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# How Legal Intermediaries Facilitate or Inhibit Social Change

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## **How Legal Intermediaries Facilitate or Inhibit Social Change**

### **Abstract**

*This article explores how legal intermediaries facilitate or inhibit social change. We suggest the increasing complexity and ambiguity of legal rules coupled with the shift from government to governance provides legal intermediaries greater opportunities to influence law and social change. Drawing from new institutional sociology, we suggest rule intermediaries shape legal and social change, with varying degrees of success, in two ways: (1) law is filtered through non-legal logics emanating from various organizational fields; (2) law is professionalized and increasingly filtered through and by non-legal professionals with varying degrees of connection to law. We draw from case studies in the United States and France to show how intermediaries facilitate or inhibit social change.*

**Keywords:** Intermediaries, Law and Social Change

## Introduction

For decades, scholars have been debating law's capacity to produce social change - that is, change that increases social justice, equality and fair governance in society. At the core of the debate is the role that public legal institutions such as legislatures, administrative agencies, and courts play in articulating and setting the course for social change. Legislation, regulation, and litigation are important instruments of social change in various elements of social life such as education, health care, housing, transportation, race relations, and the environment. Formal legal reforms can also be used symbolically to organize political and social movements (Williams, 1991; McCann, 1994; Commaillé, 2015). Moreover, law's subtle influence on the social interactions of everyday life increase the potential for social change (Engel & Munger, 1996; 2003).

Despite significant judicial decisions and legislation, law and society scholars often question law's capacity to produce social change. Some argue that legal change developed by formal legal institutions produced little improvement in the economic and social circumstances of disadvantaged communities (Rosenberg, 1991). Other scholars argue that reliance on rights rhetoric reinforces and legitimates a legal system that masks inequality (Kairys, 1982; Bourdieu, 1986). In addition to maintaining existing legal inequality, legal rights can also be ambiguous "weapons" (Israël, 2009), a "myth" (Schein-gold 1974) and psychologically costly to those who claim them (Bumiller, 1988). Others note that the characteristics of parties also limit law's capacity to bring about social change, with particular advantages inherent to repeat players that have greater resources, knowledge, and experience with legal institutions (Galanter, 1974).

Recognizing law as not simply top-down and emanating from public legal institutions, existing research increasingly suggests that law shapes social actions and institutions through constitutive, cognitive, instrumental and normative mechanisms (Stryker, 2003, 2007). These frameworks lay the foundation for two overlapping processes through which economic and legal institutions, actors, interests and norms attempt to influence law and social change (Edelman & Stryker, 2005; Stryker, 2007). On the one hand, cultural meaning making and institutional diffusion play a role and on the other hand, political resource mobilization and counter-mobilization also play a role. Working within this broader framework, scholars are increasingly exploring

the role that legal intermediaries play between the law on the books and the law in action.

Political scientists and sociologists have made important contributions in this vein. Political scientists often focus on the role intermediaries play not just in the lobbying process, but in implementing and monitoring law that is created by “rule-makers” for “rule-takers” in regulatory settings (Abbott et al., 2017). Sociologists focus more on cultural meaning making and institutional politics, (Dobbin, 2009; Dobbin and Dowd, 2000, Stryker, 2000) and emphasize reframing, diffusion, loose coupling and the managerialization of law by private organizations (Edelman 2016). As insightful as these approaches are, much work remains to be done. In particular, although existing approaches in political science examine regulatory intermediaries, it is still within a framework that views law as a “top-down” process coming from public legal institutions. Conversely, while sociologists have revealed some mechanisms through which intermediaries impact law and social change, empirical research in this vein has largely been confined to labor and employment law (Edelman, 2016; Dobbin, 2009; Stryker, 2007).

In contrast to these approaches, we center our analysis around three primary concerns. First, we need to understand the conditions that make it more likely that intermediaries will impact law’s capacity to produce or inhibit social change. Second, to the extent that normative, instrumental, cultural, political, and constitutive processes impact law’s capacity to produce social change, we need to examine the mechanisms that drive those processes and the role that intermediaries play. Third, far more empirical research should focus on the role that legal intermediaries play in facilitating and inhibiting social change across a *wide variety of social institutions*.

We identify these areas as especially important because the location of lawmaking, interpretation, and implementation across the world has changed and shifted toward public-private partnerships and the contracting out of governmental services to civil society actors and organizations. Too often scholars and policymakers focus on the role that public legal institutions play in facilitating or inhibiting social change without a closer interrogation of the series of non-legal actors within society that are tasked with interpreting, implementing, and even shaping the meaning of legal rules in society. These professionals in various industries manage legal requirements and handle law-related complaints.

This article argues that rule intermediaries, *i.e.*, state, business, and civil society actors that affect, control or monitor how legal rules are interpreted, implemented or constructed once they are passed by public legal institutions, facilitate and inhibit social change in society. In doing so, we pivot the discussion about law and social change away from debates about the power of formal legal institutions to effectuate social change. We also pivot away from general normative, instrumental, cognitive or political theories to explain social change. Because legal and social rules, concepts, routines and institutions are reciprocally or mutually constructed over time, it does not make sense to treat law as only an “independent” variable and social change as only a “dependent variable.” A theory of law and social change should theorize and research how law, politics, and social culture and their interplay shape the nature of and causal relationships among legal variables and social change variables. Moreover, we focus on and limit our analysis to the processes and social mechanisms through which intermediaries facilitate and inhibit social change. Consistent with prior approaches, we view “social mechanisms as composed of chains or aggregations of actors confronting problem situations” that mediate between causes and effects (Gross 2009, 368). We argue that legal intermediaries are the key actors on the chain between law and social change, and try to more precisely reveal how intermediary’s professional experience, institutional logics, and understandings of law and compliance facilitate and inhibit social change in different situations.

We begin by articulating the conditions that have led to the increasing importance of intermediaries in relation to law and social change. We suggest that three conditions have made intermediaries more likely to play a role in shaping legal and social change: the global shift from government to governance, the inherent ambiguity in legal rules, and the increasing complexity of legal rules. We argue that the interaction of these three elements have created greater space for non-traditional actors to emerge and influence law. In particular, a wide-variety of legal and non-legal actors among and within organizations that come into contact with law have increasing discretion in their legal environments.

We then offer a new institutional theory of legal intermediaries and social change. Drawing from new institutional organizational sociology, we set forth a theoretical framework for understanding the legal intermediary’s role in facilitating or inhibiting social change as a process and proceed to specify the mechanisms through which intermediaries facilitate and inhibit social

change. We note that our definition of progressive social change is broad, including instrumental, political, and cultural considerations (Kostiner 2003). Under this definition, social changes consists of providing concrete resources such as jobs, health care, and education to marginalized people, providing ways for marginalized people to be empowered, united and politically mobilized, and emphasizing the need to transform individual and collective identities and assumptions in society (Kostiner 2003).

We suggest rule intermediaries shape legal and social change, with varying degrees of success, in two primary ways: (1) law is filtered through non-legal logics emanating from various organizational fields; (2) law is professionalized by non-legal actors, that is, law is increasingly filtered through and by professionals with varying degrees of connection to law. By non-legal actors, we mean actors who are *not* working or inscribed in the legal field as professionals such as lawyers, judges, legislators, or others.<sup>1</sup> To show the expansive arc of legal intermediaries, we examine how professionalization and the filtering of non-legal logics work hand-in-hand to facilitate and inhibit social change across a range of subject areas including employment, labor, corporate governance, health, safety, privacy, and consumer protection. We explore how legal intermediaries influence the law on the books, the law in action, and legality itself in different institutional environments.

The final section discusses the implications of our framework for studies of legal intermediaries and the relationship between law and social change. While normative, instrumental, political and cultural processes through which law produces social change remain important (Edelman, 2016; Dobbin, 2009, Stryker et al., 2012), our approach helps explain the underlying mechanisms that drive those different processes. In particular, political, cultural and institutional theories through which law is influenced are often *derived from and influenced by* the increasing professionalization of law by non-legal actors and how these non-legal actors encounter and filter what law means through non-legal logics. By highlighting the conditions that lead to greater legal intermediation and the particular processes and mechanisms through which intermediaries can facilitate and inhibit social change, we set forth a framework for scholars to use in future studies of intermediaries.

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<sup>1</sup> These legal professionals develop specific logics related to their belonging to the legal field (Bourdieu, 1986).

## The Conditions that Lead to the Increasing Role of Intermediaries

This section answers the following questions: Why should scholars of law and social change focus on intermediaries? What are the conditions that have led to increasing involvement by intermediaries in not just implementation of legal rules, but law's construction and meaning? We view these questions as essential to understanding how different kinds of legal intermediaries operating in different institutional and social environments facilitate and inhibit social change. We argue that analysis of law and social change needs to focus less on public legal institutions and more on the rising role of intermediaries because the location of "lawmaking" has shifted. In particular, the regulatory environment has gradually moved from a government to governance model that places a greater role on legal and non-legal actors tasked with interpreting, implementing and constructing law. Coupled with the inherent ambiguity of legal rules regulating organizations and the increasing complexity of legal rules, the changing regulatory state provides greater space for intermediaries to intervene.

For much of the twentieth century, scholars across a variety of disciplines studied law as a "top-down" process, a system of rules coming from the command of government or, more precisely, public legal institutions. Traditional instruments of lawmaking by public legal institutions such as legislatures, courts and administrative agencies include formal rules and stipulations, adversarial methods, enforceable means of dispute resolution and command-and-control regulatory mechanisms. Within this top-down framework, research focusing on public law often examines the relationship between businesses and legal institutions and in particular, law's capacity to produce social change. We note that the traditional top-down model was never absolute, as socio-legal scholars often argue social change can shape law as well.

Considerable theoretical and empirical focus is devoted to explaining the way interest groups, as intermediaries, directly participate in governmental processes such as legislatures and administrative agencies (Mills, 1956; Dahl, 1961; Polsby, 1963; Dahl, 1967; Shapiro, 1988). Interest group studies interested in understanding structural business power examine how business occupies a privileged position in society (Lindblom, 1977; Offerlé, 1994). Other scholars interested in instrumental aspects of business power examine how interest groups form advocacy coalitions that lobby, negotiate for favorable laws, build (or set) an agenda in their strategic favor or exert direct



influence on government decisionmakers through campaign contributions (Kingdon, 1984; Baumgartner & Jones, 1993; Leech et al., 2002; Kamieniecki, 2006; Laurens, 2015). While instrumental, structural, and public choice approaches are all different, they each analyze interest groups as rational, strategic intermediaries seeking direct influence over governmental institutions.

Faced with command-and-control regulatory mechanisms that include formal rules and requirements, businesses try a variety of approaches to influence not just legislation but regulatory policy (Bernstein, 1955; Stigler, 1971; Posner, 1974; Quirk, 1981; Vogel, 1989, 1995). Beginning in the 1950s and 1960s, United States regulatory agencies became the subject of debates between economic or capture-cartel theories and their critics (Herring, 1936; Huntington, 1952; Bernstein, 1955; Kolko, 1965). Capture theory suggests that regulation is “acquired by the industry” and designed and operated primarily for its benefit (Stigler, 1971, p. 3; Posner, 1974; Becker, 1983).

Interest groups, public choice, and capture studies explain public law as a top-down process, where legislators and regulators try to coerce or in some cases encourage organizations to comply, while organizations engage in rational, strategic choices as to whether to comply and how to influence legal mandates (Jordana & Levi-Faur, 2004; Braithwaite, 2008). At all times, public law is produced by government. In this view law is exogenous to organizations even as it is open to organizational influence. Thus, studies of government made great strides in explaining how businesses directly influence government outputs, whether they are laws made by legislatures or legal rules implemented and enforced by administrative agencies. As mentioned earlier, much of the prior scholarship on law and social change analyzes the legal environment in terms of whether public legal institutions are capable of producing legal change.

More recently, business and civil society actors’ relationship with regulatory institutions has undergone a dramatic shift due to the transformation of the regulatory state over the past thirty years. In particular, the location of governmental decisions shifted away from traditional public governmental institutions. The top-down “command-and-control” regulation of the 1960s and 1970s spawned heightened capture and interest group pluralist behavior. In response to political change at the executive and congressional levels of government, the 1980s and 1990s saw a shift toward free market capitalism,

privatization, and devolution to the private sector in the United States and Europe (Majone, 1997; Bignami 2004a, 2004b; Streeck & Thelen, 2004; Levi-Faur, 2005; Braithwaite, 2008).

Despite popular belief that regulation was abandoned when neoliberalism was adopted around the Western world in the 1980s, empirical evidence suggests that privatization, deregulation, and the nurturing of markets under neoliberal governments expanded and extended regulation across the world (Vogel, 1996; Jordana & Levi-Faur, 2004; Levi-Faur, 2005; Braithwaite, 2008; Parker & Nielsen, 2011).

Thus, the alleged deregulation and move toward free markets led to a slow re-regulation of free markets in the form of softer, less stringent regulation aimed at perfecting market performance (Majone, 1997; Levi-Faur, 2005). Under a new era of public-private partnerships between corporations, state actors, civil society groups, non-governmental actors are taking a more active role in governing themselves and trying to maintain the public good (Majone, 1997; Braithwaite, 2002; Lobel, 2004; Freeman, 1997, 2000; Sturm, 2001; Ansell & Gash, 2008; Benish, 2014). Scholars explored the role of “brokers of capitalism” in Europe by highlighting their lobbying and influence on the regulations adopted by the European Union (Laurens, 2015). Regulation is still an important component of governance, but governance schemes go beyond mere regulation because they are consensus oriented, deliberative, and aim to allow private industry more direct involvement and control in implementing public policies (Braithwaite, 1982; Kagan et al., 2003; Lobel, 2004; Ansell & Gash, 2008; Freeman and Minnow 2009).

While regulatory capitalism and privatization are the reality (Levi-Faur, 2005), soft, less aggressive regulation, rather than the state directly mandating what is permitted or illegal to industry, is the expanding part of government (Vogel, 1996; Levi-Faur, 2005; Schneiberg & Bartley, 2008). Formal laws and directives coming with the coercive backing of the state or a supranational entity like the European Union decline as states move toward a broader conception that establishes non-binding rules such as standards and guidelines (Djelic & Sahlin-Andersson, 2006). Governance articulates the constellation of activities, functions, and exercise of control by both public and private actors in the promotion of social, political, and economic ends.

Empirical studies of governance highlight the new instruments and techniques of regulation. These studies account for the new types of legality, including negotiated rule-making, management-based regulation, and other regulatory systems that try to follow the logic of governance (Coglianese, 1997; Coglianese & Nash, 2001; Coglianese & Lazer, 2003; Howard-Grenville, 2005; Gunningham, 1995; Gunningham & Sinclair, 1999, 2009; Ayres & Braithwaite, 1992; Lacoumes & Le Galès, 2005; Mockle, 2007; Halpern, Lascoumes & Le Galès, 2014). Because law was traditionally thought of as formed and defined outside of organizations and prior to reaching organizational domains, governance studies emphasize private organizations' motivations for complying or not complying (Simpson, 1992, 1998; Vaughan, 1998; Parker & Nielsen, 2009, 2011; Gunningham et al., 2004; Haines, 2009), social and legal license pressures (Kagan et al. 2003) or moral value laden concerns (Tyler, 1990).

More recently, scholars are examining how state, business, and civil society actors act as “rule-intermediaries” that affect, control, or monitor relations between rule-makers and rule-takers (Abbott et al., 2017; Levi-Faur & Starobin, 2014; Locke, 2013). This framework suggests that rule-makers create law for rule-takers and the rule intermediaries play a major role monitoring, verifying, testing, auditing, and certifying legal rules (Levi-Faur & Starobin, 2014; Abbott et al., 2017).

Scholarship on regulatory governance has done an excellent job of highlighting the shift from government to governance. They have also highlighted how various interest groups and stakeholders as intermediaries often influence law through instrumental, political or even normative processes. However, scholarship in this vein has produced far more empirical research on the rise and character of governance than on its translation into practice (Schneiberg & Bartley, 2008). Moreover, existing approaches from political scientists studying regulatory governance and rule intermediaries still position rulemaking as within the domain of public legal institutions as the rule-makers. Whereas existing studies on intermediaries examine how intermediaries monitor, verify, or certify legal rules (Abbott et al., 2017), they have rarely examined the processes and mechanisms through which intermediaries *shape the meaning of law* itself and in doing so, facilitate and inhibit social change. Given the change in the regulatory state, there is far more room for stakeholders to actively shape and determine the degree to which various laws that are passed will shape social change (cf. Gilad 2014).

The changing structure of the regulatory state from government to governance is coupled with the fact that laws regulating society and businesses in particular, are often ambiguous as to how to comply with them and increasingly complex and technical. Thus, the potential for legal rules to be shaped by rule intermediaries is heightened by vague and ambiguous legal provisions. Legislation is often unclear and judicial rulings interpreting ambiguous statutes often provide little guidance on how to translate and implement legal standards into everyday organizational practice (Edelman 1990, 1992; Edelman & Talesh, 2011). In particular, statutes often constrain procedures more than substantive outcomes and focus on issues such as shifting burdens of proof or the availability of various kinds of relief (Edelman & Talesh, 2011).<sup>2</sup> Powerful laws are also often accompanied with weak or declining enforcement mechanisms. We are not suggesting that all laws are ambiguous and incapable of providing appropriate guidance to civil society actors. For example, administrative agencies often provide guidelines and regulations that help clarify the meaning of legal rules. Nonetheless, there is often considerable room for interpretation and construction of legal rules by intermediaries due to the lack of clarity.

Laws and regulations are not just ambiguous with respect to how to comply with them; they are more complex than ever before (Ruhl & Katz, 2015; Schuck, 1992). Scholars across the world are increasingly examining the complexity of legal rules and its impact on judges and juries (Kades, 1997; Graff & Mestad 2014). Laws such as the Health Insurance Portability and Accountability Act, the Foreign Corruption Practices Act, Bankruptcy laws, the United States Tax Code, the Wage and Hour Laws in France, the Registration, Evaluation, Authorization and Restriction of Chemicals in Europe and many other environmental laws across the world are dense, technical, complex, indeterminate and require specialized sets of knowledge. There has never been a time when law was considered completely simple. However, the growth of new industries, markets and technologies in areas such as intellectual property, financial services, the internet, and transnational legal settings has caused formal and informal legal institutions to define the scope of permissible and impermissible behavior. A society concerned about va-

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<sup>2</sup> Of course, shifting burdens of proof can matter in how much social change is produced (Stryker, 2001).

rious “risks” (Beck, 1986) has emerged and created the need to manage, regulate, and govern these risks through various laws and legal rules which are increasingly complex, sophisticated, or technical. The rising complexity of legal rules requires greater specialization within the legal profession but also greater involvement and coordination with specific industries and the organizations that these laws impact.

We suggest, therefore, that the evolution of the regulatory state from government to governance plus the large number of ambiguous and complex legal rules have created conditions that lend themselves toward much greater involvement by legal intermediaries. Under these conditions, organizations and civil society actors have tremendous discretion and opportunity to shape the meaning of legal rules. These are not necessary conditions, but they certainly are sufficient conditions that help us understand why rule intermediation by non-legal actors is more prevalent than ever before across the world.

## **A New Institutional Theory of How Intermediaries Influence Law and Social Change**

### *Understanding Legal Intermediaries Through A New Institutional Lens*

This section draws from new institutional organizational sociology theories of law and organizations to explain how intermediaries facilitate and inhibit social change. After developing our framework, the following sections use empirical research to illustrate our argument. New institutionalists specify the institutional and political mechanisms through rule intermediaries such as private organizations and civil society actors shape the content of legal rules (Zeitlin, 2005; Schneiberg & Clemens, 2006; Schofer & McEneaney, 2003; Parker, 2002; Stryker, 1994, 2000, 2002; Talesh, 2009; Bessy, Delpeuch & Péliisse, 2011; Gilad, 2014); Edelman, 2016). Using concepts such as institutional logics and organizational fields,<sup>3</sup> new institutionalists examine how organizations interact with their social and legal environment. This theory starts with a basic premise: laws regulating organizations are ambiguous, in that they often do not define the terms of compliance (Edelman,

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<sup>3</sup> An organizational field refers to the community of organizations that coexist and interact in some area of institutional life and share common systems of meaning, values, and norms (DiMaggio and Powell 1983, 1991; Scott and Meyer, 1991; Scott, 2002; Scott et al., 2000).

1990, 1992). In these situations, organizations do not resist or avoid law, but instead, respond by creating written rules, procedures, and structures to fill in law's meaning. As organizations legalize themselves, managerial and risk logics influence the way in which organizations understand law and compliance (Pélisse, 2011b; Talesh, 2015a; Edelman, 2016).

Although institutional logics do not emerge from organizational fields, they often are reshaped and customized in an organizational field through various mechanisms (Thornton & Ocasio, 2008). Early accounts of organizational fields emphasize the uniformity, taken-for-grantedness and institutional isomorphism that results in a dominant or settled logic within a field (Tolbert & Zucker, 1983).

More recently, political sociologists and new institutionalists who study institutional change treat institutions as settlements of conflict among actors with differential power and competing frames (Stryker, 1994, 2000; Fligstein, 1996; Rao, 1998; Roy, 1997; Schneiberg & Bartley, 2001; Gilad, 2014). Empirical studies demonstrate that institutional logics co-exist and co-evolve over time (Dunn & Jones, 2010) while often one institutionalized or dominant logic is replaced or abandoned for a new dominant logic (Have-man & Rao, 1997; Thornton & Ocasio, 1999; Thornton, 2002; Lounsbury, 2002; Rao, Monin, & Durand, 2003). Moreover, field actors often mobilize multiple logics within organizational fields (McPherson & Sauder, 2013; Talesh, 2015c).

Recent work in this area focuses attention on how organizational field logics influence the legal field, *i.e.*, “the environment within which legal institutions and legal actors and in which conceptions of legality and compliance evolve” (Edelman, 2007, 58). The tensions between the logics of organizational and legal fields, one anchored around efficiency and rationality, the other around rights and justice (and more recently informality in the form of alternative dispute resolution), come into play when organizational and legal actors and institutions interact (Edelman, 2007; Stryker, 1994, 2000; Pélisse, 2011a; Talesh, 2012).

In addition to focusing on the importance of institutionalized logics, prior new institutional research shows that the professions are key carriers of ideas among and across organizational fields. In particular, we have seen a professionalization of legal services by non-legal actors that operate and interact

with law in tangible ways. In particular, human resource officials, personnel managers, management consultants, risk management consultants, insurance officials, and in-house lawyers communicate ideas about law as they move among organizations and participate in conferences, workshops, training sessions, professional networking meetings, and publish professional personnel literature (Jacoby, 1985; Baron et al., 1986; Abzug & Mezas, 1993; Edelman et al., 1993; Edelman et al., 2001; Edelman et al., 2011; Talesh, 2015). Professional associations, conferences, and other forums offer opportunities for the diffusion of new solutions to perceived managerial problems such as the threat of employment lawsuits (Edelman et al., 1992; Bisom-Rapp, 1996, 1999).

The professionalization of legal services by legal and non-legal actors is coupled with the filtering of law through various organizational logics operating among particular fields or industries. New institutional organizational sociology studies reveal how law becomes managerialized as values such as rationality, efficiency, and management discretion operating within an organizational field influence the way in which organizations understand law, legality, and compliance (Edelman et al., 2001). More recently, scholars have started to broaden the framework beyond managerialization and explore how other non-managerial logics influence the way that organizations understand the meaning of law and in particular, the role of intermediaries who are not legal professionals (Pélisse, 2014, 2016). Consumer, risk, science and prison logics emanating in various organizational fields can influence the way that organizations understand the meaning of law (Stryker, Docka, & Wald 2012; Verma, 2015; Talesh, 2012, 2014, 2015a, b). Managerial logics can be in contestation with logics or work in complimentary ways (Talesh, 2015a). Moreover, managerial, risk, labor or consumer conceptions of law shape the way public legal institutions such as legislatures (Talesh 2009, 2014; Pélisse, 2009), courts (Edelman et al., 1999; Edelman, 2005, 2007; Edelman et al., 2011), regulatory agencies (Talesh, 2012, 2015c) and arbitration forums (Talesh, 2012) understand law and compliance.

The following offers a new institutional theory of law and social change to explain the how—under this altered regulatory environment—legal intermediaries facilitate and inhibit social change. Using a new institutional framework, we focus on two key mechanisms through which rule intermediaries influence social change: the professionalization of legal services by non-legal actors and the filtering and mediation of law through va-

rious non-legal logics operating in organizational fields. These two mechanisms work together and lead to intermediaries facilitating and inhibiting social change in various ways.

Although instrumental, cognitive, political, cultural, normative and constitutive processes identified by political scientists and sociologists remain pathways through which law shapes social change, we suggest that legal intermediaries are critical actors on the chain between law and social change. Specifically, legal intermediary's professional experience, institutional logics and understandings of law and compliance are driving forces for facilitating and inhibit social change in different situations. Our framework does not negate political, cultural, instrumental or normative approaches of law and social change that have been previously explored. Strategic political action, lobbying, political mobilization, cultural reframing, decoupling, diffusion, and other mechanisms developed in prior work on intermediaries by sociologists and political scientists are crucial to understanding the way intermediaries impact law and social change. But we suggest that these political, cultural, instrumental and even normative processes are often derived from and influenced by the increasing professionalization of law by non-legal actors in organizational fields and how non-legal actors encounter and filter what law means through non-legal logics in their institutional environments. Thus, organizations' lobbying choices, political mobilization agendas, strategic considerations, and cultural and cognitive scripts are often drawn from and shaped by the non-legal logics operating in an organizational field and the intermediary's professional experience. In this respect, our framework provides the "backstory" for what shapes organizations and civil society actors' political, cultural, and instrumental-based choices for how best to respond to various laws.

While we use existing mechanisms previously developed in the new institutional literature, we push them beyond the existing framework. The following sections explore empirical research from the United States and France to highlight the broad role of intermediaries, the professionalization of law-related services by non-legal actors and the filtering of law through various non-legal logics. Although our analysis starts with research on labor and employment law, where the majority of new institutional empirical work on institutional and political mechanisms reside, we apply our framework to a wide variety of other areas. In doing so, we highlight the influence that multiple



institutional logics have in the manner that organizations influence the meaning of law and compliance.

### ***Professionalization of Law by Non-Legal Actors and the Rise of Managerial Logics***

Research in the area of employment discrimination law highlights how these two mechanisms interact and allow intermediaries to inhibit social change. We start here in part because the theoretical framework grew out of research in this area and because there has been more empirical research on the role of intermediaries and social change in the employment area than other areas. In the United States, Title VII of the Civil Rights Act of 1964 promised broad protection against employment discrimination but failed to clearly articulate what discrimination means or what organizations need to do to avoid discrimination (Edelman, 1990, 1992). Faced with legal ambiguity as to how to comply with anti-discrimination laws, employers turned to law-related aspects of their organizational field for ideas on how to respond. Employers responded to employment laws by creating new offices and written rules, procedures, and policies in an attempt to achieve legal legitimacy while at the same time maintaining managerial power and discretion over employment decisions. There was also a spread of special offices devoted to civil rights issues and special procedures for processing discrimination complaints. Early adoption of these structures was followed by the vast majority of other employers (Edelman, 1990, 1992; Dobbin et al., 1993).

With the increase of anti-discrimination rules, civil rights offices, grievance procedures, and other legal structures, legal and non-legal professionals working in employment and related fields began to institutionalize these structures. In particular, in-house lawyers, human resource officials and affirmative action and diversity officers claimed that these structures could insulate organizations from lawsuits and legal liability (Edelman, 2016). In-house counsel lawyers increasingly embed themselves deep within organizations as they play multi-faceted roles as cop, counselor, and entrepreneur (Nelson & Nielson, 2000). The more lawyers become integral to the functional operation of the organization, the more likely they will use their expertise to serve rather than to question managerial values and goals.

In fact, in-house counsels often work in parallel and complementary ways with non-legal intermediaries such as human resource officials and managers

or industrial psychologists. Training programs, administered by intra-organizational professional intermediaries such as human resource officials or external consultants help institutionalize managerialized conceptions of law and compliance by often claiming that grievance procedures and formal personnel offices insulate organizations from legal liability (Bisom-Rapp, 1996, 1999; Edelman, 1992). This approach simultaneously limits law's impact on managerial power while preserving employers' unfettered discretion.

The professionalization of legal services by non-legal actors provides a pathway for law to be filtered by logics emanating from organizational fields. Existing empirical research reveals how managerial conceptions of law broaden the term "diversity" in a way that disassociates the term from its original goal of protecting civil rights (Edelman et al., 2001). For example, managerial rhetoric helped transform the meaning of "diversity" during the 1980s and 1990s from the legal ideal of gender and racial representation to a managerial ideal that accepts and incorporates different backgrounds and viewpoints in a workforce for productive purposes (Edelman et al., 2001).

Similarly, in France, managerial rhetoric transformed principles of discrimination into managerial categories such as diversity (Bereni, 2009) and recast concerns of psychological bullying (Bastard & Cardia-Vonnèche, 2003). French scholars have also revealed how laws developed to combat unemployment and improve working conditions were transformed and recast as opportunities for employers to gain greater flexibility over employee salaries (Pelisse 2004a). Other studies in the United States reveal how managerialized conceptions of law transform sexual harassment claims into personality conflicts (Edelman, Erlanger, & Lande, 1993), and deflect or discourage complaints rather than offer informal resolution (Marshall, 2005).

Managerialized conceptions of law ultimately influences the meaning of judicial decisions with regard to employment cases. For example, scholars show how industrial organizational psychologists, as non-legal intermediaries, helped lay the foundation for disparate impact theory of discrimination under Title VII, one that was ultimately adopted by courts (Stryker, Docka, & Wald 2012; Stryker, 2011). Relying on science, industrial organizational psychologist's research pertaining to performance-related worker characteristics and performance evaluation for employees and human resource management helped influence judicial thinking on disparate impact. Others have shown how law becomes endogenous as United States courts often defer to

the presence of institutionalized policies and procedures as evidence of non-discriminatory treatment without evaluating the merits of these procedures (Edelman et al., 2011). In the employment law context, non-legal intermediaries that are filtering law's meaning through a managerial logic have weakened civil rights with largely symbolic structures (Edelman, 2016). These compliance policies and procedures exude legitimacy to the public and public legal institutions but often do not provide substantive change for employees in the workplace. As a result, law's ability to achieve social change (in this case, equality and fair workplace governance) has been inhibited by intermediaries.<sup>4</sup>

The managerialization of law and the accompanying professionalization of legal services by non-legal actors is not limited to the United States. Managers, union members, and employee representatives play an important intermediary role in the design and enforcement of employment and labor laws in France. Although formal legal professionals such as judges (Willemez, 2012), lawyers (Pélisse, 2005), labor inspectors (Pélisse, 2004b), and in-house counsels are involved in the construction of formal law and in its implementation, they played far less of a role in the lived experience of employees on the ground as collective bargaining became more decentralized in the past twenty years.

For example, labor laws adopted by France concerning the reduction of work time at the end of the 1990s devolved a large part of control over wage and hour rules to the stakeholders involved in labor relationships. Even though wage and hour laws were created by the French government, in action, collective bargaining became a central location for the construction and interpretation of labor rights for organizations. Moreover, recent legislation increased this trend in France. As a result, an intricate interaction takes place between and among various intermediaries during collective bargaining. Human resource officials represent employers while union representatives advocate for employees in labor disputes. In their representative capacities, these intermediaries have discretion to create, implement, and enforce legal rules concerning work time and working conditions such as equal pay among genders.

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<sup>4</sup> In the employment context, we believe law has largely failed to produce social change under all three strands definitions as set forth by Kostiner that we identified in our introduction - instrumental, political, and cultural (Kostiner 2003).

One specific example concerns the wage and hour rules of staff and manager employees. After a law was passed in 1998 that reduced the work time from 39 to 35 hours a week, human resource officials and union representatives developed an approach for counting the work time of staff and managers by days (limited to 217 days a year) rather than hours (counted by weeks). Although employers initially did not want to include staff and managers in the wage and hour reduction law, unions, social movements and pressures emanating from the staff and managers themselves within organizations drove employers and union representatives to create a new approach that accounts for staff and managers in wage and hour laws (Pélisse, 2004; 2009). It is important to note that this institutionalized practice developed by human resource officials and union representatives was not initially permitted by law. However, this process was ultimately adopted into law in 2000. The new law resulted from negotiations by high level organizational executives, human resource managers, and union representatives. Whereas Edelman's work often highlights only how managers, in-house counsel, and human resource officials filter law's meaning through a managerial lens, here we see competing intermediaries (human resources managers *and* union representatives) with competing logics and values balancing one another in collective bargaining negotiations and influencing the content and meaning of labor law. As a result, there is less imbalance of power, or at least more engagement by divergent institutional actors with competing goals when law is being constructed. Moreover, because of the decentralization of collective bargaining in labor law, union representatives and even members are more actively involved in negotiations involving not just wages, but other aspects of labor rights and governance.

Moving away from formal employment settings, we see intermediaries play a major role for those that are unemployed and are trying to reenter the workforce. Job counselors in France play a pivotal role in interpreting complex and simultaneously ambiguous legal rules pertaining to unemployment and welfare. France has an intricate, detailed, and complex set of laws and regulations for workers who are laid off from work for economic reasons. An experimental regulation known as the "flexisecurity policy" was developed in 2006 by the French government. The policy attempted to simultaneously increase flexibility on the job market and legal protection and security for employees. This policy was implemented in approximately thirty territories in France between 2006 and 2013. In order to continue to be compensated

for one year while unemployed, workers who were included in the program were required to sign a contract agreeing “to search for a job,” engage in “adapted and realist training” programs, and pursue weekly meetings with job counselors. These parts of the regulatory policy, as well as the general rules for unemployed, were not expressly defined.

Brun, Corteel, and Pelisse’s study (2012) demonstrated that over a period of years, job counselors developed not only a specialized expertise in welfare and job skills, but also the legal rules that need to be complied with. In addition to using empathy and understanding to help workers navigate this program, job counselors’ repeated involvement over time allowed them to construct what it legally means to actively search for a job, participate in training, and enhance her professional skills while unemployed (Brun, Corteel, & Pé-lisse, 2012). Over time, government officials afforded job counselors tremendous deference to construct the meaning of “unemployed.” That is, professional job counselors mediated the meaning of unemployment law and influenced what these policies require from unemployed workers and what unemployed workers were entitled to. Thus, we view job counselors in France as not just street level bureaucrats (Lipsky, 1980; Watkins-Hayes, 2009), front line workers (Maynard-Moody and Musheno, 2004) or “agents de guichet” (Dubois, 1999, 2010) with discretion to make decisions. Instead, job counselors are legal intermediaries actively engaged in constructing the meaning of labor and unemployment laws and regulations (Pélisse, 2014).

In sum, both in formal and informal employment settings, we see a wide variety of professionals who are not lawyers and not traditionally thought of as legal actors, engaging in legal intermediation. These examples highlight how managerial values shape the way human resource managers and officers understand law in the United States often in ways that weaken rights. However, we see competing logics from union representatives and job counselors press against managerialized conceptions of law in France and preserve labor and employee rights to varying degrees. The space between what formal employment and labor laws state as codified in statutes are given meaning by a series of professionals who filter law often through managerial and other values. Thus, consistent with prior studies, we see cultural meaning making, political mobilization, and strategic action in various capacities. However, our analysis suggests that what is driving these institutional and political mechanisms are the logics emanating from organizational fields and how va-

rious non-legal professionals tasked with implementing law filter law's meaning through these logics. Human resource officials, union representatives, managers, and job counselors influence the law on the books, the law in action, and legality itself.

### ***Professionalization of Law by Non-Legal Actors and the Role of Risk Logics***

Institutional and political mechanisms mobilized by intermediaries are not just driven by managerial logics. In another related area, there has been considerable focus on how risk logics can mediate law's meaning. In particular, different professions are anchored in different logics and these logics can shape the lens through which law is interpreted, implemented, and even constructed. The insurance field, for example, uses the logic of risk to shape the way organizations that purchase certain lines of insurance understand law and compliance. The following highlights three ways the insurance field acts as a legal intermediary. We then pivot away from insurers and demonstrate how risk management principles are used by safety officers in scientific laboratories.

### ***Insurance Company Intermediation of Employment Law***

In response to perceived threats of employment discrimination lawsuits, insurance companies began offering Employment Practice Liability Insurance (EPLI). Unlike prior forms of business insurance that expressly excludes coverage for liability arising out of employment practices, EPLI policies provide insurance defense and indemnification coverage to employers for claims of discrimination (e.g., age, sex, race, disability) and other employment-related allegations made by employees, former employees, or potential employees. Insurers increasingly offer EPLI and employers increasingly purchase this insurance (Talesh 2015a, b). Insurers play a role in averting such risk and act as a regulatory intermediary because employers have an incentive to avoid discrimination; however, insurers do so in a way that focuses on avoiding litigation rather than fostering a discrimination-free work environment.

Specifically, the insurance field (insurance companies, agents, brokers, and risk management consultants), through EPLI and the accompanying risk ma-

agement services that the insurance field offers, construct the threat of employment law and influence the nature of civil rights compliance (Talesh, 2015a). Drawing from participant observation and interviews at EPLI conferences across the country as well as content analysis of EPLI policies, loss-prevention manuals, EPLI industry guidelines, and webinars, Talesh shows how insurance companies and institutions use a risk-based logic and institutionalize a way of thinking centered on risk management and reduction. Faced with uncertain and unpredictable legal risk concerning potential discrimination violations, insurance institutions elevate the risk and threat in the legal environment and offer a series of risk management services that they argue will avert risk for employers that purchase EPLI.

By framing employers' legal environment in these terms, the insurance industry creates a space to encourage employers to engage in managerialized responses and develop formalized policies and procedures by using the various risk-management services offered by insurers to help reduce these risks. Thus, in this instance, risk and managerial values work in a complementary manner and allow insurers as rule intermediaries greater influence over compliance issues concerning employers.

Insurers encourage employers to purchase EPLI because these insurance policies and the value-added risk management services that insurers offer will reduce employers' risk. In particular, EPLI insurers offer a variety of risk-management services to employers that try to provide a regulatory check on employer discriminatory practices. EPLI insurers conduct compliance audits of employers and offer employers a confidential legal hotline that allows employers to ask legal questions to insurer-sponsored lawyers. They also provide employee handbooks and employment "contract builders" to employers so that they can construct a handbook and develop contracts without actually drafting the documents (Talesh, 2015a).

EPLI insurers influence the meaning of compliance with anti-discrimination laws in a number of ways. For example, conferences, training programs, loss-prevention manuals, and insurance policy language provide an opportunity for the insurance field actors to build discretion into legal rules. In other words, insurance companies develop policy language, which provides work-arounds to certain legal rules clearly forbidding insurance coverage for certain acts or omissions in civil rights contexts.

For example, the insurability of punitive damages highlights how the insurance field builds discretion into legal rules. Even though civil rights laws can potentially subject employers to punitive damages and many states prohibit the insurability of such damages, EPLI insurers build discretion into their policies and broaden coverage to include punitive damages by including “most favored venue” clauses into their policies. In particular, these clauses indicate that the enforceability of insurance coverage shall be governed by the applicable law that most favors coverage for punitive and exemplary damages. Not surprisingly, insurance companies state jurisdictions in their policies, which the insurance companies must consult in determining insurability, that often permit coverage for punitive damages. Thus, even though statutes and caselaw often prohibit coverage for punitive damages, these damages are covered by EPLI. Under the framework of risk management and risk aversion, EPLI limits the ability of state and federal civil rights laws to hold employers directly responsible for paying punitive damages because employers now have the ability to transfer these costs to insurers. EPLI insurers are stepping in and providing services in a manner that makes the regulatory impact of certain anti-discrimination laws and ultimately social change harder to achieve.

In addition, insurance companies also reframe legal rules and principles around a non-legal risk logic that focuses on averting risk and making discrimination claims against employers more defensible. For example, insurers spend considerable time at conferences and training sessions discussing a relatively new workplace issue that is now being increasingly litigated by plaintiffs’ lawyers: workplace bullying. Although insurance institutions have an opportunity to encourage more lawful conduct in light of changing anti-discrimination laws, insurance field actors shift responsibility for fostering a safe and positive workplace away from employers. They do so by communicating how EPLI provides coverage for employers in the event that an employee is found liable for bullying (Talesh, 2015). Insurers are simply transferring risk without providing preventative guidance.

Insurers do engage in loss prevention, but do so in a manner that is filtered by risk-management logics. Law comes to be viewed and understood as risk. While EPLI and the series of risk-management services offered with the insurance policy can potentially improve employment practices and compliance, EPLI risk-management services may at times shape compliance in a way that leans more toward making claims defensible rather than fostering a



discrimination-free workplace.

Despite the questionable regulatory outputs of insurers as risk managers in the employment context, there is considerable deference to EPLI by public legal institutions, such as courts, legislatures, and regulatory institutions. In particular, federal, state, and municipal governments adopt the risk logics of EPLI insurers and encourage, and at times require, public organizations and governmental institutions to purchase EPLI (Talesh, 2015b).

Insurer risk-management services can have positive and negative impacts on social change. On the one hand, insurer risk management practices may reflect some best practices and lead to improved employment policies and procedures and greater equality in the workplace. On the other hand, they may also make it easier for employers to develop policies and procedures without actively participating in the creation of these policies and procedures. In particular, insurance company guidance on these issues largely focuses on how to avoid litigation as opposed to providing guidance on how to maintain a discrimination-free work environment. Similar to managers and human resource officials in the employment context (Edelman, 2016), here the insurance field filters law through a non-legal risk logic in ways that make law's ability to achieve social change harder.

### ***Insurance Company Intermediation of Corporate Law***

Sometimes intermediaries are well-positioned to engage in social change but choose not to. For example, insurance companies offering directors' and officers' insurance to directors and officers of a corporation have opportunities to engage in loss and risk prevention and discourage wrongful or even illegal behavior, but fail to take action. Concerns of corporate malfeasance by directors and officers of corporations at the expense of shareholders and broader notions of corporate social responsibility remain present in the increasingly global economy. Empirical studies of the relationship between directors' and officers' insurance and corporate actors reveals that directors' and officers' insurance (D&O) significantly weakens the deterrent effect of shareholder litigation and thus undermines such private attorney general suits as forms of regulation (Baker & Griffith, 2010). Despite having financial incentives to do so, D&O insurers neither monitor nor provide loss prevention programs to the corporations they insure. In particular, D&O insurers do not condition the sale of insurance on adopting loss-prevention policies. Brokers

and risk managers note that loss prevention advice is not very valued or binding on public corporations (Baker & Griffith, 2010).

Moreover, insurers rarely try to influence or change corporate behavior. While insurers servicing private corporations routinely provide corporations access to newsletters, conferences, and written materials relating to good governance, insurers do not condition insurance coverage on adopting any governance practice, providing loss-prevention audits, or even providing clear discounts for adopting what insurers might consider good corporate governance standards.

Thus, despite the availability of shareholder lawsuits to protect the corporation and curb corporate misconduct, corporate executives purchase D&O insurance with shareholder money and essentially shift the vast majority of malfeasance and misconduct risks away from themselves while operating at a publicly traded company. Whereas EPLI insurers filter law's meaning through a lens of risk mitigation and avoidance, insurers offer little advice or risk management and top executives ask for little assistance in monitoring or managing the day-to-day operations. Thus, intermediaries in this instance have opportunities to improve the legal and ethical conduct of corporate directors and effectuate positive social change, but do not.

### ***Insurance Company Intermediation of Privacy Law and Data Theft***

On a more positive note, insurance companies in the past decade have intervened in the area of privacy law and data theft with some substantive impact. Cybersecurity risks are among the biggest new threats facing businesses and most consumers. Governments, businesses, and society at large are all concerned about private data being stolen or misappropriated. In addition to causing financial and public relations damage, and threatening an organization's survival, organizations also face a myriad of compliance challenges as they are forced to navigate between the various federal and state laws and regulations concerning the collection and use of personal data. Organizations face difficult challenges in terms of complying with these laws. Although many organizations do have formal policies in place, the majority of organizations do not believe that they are sufficiently prepared for a data breach, do not

devote adequate money, training, and resources toward protecting consumer's electronic information from data breaches, and fail to perform proper risk assessments (Talesh 2017a).

The insurance field stepped in and, in the last decade, began offering cyber insurance. Cyber insurance is insurance designed to provide both first-party loss and third-party liability coverage for data breach events, privacy violations, and cyberattacks. Recent research suggests that insurance companies and institutions, through cyber liability insurance, do not simply pool and transfer an insured's risk to an insurance company or provide defense and indemnification services to an insured. In addition to transferring risk, research suggests that cyber insurance provides a series of risk management services that actively shape the way an organization's various departments tasked with dealing with data breach, such as in-house counsel, information technology, compliance, public relations, and other organizational units, respond to data breach. Cyber insurers are acting as compliance regulators and trying to prevent, detect, and respond to data breaches and help organizations comply with various privacy laws. Thus, cyber insurers frame the legal environment in terms of risk and then encourage corporations to use their risk management services to avoid data breaches and privacy law violations (Talesh, 2017).

Many of the issues that arise during a data breach that are often handled by internal departments within an organization, such as legal, compliance, information technology and public relations/crisis management, are now being managed by insurance industry professionals or third-party vendors that insurance companies offer to assist organizations at a reduced fee. Cyber insurance provides a pathway for insurance institutions to act as external compliance monitors and managers of organizational behavior with respect to data theft. Insurers and the third-party vendors that they contract with are stepping in and offering risk management services aimed at preventing, detecting, and responding to data breach (Talesh, 2017a,b).

Cyber insurance covers not just legal defense and indemnification costs associated with a covered loss, but the legal, forensic investigation, business interruption, crisis management, and credit monitoring and restoration expenses. However, insurers do not just pay for the costs of these services, they also provide access to services aimed at responding to, investigating, defending, and mitigating against the consequences surrounding a data breach

event or privacy law violation. For example, cyber insurers help organizations respond when a cyber security system is breached, identify the source and cause of the data breach, contain the breach, and ultimately restore the network processes that may have been damaged as a result of the breach. To address these problems, cyber insurers or their third-party vendors offer forensic cyber security experts to organizations.

Another major threat organizations face when a data breach occurs is severe damage to its reputation. Cyber insurance addresses this risk by covering the costs to retain the services of a public relations and crisis management firm. However, cyber insurers go beyond providing coverage by offering a series of preapproved public relations and crisis management firms that the insured can retain at a reduced premium. Insurers perform similar intermediary roles with regard to legal services and credit monitoring and restoration (Talesh, 2017).

When evaluating the totality of services that the insurers offer organizations, such as the legal services, forensics, public relations, and crisis management, the insurer can be seen as the manager and regulator of cyber security risks. Given the under-preparation and under-compliance by businesses and despite the insurer's financial incentives, institutionalized risk management techniques developed within the insurance field can potentially improve organizational practices and compliance concerning data breach. Most organizations view insurer interventions as value added because existing research suggests that most organizations believe that they are underprepared for data breach and under compliant with privacy laws. After all, both organizations and consumers benefit when insurers prevent data breaches.

In sum, we see insurance organizations and risk management professionals filtering the meaning of employment, corporate and privacy law through a lens of risk and managerial logics. Insurance professionals working with the insurance industry go beyond their traditional services offered and with different degrees of intensity and effectiveness, try to shape the way organizations comply with laws. In this respect, insurers are performing a regulatory function and impacting social change, although with varying degrees of success. Thus, we should think of insurers as regulatory intermediaries as not always a good or bad endeavor, but instead, on a continuum.

There are important distinctions between directors and officers and cyber contexts. Directors and officers are not interested in being told how to engage

in risk averse behavior. Policyholders in the cyber context, however, are interested in the insurance defense and indemnity coverage but also the accompanying risk management services that can prevent, detect, and respond to a data breach event. The professional risk management services that accompany cyber insurance also fill a knowledge gap for the organization both with respect to how to deal with actual threats but also the increasing complex maze of rules organizations must comply with. Because of the variety of privacy laws and rules and the challenges of preventing data breaches, organizations are willing to use risk management tools that deal with the latest cyber threats that it lacks internal tools to defend against. In contrast, directors and officers believe they possess the requisite professional knowledge and experience to manage a corporation responsibly and are less eager to receive insurance risk management recommendations.

Differences also exist between the EPLI and cyber contexts. EPLI insurers try to shape the meaning of law for employers tasked with dealing with discrimination laws whereas cyber insurers spend far less time mediating law's meaning and far more time trying to enhance an organization's ability to detect and respond when faced with a data breach. Unlike in the EPLI context, the cyber insurance risk management tools are less about simply avoiding being sued and more about developing processes to prevent or limit any data breach problem from occurring.

We are cautious to make broad sweeping claims based on these three case studies since the social and legal context of each case differs. Whether an intermediary can facilitate or inhibit social change depends on a variety of factors. It appears, however, that insurer-sponsored intermediation is more likely to be accepted and followed when the interests of the powerful regulated actors are aligned with consumers. For example, the incentives are better aligned between organizations and consumers concerning cybersecurity threats. Given the financial, legal, and reputational harm of a data breach event and that existing research suggests that organizations are currently unable to keep up with cyber threats, no organization benefits from a cyber-attack. Thus, businesses purchasing cyber insurance are interested in using these risk management tools to prevent and detect risks because it helps itself and its clients.

### ***The Use of Risk Management in Non-Insurance Settings: Safety Officers in Scientific Laboratories***

Risk logics do not just influence the insurance field or actors that interact with insurance companies. Risk reduction and risk management principles shape the way professional safety officers interpret and implement a variety of environmental, health and safety rules (Silbey, 2017). Professional safety officers for many industries have to ensure compliance with various international laws, industry guidelines, and government agency mandates aimed at protecting the environment and worker's health and safety. Safety officers in scientific laboratories in France and the United States use their extensive training and technical skills and knowledge concerning safety, chemical products, and health risks to interpret and implement many legal regulations surrounding health and safety in work settings. They implement surveillance technology and databases to manage hazards (Silbey and Agrawal, 2011) and develop "relational regulation practices" in science laboratories (Huising and Silbey, 2011). Safety officers also use the authority of legal rules to manage risks, influence safe practices, and build good working conditions (Pélisse, 2017; Borelle et Pélisse, 2017).

Environmental, health and safety regulations issued by the Environmental Protection Agency, the Occupational Safety and Health Administration, States and many municipalities are often quite complex and filled with technical requirements and language. They are also vague and overbroad with respect to how to comply. For example, many environmental and safety regulations are not applicable or easily implementable toward nanoparticles and nanomaterials (Pélisse, 2017). The primary regulations in Europe for the Registration, Evaluation, Authorization and Restriction of Chemicals are largely inapplicable to nanoparticles. In particular, these regulations only require that chemicals produced at greater than one ton per year be registered and evaluated for authorization. There is very little evaluation of risks and hazards in Europe for chemicals that produce less than one ton. Even though some nanoparticles probably have a hazardous effect on the health for workers or consumers, these regulations are largely inapplicable to nanoparticles due to its very small size and weight. To fill this gap, industry associations and many countries have tried to provide more direct guidance. The European Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) proposed recommendations for the countries and organi-

zations producing or importing nanomaterials. In France, the National Institute for Research on Safety (INRS) also drafted guidelines for labs, centers, and organizations that research issues involving nanoscience. France was also the first (and still sole) country in the world to implement a national and annual register for nanoparticles and nanomaterials (named R-nano).<sup>5</sup> While there has been progress, these regulations still leave considerable ambiguity concerning how to implement and enforce rules pertaining to nanoparticles. Also, hazards related to nanoparticles and materials are very often uncertain. Even though health and safety regulations often contemplate environmental “precautionary” principles (Drais, 2017), advances in science and technology have made complying with these regulatory provisions difficult to implement. Moreover, each laboratory operates with internal guidelines and rules emanating from its own research institution or university. Thus, external legal rules and internal guidelines at universities leave considerable room for implementation.

Amidst this legal environment, safety officers play an important intermediary role in trying to facilitate compliance with external legal rules and internal guidelines (Huisling and Silbey, 2011). Similar to employment and insurance settings, safety officers have professional training and knowledge relating to safety, chemical products, and health risks. They combine their knowledge of health and safety with a working understanding of legal regulations. Safety officers influence safety offices in the universities but also the labs themselves. Their consistent presence and role remind the technicians, graduate students, and professors that concerns over that safety procedures, risk reduction and risk management are useful, necessary, and mandatory (Pélisse, 2017).

When safety officers work in the safety offices, they translate legal rules, best practices or recommendations of EU, national agencies or local regulators related to various biological, chemical, and nanoparticle risks and convert them into practical regulations. They prescribe how to weigh nanoparticles in the bench fume-hoods, and identify what experiments must be conducted in secure and sealed glovebox settings. They also determine what tools or equipment workers are permitted to use and what type of lab-coats have to be worn in the lab. They draft and develop procedures and policies and conduct annual inspections to evaluate whether these policies have been

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<sup>5</sup> French regulations were revised in 2012 with the Grenelle II Laws.

implemented. Safety officers couple their working knowledge of the law with a focus on risk prevention and safety.

But safety officers are not the sole actors that deal with health and safety. Permanent engineers or technicians in French labs often perform a safety oversight function while Principal Investigators in the United States often select PhD graduate students to be “safety representatives.” Although these actors are only partially focused on safety issues and legal responsibility remains the responsibility of the directors, Principal Investigators, or Universities, these safety representatives adapt and implement the rules daily. Safety representatives must engage in risk management and risk reduction amidst an environment where scientists are eager to test and conduct experiments that push the boundaries of what is permissible. This is a difficult challenge (Borelle and Péglise, 2017). Scientists consider themselves experts and most qualified on how to conduct experiments in a safe manner. Therefore, scientists are not always eager to accept feedback from safety representatives and safety officers. Nevertheless, safety actors in the laboratories and universities try to fill in the meaning of ambiguous and complex legal mandates and simultaneously balance concerns over law, science, and risk reduction. Safety officers and representatives are uniquely poised to act as regulatory intermediaries because they possess professional expertise on risk reduction and safety but also understand the legal mandates. Because the risks to scientists are often high, safety officers take their compliance role seriously. Safety officers and safety representatives, therefore, are crucial intermediaries for ensuring the safety and health of workers in science labs (Huising and Silbey, 2011; Péglise, 2017; Borelle et Péglise, 2017). The rise in litigation and legal liability surrounding laboratory accidents across the world has led to more scrutiny and evaluation of lab safety policies and in particular, the role of safety officers.<sup>6</sup>

Thus, there are employment, corporate, privacy, and safety laws across the world aimed at particular social causes, such as preserving equality in the

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<sup>6</sup> In the United States, the deadly accident at the chemical laboratory at UCLA in 2008 brought scientific safety requirements in direct interaction with legal liability and standards of care. The case ultimately resulted in a settlement but not after tremendous attention and scrutiny concerning safety requirements in laboratories. Similarly, scientists in France have been victims of major asbestos accidents in university labs that also resulted in legal scrutiny.



workplace, making sure our corporations operate free of fraud and malfeasance, maintaining the privacy of organizations' and people's personal and financial information, and keeping our world environmentally safe. Whether these laws succeed in their goals is often determined by the way professional intermediaries interpret, implement, and construct legal regulations. These examples suggest that non-legal intermediaries such as insurance professionals and safety actors often filter what law means through a risk logic. At times we see intermediaries nudging organizations toward strategic action. At other times, we see intermediaries encouraging organizations to adopt taken for granted norms operating among the organizational field. However, the political, strategic, and even cultural meaning making activities appear to be derived from the managerial and risk logics through which intermediaries filter law's meaning. Further research on how organizational actors influence law's meaning through a logic of risk should explore whether there are potentially multiple types of risks and consequently, multiple risk logics.

### ***Professionalization of Law by Non-Legal Actors and the Rise of Consumer Logics***

Thus far, our examples highlight how non-legal professionals often shape law through different logics when implementing law within organizations. This impacts the law in action but also law-related ideas, ideals, principles, and rituals that permeate society (legality). But non-legal professionals are also playing a big role in shaping law's meaning in more formalized dispute resolution forums or what socio-legal scholars refer to as the law on the books. Manufacturers, for example, mediate consumer protection legislation in ways that impact the likelihood that consumer protection laws will bring about social change. Although lobbying and interest group politics remain at the fore-front, what organizations choose to lobby for is often an outgrowth of the logics operating within organizational fields.

Through a quantitative coding and qualitative content analysis of 25 years of legislative history and interviews with legislative analysts involved in crafting both laws in California and Vermont, Talesh (2014) shows how automobile manufacturers, who were initially subject to a powerful consumer warranty law in California in 1971, transformed and ultimately weakened the impact of this law by creating their own dispute resolution venues. As these legalized structures became institutionalized among the organizational field

and eventually run by third-party organizational surrogates, manufacturers infused business values into California legislation in varying degrees through lobbying and reshaped the meaning of law and compliance among not just organizations, but the legislature. The analysis reveals that consumer protection legislation became amended and weakened over time as businesses values increasingly dominated the legislative process. As a result of such legislation, consumer rights and remedies became largely contingent on first using third-party dispute resolution structures funded by manufacturers where rights and remedies equivalent to those available in court do not exist. The legislature's perceptions of manufacturer dispute resolution structures as efficient and the proper forum for these conflicts was culturally conditioned around manufacturers' norms and beliefs that private dispute resolution was the appropriate mechanism for conflict resolution.

As was the case in California, the Vermont legislature in 1984 reached consensus that alternative dispute resolution (ADR) forums as opposed to courts were the proper place to resolve legal disputes. However, the contested and varying political alliances in Vermont, as well as a different developmental "path" (cf. Pierson 2004), led to a different dispute resolution structure being codified into law. In particular, different interest groups, namely, consumer advocates and automotive dealers, dominated the Vermont legislative process. A political trade off ensued among key stakeholders such as automotive dealers, manufacturers, consumer advocates, and the state attorney general, whereby a court option was eliminated from consideration in return for permitting the state of Vermont to administer a dispute resolution structure in addition to allowing the private dispute resolution process to operate.

Once consumer protection law is privatized, institutionalized and competing logics operating among stakeholders and organizations play an important role in determining how lemon laws are implemented in arbitration systems operating outside courts with various levels of involvement by private organizations, state actors, and civil society stakeholders (Talesh 2012). Despite having similar formal laws on the books, the law in action operating in different private and state-run lemon law dispute resolution forums is very different based on the way business and consumer perspectives are accounted for in each dispute resolution process.

Talesh's (2012) research revealed that under the single-arbitrator private dispute resolution system run by private organizations with soft state oversight,

business values flow into the rules, the procedures, and the meaning of law operating in the private dispute resolution system mainly through an extensive training and socialization process for arbitrators. For example, in California, the consumer lemon law arbitration program is run by private third-party administrators who champion themselves as experts in dispute resolution. These third-party administrators are professional organizations and experts in dispute resolution. They also design and facilitate arbitration programs in various capacities. In this instance, these third-party administrators recast law through a managerial lens. Specifically, they teach arbitrators to disregard any prior knowledge of legal processes and strictly follow what they are taught in the training processes. Arbitration trainers emphasize managerial values such as efficiency, discretion, and flexibility with respect to applying formal law in these processes. This philosophical orientation is a key mechanism for explaining how organizations shape the meaning of law (Talesh, 2012).

On the other hand, the state-run dispute resolution system in Vermont consists of a five person arbitration board of three citizens, an automotive dealer and a technical expert. Vermont's arbitration system anchors the neutrality and legitimacy of its dispute resolution structure in a collaborative justice model that balances interested stakeholders reflecting business and consumer logics in a state funded and designed structure. Vermont's panel of arbitrators receives minimal formal training and socialization. The little training they do receive largely focuses on assuring that they apply formal law. Vermont arbitrators believe the effectiveness of the lemon law arbitration board is contingent on the right mixture of people offering different consumer and business perspectives while still operating within the requirements of formal law. To the extent business values are introduced into the process by the presence of the automotive dealer and technical expert arbitrators on the lemon law board, they seem to be balanced with competing consumer values by the presence of three citizen arbitrators.

In Vermont, these same core legal principles rest on interest representation and balancing business and consumer logics in the dispute resolution system. Data on who wins these arbitrations reveals that consumers are twice as likely to win in Vermont as they are to lose in California (Talesh, 2012). Thus, consistent with prior new institutional studies (Edelman & Stryker, 2005), politics and institutional meaning making mechanisms matter. But Talesh's analysis reveals how business and consumer logics influence the content and

meaning of legislation, the institutional design of dispute resolution systems, and have important implications for consumers' access to justice and more broadly, the civil legal system (Talesh, 2009, 2012, 2014). This comparative analysis is especially useful for our analysis because it shows how the professionalization of law by non-legal actors (manufacturers and third-party arbitration administrators) and the filtering of non-legal logics can both inhibit and facilitate social change based on the ways these logics are incorporated into consumer protection legislation and the design of the dispute resolution process.

### **Legal Intermediaries: Lessons Learned and an Ongoing Research Agenda**

Law and social change has and will continue to be an important issue for scholars and policymakers to wrestle with. While prior research has done an excellent job of shedding light on the normative, instrumental, political, and cultural processes through which law produces social change, our approach helps explain the underlying mechanisms that drive those different processes. In particular, strategic, political, cultural, and institutional ideas and tactics through which law is influenced are often derived from and shaped by the increasing professionalization of law by non-legal actors and how these non-legal actors encounter and filter what law means through non-legal logics. Our new institutional theoretical framework highlights how the overlap between organizational and legal fields often leads to a mix of organizational and legal logics that influence the way organizations and other stakeholders understand and implement laws.

In addition to this core finding, we believe our framework reveals a number of broader lessons that should guide future research on the study of intermediaries and their role in social change. First, we lay out the conditions that have led to increasing involvement by intermediaries in law's construction and meaning. We suggest that discussions of law and social change need to focus less on whether and when formal legal institutions can facilitate legal change. In particular, the location of legal rulemaking has changed. While command and control, top-down regulation exists, there has been a pivot globally toward more co-regulation, self-regulation and the contracting out of rights to civil society actors, businesses, and other stakeholders. Moreover, there are more laws and legal regulations than ever before and

these legal mandates are also complex and ambiguous with respect to how to comply. The move from government to governance and the increasing complexity and ambiguity of legal rules gives intermediaries greater space to actually construct what law and compliance means in action. Thus, whether law can produce social change is not as contingent on the behavior of formal legal actors connected to public legal institutions but instead, intermediaries. These actors are positioned to play an even greater role in determining whether law can facilitate or inhibit social change. Future scholarship on law and social change should be mindful of the changed conditions for fostering social change.

Second, this article highlights the variation of intermediaries along a number of dimensions. For example, intermediaries are both legal and non-legal actors. The obvious remains true: lawyers, law firms, and in-house counsel and actors connected to formal legal institutions such as judges, legislators, and regulators play an important role in interpreting and shaping the meaning of legal rules. But non-legal actors such as job counselors, safety officers, human resource officers, labor union representatives, managers, financial analysts, insurance companies, risk managers, and insurance brokers also play a key and less recognized role in facilitating and inhibiting social change, through their daily uses of the legal rules that they handle in their professional practices. The increasing complexity of legal rules and the rise of professionalized services create a space for new and more de-centered actors to take on quasi-legal roles.

Third, intermediaries are not just confronting law in traditional legal settings. Rather, intermediaries impact a wide variety of industries and settings, ranging from labor and employment, cybersecurity, corporate behavior, arbitration, consumer protection, welfare, and health and safety. At every turn, there are formal laws and regulations. However, there is also tremendous discretion and space for organizations and individuals to implement these laws. Given the pivot away from command and control regulation to more public-private actors involving civil society actors and stakeholders, we anticipate intermediaries playing an ever greater role in years to come across a variety of areas.

Fourth, the idea of law as an instrument of social change cannot be divorced from organizational fields and more importantly, the field logics operating among actors that are tasked with complying with laws (Edelman & Stryker,

2005). We note that the importance of institutional logics has been discussed previously (Edelman & Stryker, 2005). But we purposely move beyond examples to show the broad influence we believe legal intermediaries have and in particular, how field logics influence the way that intermediaries understand and construct law. Our case studies across the United States and France repeatedly demonstrate that law is filtered through multiple and sometimes contested logics and these logics allow field actors to filter and mediate law's meaning in very powerful ways. Whereas early work focused on how managerial values filter law's meaning, here, we present a more complex picture where multiple and competing logics shape the way organizations go about complying with laws.

Given the increasing deference to organizations with respect to implementing law, risk, managerial, and consumer logics can steer legal interpretation and implementation in different directions and impact law's capacity to produce progressive social change in various ways. Our framework highlights how intermediaries contribute or inhibit to social change, regardless of whether we define social change along the instrumental, political and cultural dimensions as set forth by Kostiner (2003). Legal intermediaries contribute to concrete material changes for employees, unemployed workers, scientists, managers, including helping find unemployed workers new jobs, preserving wage and hour equity, or bolstering cybersecurity defenses. They also contribute to or inhibit political dimensions of social change by empowering employees against managers in collective bargaining labor negotiations, and mobilizing an increased discourse around safety in scientific laboratories. However, intermediaries often use managerial and risk logics to weaken consumer protection legislation, and encourage employers to develop symbolic policies and procedures and consequently, make it less likely that employers can be sued for employment violations. Finally, legal intermediaries transform not just individual and collective identities, but legality itself. Our case studies reveal that intermediaries filtering law through various non-legal logics redefine the ways to count working time for staff and managers, the meaning of a job for an unemployed worker, what constitutes legally compliant safe conditions in laboratories, the meaning of consumer protection

law, what constitutes discrimination, and how to comply with anti-discrimination laws. Sometimes legal intermediary constructions of law facilitate social change while other times they inhibit it.

Going forward, we hope our working typology will nudge others to focus on the legal intermediary's ability to shape the content and meaning of law. Although we applaud the increasing examination of regulatory intermediaries by scholars across the world (Abbot et al., 2017), existing approaches still view law as largely a top-down phenomenon coming from formal legal institutions. Under this framework, rule-makers "create" law for rule-takers and rule intermediaries play a mediating role implementing and monitoring law (Abbott et al., 2017). In contrast, our framework suggests that the boundaries between rule-makers, rule-takers, and rule intermediaries are much more blurred than existing approaches suggest. Legal intermediaries play an increasing role in not just affecting, controlling or monitoring relations between rule-makers and rule-takers, but in constructing the content and meaning of law itself. Unlike street-level bureaucrats that use their discretion to implement policy on the ground, the intermediaries we examine are actually shaping the content and meaning of law among public legal institutions and in organizational domains.

Given the inherent ambiguity in law and law's "fuzziness" (Wroblewski, 1983) or "undecided" dimension (Amselek, 1991), especially with respect to regulatory rules, intermediaries operating within organizational fields are influencing the content and meaning of legal rules and how these actors understand law and compliance (Talesh, 2015a,c; Péglise, 2014, 2016). Moreover, institutionalized practices that come to be seen as rational often end up being deferred to by public legal institutions such as courts, legislatures, and administrative agencies. Under our approach, law is an endogenous process as intermediaries simultaneously act as rule makers and takers (Edelman, 2016; Talesh, 2009). Thus, we encourage scholars interested in studying law and social change to not be bound by existing frameworks that compartmentalize the intermediary role as operating within a world where lawmaking is exclusively the province of public legal institutions. Instead, we suggest greater attention on intermediaries as actors that construct and shape the meaning of law and various types of legality in different regulatory settings in ways that have positive and negative impacts in society.

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