Human Rights in an Era of Neoliberal Globalization: The Alien Tort Claims Act and Grassroots Mobilization in *Doe v. Unocal*

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This article examines a widely publicized corporate accountability and human rights case filed by Burmese plaintiffs and human rights litigators in 1996 under the Alien Tort Claims Act in U.S. courts, *Doe v. Unocal*, in conjunction with the three main theoretical approaches to analyzing how law may matter for broader social change efforts: (1) legal realism, (2) Critical Legal Studies (CLS), and (3) legal mobilization. The article discusses interactions between *Doe v. Unocal* and grassroots Burmese human rights activism in the San Francisco Bay Area, including intersections with corporate accountability activism. It argues that a transnationally attuned legal mobilization framework, rather than legal realist or CLS approaches, is most appropriate to analyze the political opportunities and indirect effects of *Doe v. Unocal* and similar litigation in the context of neoliberal globalization. Further, this article argues that human rights discourse may serve as a common vocabulary and counterhegemonic resource for activists and litigators in cases such as *Doe v. Unocal*, contrary to overarching critiques of such discourse that emphasize only its hegemonic potentials in global governance regimes.

This article examines "bottom-up" processes of legal mobilization in *Doe, et al., v. Unocal Co*. (1997, 2000), a pivotal human rights and corporate accountability case filed in 1996 by Burmese plaintiffs and U.S. human rights litigators under the Alien Tort Claims Act (ATCA), initially legislated under the Judiciary Act of 1789. This statute allows people who are not U.S. citizens to file lawsuits in U.S. courts for alleged violations of international human rights law and has become a lightning rod for debates about corporate social responsibility, human rights, and the rule of law in an era of globalization. *Doe v. Unocal* alleged that Unocal was complicit

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in human rights violations perpetrated in constructing a natural gas pipeline through Burma to Thailand, the Yadana project, in which Unocal was a co-investor, under a doctrine of "vicarious liability" worked out in case law through precedents established during the Nuremberg trials (Stephens 2002). Plaintiffs charged that they suffered forced relocation, forced labor, rape, murder, and torture as a result of the project. After more than eight years of litigation, in December 2004, Unocal and the plaintiffs announced that they would settle out of court, with Unocal agreeing to pay the plaintiffs an undisclosed but reportedly substantial sum, and to pay for health, education, and other social programs in the pipeline region.

In order to consider the significance of this litigation to broader social change efforts, this article looks at the dynamics between *Doe v. Unocal* (1997, 2000) and U.S.-based, grassroots Burmese activists who are not formal parties to *Doe v. Unocal* but are engaged in the struggle to end state and corporate repression in Burma.[1] The case provides a touchstone for analyzing not only the potential impacts of litigation in broader social movements, but also the unique dynamics of legal mobilization in a transnational context, including the politics of human rights discourse and its counter-hegemonic potentials. This article argues that a transnationally attuned legal mobilization framework, rather than the analytical tools of legal realist or Critical Legal Studies (CLS) scholars, is most appropriate to evaluate the potential impacts of *Doe v. Unocal* and similar cases. This case study analyzes how ATCA litigation may have indirect effects and be intertwined with processes of grassroots mobilization and capacity-building prior to, during, and after a lawsuit is filed, regardless of formal legal outcomes. Indeed, these informal outcomes are often the goals of ATCA litigators and plaintiffs. This analysis highlights not only the role of such litigation in constituting new political opportunities for grassroots activists, but also the organizational strengths of Burmese activists that were pivotal to leveraging and translating litigation into broader mobilization to end repression in Burma—though these struggles are far beyond any single tactic or the scope of this article.

This article begins with a review of theoretical perspectives on litigation and social change, before delving into the context of interaction between Burmese activists and *Doe v. Unocal* (1997, 2000). It discusses in broad terms the politics of resource extraction and

[1] This article refers to Burma rather than Myanmar due to the political connotations of these two names in English. As one scholar of Burmese politics writes, "The military regime unilaterally changed the English name of the country to Myanmar without consulting the country's citizens" (Fink 2001:5–6).

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human rights in Burma, to outline the political challenges and opportunities confronting activists and ordinary Burmese citizens in addressing situations such as the Yadana gas pipeline project. Next is a discussion of specifically legal opportunities opened to activists under the ATCA, following the watershed *Filartiga* case (*Filartiga v. Pena-Irala*, 2nd Cir. 1980). An analysis of legal mobilization in *Doe v. Unocal* follows, drawing on data from archival research and interviews with grassroots activists and litigators. In conclusion, the article discusses the significance of these data to legal realist, CLS, and legal mobilization frameworks for assessing the role of law in social change.

Theoretical Perspectives on Litigation and Social Change

Within sociolegal scholarship there are three main theoretical approaches to conceptualizing and analyzing how law may matter for social change and social movements: (1) legal realism, (2) CLS, and (3) legal mobilization. None of these approaches is optimistic, in general, about the potential of law to support broader social reform efforts; all acknowledge that, overall, established laws tend to represent dominant power relations in society and operate in ways that perpetuate status quo inequalities. Yet they differ significantly in the extent to which they see law as having the potential to also operate in counterhegemonic ways, in certain contexts. Their major premises and lines of difference are summarized herein.

For legal realists, litigation holds scant potential for meaningful social reform. It offers empty promises and "hollow hopes," according to scholars such as Rosenberg, rather than substantive benefits. Rosenberg and other legal realists often base such arguments on studies of the "gaps" between formal litigation outcomes, as in *Brown v. Board of Education* (1954, 1955), and their implementation (Becker & Feeley 1973; Horowitz 1977; Johnson & Canon 1984; Rosenberg 1991, 1992, 1994; Bogart 2002). They emphasize the multiple disconnects between court decisions and practices beyond courts, including courts' lack of financial and administrative resources to implement their decisions, especially in the face of social or political opposition. According to such studies, without federal action or legislation, litigation and court decisions mean little, and gaps between what is officially "law" and "law in action" demonstrate the futility of litigation tactics for social movement activists, especially given the time and financial resources typically required to pursue a lawsuit. Legal realists argue that activists would be better served by devoting their limited capacities to other activities.

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CLS scholars also see little potential in litigation. However, compared with legal realists, they place far greater emphasis on the ways that litigation may demobilize and undermine social movements due to law's ideological biases, intertwined with dominant hierarchies, beyond being a waste of resources (Gabel 1984; Kelman 1987). CLS scholars underscore the drain on activist resources imposed by litigation, but they also argue that litigation fractures and hampers movements by individualizing conflicts that are embedded in broader social power inequalities that should be targeted by nonlegal and illegal tactics instead, not tied up in legal processes. They contend that litigation thereby erodes both the organizational capacity and social rights consciousness necessary to mobilize *collective* claims that challenge unequal power relations and injustices beyond the courtroom. They view litigation as mystifying the extralegal underpinnings of social inequality and injustice.

Finally, a legal mobilization approach, initially articulated by McCann (1994) as a critique of legal realist and CLS analytical frameworks, takes a "bottom-up" view of litigation to examine how activists understand and mobilize legal discourses, such as human rights, as well as legal actions and institutions. From this vantage, legal mobilization scholars argue that whether litigation advances the efforts of social movement activists depends on the *context of interaction* between activists and legal processes, in particular the intertwining of broader structures of political opportunity, organizational resources, and rights consciousness. This analysis draws on key concepts from McAdam's "political process model" in social movement studies, which posits that for social movement mobilization to take place, structures of political opportunity (e.g., for civil society actors vis-à-vis the state), activists' indigenous organizational strength, and shared social consciousness (including a sense of collective identity and rights consciousness) must intersect (McAdam 1982:51).

McCann and other legal mobilization scholars bring to this model explicit attention to litigation tactics and processes, emphasizing the ways in which litigation may be employed to harness and even constitute meaningful political opportunities, as well as organizational strength and collective rights consciousness, rather than necessarily eroding them. Moreover, a legal mobilization framework directs analytical attention beyond the formal, top-down outcomes of litigation in courtrooms and the direct effects of litigation that preoccupy legal realists, focusing instead on law's indirect effects, grassroots activists, and activities beyond the courtroom. This perspective articulates with more general sociolegal scholarship on the ways in which rights, interests, and understandings of justice are continually negotiated in people's everyday lives and

interactions, not only via courts and lawsuits (Espeland 1998; Ewick & Silbey 1998; Yngvesson 1989).

To summarize legal mobilization's main contrasts with legal realist and CLS approaches, a legal mobilization framework attends to the potential for *indirect* effects of litigation, regardless of courtroom decisions, including building activist networks and garnering media attention. In addition, unlike legal realist and CLS approaches, a legal mobilization approach does not assume that litigation only drains organizational and movement resources, but examines how it may leverage new resources as well. This assumption is especially pertinent to movements that comprise diffuse networks of organizations, such as transnational advocacy networks (TANs), wherein most participants are not direct parties to the litigation. A legal mobilization approach also does not posit a zero-sum relationship between litigation and other activist tactics and does not assume that litigation undermines collective consciousness and claims-making. All these elements enable a legal mobilization framework to evaluate the complex and multifaceted ways in which law may intersect with social change and counterhegemonic projects. So while this approach is not generally optimistic about the impacts of litigation on broader social reform efforts, it acknowledges law's *limited, contextual* potential to advance activists' objectives, unlike the other principal theoretical perspectives on these questions.

However, vis-à-vis *Doe v. Unocal* (1997, 2000), one crucial limitation of McCann's legal mobilization framework is that it theorizes a U.S. domestic political context, rather than the unique dynamics of a transnational context. Scholars such as Santos and Rodriguez-Garavito (2005) have made seminal, key contributions to studying the use of law by transnational social movements, including the potential role of law in counterhegemonic globalization projects. They distinguish their own bottom-up, "subaltern cosmopolitan legality" (Santos & Rodriguez-Garavito 2005) from two other lines of research that they argue dominate sociolegal approaches to studying the role of law in globalization: (1) the literature on "global governance," which echoes concerns and assumptions of U.S. legal realists (MacNeil et al. 2000; Nye & Donahue 2000); and (2) literature from "hegemony scholars" that draws on ideas in the CLS tradition, emphasizing the contribution of law to patterns of domination across borders (Dezalay & Garth 2002; Nader 2005). "We argue that, despite their radically different goals and theoretical roots, [these approaches] share a top-down view of law, globalization, and politics that explains their failure to capture the dynamics of bottom-up resistance and legal innovation taking place around the world" (Santos & Rodriguez-Garavito 2005:6). Their subaltern cosmopolitan legality model shares much in common with a legal

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mobilization framework, though it is less explicitly engaged with concepts from social movement theory that are useful to examining grassroots activism.

Also helpful to analyzing legal mobilization in a transnational context is the political science literature on TANs and their potential to constitute norms and bring about "boomerang effect" sanctions across nation-state borders (Keck & Sikkink 1998). As Risse and colleagues explain, "A 'boomerang' pattern of influence exists when domestic groups in a repressive state bypass their state and directly search out international allies to try to bring pressures on their states from outside" (Risse et al. 1999:18). These scholars emphasize the potential for TANs to have progressive socialization effects on states via successive boomerang effects. Hence this literature contributes to a legal mobilization framework a keener understanding of an important type of activist organization operating across borders (i.e., TANs) as well as possible indirect effects of litigation in the form of transnational boomerang effects.

Yet while Risse et al. assume the beneficence of human rights discourse and activism, other scholars, including Santos and Rodriguez-Garavito, present critical analyses of the hegemony of human rights discourse in elite governance projects. These critiques contend that such discourse is inextricably intertwined with European colonial preoccupations with social order and control, and the mentality that non-Europeans are unable to govern themselves (Rajagopal 2003). In other words, while human rights TANs and boomerang effects are useful reference points for investigating processes of transnational legal mobilization, they may operate in contradictory, repressive, and hegemonic ways, not only according to the formal ideals of human rights. Hence this article's analysis of "bottom-up" mobilization in *Doe v. Unocal* (1997, 2000), a case that draws on international human rights law, includes attention to the multivalent character of human rights discourse in the context of globalization. It explores possibilities for both hegemonic and counterhegemonic human rights mobilization. To lay the groundwork for this analysis, next is a discussion of the political and economic contexts of resource extraction and human rights in Burma, sketching the political challenges and opportunities confronting actors who attempt to address situations such as the Yadana project.

Resource Extraction and Human Rights in Burma

Historical Overview of Military Rule in Burma

In 1948, the Union of Burma achieved nominal independence from British colonial administration after decades of colonial rule.

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The new parliamentary democracy was beset by conflict among diverse groups as ethnic minorities sought autonomy from the Burman ethnic majority. A military coup ended representative government in 1962, and for the next 26 years the Burma Socialist Program Party (BSPP) led a military-dominated regime that ruled without free elections, freedom of association, or freedom of expression. In the 1960s and 1970s, student and worker protests against the regime were crushed. Meanwhile, ethnic opposition groups continued to fight guerilla wars in outlying regions of the country. The BSPP's isolationist economic policies led to deteriorating economic conditions, including food shortages.

In 1988, popular discontent was manifest in widespread demonstrations against the military regime, with hundreds of thousands of Burmese calling for democratic elections. In response, the army declared a coup and seized direct power as the State Law and Order Restoration Council (SLORC)—later renamed the State Peace and Development Council (SPDC).[2] After massacring thousands of demonstrators, the SLORC announced that elections would be held once "peace and tranquility" had been restored. The military government apparently thought that its hastily organized party, the National Unity Party, would win the post-coup elections, and that it had adequately rigged the vote in its favor. Yet when elections were held in 1990, the National League for Democracy (NLD) led by Aung San Suu Kyi won more than 80 percent of parliamentary seats—though the NLD and other opposition parties had fewer resources and less access to media than the SLORC. The regime denied the validity of the election and began cracking down against perceived political enemies and NLD supporters, placing Aung San Suu Kyi under house arrest.

Many of the Burmese diasporic activists currently opposing the regime abroad left after the events of 1988 and 1990. The SPDC/SLORC continues to rule by fiat. In October 2007, the regime again suppressed widespread popular uprisings by Buddhist monks, students, and others in Burma.

Natural Resource Exploitation and Military Repression

Burma is abundant in natural resources that have nonetheless not benefited the vast majority of people living there, neither under British colonial rule nor under Burmese military rule that began in 1962. The BSPP's "Burmese Way to Socialism" rejected foreign capital and trade, crippling economic growth for decades. However, these policies shifted after the 1988 suppression of

[2] The SLORC was renamed the State Peace and Development Council (SPDC) in 1997.

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Burma's democracy movement, when the country was nearly bankrupt. The SLORC needed an influx of funds, so it officially abandoned socialism and sought foreign investors to finance the development and exploitation of Burma's natural resources—including vast tracts of forest, fishery concessions, mineral reserves, and oil and gas fields. Often such resource exploitation has been devised to produce quick profits for the regime, regardless of effects on the environment or human rights. The Burmese military forbids complete foreign ownership of companies operating in Burma; hence, most major investments are joint ventures with the regime. So while international investment may help bring about socially beneficial economic development in certain contexts, in Burma such investment is funneled mainly to military-run companies that dominate much of Burma's trade and industry, thereby strengthening the military regime (Fink 2001:4). These projects often entail forced labor, forced relocations, and the destruction of forests and fisheries that have supported the livelihoods of local communities for centuries.

Given these political and economic contexts, in Burma the exploitation of natural resources and military repression are deeply intertwined, particularly in large infrastructure projects such as the Yadana gas pipeline in which Unocal invested. For all these reasons, Aung San Suu Kyi supports economic sanctions and boycotts on foreign investment in Burma, including the Yadana pipeline, arguing that such investment serves the military regime and not the broader Burmese society. Yet Unocal and other transnational corporations (TNCs) continue to assert that foreign investment is inherently beneficial and that to disinvest in Burma or countries with similarly repressive governments would be unhelpful and even harmful to democratic prospects. This stance is reinforced by hegemonic neoliberal policy frameworks that undermine the legitimacy of market regulation in general, in Burma and beyond—including the regulation of TNCs on behalf of labor, the environment, or human rights.

In sum, activists fighting for human rights in Burma, including accountability for corporate business operations, confront incredible political challenges. Within Burma, open resistance and mobilization are rare; when uprisings have occurred, as in October 2007, the military regime has countered them with brutal massacres and jailing of dissidents. Outside of Burma, Burmese diasporic activists still face enormous obstacles, as well as personal risks, including the possibility that agents of the Burmese regime will retaliate against relatives who remain in Burma. Yet there are far greater opportunities for mobilization against the Burmese regime in an international context than in a domestic context. Diasporic activists have greater freedom to associate and express their views,

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as well as additional allies, funding sources, and tactical possibilities that may be leveraged to exert external pressure on the regime, catalyzing "boomerang effects" as discussed above. Below I delve into one of these tactical possibilities, ATCA litigation, which exploits the expanded political opportunities for certain activists in an international context as well as specifically legal opportunities constituted by civil and human rights lawyers in 1980.

International Legal Opportunities: The ATCA and *Filartiga* Precedent

Activists and lawyers who mobilized around *Doe v. Unocal* (1997, 2000) beginning in the 1990s took advantage not only of expanded political opportunities for activism outside of Burma, but also of specifically legal opportunities constituted under the ATCA in 1980, when the *Filartiga* precedent (*Filartiga v. Pena-Irala* 1980) established the validity of drawing on international human rights law in U.S. courts. This precedent made it possible for people who are not U.S. citizens to be plaintiffs in lawsuits alleging violations of human rights abroad—as in *Doe v. Unocal*. In its entirety, the ATCA reads: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States" (Judiciary Act of 1789, ch. 20, §9[b], 1 Stat. 73, 77 [1789]; amended 28 U.S.C. §1350, 1982). On the books since its adoption by the first U.S. Judiciary in 1789, the ATCA lay dormant for almost 200 years, until lawyers associated with the Center for Constitutional Rights (CCR) used it to sue a former Paraguayan police official for violations of international human rights law in the watershed *Filartiga* case (*Filartiga v. Pena-Irala* 1980). The case established for the first time that violations of "the law of nations" include torture by state officials, in accordance with contemporary international human rights law. This precedent opened the door to drawing on other contemporary human rights norms in ATCA litigation.

This jurisprudential precedent was not incidental but resulted only after repeated attempts by activist lawyers and organizations to invoke the UN Charter and UN Declaration of Human Rights in U.S. civil rights suits in the period after World War II (Stephens & Ratner 1996:xv). These efforts stalled with the 1952 case of *Sei Fujii v. State of California*, in which the California Supreme Court ruled that the UN Charter's human rights clauses were not self-executing and hence did not "impose legal obligations on the individual member nations or . . . create rights in private persons" (*Sei Fujii v. State of California* 1952, 38 Cal. 2d 718, 722, 242 F. 2d 617, 620–21 [152]; as cited in Stephens & Ratner 1996:xvi). Then in the 1970s, a

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lawyer associated with the CCR, Peter Weiss, rediscovered the ATCA statute and "contemplated using it to sue U.S. government officials on behalf of Vietnamese victims of various U.S. actions" (Stephens & Ratner 1996:xvi–xvii). Other individuals and organizations also invoked international human rights norms in attempts to stop the U.S. government and corporations from aiding the apartheid regime in South Africa. These efforts did not achieve formal victories or direct legal results, but they laid groundwork for institutionalizing international human rights norms in U.S. courts, and Weiss and Rhonda Copelon, another CCR lawyer, eventually filed the *Filartiga* case. Similar ATCA cases against individuals (i.e., not corporations) followed. A particularly significant case of this type was *Kadic v. Karadzic* (1995), which opened the door to corporate ATCA suits by holding that private individuals could be directly liable for certain violations, and that state action was not necessary for culpability in genocide and war crimes cases. Building on the *Filartiga* and *Kadic v. Karadzic* precedents, CCR was later a party to *Doe v. Unocal*, the first ATCA case brought against a U.S. corporation that survived a motion to dismiss.

In terms of the theoretical perspectives discussed above on the role of litigation in broader social change efforts, an important point here is that *Filartiga* was itself based on earlier, unsuccessful attempts by activists and lawyers to draw on international human rights norms in U.S. civil rights cases. In other words, *Filartiga* represented the fruits of earlier processes of legal mobilization. At the same time, *Filartiga* constituted novel legal opportunities for activists and TANs that went on to mobilize around ATCA cases against both individuals and corporations, including *Kadic v. Karadzic* and *Doe v. Unocal*. These dynamics demonstrate the indirect effects that may result from even "failed" litigation efforts in certain contexts, particularly where such litigation articulates with practical and discursive possibilities for transcending the constraints of local political structures, whether at the national or subnational levels.

Legal realists would tend not to appreciate such dynamics, given their focus on formal, direct legal outcomes. ATCA legal mobilization before and after *Filartiga* also belies CLS scholars' contention that litigation is inherently individualizing and demobilizing, eroding collective consciousness and claims-making. Rather, *Filartiga* and other ATCA lawsuits drawing on international human rights law have been nurtured by and catalyzed collective rights consciousness and broader social reform efforts all along. Other scholars working in a legal mobilization tradition have critiqued CLS scholars' arguments along similar lines, presenting analyses of domestic social movements that have effectively leveraged litigation tactics in collective struggles (Schneider 1986; Poll-

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etta 2000). While these studies by no means suggest that litigation is necessarily or usually emancipatory for social movements, they do point to possibilities for litigation to operate in counterhegemonic, collectively oriented ways in certain contexts, as in *Filartiga* (1980).

Moreover, *Filartiga*, *Kadic v. Karadzic* (1995), and other ATCA lawsuits against individual defendants laid groundwork for *Doe v. Unocal* (1997, 2000) and subsequent legal mobilization against corporations—moving beyond international human rights law's traditional focus on *state* actors (Donnelly 2003). Sandra Coliver, a litigator with the Center for Justice and Accountability (CJA), an organization that focuses on ATCA cases against individual defendants, commented that such cases advance the principle of universal jurisdiction and the acceptance of international human rights norms in U.S. courts, with implications for a broad range of legal mobilization efforts. As she put it,

> The thinking is that once U.S. citizens become comfortable with the notion that ATCA should be applied against such foreign human rights abusers, it is only a short step to understand that, at a minimum, the same standards should be applied to U.S. agents in the cases when they aid and abet such violators, or to U.S. corporations doing business abroad in collaboration with repressive regimes. (Interview with Sandra Coliver, CJA, 13 April 2004)

Indeed, ATCA cases involving individuals have continued and led to some of the most significant ATCA precedents, especially the 2004 case of *Sosa v. Alvarez-Machain*. In *Sosa*, the U.S. Supreme Court ruled that while the arbitrary detention of a Mexican national by a U.S. Drug Enforcement Administration (DEA) agent was not actionable under the ATCA, perpetrators of other offenses deemed to be violations of international law could be held liable under the statute. In other words, the Supreme Court upheld the *Filartiga* precedent and allowed *Doe v. Unocal* and other corporate ATCA cases to proceed, leading human rights activists to hail the decision as a victory. Meanwhile Richard Herz, a litigator with Earth Rights International (ERI), which litigated *Doe v. Unocal* and other corporate ATCA cases, commented, "Both [kinds of ATCA cases] support the idea of accountability for human rights violations in U.S. courts. [They support] the idea that the U.S. shouldn't be a legal safe haven for those who have committed or are complicit in egregious human rights abuses" (Interview with Richard Herz, ERI, 28 October 2004). In other words, these litigators see ATCA cases against individuals and corporations as synergistic, both contributing to the broader struggle for human rights in an era of globalization, though CLS critics may dismiss litigation efforts,

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particularly against individual defendants, as turning away from more radical, structural change.

Next is a presentation of the methodology drawn on to investigate legal mobilization in *Doe v. Unocal*, followed by an analysis of how the litigation intersected with political opportunities, organizational capacities, and rights consciousness for activists beyond the courtroom who were not formal parties to the case. This analysis emphasizes "bottom-up" understandings and actions articulated with the litigation, highlighting the multiple ways in which law may matter for political struggles and social reform efforts, beyond formal legal processes.

Methodology for Investigating Legal Mobilization in *Doe v. Unocal*

In order to engage the theoretical perspectives introduced earlier and develop the legal mobilization approach employed in this case study, this research draws on (1) qualitative interviewing methods and (2) an analysis of documents relevant to *Doe v. Unocal* (1997, 2000) and other ATCA cases (NGO reports, judicial decisions, media coverage, etc.), as well as secondary sources on Burmese history and politics. It also draws on limited participant-observation at events organized by Burmese grassroots activists. Data from two types of organizations structured the research: human rights advocacy organizations litigating ATCA cases, and grassroots Burmese organizations in the San Francisco Bay Area. I discuss these organizations and the methodology for interviews with litigators and activists in greater detail below. All interviews took place in 2004, the year *Doe v. Unocal* litigation finally culminated in an out-of-court settlement.

Human Rights Advocacy Organizations Litigating ATCA Cases

The first group of organizations in this study—advocacy organizations engaged in ATCA litigation—consisted of the CJA, ERI, and the International Labor Rights Fund (ILRF), which has since changed its name to the International Labor Rights Forum. These are three of the primary U.S. human rights organizations that have used the ATCA to advance their work. CJA litigates ATCA cases against individuals, while ERI and ILRF served as co-counsel in *Doe v. Unocal* and have gone on to litigate other corporate ATCA cases. In 2004, when much of the research for this article was conducted, these three organizations and one other, the CCR, were the only NGOs in the United States to employ ATCA litigation in their work, as part of broader social struggles that they and other actors were engaged in.

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Interviews With Human Rights Litigators

The four human rights litigators interviewed for this case study were selected based on their affiliations with these organizations and their knowledge of *Doe v. Unocal* or other ATCA cases. In semi-structured, open-ended interviews lasting between 30 minutes and one hour, litigators were asked what they perceived to be the main challenges to and opportunities for advancing the objectives of their organization, how they employed litigation and other tactics in that work, and whether and how they thought ATCA litigation articulates with extralegal struggles for social change beyond their organization, including the work of grassroots activists. Those litigators involved with *Doe v. Unocal* were asked to reflect on the case's import vis-à-vis the larger struggle for human rights in Burma. Litigators were also asked how they viewed the relationship between ATCA lawsuits against individuals versus those against corporations, and whether they thought ATCA cases matter beyond their final outcomes.

Grassroots Burmese Organizations Mobilizing for Human Rights and Democracy

The second group of organizations in this study—grassroots organizations comprising mainly Burmese diasporic activists—consisted of the Burmese American Democratic Alliance (BADA) and the Burmese American Women's Alliance (BAWA). BADA and BAWA are the principal grassroots organizations oriented toward Burmese democracy and human rights issues in the San Francisco Bay Area, as well as important nodes of such activism on the West Coast—part of a long-term international "Free Burma" campaign that has ebbed and flowed over the years among various groups and locales. Both organizations comprise mostly Burmese Americans, though some members are non-Burmese activists concerned about repression in Burma.

While there is great ethnic, socioeconomic, and geographic diversity among Burmese diasporic activists, the common ground of these groups is that they overwhelmingly oppose the Burmese military regime (Thawnghmung 2005). Where groups differ is in their vision of a post-regime Burma, in particular whether they emphasize a unified, democratic Burma under the leadership of the NLD and Aung San Suu Kyi, or place greater emphasis on autonomy for their particular ethnic group. Sometimes these efforts are combined. The groups in this study, BADA and BAWA, strive to bring democracy to Burma, rather than more particular goals of ethnic autonomy or religious freedom; their memberships include a range of ethnic groups and religions.

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As a researcher, I first connected with these two organizations at a Burmese Human Rights Day in Berkeley in March 2004, an annual event sponsored by BADA that features national and international activists in the Free Burma movement. I subsequently contacted activists and explained that I was interested in learning more about their work to advance human rights in Burma, including how they came to that work, without mentioning an explicit focus on law or the *Doe v. Unocal* (1997, 2000) case.

Interviews With Grassroots Activists

The sixteen activists interviewed for this case study were selected primarily based on their positions within BADA and BAWA (e.g., as executive committee members, board members, or founding members), rather than through snowball or random sampling techniques. The rationale was that these informants could best speak to organizational strategy, perceived opportunity structures, framing, and organizational resources. Interviews were conducted in English, semi-structured, and open-ended, and averaged one hour in length. Grassroots activists were asked a broader range of questions than litigators, in order to delve into grassroots perspectives on human rights discourse, rights consciousness, and legal mobilization. Activists were asked about challenges and opportunities for advancing their organizational objectives, including which tactics they saw as most effective. They were asked about their knowledge and perception of the *Doe v. Unocal* case, and how they would evaluate the case or future ATCA litigation if the courts ruled in favor of Unocal, or if the case were dismissed. In addition, activists were asked how they first encountered human rights discourse and how it figured into their personal understandings and activism. In responding to these questions, activists often shared more general reflections on Burma and U.S. publics, corporate accountability, rights, and globalization. Many spoke about the personal trajectories through which they became activists—narratives that are beyond the scope of this article.

Initial Hypotheses

This research began with the hypothesis that *Doe v. Unocal* would matter to litigators and human rights advocacy organizations but would have little significance to the collective claims-making of grassroots activists not formally associated with the case—and hence to broader dynamics of legal mobilization. This research also began with the hypothesis that there would be a significant disjuncture between the ways litigators and activists might talk about the case in relation to broader social change efforts.

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Doe v. Unocal Mobilization and Leveraging Political Opportunities

This article has already outlined in broad terms the political and economic context of resource extraction and military repression in Burma. Now I turn to details of the Yadana project in which Unocal was a co-investor, in order to establish the context of legal mobilization in *Doe v. Unocal* (1997, 2000) and examine the case's leveraging of political opportunities in particular. In this project, as in Burma generally, there was a direct link between foreign investment by companies such as Unocal and militarization by the SPDC/SLORC, which controls international business deals and provides "security" for projects such as the Yadana gas pipeline. Before the Yadana project was conceived, there were no permanent army outposts in Burma's Tennessarim region, where the pipeline would be constructed. However, beginning in 1991, while the French company Total and Unocal were negotiating with the SLORC over the project, the regime began to militarize the pipeline region (Giannini 1999). This militarization resulted in the human rights violations that were the basis of *Doe v. Unocal*, including forced relocation, forced labor, rape, murder, and torture.

As touched on previously, within Burma there are no real opportunities for victims of such abuses to have their grievances heard or to challenge status quo power relations. There is not even a formal legal system accessible to such complaints, however inadequate formal legal institutions and processes may be. As a 1996 report by ERI, *Total Denial*, describes the situation, "[In Burma], the rule of law is enforced only when it benefits the Burmese military regime" (ERI 1996:45). This legal vacuum has been especially acute since the SLORC suppressed the democracy movement in 1988 and asserted its direct control over Burma, declaring martial law. As a SLORC secretary and head of military intelligence elaborated on his concept of martial law in 1992, "Martial law is neither more nor less than the will of the general who commands the army; in fact martial law means no law at all" (ERI 1996:45–6). Hence in Burma there was no independent judiciary or due process of law available to those affected by the Yadana project. Nor was there freedom of information and expression, freedom of association, or freedom of movement (Liddell 1999). In this context, TANs and *Doe v. Unocal* provided alternative mechanisms for legal compensation and mobilization, leveraging opportunities unavailable inside Burma.

In addition, *Doe v. Unocal* provided a possible point of *enforcement* of international human rights standards vis-à-vis a TNC, countering a "race to the bottom" amidst neoliberal economic policies disarticulated from human rights norms. According to an ERI

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report, "[The Yadana pipeline] investment project showcases the host of unredressed legal grievances which arise in connection with TNC activity throughout Burma. . . . SLORC understands that the lack of regulation and accountability is one of the factors that makes Burma an attractive country for oil companies' investment" (ERI 1996:46). The report discusses the Yadana project as part of broader trends in Unocal's investment strategy toward less regulated societies, "where profits are higher and environmental protections are not coincidentally fewer" (ERI 1996:60). In this context, ILRF lawyer Terry Collingsworth emphasized the importance of *Doe v. Unocal* and similar ATCA cases in advancing a human rights enforcement agenda, rather than merely enshrining such norms in voluntary corporate codes of conduct. "I have sat through a few too many academic discussions about ideal normative standards, and I have interviewed too many victims of human rights abuses, only to feel the frustration, if not the embarrassment, of explaining that their stories will be told to the world in reports . . . . My personal obsession has become finding ways to enforce human rights norms" (Collingsworth 2002:185).

This section has discussed the key political opportunities that *Doe v. Unocal* leveraged: namely, (1) an international context of action for Burmese plaintiffs and activists, and (2) through the ATCA and building on the *Filartiga* (1980) precedent, advancing a human rights enforcement agenda vis-à-vis a corporation, rather than voluntarism. As a corollary to these opportunities, litigation also leveraged a multivalent political context involving collusion between state and corporate actors, with the potential to facilitate collaboration between Burmese human rights activists, corporate accountability activists, and litigators. Mobilization around these opportunities has, in turn, helped further institutionalize these legal and organizing avenues for a wide range of activists. The next section examines in greater detail the mobilization processes that leveraged these political opportunities in the course of the litigation, particularly the ways that *Doe v. Unocal* led to organizational capacity-building and the growth of TANs, and therefore increased indigenous organizational strength, according to the terms of McAdam's political process model (1982) and McCann's legal mobilization framework (1994).

Doe v. Unocal Mobilization Processes and Organizational Capacities, Networks

Archival research and interview data presented below suggest that some of the most important impacts of *Doe v. Unocal* (1997, 2000) were the indirect effects of the litigation. These include

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bolstering the organizational strength, tactical repertoires, and discursive resources of activists. This research found four principal indirect effects of legal mobilization in *Doe v. Unocal*: (1) organizational growth and capacity-building; (2) growth of TANs and potentials for boomerang effects; (3) broadening activists' and litigators' tactical repertoires, including possibilities for synergy among different tactics and movements; and (4) cultivation of symbolic and communicative resources for movement-building and mobilization. While I discuss them separately, these effects are in many ways interdependent. For example, the cultivation of symbolic resources and the broadening of activists' tactical repertoires are also ways of building organizational capacity and possibilities for outreach, to both allies and publics.

Organizational Growth and Capacity-Building

One of the most significant indirect effects of *Doe v. Unocal*, beyond formal legal outcomes, was the organizational growth and capacity-building that took place in the course of litigation. The most outstanding example of such organizational growth is ERI, a human rights advocacy and legal organization that did not exist prior to mobilizing around *Doe v. Unocal*. While ERI's broader mandate is to advocate for "earth rights" around the world, the organization was founded in 1995 to help litigate *Doe v. Unocal* and grew directly from engagement with Burmese human rights and environmental politics, particularly the Yadana pipeline project. ERI's founders included two human rights litigators, Katie Redford and Tyler Giannini, as well as Karen Burmese activist Ka Hsaw Wa, a leading human rights activist in the Burmese diasporic community who was a student leader in the 1988 demonstrations, after which he fled Burma. According to Redford, she first learned about the Yadana pipeline project during a summer law school internship along the Thai-Burma border. As Redford describes the relation between the Yadana project and the founding of ERI:

> I was just shocked that an American corporation in the 20th century could be complicit in and benefiting from human rights abuses committed in the name of extracting natural resources . . . particularly Burma . . . . So I felt that we could use the law and we could actually sue Unocal for its complicity in these human rights abuses . . . . At that time I was one of the few people who actually thought that that was possible. So, yes, [Wa, Giannini, and Redford] did establish ERI to really harness the power of the international legal system on behalf of victims of human rights abuses at that time committed in Burma in the name of corporate profit. (Redford 2008: n.p.)

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Initial funding for ERI came from Echoing Green, a foundation that provides seed money for organizational start-ups that Redford and her colleagues persuaded of the potential of litigation, even while "prior to filing the case, we had so many people – our law professors, other foundations, our parents – telling us that we were crazy" (Redford 2008: n.p.).

In other words, legal mobilization around *Doe v. Unocal* resulted in the founding of ERI, an organization with broader social change objectives that has gone on to serve as co-counsel in similar ATCA cases, provide informational resources on filing ATCA lawsuits (ERI 2003a), and maintain a "Burma Project" to document and organize around ongoing human rights violations in Burma. Today, ERI's principal activities include (1) training emerging human rights and environmental leaders, (2) litigation to hold corporations and governments accountable for human rights and environmental abuses, and (3) advocacy campaigns to expose earth rights violations and protect earth rights legal mechanisms, where "earth rights" are understood as "those rights that demonstrate the connection between human well-being and a sound environment, and include the right to a healthy environment, the right to speak out and act to protect the environment, and the right to participate in development decisions" (ERI 2003b:3). So not only did *Doe v. Unocal* result in organizational capacity-building, it also catalyzed the formation of a unique human rights NGO, working at the intersection of environmental and human rights issues. These are among the significant indirect effects of this litigation. A legal mobilization approach helps illuminate these impacts as legal realist and CLS frameworks do not.

ATCA litigation in *Doe v. Unocal* also helped the ILRF to build organizational capacity by providing an avenue for mobilization around legally enforceable human rights and labor standards in the context of globalization. ILRF began forming in the early 1980s, as a coalition of advocates from the human rights, labor, academic, and faith-based communities for the rights of workers in a globalizing economy. In 1984, the coalition secured legislation in the Generalized System of Preferences that linked the granting of U.S. trade and investment benefits to countries' respect for labor rights. In 1986, the coalition founded the International Labor Rights & Education Research Fund (later shortened to ILRF) to monitor enforcement of these laws and develop additional tactics to fight for workers' rights around the world. One of ILRF's primary tactics from the late 1990s onward was ATCA litigation against corporations, beginning with *Doe v. Unocal*.

So while *Doe v. Unocal* was not the catalyst for founding ILRF, as it was for ERI, the case and similar ATCA litigation did build on ILRF's pre-existing organizational commitments in the field of

human and labor rights, opening avenues to mobilize around legally enforceable human rights standards for TNCs. ATCA litigation also helped ILRF distinguish itself among advocacy organizations devoted to labor and human rights. As its 2005 annual report states, "Perhaps our most unique contribution to the global effort to protect workers has been through successful legal advocacy" (ILRF 2005:1). The report mentions that ILRF is the only human rights and anti-sweatshop NGO to have utilized tactics ranging from campaigning to litigation in order to promote economic and social rights for workers around the world.

As for the grassroots Burmese organizations in this study, BADA and BAWA, since these groups were not parties to *Doe v. Unocal*, ATCA litigation did not impact the organizational growth and capacity-building as directly as it did for ERI and ILRF. Rather, BADA and BAWA activists spoke of less direct connections between the case and their activities and organizations, discussed in the following section. In any case, all the Burmese human rights activists interviewed knew about the case, supported it, and thought it was important in the fight for democracy and human rights in Burma. Moreover, activists were familiar with ERI and Ka Hsaw Wa, who had spoken about *Doe v. Unocal* at a recent BADA event.

Growth of TANs and Possibilities for Boomerang Effects

Another important indirect effect of *Doe v. Unocal* (1997, 2000) was the growth of TANs in conjunction with mobilizing around the case—an effect intertwined with organizational growth and capacity-building by ERI and ILRF. As these organizations developed relationships with plaintiffs and communities along the Thai-Burma border and beyond, they forged transnational ties to assist with mobilization in *Doe v. Unocal* and similar cases. ERI now maintains offices in Washington, D.C., and Southeast Asia, for example, and operates an Earth Rights School in Southeast Asia as well. Since its founding, ERI has also collaborated with organizations based exclusively in Southeast Asia, such as the Southeast Asian Information Network (SAIN), with which it researched and produced its first report in July 1996, *Total Denial: A Report on the Yadana Pipeline Project in Burma*. The report opens with letters of support and solidarity from not only the Secretary General of the National Council of the Union of Burma (composed of elected members of Parliament from the 1990 election), but also field officers from Environmental Rights Action in Nigeria, and a coordinator of the international coalition OILWATCH—all groups fighting environmental and labor abuses by oil companies at that time. ERI has continued to nurture and mobilize such international ties and TANs in its work, in tandem with its ATCA litigation efforts.

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While ILRF's ties with Burma and Southeast Asia are not as extensive as those of ERI, in 2005, ILRF established its first overseas office in Quito, Ecuador, "to build and maintain partner relationships in the Central and South American region" (ILRF 2005:2). ILRF is currently involved in ATCA cases on behalf of plaintiffs in Argentina, Colombia, Ecuador, Guatemala, and Nicaragua, in addition to corporate campaigns in the region without a litigation component. It is also involved in ATCA litigation in Liberia, Indonesia, and Turkey, among other countries. Like ERI, ILRF's involvement in ATCA litigation has been intertwined with building networks across national borders. ILRF litigator Collingsworth noted that ATCA cases often result in the growth of TANs because such networks are needed in order to initiate cases, and lawsuits may then serve as nodes for further mobilizing across borders, including among actors not directly involved in litigation processes. As an example, he cited an ATCA lawsuit that ILRF pursued against the Coca-Cola Company for allegedly aiding and abetting paramilitary executions of trade union leaders in Colombia (*Sinaltrainal, et al. v. Coca-Cola Co*., 256 F. Supp. 2d 1345 (S.D. Fla. 2003):

> [Litigation] ... served to focus a broader campaign seeking to persuade [Coca-Cola] to accept responsibility for violence in its bottling plants, wholly apart from any potential legal liability under the ATCA. The campaign is using factual information developed from the investigations connected to the litigation, as well as traditional human rights reports, to support specific demands that Coca-Cola respond to the violence in Colombia ... . The major participants in the campaign in the U.S. are the International Brotherhood of Teamsters, the United Steelworkers of America, the United Food and Commercial Workers Union, the United States Labor Education Project, and the ILRF. In addition, the Canadian Labour Congress, and ... the Canadian Auto Workers, have joined. The campaign provides a promising model of cooperation to change corporate behavior that supports or tolerates human rights abuses. (Collingsworth 2002:193)

So regardless of formal legal outcomes, the processes of litigating *Doe v. Unocal* and similar ATCA cases have resulted in the growth of new TANs mobilized around human rights and corporate accountability, with the potential to have progressive boomerang effects on TNCs and states. These TANs comprise disparate actors across national borders with few other avenues for such mobilization.

Broadening Tactical Repertoires

Litigators and grassroots activists also had a lot to say about the ways in which *Doe v. Unocal* (1997, 2000) and similar ATCA

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litigation broadened their tactical repertoires. Many mentioned the synergy between litigation and other tactics, such as shareholder resolutions, in pressuring Unocal and other corporations to respect human rights and environmental standards. More than half of the BADA and BAWA activists interviewed had taken part in annual demonstrations against Unocal at its shareholder meeting in Los Angeles. BADA's president mentioned that he spoke at Unocal's 2003 meeting, where he and others discussed *Doe v. Unocal* in the context of urging shareholders to support a resolution for Unocal to divest from Burma. Unocal reportedly devoted more than half of that meeting to addressing the Yadana project, though it comprised only a fraction of Unocal's total investments. BADA's president thought that the company's preoccupation with defending its Burmese investments to shareholders indicated the importance of negative publicity from the case, saying, "I think they [Unocal] are very conscious of their image. The amount of money invested in the Burma project might be a miniscule amount but I think they are very, very afraid that their image will suffer" (Interview with V. W., 25 April 2004).

A grassroots organizer working with BADA also emphasized the boost *Doe v. Unocal* gave to shareholder activism, saying, "A lawsuit is a really clear way in which getting involved in human rights abuses comes back to hurt the bottom line. I bring that lawsuit up a lot [when I talk to shareholders]. . . . It's one of the many risks that they face" (Interview with H. Q., 8 October 2004). In other words, *Doe v. Unocal* expanded the tactical repertoires of grassroots activists as well as those of litigators, particularly in combination with tactics such as shareholder education and protest at corporate meetings.

Litigators also discussed the potential synergies between lawsuits such as *Doe v. Unocal* and broader campaigns, often in the context of talking about the limitations of legal tactics alone and law's place in a larger mosaic of human rights and social justice activism. As Collingsworth put it, "The weakness of most campaigns is that they lack teeth . . . . Using litigation in tandem with a campaign could provide this necessary element" (Collingsworth 2002:193). Hence in deciding whether or not to take on cases, ILRF considers social factors beyond the details of the legal case, e.g., whether a company is public and could be a good target for larger campaigns, via boycotting or shareholder activism (Interview with ILRF lawyer, 19 October 2004). While these tactics and synergies were also mentioned by grassroots activists, litigators were more likely than grassroots activists to talk about the enforcement potential of ATCA litigation and the contribution of ATCA corporate lawsuits to their tactical repertoires on that basis.

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Cultivation of Symbolic and Communicative Resources

Litigators and grassroots activists also thought that *Doe v. Unocal* (1997, 2000) helped cultivate symbolic and communicative resources for movement-building and mobilization. Some activists pointed out that *Doe v. Unocal* provided a unique foothold for U.S. national media and other public outreach around Burmese human rights issues. A co-founder of BAWA emphasized the case's importance as a public education tool, saying, "That's the only case that's being sued in the U.S. [involving Burma] . . . if Unocal gets affected then [the Burmese government] will get affected. It would be nice if that case was well-known and people know about the situation in Burma . . . because let alone knowing about the situation in Burma, people don't even know there's a country called Burma" (Interview with K. K. L., 24 April 2004). Other Burmese activists echoed these sentiments, saying that the case gave them a unique chance to tell their stories and talk about Burmese politics with broader audiences, from non-Burmese publics to U.S. elected officials.

Echoing the thoughts of BADA's president, activists also talked about the case's importance in instigating negative publicity for Unocal, and not only at the annual shareholders meeting. One BADA member pointed out that Unocal's involvement in Burma had been covered in publications ranging from *The Wall Street Journal* and *The Economist* to *Newsweek*, exposing the risks of Unocal's business ventures to wider audiences. Meanwhile, a BADA board member speculated that the case not only created negative publicity for Unocal, but more broadly, "[The case] gives American business a black eye" (Interview with R. D., 16 October 2004). While these views represent activists' speculations, they parallel risk assessments (Hufbauer & Mitrokostas 2003) as well as the perspectives of many business commentators on ATCA corporate cases. As one such analyst weighed in on this point, "The punitive results of such [ATCA] trials have been mixed, but the risk to the reputation of a multinational firm facing an ATCA charge far outweighs any direct monetary damages" (Shute 2007:1).

Activists and litigators talked as well about the symbolic power of law itself and the potential for *Doe v. Unocal* and similar ATCA cases to cultivate symbolic and communicative resources on that basis, by legitimating specific human rights violations in a legal context. For example, a litigator with ERI mentioned that while he saw *Doe v. Unocal* as only "a small piece of the puzzle" in the broader movement for human rights in Burma, "I think that it's important in that it first of all will validate the claims of these particular people that they were subject to abuses by the Burmese military. It will also show how Unocal is complicit in those abuses, and it calls attention more broadly to abuses in Burma and U.S.

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corporate complicity" (Interview with ERI lawyer, 28 October 2004). Speaking to the particular symbolic power of a legal context for documenting violations of human rights, he continued, "I think [the law] has an important role. . . . When a U.S. court hears evidence about particular human rights abuses and says that it happened, the court is seen as sort of a neutral institution that validates the claims that the plaintiffs had been making" (Interview with ERI lawyer, 28 October 2004). In other words, this litigator saw ATCA cases as providing an avenue for publicly documenting and acknowledging human rights violations. He stressed the legitimizing potential of legal tactics in general and their importance in substantiating details of corporate abuses in *Doe v. Unocal* in particular.

Other activists emphasized that the case helped specify and reveal the human dimensions of Burma's political situation, as well as demonstrate the consequences that can follow from a lack of corporate accountability in the global economy. As a BADA board member put it, "Legal tactics like the Unocal example are helpful because we can prove which girl was raped and killed, which man was killed, whose homes were destroyed by the military, how they came there, got livestock, pigs, these things, destroyed their homes and gardens to make way . . ." (Interview with A. K., 2 October 2004). Another BADA member emphasized the emotional significance of such specific acts of documentation and validation, saying, "Through this case you see very personally the devastation that's caused by that government and whoever's supporting that government. It's not just a statistic anymore. You really see what this is. You really feel this human pain" (Interview with J. M., 7 October 2004). He thought the case had provided a specific narrative and rallying point for activists involved in Burmese human rights activism. His remarks also suggest that individualizing, personalizing aspects of legal tactics may help highlight specific human stories and incidents for the media, publics, and policy makers, while not necessarily impeding collective claims-making. As BADA's president said in his speech to Unocal shareholders:

> Since I am from Burma, I know firsthand how the military government treats us, our people of Burma. Basic human rights are not observed. There is no freedom of speech. . . . The largest source of foreign revenue for the military comes from oil and gas corporations like UNOCAL. The democracy movement has repeatedly called for all foreign oil companies to sever their ties with Burma's junta and to leave Burma. As recently as April 2003, ASSK herself [Aung San Suu Kyi] has called UNOCAL once again to leave Burma . . . [CEO] Charles Williamson says, "We are improving the lives of the people who live along the pipeline areas. We are creating jobs for them and they like it." YES, BUT THAT IS ONLY A DROP IN THE BUCKET. UNOCAL PIPELINE IS

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> ONE OF THE SINGLE LARGEST SOURCES OF REVENUE FOR THE JUNTA. MILLIONS OF OUR PEOPLE RESENT UNOCAL BECAUSE THEY HAVE DISPLACED AND MADE OUR PEOPLE HOMELESS. (excerpt from printed copy of V. W.'s speech at the May 2003 Unocal shareholders' meeting in Los Angeles; capital letters as printed in original)

Finally, one of the litigators emphasized the ways in which human rights discourse is a useful resource for constructing public communication frames pertaining to corporate accountability and labor rights, given the purported universality of human rights discourse. The litigator stressed that the universal connotations of the human rights frame are especially crucial to ILRF's work because the organization wants to avoid charges of "protectionism" or of serving only the interests of American labor. As he put it, "We don't want to be perceived as having our agenda driven by American unions . . . [though] if there are unions that want to work with us and help us and join us in solidarity, that's great" (Interview with ILRF lawyer, 19 October 2004).

This litigator's perspective on the value of human rights discourse for corporate accountability mobilization articulates with a broader landscape of debate over the ways in which human rights discourse may be implicated in both hegemonic and counterhegemonic projects. The next section examines human rights discourse in *Doe v. Unocal* legal mobilization by inquiring into the ways that Burmese grassroots activists understand such rights. In the process, it considers how this international human rights legal case may, or may not, reinforce hegemonic approaches to governance and the "rule of law" in the context of neoliberal globalization.

Doe v. Unocal Mobilization Processes and Rights Consciousness

In addition to *Doe v. Unocal*'s (1997, 2000) effects on the organizational capacities of litigators and grassroots activists, including their symbolic and communicative resources, legal mobilization around the case intersected with activists' understandings of rights and claims-making. Thus part of the broader legacy of *Doe v. Unocal* is the rights consciousness it nurtured among activists, including activists' understanding of "human rights" and the potential value and drawbacks of human rights discourse for claims-making. In this regard, the interview data indicate that *Doe v. Unocal* nurtured rights consciousness among activists by (1) building morale in the Burmese community that marginalized people's rights have meaning, (2) extending and elaborating activists' rights consciousness to situate abuses in Burma in the broader context of globalization and

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development politics, and, in particular, (3) leveraging human rights discourse to nurture rights consciousness and claims-making "from below," in relation to both corporate and state actors—including regimes such as the Burmese junta that exploit critiques of human rights to justify their own abuses of power.

Building Morale Among the Politically Marginalized

When asked about the significance of *Doe v. Unocal* beyond its outcome for plaintiffs in the case, BADA's president emphasized the case's importance for the morale of the broader Burmese community, within and beyond Burma. He thought that the case not only showed the Burmese junta that the international community is monitoring its actions, but also communicated to Burmese civil society that people abroad care about what is happening there and are acting to change things. As he articulated it:

> The activist forces outside can point our fingers and say, "Hey—look at it, look at our small little group. We are trying our best in siding with the forces against Unocal and we have succeeded. So you activists in other parts of the world, don't think that your small voices or small work doesn't count. Your forces, your voices can count." (Interview with V. W., 25 April 2004)

Another BADA activist who visited the Thai-Burma border in summer 2003 voiced similar thoughts, underscoring the potential of the *Doe v. Unocal* case to boost the morale of both Burmese and others facing daunting political circumstances. As he put it:

> Everybody who's interested in Burma knows about . . . the Unocal case and the pipeline. I interviewed people on the border who were in villages where they built the pipeline . . . . Everybody's watching it. Everybody wants to see if the U.S. courts will actually bring a huge corporation, a petroleum corporation, which are the kings of kings, to heel . . . . Because it seems that the corporations are able to buy governments so easily and they're pretty much running the show. So everybody's watching to see if this will happen . . .. It would be morale-boosting for the Burmese . . . [and] a lot of people in the world to see the U.S. court system marginally uphold justice and not rate money over human rights. (Interview with J. M., 7 October 2004)

The importance of this case to the wider community of Burmese activists, refugees, and others is part of the full legacy of *Doe v. Unocal*. These activists speak to the ways in which the case is significant in nurturing rights consciousness, morale, and hope, especially among the politically marginalized.

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Expanding Rights Consciousness to Articulate Local and Global Contexts

Beyond fostering general rights consciousness among activists and other Burmese, some activists spoke about the ways in which *Doe v. Unocal* encouraged awareness of corporate power and globalization politics. As one BADA activist related:

> The more I'm involved with the case, the more I'm aware about . . . global resource looting . . . . Multinational corporations are going out and after—without any regard to human rights or legal rights or the environment. The more I know, the more I am energized to do what I can to [prove] them guilty of what they are actually guilty [of]. That's why we invited Ka Hsaw Wa [of ERI] to the Burmese Human Rights Day, and we tried to bring him into the radio and all that. (Interview with M. T., 14 October 2004)

These remarks underscore the connections between *Doe v. Unocal* and debates about "development" around the world, in the context of neoliberal economic policy logics. In suing a U.S. corporation for alleged misdeeds in connection with a natural gas pipeline project, the case challenged the neoliberal idea that corporate conduct should be unregulated, as well as the contention that TNC investment in less developed countries necessarily leads to socially beneficial development. These connections between *Doe v. Unocal* and larger development debates were emphasized not only by activists, but also by organizations such as ERI, which understands earth rights to include "the right to participate in development decisions" (ERI 2003b:3). Again, the broader legacy of *Doe v. Unocal* includes the ways in which legal mobilization provided an avenue for diverse actors to elaborate their rights consciousness around these issues.

Leveraging Human Rights Discourse "From Below"

Regarding the ways in which the ATCA's human rights discourse figured into the understandings and practices of activists, all the Burmese activists I spoke with emphasized the importance of human rights discourse in their activism vis-à-vis the Burmese government as well as Unocal, and they talked about human rights as an integral part of their activism and political experiences. Many mentioned that they had first heard talk of "human rights" during the 1988 democracy uprising in Burma, when Aung San Suu Kyi and her party, the NLD, first rose to prominence. They said she and other leaders helped educate and mobilize people around human rights ideals, and many became aware of the UN's Declaration on Human Rights at that time. Some activists described that

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"coming out" period for human rights discourse in Burma as a kind of explosion, in comparison with the earlier period, saying,

> In 1988—we heard of human rights at that time. Before then the people of Burma closed their eyes, closed their ears . . . the people could not say what they feel, what they want . . . . Aung San Suu Kyi made a presentation to the people and we heard about human rights. We heard about the UN [declaration] . . . . We learned we can tell our situation to the UN . . . before then we didn't know about human rights. (Interview with K. T. T., 1 May 2004)

One BAWA member said, "At that time [in 1988] I heard a lot of things about human rights. Before 1988 people suffered inside, but at that time it erupted" (Interview with H. H. W., 1 May 2004). And another activist related, "I was part of the student movement in 1988. I first heard of human rights at one of the Aung San Suu Kyi meetings in 1988 . . . . At the time teachers mentioned about very simple, very basic, very clear [human rights] so everyone can understand" (Interview with S. S. W., 1 May 2004). In other words, for the Burmese activists interviewed, human rights discourse functioned as a language for claims-making within and beyond Burmese society. Activists spoke about human rights discourse as a language they had first heard used by Burmese leaders. They saw it as a discourse through which to appeal to international institutions and activists, including diasporic Burmese activists, rather than as an idiom imposed on them or in conflict with their understanding of Burmese cultural values. They spoke of human rights discourse as a resource for mobilization, along the lines discussed by McCann, McAdam, and Sikkink.

Activists also spoke to critiques of human rights, including the view that human rights discourse may function as a neocolonial political tool or conflict with "Asian values." In general, activists thought that this critique could too easily play into the hands of the Burmese junta or other authoritarian rulers rather than supporting ordinary citizens. As one BAWA member put it, "Sometimes the conflict comes . . . when it benefits an individual or some organization [to emphasize that conflict] . . . if you really think about what is right, I think there shouldn't be a conflict between human rights values and Burmese values" (Interview with Y. V., 17 April 2004). Meanwhile, another BADA member stated, "Human rights [do] not belong to a specific country, not to white people or Asian people . . . . Human rights do not have borders. The Asian countries need human rights, too. Human rights don't stop at borders" (Interview with Y. A., 6 November 2004). Speaking of the cynical cooptation of critiques of human rights, a BADA board member related that, "The spurious 'Asian values' debate had been fostered by Lee Kuan Yew [of Singapore], and Mahathir Mohamad [of

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Malaysia] . . . . It's an attempt to legitimate their own power structure, control the media, maintain economic and political domination" (Interview with R. D., 16 October 2004). He pointed out that Asian leaders could abuse human rights discourse and state power as well as Western political leaders, though on their own terms. In the case of Burma specifically, Burmese Lieutenant-General Thein Sein, First Secretary of the Burmese junta, has responded to criticisms of the governing junta by dismissing them as "instigation and interventions of tricky neo-colonialists who want to manipulate and dominate the nation" ("Myanmar people urged to safeguard independence, sovereignty," *New Light of Myanmar*, 12 Nov. 2004, http://www.rebound88.net.).

In addition, activists underscored the multifaceted, contested character of Burmese culture and society, comprising diverse actors with a range of values and practices. One BAWA founding member articulated such a view by saying,

> I think culture depends on the people's beliefs and personality. Because some people will do whatever to make themselves rich, but others won't because they have principles. People are doing business with this military government because they're getting rich. Different people in Burmese society would have different views. So I think there may be a conflict between human rights and certain segments of Burmese society, but not all. (Interview with K. K. L., 24 April 2004)

She and other activists saw no inherent conflict between human rights and a purportedly distinct Burmese culture. As one BADA activist expressed his connection to human rights ideals, "When I advocate for freedom, for human rights, I also have that fundamental view that we are the same, we are in the same boat. Everybody needs to help. Everybody wants freedom. And we need to work together and that working together is the most important thing for the human rights activists, I think. Especially [given] the most important challenges we are facing now" (Interview with M. T., 14 October 2004).

Interviews with Burmese activists also suggested that human rights discourse may be empowering to grassroots activists from a range of backgrounds, including those whose educations come not through channels of privileged instruction, like law school, but through activism and struggle. Among the Burmese diasporic activists interviewed, all but two came to the United States after the Burmese government's repression of democratic activists in 1988, some as refugees seeking political asylum and others as professionals seeking better opportunities for themselves and their families.

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These interviews do not dismiss critiques of human rights discourse and its potential complicity with hegemonic governance regimes—they only underscore the importance of context to evaluating the politics of human rights. The context examined here, in which transnational diasporic communities draw on human rights discourse to challenge a military regime that leans on critiques of human rights to legitimate repressive policies, suggests the need to temper overarching critiques that frame human rights only as a hegemonic discourse for perpetuating Western "civilizing processes" and neocolonial rule of law. These interviews also underscore the ways that human rights discourse may serve as a common vocabulary and strategic resource for activists and litigators in cases such as *Doe v. Unocal* (1997, 2000).

At the same time, while this research did not turn up the disconnects between human rights advocacy organizations and grassroots Burmese activists initially hypothesized, some differences did emerge in the emphases of activists and litigators in discussing human rights discourse and *Doe v. Unocal*. For example, whereas Burmese grassroots activists tended to speak of human rights discourse in the context of challenging the Burmese military regime, including but not limited to its exploitative collusions with corporations such as Unocal, the ILRF litigator saw the human rights frame as useful for avoiding the charge of "protectionism" often leveled against the labor movement. In addition, litigators focused on corporate accountability would emphasize the enforcement potential of ATCA litigation, in contrast to voluntary codes of corporate social responsibility, while grassroots activists never emphasized this point. Instead, several talked about the potential boomerang effects of *Doe v. Unocal* on the Burmese military regime, in the framework of sanctions. As one BADA activist spoke of the case, "This [is one] way of trying to make a dent in the sanctions sector. The Burmese government is afraid of sanctions. And we can say that if the Unocal case comes out against Unocal, then the Burmese government, since they are also involved, they would feel it very much" (Interview with V. W., 25 April 2004).

There were also differences between ERI and ILRF in terms of the relationship of *Doe v. Unocal* to their broader organizational work. ERI has from its inception been especially focused on Burma, rooted in Burmese activist networks and the *Doe v. Unocal* case, as well as a concept of "earth rights" that articulates with both state and corporate roles in development and natural resource exploitation processes. Meanwhile, ILRF emerged a decade earlier and framed its work around fighting for labor rights and corporate social responsibility without such a environmental, national, or development focus. Thus there seemed to be greater overlap in the

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understandings and strategies of Burmese grassroots activists and the work of ERI than in the work of ILRF.

Yet it is also important to note that these different emphases were of a piece with the multivalent legal and political context of *Doe v. Unocal* that, in the first place, facilitated opportunities for mobilization by disparate actors, including Burmese activists, corporate accountability activists, and human rights litigators. This multivalent context constituted an opening to challenge human rights abuses in Burma by both Unocal and the military regime in ways impossible through other avenues. So while there is a need for further studies of the power dynamics and conflicts within such legal mobilizations, the preponderance of data in this study of *Doe v. Unocal* underscores the significance of the case to grassroots Burmese human rights activists and indicates a constructive tactical alliance between activists and litigators, relative to the challenges and opportunities confronted.

Conclusions Regarding *Doe v. Unocal* Legal Mobilization

This research began with the hypothesis that *Doe v. Unocal* (1997, 2000) would matter to litigators and human rights advocacy organizations but would have little significance to the collective claims-making of grassroots activists not formally associated with the case—and hence to broader dynamics of legal mobilization. This research also began with the hypothesis that there would be a significant disjuncture between the ways litigators and activists might talk about the case in relation to broader social change efforts.

On the whole, these hypotheses proved incorrect, as the grassroots Burmese activists interviewed all knew about the case and thought it significant to their fight for democracy and human rights in Burma. Like litigators, they cited numerous examples of ways in which they thought the case mattered to their efforts, regardless of formal legal outcomes. They mentioned mobilizing *Doe v. Unocal* to gain public attention for Burma's political plight as well as to influence Unocal, other TNCs, and the Burmese regime. In addition, Burmese activists spoke about the case in the language of human rights, as did litigators, and they cited sources of human rights discourse in their own political experiences beyond legal contexts. These data indicate that human rights discourse served as a common vocabulary and strategic resource for activists and litigators, including as a discourse nurturing collective rights consciousness and claims-making "from below" in relation to both corporate and state actors.

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This article argues that a transnationally attuned legal mobilization framework, rather than the analytical tools of legal realist or CLS scholars, is most appropriate to evaluating these indirect impacts of *Doe v. Unocal* and similar ATCA cases. As illuminated through such a legal mobilization framework, the data suggest that litigation and mobilization around *Doe v. Unocal* resulted in multiple indirect, informal effects for grassroots activists, litigators, and organizations devoted to Burmese human rights and corporate accountability activism. Litigation leveraged the key political opportunities of (1) an international context of action, (2) the ATCA's potential to enforce human rights standards vis-à-vis a TNC, and (3) a multivalent political context facilitating collaboration between Burmese human rights activists, corporate accountability activists, and litigators. It leveraged these opportunities against a background of severely constrained alternatives for Burmese activists in particular. Mobilization on these bases, in turn, helped further institutionalize these legal and organizing opportunities for activists devoted to Burmese human rights activism and other causes, due to the multiple effects of mobilization processes beyond the courtroom. Overall, this research found four principal indirect effects of legal mobilization in *Doe v. Unocal*: (1) organizational growth and capacity-building; (2) growth of TANs and potentials for boomerang effects; (3) broadening activists' and litigators' tactical repertoires, including possibilities for synergy among different tactics and movements; and (4) cultivation of symbolic and communicative resources for movement-building and mobilization.

In addition to the multiple ways in which *Doe v. Unocal* affected the organizational capacities of litigators and grassroots activists, interview data indicate that mobilization around the case nurtured rights consciousness among activists by (1) building morale in the Burmese community that marginalized people's rights have meaning, even in challenging a powerful corporation such as Unocal; (2) expanding activists' rights consciousness to situate abuses in Burma in the broader context of globalization and development politics; and, in particular, (3) leveraging human rights discourse to nurture rights consciousness and claims-making "from below," in relation to both corporate and state actors—including regimes that exploit critiques of human rights to justify their own abuses of power.

Legal realists would tend not to appreciate such dynamics, given their focus on formal, direct legal outcomes. Nor would legal realists or CLS scholars tend to acknowledge or appreciate the tactical synergies mentioned by litigators and activists—the synergies between litigation and shareholder activism, for example. In addition, CLS scholars would tend not to recognize the collective claims-making and rights consciousness enabled by *Doe v. Unocal* and

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similar litigation. Meanwhile in the law and globalization literature, neither governance nor hegemony scholars tend to recognize the counterhegemonic, transnational possibilities of litigation highlighted here, including those in conjunction with human rights discourse. These potentials are articulated by scholars drawing on the perspective of subaltern cosmopolitan legality, as well as those emphasizing the importance of TANs and boomerang effects for progressive activism across borders. In sum, these data suggest that a transnationally attuned legal mobilization theoretical framework is best equipped to evaluate the complex and multifaceted ways in which law may intersect with social change and counterhegemonic projects—for Burmese human rights activists, corporate accountability activists, and others concerned with social justice in the context of neoliberal globalization.

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