in earnest. First, I seek to develop a preliminary typology of common legal and business mechanisms through which multinational corporations contribute to and shape the content of local, national and transnational

regulation. Second, through a hypothetical and a series of real world examples drawn from my legal practice, I suggest how the decisions of multinational corporations often establish the de facto rules that govern large swaths of social life particularly in developing countries. From here, I argue that “[w]hen corporations create or shape the content, interpretation, efficacy, or enforcement of legal regimes, and, in so doing, produce effects on social welfare similar to the effects resulting from rulemaking and enforcement by governments, corporate actors are engaged in governance.”

At the same, this piece seeks to challenge the common assumptions often made by progressive legal scholars and activists that “Business” has a common global interest that is opposed to the interests of “Civil Society” or that private ordering always leads to worse outcomes than public regulatory processes. Again using specific examples, I describe concrete situations in which private ordering might lead to higher social standards than harmonized regulation by public authorities. I also suggest that regulators and policymakers need a much more sophisticated understanding of both the differences between multinational corporations, as well as the ways in which variables such as industry, size, risk orientation, long term or short term focus, competitive conditions, and others business factors affect the kinds of decisions that corporations make and thus the effects such decisions create in the global governance arena.

I end this piece by suggesting that seeing corporations not only as “private” objects of regulation but also as “public” regulatory institutions suggests a range of questions for further study if regulators and policymakers are going to better harness corporate power for the public good. If a lawyer or political scientist wanted to understand the regulatory and social welfare effects of a public regulatory institution, she might focus attention on the institutional practices, governance structures and decision-making processes inside that public institution to explore how those factors shaped the effects. Some common objects of such a study might include the institution’s constitutional framework, allocation of power amongst affected constituencies, mechanisms for checks and balances, and opportunities for corruption and abuse. If multinational corporations are important regulatory actors in the transnational arena, I argue that it might be similarly necessary to inquire into the decision-making processes and governance structures within corporations if we are to better understand the decisions they make. Such an inquiry should also help policymakers to determine when they should facilitate private ordering processes and when they should check them through regulation to avoid adverse regulatory or social welfare effects.

My piece “Corporate Power and Global Order” begins where “How Corporations Govern” leaves off. It reiterates some of the ways in which corporations govern in the transnational context and takes up the suggestion at the end of “How Corporations Govern” by exploring how national corporate governance rules might shape the global governance effects of corporate behavior through influencing the way multinationals behave. Again through a series of specific examples, the piece suggests ways in which national corporate governance rules can have significant effects on corporate behavior, particularly in developing countries and thereby alter the kinds of regulatory and social welfare effects that could result from that behavior. Through these examples, the piece

argues that in some ways corporate governance, while normally conceived as primarily about the relations between shareholders and managers within individual firms, might also be understood as a significant instrument of global governance. I end the piece by suggesting that one might more efficiently achieve concrete social welfare results in respect of environmental degradation, worker safety, resource conservation and many other areas by altering the corporate governance rules of Delaware and few of the other significant jurisdictions like Germany, the U.K. and Japan, as by trying to bring about national regulatory reform in each developing country around the globe.

As with “How Corporations Govern,” “Corporate Power and Global Order” articulates the framework for a broad research agenda regarding the transnational effects of national corporate governance rules. The piece “Corporate Governance and Global Governance” is a reworked version of “Corporate Power and Global Order” which examines how the transnational effect of national governance rules might be put to strategic use by progressive lawyers and policymakers.

My remaining three publications in the international business area were pieces solicited on specific topics. My review of Antony Anghie’s groundbreaking book, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press: Cambridge, UK (2005) for the American Journal of International Law has helped me to better understand the colonial and post-colonial history required for the projects I describe below on the regulation of foreign investment in conflict zones. The “Remarks” piece from the roundtable on outsourcing and insourcing of capital and labor in the Texas International Law Journal explores some of the various and competing economic theories about whether and how outsourcing may or may not be a problem for developed economies and raises questions about the possible long term effects of a system of global regulation that permits capital to move freely in response to market demand while labor is largely constrained to particular geographic locations regardless of market conditions. In my review of James Boyles, *Shamans, Software Spleens*, I build on Boyle’s insights to argue that reverse-engineering the emerging transnational regime of intellectual property rights may provide scholars with a particularly rich field for reexamining and fortifying critiques and progressive policymaking regarding the distributional and governance aspects of the private property regime as a more general matter.

A complete list of my publications and presentations in this field is included in the attached resume.

Current Research and Future Scholarship

The project for my next article builds on and tests some of the assertions I make in my prior work on corporate power. In “How Corporations Govern” I suggest that one of the significant ways in which multinational corporations shape the regulatory regime and social welfare in developing countries is through foreign direct investment (or the threat to withhold investment or disinvest if their business needs are not accommodated by the developing state). In the last 15 years, a significant literature has emerged from development economists and international financial institutions (IFIs) like

the World Bank and the International Monetary Fund about the legal and institutional preconditions necessary to attract foreign direct investment—preconditions such as formal property and contract regimes, functioning courts, honest civil servants, low levels of government corruption and a business friendly regulatory environment. Against this backdrop, I became interested in exploring circumstances in which foreign direct investment continued in contexts in which these preconditions were not met—if foreign direct investment persists in conflict-ridden developing countries, what systems of regulation or governance ameliorate the investors’ risk in the absence of functioning institutions of the developing state?

The project looks at a wide array of material from a range of disciplines including historical material regarding the protection of foreign investors under colonialism and the subsequent period of decolonization and the current legal regime of investor protection through Bilateral Investment Treaties. I juxtapose illustrative examples from these regimes with some of the latest governance thinking from the international financial institutions and leading NGOs on the relationship between conflict and persistent underdevelopment and how foreign investment led growth might provide the answer to both conflict and chronic poverty. Interestingly, the regime for investor protections tends to assume that the interests of the foreign investor and the developing state are so adverse that extraordinary legal protections need to be put in place to protect the investor from exploitation or expropriation by the state. By contrast, the regime for foreign investment led conflict reduction assumes that the interests of foreign investors and developing states are so much in harmony that multinationals might helpfully assume many of the traditional state functions including economic policy development, infrastructure development and the provision of social goods like education and healthcare. Despite these apparent contradictions in the two perspectives on the relations between the foreign investor and the developing state, one of my principle findings so far is that both the legal regime of investor protections and the more diffuse governance mechanisms of investor led growth proposed by the IFIs and NGOs are, for quite different reasons, advocating the empowerment of multinational corporations vis-à-vis developing states.

While it is generally acknowledged by most advocates of foreign investment led growth as a conflict reduction strategy that investment sometimes creates or enhances conflict, these advocates generally assume that multinationals can be encouraged to engage in conflict minimizing business practices by training in conflict impact assessment techniques. These advocates further suggest that the risk of corporate malfeasance can be ameliorated through three mechanisms: (i) an alignment of the multinational’s business interests with the developing state in conflict reduction and development, (ii) the acceptance by multinationals of voluntary corporate social responsibility codes and (iii) oversight of multinational activities by IFIs and NGOs.

While there might be good reasons to doubt the capacity of developing states to manage effectively poverty alleviation or provide for the social welfare of their people, particularly in the context of persistent conflict, corrupt institutions and 25 years of erosion of state capacity under structural adjustment regimes imposed by IFIs, it would seem one would need to know a good deal more about the motivations and business goals

of the multinationals, as well as the extent to which these goals overlap with the development interests of the local populations, before one could confidently advocate that multinationals assume many traditional state functions. In addition, as the multinational comes, whether willingly or unwillingly, to look more like the state through passive and more overt assumption of state regulatory and social welfare functions, the kinds of concerns about transparency and political accountability raised in my earlier pieces about corporations as regulators become even more acute. Using some of the methods I developed in my earlier work, I intend to explore how these assumptions might play out if we began to explore the differences in business strategy between companies engaged, for example, in long term extractive activities such as oil extraction or mining versus highly mobile export manufacturing exploiting pools of low wage labor. It seems reasonable to expect that multinationals in different industries with different business goals and commitments are likely to make different types of governance decisions with some being more attentive to the needs of local populations than others.

Without denying the potential for multinationals to play a significant and helpful role in both economic growth and conflict reduction, my goal with this piece is to suggest some reasons to be cautious about putting too much faith in a foreign investment led resolution to these complex problems --- particularly one that is inattentive to the very different business strategies and corporate incentives at work in different industries and geographic areas. At the same time, through an analysis of the diverse literature on foreign direct investment and conflict I hope to explore the extent to which scholars, lawyers, economists and activists across the political spectrum seem to have largely given up on the viability of development states as potential vehicles for development or social transformation. The governance regime of the future for the developing world looks a lot like a complex form of trusteeship in which a variety of foreign institutions, some public and some private, determine economic and social policy for poor countries around the globe.

Over the next year or so I also hope to complete a major article that takes up the question left open at the end of “Corporate Power and Global Order”: “Assuming that multinational corporations have a significant effect on transnational regulation and global social welfare and that these effects might be influenced by changes in national corporate governance regimes such as the corporate law of Delaware, is using corporate governance law an efficient way to effect changes in global social welfare?” Building on the early work of R.L. Coase on determining the efficiency of changes in liability rules, I intend to explore how this might play out in a transnational context by comparing a change in the business judgment rule in Delaware against various regulatory alternatives for shaping corporate behavior in individual developing countries. I anticipate this research will require familiarity with the domestic law and economics literature on the efficiency of rules as well as with the dominant critiques of that literature. I would then need to spin out in a hypothetical way how these traditional assertions and critiques might be affected through a comparison of rules from different countries serving different constituencies and situated in different legal systems. In essence, through this piece, I hope to model both the usefulness of Coasian law and economics regulatory analysis for

identifying affected constituencies and the externalities that could result from different regulatory choices in the transnational context, as well as the limits of that analysis in helping to resolve conflicts between the policy goals of diverse societies that are nevertheless interlinked through the transnational economic system.

In addition to the projects just described, I have three other research projects in the pipeline that I want to just briefly mention.

The first is an article that will build on some of the insights from the Coase article to take up anew the business judgment rule in U.S. corporate law. Specifically, I will reconsider some of the economic rationales that were made to justify insulating corporate boards from civil liability for negligent business decisions under the business judgment rule, as well as indemnification and exculpation provisions adopted into corporate law in the 80s and 90s with rationales for imposing criminal liability for management malfeasance in a number of contexts under the Sarbanes-Oxley Act of 2002. It seems if there is no rationale economic justification for civil liability, we could hardly rationalize criminal penalties. I plan to use the move to harsher penalties as an occasion to reconsider the whole field and perhaps reopen the corporate law orthodoxy which suggests that a regime that places negligent risk of board malfeasance on shareholders, and indirectly on society is justified by the gains its is likely to produce in overall social welfare.

The second article will look at the progressive critiques both within and outside law and economics scholarship regarding shareholder “wealth maximization” as both proxy both for measuring efficiency as well as social welfare and apply these insights to the similar role “gains from trade” plays in the context of discourses regarding regulatory efficiency and global social welfare.

Finally, I have a joint project with Prof. Karl Klare of Northeastern University School of Law that explores how we might think more globally about low wage labor in both the developed and developing world in the context of a global economy and national and international trade and labor regimes. This project looks at these issues through an examination of a case study we developed involving the importation of Vietnamese catfish filets and the responses by the U.S. and Vietnamese governments, the national and international trade regime, the aquaculture and fish processing industries, labor unions and U.S. and Vietnamese workers.

Teaching Approach and Philosophy

Three themes run through all my courses. In each course, I situate the applicable doctrinal regime in historical, theoretical and social context, use problem-based methodologies to give students an experience of the doctrines as they are actually used in practical contexts, and I explore the links amongst different local, national and transnational regulatory regimes to consider whether a better understanding of those linkages can lead to better regulatory policy and increased opportunities to improve social welfare both at the local and the transnational levels.

History, Theory and Social Context

While I emphasize the importance of history, theory and social context in all my courses, I will focus on two examples to illustrate some of the ways I incorporate these themes into my teaching.

My Conflict of Laws course focuses on the historical evolution of theories of sovereignty and the ways in which that evolution gives rise to different understandings of what constitutes a “conflict” of sovereign power, and what doctrinal methodologies might best address these conflicts as conceived. As we explore the historical conflicts cases and theories, I try to get students to articulate the “world view” from which the various theories used to resolve doctrinal conflicts have been expressed and to understand how these doctrinal theories, whatever their current logical or common-sense appeal, seemed coherent and potent in their historical context. In other words, rather than immediately applying a “modern” sensibility to the doctrines and theories of the past, students are encouraged to assume that the judges and theorists we study are skilled and dedicated professionals acting in good faith to address practical doctrinal problems. Over time, the students begin to experience how the doctrinal problems and solutions conceived in relation to one world view succeed in resolving some problems while missing others. This often leads to the breakdown of one world view and the development of another. In the field of Conflicts, we first see this process in attempts to save a mainstream theory for resolving conflicts whose plausibility had begun to slip by developing judicial exceptions to cover situations where the theory seems deficient, and later, by a frontal assault on the mainstream theory itself. New theories emerge sometimes through academic intervention and sometimes by judicial innovators. At the same time, the old theories and doctrines continue to shape and influence the new ones—sometimes producing doctrinal chaos, sometimes profound innovation.

Conflict of Laws is an excellent course for exploring these processes of doctrinal change and shifts in legal consciousness because the field has undergone several fundamental transformations in theory and doctrinal method in the last 100 years. Hence, by examining the doctrinal framework in this field I am also able to give students an introduction to American legal history and as well as a tangible experience of how legal doctrine is always situated in a context of legal consciousness that establishes the doctrine’s legal plausibility and grounds the practitioner’s experience of legal constraint—at any particular moment in time, some arguments can be plausibly put forward and others can’t. It is a critical part of the professional training of lawyers to understand those boundaries and when and how they can be pushed or challenged. In the end, I ask students to articulate some of the contours of their own modern legal consciousness and to explore critically their modern sensibilities through the vehicle of conflict of laws doctrine. How do we conceive the field in 2007? What doctrinal solutions seem compelling to us and what problems are they trying to address? What problems that were the focus of past doctrinal strategies fall through the cracks of our own doctrinal frameworks? Do the modern theories and doctrines seem like advances on

the theories of the past? My materials for this course include a casebook and supplemental materials I've assembled over time to support my method and approach.

In Law and Economic Development, the thematic goals of history, theory and social context are also central, but the approach is quite different than the one I use in Conflict of Laws. In Law and Development, we examine many of the prevailing economic theories of development, the formulation of political and social policies based on those theories and the creation of legal and institutional mechanisms to implement those policies from about 1950 to the present. The focus of the course is on the role of law and institutions in the creation of markets and the distributional consequences of various legal and institutional frameworks on local and global social welfare. The course looks in detail at the different ways in which similar economic theories produce different social policy strategies and legal and institutional forms, as well as different economic results in different parts of the world.

One goal of my approach is to show how the social and political context of particular countries or regions shapes and transforms the general economic theories, the institutions designed to implement those theories and the effects of those theories on development. At the same time, we can see how attempts to apply general economic theories in different social contexts can produce dramatically different effects. This method of tracing the development of theories, social policies and legal institutions helps students to explore the links between history, theory and social reality and to see how these factors shape and transform the legal and institutional possibilities for lawyers in particular contexts. Students are also able to see some of the ways in which the legal and institutional choices lawyers make can produce profound transformations of the economic and social reality in the contexts in which they work. For this course, I use a course book on development economics as well as a wide range of supplemental materials and case studies I have developed.

Problems-Based Methodology

A second major aspect of my approach to teaching is the use of a problems-based approach combined with role playing and independent research to give students a more active and direct experience of how the doctrines they are learning are actually used in practical contexts. Once again, while I incorporate a problems-based approach in most of my courses, I will focus on two examples to illustrate how this methodology informs my teaching.

In my Corporations course, a problem-focused method is used to show how corporate law is by and large a system of default rules that are given life and meaning in the context of particular business needs and circumstances. Classes are organized around doctrinal material and legal cases as well as a business problem which illustrates the doctrinal material covered each day. To facilitate effective work on the problems, students are organized into small groups or "firms." These firms then work together for the entire quarter sharing skills, diverse backgrounds, expertise and perspectives to arrive at group/firm solutions to the business problems presented each day in class. Since the

class is generally very large, a number of firms are designated each day to deliver their “business product,” in this case their analysis of the problems to the rest of the class. The portion of their evaluation relating to the analysis of the problems is based on the performance of the group as a whole.

One pedagogic goal of the group/firm model is to get students to reflect on the ways in which business enterprises make choices about how to best deploy the different skills, expertise, levels of commitment, and goals of the various people making up the enterprise as well as how to create incentives for participation, control shirking and limit the interest of a few coming to dominate the firm. A few weeks into the course, I ask students to reflect in a short paper on their group experience, situating it in the context of doctrinal discussions about choice of business entity, allocation of rights and responsibilities amongst management, the effectiveness of fiduciary duty concepts to produce optimal incentives and performance amongst the group, and a number of other themes. In this way students come to recognize how the doctrines and strategies of corporate law reflect choices about how to facilitate the goals of diverse groups within structured institutions.

The problem-based approach also give students a taste of what it might be like to be a transactional lawyer. The problems generally put the students in the role of advising attorney and demonstrate the extent to which being a good corporate lawyer requires a thorough understanding of the economics of the business and the needs and interests of the people who comprise it.

In my course on International Business Regulation, I use problem-based teaching in a quite different way. This course seeks to give students an overview of the many layers of regulation that shape the transnational marketplace as well as an introduction to basic international trade law, institutions and concepts. Since much of this material is totally new for most students, the case studies are reserved for the last third of the course when the students have sufficient background about the multiple regimes and their complex interaction to address the case studies in their full complexity. Nevertheless, during the first week of class students are assigned to groups and offered an opportunity to select from a range of possible case study topics. Topics range from things like agricultural subsidies and their effects on commodity prices and economic development, to outsourcing and the transformation of global labor markets, to intellectual property protection through the WTO and its affect on access to medicine in the developing world, to attempts to regulate the importation of genetically modified foods in Europe and the resulting conflicts with the global trade regime. Students are encouraged throughout the first two-thirds of the course to think about the material we are learning through the lens of their particular case study topics and to do independent research regarding their topics from the perspectives of different potentially affected constituencies. In the last third of the course, students, under my supervision, prepare the reading materials for their case study and teach the topic through a role-playing exercise which involves the entire class in the discussion. One requirement of these presentation/role playing exercises is that they illuminate the applicable case study topic in the context of the regulatory frameworks studied in the course. In this way, I try to

give students a sense of the complex legal, social and political dynamics of these legal problems and the multiple policy and regulatory strategies that might be brought to bear on them.

Linkages between Regulatory Regimes

This theme is also central to all my courses, though it is perhaps most dramatically demonstrated in my International Business Regulation and my Law and Economic Development courses.

In International Business Regulation, I focus on refuting the conception, common among students at the outset, that the “transnational” is a space of limited regulation and free market competition. I explore the numerous levels of multiple, overlapping and often conflicting regulatory frameworks that shape transnational business activity and the ways in which multinational businesses strategize this complex regulatory context to achieve their business ends. My course focuses on linkages between private law regimes like contract and private commercial arbitration, the extraterritorial reach of national legal regimes, regional law regimes such as the NAFTA or the European Union, public international law, international economic law, trade law and the World Trade Organization framework, and how these diverse regimes create obstacles and opportunities for businesses as well as civil society organizations, labor and other constituencies of global society. By the end of the course, I hope students will appreciate that whether one is trying to facilitate corporate growth or regulate corporate behavior, a better understanding of the complex interaction between regimes and the ways in which different constituencies arbitrage those regimes to their advantage is required.

In Law and Economic Development, I explore the ways in which “development” in any particular country is a product of the interaction between national development policy and institutions and transnational legal regimes, regional priorities and difficulties, historical contingencies and path dependence, trade patterns and relationships, international financial institutions, non-governmental organizations, and numerous other influences. When the course is finished, students will have seen that it is difficult to think about national or local development policy without taking these diverse regulatory and economic regimes into account. At the same time, creating diverse local or national development strategies requires a sophisticated understanding of the ways in which global influences and trends may shape or thwart the local effects of those strategies.

The importance of supervised writing and independent research

Though this is less a matter of pedagogic philosophy than practical training for a profession that lives by and large by the pen, I make myself available to supervise students in a range of different types of independent research and writing, sometimes in connection with a course and sometime in the context of an independent study for credit. For example, I offer students in each of my classes the opportunity to write a more substantial paper to fulfill their American Bar Association writing requirement in lieu of the three short papers I usually require. Where the subject matter

permits, I ask students to choose a current case and write a case comment analyzing the doctrinal significance of the case, placing it in historical context in the field and speculating on its importance to future development in the law in the applicable area. In courses less amenable to reported cases, such as International Business Regulation and Law and Economic Development, I work with students individually to develop projects that can meet the applicable requirements and be reasonably undertaken in a 10 week quarter. Students have been amazingly creative and the work product has been quite interesting and diverse. One student's paper looking at bilateral investment treaties inspired my own research in that area. Another student who wrote about slum housing reform in Mumbai, India led to an excellent paper and also to an internship working on slum housing issues in Mumbai the following quarter. Other representative examples of supervised study projects include a reading tutorial on war and human rights law, a paper on the World Trade Organization and Appellate Body opinions on tariffs imposed by Pres. Bush on imported steel, a comparative analysis of U.S. and European Union approaches to hedge fund regulation, a paper exploring the international law aspects of a long-standing dispute between Korea and Japan over some small, uninhabited islands, and a paper examining different law and economics approaches to the regulation of multinational corporations.