

# Here to There: Lessons Learned from Public Interest Law

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## Introduction

Philanthropy has turned its eye toward developing the field of public interest technology, citing public interest law as an example of how philanthropy has successfully jumpstarted a now-robust field. While it may be tempting to proceed onwards satisfied with the knowledge it *can* be done, now is a key moment to pause and understand *how* it was done. Philanthropy could proceed with stronger investments by understanding the unique challenges associated with developing the public interest technology field, and by applying some of the lessons learned from its investment and development of public interest law.

To these ends, this document will undertake a brief review of the development of public interest law, identify parallels and differences between the technology and law fields, and suggest applicable best practices for developing the public interest technology field. The ideas presented in this memo are drawn in part from the research Freedman Consulting conducted on behalf of the Ford Foundation for the report, *A Pivotal Moment: Developing a New Generation of Technologists for The Public Interest*.<sup>1</sup>

This document is divided into three sections:

- I. Development of the Public Interest Law Field**
- II. Parallels and Differences**
- III. Applicable Lessons Learned**

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<sup>1</sup> Freedman Consulting. (2016). *A Pivotal Moment: Developing A New Generation of Technologists For The Public Interest*. <http://tfreedmanconsulting.com/documents/pivotalmoment.pdf>

## I. Development of the Public Interest Law Field

Today's public interest law field exists thanks to significant support from the Ford Foundation (Ford) in the late 1960s and early 1970s.

### Pre-Ford Foundation Investment

Before the significant investments of Ford, the public interest law field was primarily composed of legal aid and legal defense fund models. Legal aid organizations began in the late 1800s to assist immigrants in their access to legal services and encourage assimilation,<sup>2</sup> while legal defense fund organizations – founded slightly later – aimed to secure rights for disadvantaged groups through litigation. Two prominent examples of these organizations include the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People's Legal Defense and Educational Fund (LDF).<sup>3</sup>

### Major Ford Foundation Investments

Beginning in the late 1960s, Ford began making sizable investments to develop the public interest law field. These investments included financing the production of three field-building publications: *Public Interest Law: An Economic and Institutional Analysis*; "The Public Interest Law Firm: New Voices for New Constituencies;" and *Balancing the Scales of Justice: Financing Public Interest Law in America*. These texts discussed the economic rationale behind building out public interest law,<sup>4</sup> issued several recommendations for helping the field achieve financial stability,

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<sup>2</sup> Saute, Robert. (2008). *For The Poor and Disenfranchised: An Institutional and Historical Analysis of American Public Interest Law, 1876 to 1990* (Doctoral dissertation), p. 17. Available from GoogleBooks database. (UMI No. 329651).

<sup>3</sup> Cummings, L. Scott. (2008). The Internationalization of Public Interest Law. *Duke Law Journal*, 57:891, p. 898-900. This type of law was really prevalent between 1900-1950 *Duke Law Journal* p. 898-900. <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1347&context=dlj>

<sup>4</sup> Weisbrod, B.A., Handler, J.F., & Komesar, N.K. (1978). *Public Interest Law: An Institutional Analysis*. Berkeley, CA: University of California Press.

and provided a thorough landscaping of the field.<sup>5</sup> According to a *University of Arkansas at Little Rock Law Review* article authored by Louise Trubek, together, these documents:

...provide[d] a well-developed vision and strategy, a new institutional form for practicing law, an expanded professional role for lawyers, a business plan for financing these firms and lawyers, and a theoretical and institutional justification for the firms.<sup>6</sup>

Moreover, the Ford Foundation made substantive direct investments in public interest law organizations and the talent pipeline. Ford founded the Mexican American Legal Defense and Educational Fund (MALDEF) and the Native American Rights Fund (NARF),<sup>7</sup> and also went on to help found six organizations, each acting on behalf of different ethnic minority groups.<sup>8</sup>

The Ford Foundation's support of public interest work in legal education programs was also significant enough to be deemed the "catalyst" for legal aid clinic programs by Harvard law professor Jeanne Charn and Berkeley law professor Jeffrey Selbin.<sup>9</sup> Ford founded the Council on Legal Education for Professional Responsibility to help ensure that law school programs were preparing students to work on behalf of the public interest, and provided grants for the

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<sup>5</sup> Graham, Robert L. (1977). *Balancing the Scales of Justice: Financing Public Interest Law in America*. *Loyola University Chicago Law Journal*, 8:3, p. 666. <http://lawecommons.luc.edu/luclj/vol8/iss3/10/>  
<http://lawecommons.luc.edu/cgi/viewcontent.cgi?article=2259&context=luclj>.

<sup>6</sup> Trubek, Louise G. (2011). *Public Interest Law: Facing Problems of Maturity*. *University of Arkansas at Little Rock Law Review*, 33:4, p. 419. <http://lawrepository.uarl.edu/lawreview/vol33/iss4/4>.

<sup>7</sup> Overview of Ford Foundation Support for Law Fellows, Law Clinics, and the Field of Public Interest Law. *Ford Foundation*.

<sup>8</sup> Trubek, Louise G. (2011). *Public Interest Law: Facing Problems of Maturity*. *University of Arkansas at Little Rock Law Review*, 33:4, p. 418. <http://lawrepository.uarl.edu/lawreview/vol33/iss4/4>.

<sup>9</sup> Charn, Jeanne, Selbin, Jeffrey. (2013). *The Clinic Lab Office*. *Wisconsin Law Review*, 1, p. 146-148  
<http://wisconsinlawreview.org/wp-content/uploads/2013/04/6-Charn-Selbin.pdf>

founding of both law school programs and neighborhood legal clinics.<sup>10</sup> One such institution was the Institute for Public Representation at the Georgetown University Law Center.<sup>11</sup>

Concurrent with these efforts, the Ford Foundation supported pilot legal aid programs that were instrumental in the creation of the Office of Economic Opportunity's Legal Services Program.<sup>12</sup> (The Office of Economic Opportunity was created by President Johnson as part of the War on Poverty.) Not only did the Ford-supported pilots provide a model for the Legal Services Program, but several of the pilots' key leaders went on to develop the Legal Services Program.<sup>13</sup> This government program employed lawyers who aimed to spur sweeping social changes on behalf of the poor through legal action. Although the program's original mission and activities were later subverted by subsequent administrations, the Legal Services Program achieved many landmark victories on behalf of welfare recipients and tenants before its vision faded. It also projected substantive influence on prominent pieces of welfare legislation enacted during this period.<sup>14</sup>

Ford's commitment to public interest law continued beyond the late 1960s. During the late 1980s the Ford Foundation also helped establish the practice of pro-bono work within for-profit firms, providing support for the creation of the American Bar Association's (ABA) Law Firm Pro Bono Project. In a letter to the Ford Foundation, the ABA credits this program with establishing pro bono service as a "norm" within larger firms.<sup>15</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Overview of Ford Foundation Support for Law Fellows, Law Clinics, and the Field of Public Interest Law. *Ford Foundation*.

<sup>12</sup> Houseman, Alan W. (1998). Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All. *Yale Law & Policy Review*, 1:13.  
<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1357&context=ylpr>

<sup>13</sup> Gillette, Michael L. (2010). *Launching the War on Poverty: An Oral History*. Oxford University Press, p. 295-296.

<sup>14</sup> Houseman, Alan W., Perle, Linda, E. (2007). *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*. Center for Law and Social Policy. <http://www.clasp.org/resources-and-publications/files/0158.pdf>

<sup>15</sup> MacMullin, Glenda L. (1995). Letter and Grant Proposal from the American Bar Association to the Ford Foundation. Grant no. 08900977.

## Current State of the Field

Since these key investments, the public interest law field has shifted considerably. A few of the most notable changes have included the following:

- (1) A growth in the average size of public interest law organizations;
- (2) A shift from being single-issue and legal function to multi-issue and function; and
- (3) An increase in public funding.<sup>16</sup>

There are also many more organizations that undertake public interest law work. At the time of the original studies funded by Ford, there were only approximately 92 public interest law centers.<sup>17</sup> By 2000, there were over 1,000.<sup>18</sup> This number does not take into account other organizations that conduct public interest work, such as the government, law schools, and private firms. Of the full-time lawyers that offer civil legal assistance, over a quarter provide this service pro-bono. Moreover, as Trubek states, pro-bono activities have “become an important aspect of both corporate law firm practice and the provision of public interest law services for civil legal services.”<sup>19</sup>

Ford has also maintained its commitment to building the field of public interest law. For example, the Ford Foundation Law School Public Interest Fellowship Program provides support for law school students from a selection of top-tier institutions to work on behalf of Ford Grantee Organizations.

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<sup>16</sup> Nielsen, L.B., & Albiston, C.R. (2005). The Organization of Public Interest Practice: 1975-2004, *North Carolina Law Review* 84, p. 1593. <http://scholarship.law.berkeley.edu/facpubs/1618/>

<sup>17</sup> Graham, Robert L. (1977). Balancing the Scales of Justice: Financing Public Interest Law in America. *Loyola University Chicago Law Journal*, 8:3, p. 668. <http://lawecommons.luc.edu/luclj/vol8/iss3/10/>

<sup>18</sup> Nielsen, L.B., & Albiston, C.R. (2005). The Organization of Public Interest Practice: 1975-2004, *North Carolina Law Review* 84, p. 1605. <http://scholarship.law.berkeley.edu/facpubs/1618/>

<sup>19</sup> Trubek, Louise G. (2011). Public Interest Law: Facing Problems of Maturity. *University of Arkansas at Little Rock Law Review*, 33:4, p. 431. <http://lawrepository.uarl.edu/lawreview/vol33/iss4/4>.

## II. Parallels and Differences

Examining the parallels and differences as compared to public interest law can provide helpful insights into what best practices are most applicable for advancing the public interest technology field.

### Parallels

- Momentum: At the time of Ford’s major investments in the field of public interest law, there was already a groundswell of energy, which Ford was able to leverage (particularly the civil rights atmosphere of the 1960s<sup>20</sup>). Similarly today, there is a growing public curiosity about the ways in which technology influences the lives of citizens.
- Market Failure: One rationale for investment in the public interest law field was that the market was not meeting the society’s needs. Similarly, many would argue that today’s market is not supplying sufficient public interest technologists.
- Funding Challenges: Demonstrating their awareness of the need for sustainable funding mechanisms for public interest law, Ford supported the research and writing of *Balancing the Scales of Justice: Financing Public Interest Law in America*. Funding considerations for public interest technology is also a topic of conversation being called for today.
- Manifold Needs within the Field: The law impacts practically every facet of our lives – either directly or indirectly – and there is a great need for public-interest lawyers that specialize on a variety of topics. Likewise, technology has become ever-present throughout our lives, leaving our society needing technologists to work on behalf of the public interest in many ways.
- Lack of Diversity: The current lack of diversity within the tech sphere is well-documented, and the law field also struggles with diversity. According to 2010 Census

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<sup>20</sup> Ibid. p. 423

data, 88.1% of lawyers identified as white, 4.8% identified as Black, and 3.7% identified as Hispanic. (However, recent JD enrollment numbers show sign of improvement, with 24.5% of students enrolled in law school identifying as minorities.)<sup>21</sup>

- Desire for Meaningful Work: Law school students' desire to work on behalf of the social good began to be particularly well documented in the 1960s-1970s, coinciding both with larger social movements and the increase in educational and clinical programs that prepare students to undertake this work.<sup>22</sup> Similarly, millennials have also expressed a strong desire for meaningful work – for example, a recent study found that “meaningful work was among the three most important factors defining career success.”<sup>23</sup> This aligns with our own research, in which we found no shortage of technologists excited to undertake meaningful public interest work.

## Differences

- Professional Familiarity with Government: Those who practice in the field of law are inherently involved with the government and have a basic understanding of its role and procedures. Conversely, technologists may easily never touch government or public interest work, either in their educations or careers and do not have as deep of an understanding of the role of government and how it functions.
- Governmental Familiarity with Profession: The relationship between the professionals and the institution operates in both directions. Governments are inherently familiar with the legal profession and the work of lawyers, but many governmental organizations are far from tech savvy. During our research technologists expressed concern over governmental challenges ranging from basic technical infrastructure and bureaucratic barriers to an overall lack of understanding about the role technology can play in making government more efficient and effective. Shifting governmental culture to

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<sup>21</sup> Lawyer Demographics. (2015). American Bar Association.  
[http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2015.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf)

<sup>22</sup> Tucker, Marna S. (1972). The Private Lawyer and Public Responsibility – The Profession's Armageddon. *Nebraska Law Review*, 51:3 p. 370. <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=2391&context=nlr>

<sup>23</sup> Smith, Emily Esfahani, Aaker, Jennifer L. (2013). Millennial Searchers. *New York Times*.  
<http://www.nytimes.com/2013/12/01/opinion/sunday/millennial-searchers.html>

become more technologist- and technology-friendly may require significant and extended effort.

- Identity and Credentialing: While there is a common understanding of what a lawyer is, no such common understanding exists for what constitutes a technologist. At least in part because of the degree required to become a lawyer, the public interest law field never had to confront this fundamental identity question that the public interest technology field must address. While credentialing efforts in the technology sector are emerging, there is no association nor standard test to definitively credential an individual as a technologist. Moreover, while the field of law has created a shared conception of what it means to work for the public interest, technologists are still shaping a unified understanding of the work of public interest technologists.
- Career Purpose: Lawyers' day-to-day work is tied to issues involving justice. Although the work of technologists is undeniably linked to important societal issues and social justice, technologists can arguably do their jobs while ignoring the broad picture.
- Ease of Transition: An entire industry has emerged to help lawyers move between private firms and into new industries with relative ease. (Literature ranging from *The Great Firm Escape: Harvard Law School's Guide to Breaking Out of Private Practice and Into Public Service*, to "6 Key Considerations When Moving from Government to Private Practice," can easily be found through an Internet search.<sup>24</sup>) However, a parallel industry has not yet developed in the technology sector. One common concern voiced by public interest technologists during our research was the challenge of moving between private and public interest organizations.
- Educational Model: There are many opportunities to expose future lawyers to public interest work through their schooling, whereas technologists can acquire their necessary skills in many ways – both in formal and informal educational settings. This may make it more challenging for public interest work to be integrated in technologists' training.

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<sup>24</sup> Lindsey, John. (2015). 6 Key Considerations When Moving from Government to Private Practice. Bloomberg BNA. <https://bol.bna.com/6-key-considerations-when-moving-from-government-to-private-practice/>

- Business Model: Public interest law organizations are a prominent feature of public interest law, and even before Ford’s investment in the field in the late 1960s-1970s, nearly 100 public interest law organizations existed.<sup>25</sup> In contrast, there is currently a dearth of independent public interest technologist organizations (Code for America is one of very few) and it is unclear if this independent model that is so integral to public interest law is appropriate for public interest technology.

### III. Applicable Lessons Learned

There are several lessons learned that public interest technology might glean from the success of the public interest technology field:

- The Power of Planning: A remarkable amount of time, funding, and work went into creating the thorough, compelling, and actionable strategy documents for the emergence of the public interest law field. Looking back several decades later, numerous scholars now cite these documents as key accomplishments and guidance for the field. As it weighs how best to move forward with the significant investment and effort required to develop the public interest technology field, philanthropy may consider continuing similar substantive research and strategic planning.
- Diverse Funding Mechanisms: Public interest law draws its funding from multiple sources, including foundations, the government, and private industry donations of professional time and money. Likewise, public interest technology might consider targeting diverse sources of funding to support the growth and sustainability of the field.
- Target Education: Law school students have many ways to get involved with public interest work during their studies. There are public interest law fellowships, legal clinics, summer internships, pro-bono options, and loan forgiveness for those that enter the field. As described above, Ford’s funding was a “catalyst” for these types of programs. Philanthropy may take a similarly active role in helping provide these kinds of opportunities to attract technologists wanting to focus on the public interest.

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<sup>25</sup> Graham, Robert L. (1977). Balancing the Scales of Justice: Financing Public Interest Law in America. *Loyola University Chicago Law Journal*, 8:3, p. 668. <http://lawecommons.luc.edu/luclj/vol18/iss3/10/>

- Leverage Corporate Allies: Concerned over increasingly limited government funding for public interest law, the ABA successfully leveraged their wealthy corporate partners to fill public interest needs, create a financially sustainable pro bono law program, and build the field generally. As the ABA remarked in the aforementioned letter to the Ford Foundation regarding the Law Firm Pro Bono Project, "it is large law firms which have the expertise and resources" to conduct "major impact" public interest work, and by involving them in public interest work the ABA not only enabled skilled lawyers to work in the public interest but also gained financial support from firms for the public interest law program. Moreover, the ABA was keenly aware of the power of prominent allies. "The wholehearted and visible participation in pro bono heightens the legitimacy of volunteer work for all attorneys," stated the ABA's grant proposal.<sup>26</sup>

One way to dramatically increase the amount of technologists getting exposed to, and working for, the public interest would be for philanthropy to work closely with private partners in the technology industry. This may include building *pro bono*-like pathways for technologists to be involved with projects on a limited or part-time basis, and using the financial resources and visibility of major technology firms to build the field.

- Look Internationally: One crucial outcome from the growth of the public interest law field in the United States has been the international spread of the field. Ford was described by Trubek as a "key player" in leveraging U.S. practitioners' knowledge to develop the public interest law field throughout the world, and it continues to develop the field domestically and abroad.<sup>27</sup> International knowledge-sharing could prove useful for developing the public interest technology field as well, particularly given that the Internet and technology generally connect people across the world, and that other countries are asking similar critical questions.

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<sup>26</sup> MacMullin, Glenda L. (1995). Letter and Grant Proposal from the American Bar Association to the Ford Foundation. Grant no. 08900977.

<sup>27</sup> Trubek, Louise G. (2011). Public Interest Law: Facing Problems of Maturity. *University of Arkansas at Little Rock Law Review*, 33:4, p. 965-967. <http://lawrepository.ualr.edu/lawreview/vol33/iss4/4>.

## Conclusion

Tremendous time and effort went into developing the public interest law field. Undertaking further research on how we can apply this experience to a new public interest technology field also presents an exciting opportunity for Ford and other philanthropic organizations seeking to maximize investments made almost half a century ago.

It is evident that the public interest technology field may indeed look to public interest law as a model, but that this analogy requires nuance. Among the lessons that may be taken from philanthropy's experience with public interest law is the degree of effort – and subsequent success from such effort – put into strategic planning. This may serve as a tangible next step for public interest technology in order to codify a communal understanding of public interest technology, identify opportunities and liabilities, and form a joint understanding of public interest technology's strategic direction.