

# Globalization, Lawyers, and Emerging Economies

## *The Case of Brazil*

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### I GLOBALIZATION, LAWYERS, AND EMERGING ECONOMIES

In the 1990s, Brazil and other emerging economies went through a major transformation. Closed economies were opened, foreign investment was encouraged, and many state-owned enterprises were privatized. This “global transformation” had a major impact on the Brazilian legal system.

While many parts of the legal system were affected, the corporate law profession changed the most. This sector includes all the institutions and actors that provide legal advice to corporations whether domestic or foreign, public or private. Global transformation brought about major changes in the national political economy, led to a flood of new laws governing corporate activity, and created a demand for new kinds of legal services to help companies manage the new legal environment. This led to rapid growth of the complex of institutions that provide corporate legal services and affected the way lawyering was practiced and organized. Many forces came together to give new shape to the professional identity of lawyers, the structures they work in, and the roles they play. The result was the creation of a new and powerful segment of the legal profession whose activities had profound impacts on the rest of the profession, the legal system, the operation of enterprises (both public and private), state policy, and global governance.

In this book, we describe the growth of the corporate legal sector in Brazil and the impact of this development on lawmaking, legal education, regulation of the legal profession, public interest law, trade policy, and gender roles. The book is part of a larger study of global transformation and its impact on the legal profession carried out by GLEE, the project on Globalization, Lawyers,

and Emerging Economies.<sup>1</sup> Based at the Harvard Law School's Center for the Legal Profession, GLEE is currently studying these developments in Brazil, India, and China, with plans to expand the project into Africa and the states of the former Soviet Union. In Brazil, GLEE's research has been based at the law school of the Fundação Getulio Vargas (FGV) in São Paulo.<sup>2</sup>

## II THE LITERATURE

For more than half a century, a growing body of scholarship has documented the complex relationship between legal institutions and economic, social, and political development in the Global South. GLEE builds on this rich tradition and seeks to relate it to the Brazilian scene by exploring the impact of globalization on the legal profession, and vice versa.

The literature on the Brazilian legal profession as such is limited. To be sure, there have been numerous studies of the role of *law* in recent Brazilian development. Studies include the impact of new laws on the development of the capital market (Trubek 2011a), the legal architecture that allowed Brazil's successful conditional cash-transfer program to operate (Coutinho et al. 2013), the impact of international trade law, and other topics. But these studies paid little attention to the role of lawyers.

A lot has also been written about the role of Brazilian lawyers as statesmen and the effects of lawyers' presence in governance. Studies showed that from the beginning of the Brazilian state, lawyers played roles other than that of professionals serving clients. The first lawyers trained after independence were supposed to serve as statesmen. People with law training dominated the state at least until the 1930s and maintained some influence until the 1960s (Adorno 1998; Venâncio Filho 1978). Furthermore, while the military regime that took over in 1964 displaced lawyers from the peaks of state power,

<sup>1</sup> The first volume from this project, *The Indian Legal Profession in the Age of Globalization: The Rise of the Corporate Legal Sector and its Impact on Lawyers and Society*, edited by Wilkins, Khanna, and Trubek, was published by Cambridge University Press in 2017.

<sup>2</sup> Around twenty researchers and scholars in law, sociology, and political science were involved in the GLEE project's study of the corporate legal sector in Brazil and its impact. The research was conducted in 2013–2014. It focused on the states of São Paulo and Rio de Janeiro, which make up 44 percent of the Brazilian GDP and are home to almost half the lawyers in the country, the headquarters of the main Brazilian corporate law firms, and the legal departments of the largest domestic and foreign companies. To create a profile of the corporate sector, the team conducted more than fifty in-depth interviews with partners in major law firms and legal directors of large national and international companies. We also created a database that included information about the top 367 business law firms in the country. Other studies were done of the corporate sector in lawmaking, legal education, gender roles, provision of pro bono services, and trade relations.

a mass of lawyers were trained to serve the lower-level bureaucracy (Venâncio Filho 1978; Adorno 1988; Faoro 2001). During this period, and despite some efforts at reform, the formalist and generalist tradition that was imported from Portuguese universities in the nineteenth century was deepened (Venâncio Filho 1978; Lyra Filho 1980; Faria 1987; Warat 2002; Falcão Lacerda e Rangel 2012; Trubek 2012). As a result, when the military regime ended and democracy was reestablished, lawyers within and beyond the state were not up to the needs of a society growing in complexity and diversity of interests (Lyra Filho 1980; Falcão 1984; Faria 1987; Arruda 1989; Sousa and Geraldo 1997; Warat 2002).

While there is a rich literature on law in Brazilian development and on lawyers in the Brazilian state, there has been less written on the legal profession as such. However, this has begun to change. Starting in the 1990s, scholars began to look directly at practicing lawyers and address structural tensions between the legal profession and the changes stemming from the country's development process. Topics were varied, such as gender roles in law firms (see Chapter 5), the role of lawyers in judicial reform (Almeida 2006) and access to justice (Almeida 2010; Santos and Carlet 2010; Sa e Silva 2011), and legal education (Junqueira 1999; Sa e Silva 2007). But new and even more complex challenges were to come, some of the most pressing resulting from globalization. Changes in the global economy would not only lead to a push for liberalization of the local markets and changes in balance between the state and the market but would also unleash a boom in new legislation and set in motion processes that would blur the lines between indigenous and foreign forms of law practice.

Very little has been done to capture and account for the role of lawyers in globalization and liberalization in Brazil. There is one study of efforts to train Brazilian lawyers to deal with the World Trade Organization (WTO). The most influential study to date is the pioneering work of Yves Dezalay and Bryant Garth in *The Internationalization of Palace Wars: Lawyers, Economists and the Contest to Transform Latin American States* (Dezalay and Garth 2002). This book really launched the worldwide study of lawyers and globalization and provided the first analysis of this relationship in Brazil. In addition to Dezalay and Garth, Professors Shafer, Sanchez, and Rosenberg conducted a detailed study of Brazil's efforts to train lawyers to represent the country's interests in the WTO (Shafer et al. 2012). As we indicate below, GLEE builds on both of these seminal works to construct a new account of how globalization is reshaping the market for corporate legal services in Brazil and other emerging economies, and the broader implications of this restructuring.

Our theory begins with Dezalay and Garth's trenchant observation that the massive legal changes that occurred during the 1990s were making US laws and legal institutions especially influential in the global economy. To explain this, they built accounts that rested to one degree or another on four pillars: the logic of capital accumulation in open economies, diffusion, core-periphery relations, and the sociology of the legal profession.<sup>3</sup>

The first pillar was a theory of capital accumulation in an open world economy. The grand transformation in the 1990s, which the GLEE project refers to as the "global shift," can be seen as an effort to create a single world market open to global capital. The project included efforts to integrate emerging economies into this universal system.<sup>4</sup> This in turn impacted domestic law in "peripheral countries." The process included diffusion of legal rules from the core to the periphery. Dezalay and Garth noted that US legal ideas and institutions tended to be favored during the global shift even in countries with very different legal traditions and historical ties. They suggested that asymmetrical power and US hegemony are among the factors that explain why the US approach to regulation of the economy was so influential, US laws were transplanted, US styles of lawyering diffused, and US legal education was sought out by aspiring lawyers.

<sup>3</sup> The original Dezalay-Garth theory is based on a model of institutional diffusion under conditions of core-periphery hierarchy, with economic and legal developments determined by the interaction of intraelite struggles within the legal profession and policy conflicts at the state level – which the authors refer to as "palace wars." This in turn takes place in a global context in which strong interests in the core work to engage actors in the periphery in policy changes that will benefit global capital. At the same time, local elites are able to resist some pressures from the core, leading to hybrid solutions. The overall picture that emerges from this analysis is one in which "double agents" in the North and South work together in ways that preserve and enhance international hegemony. By constructing a market for new legal forms and economic ideas while adapting them to local conditions and the interests of local elites, these double agents shore up both international hegemony and domestic systems of dominance.

<sup>4</sup> Since the postwar period, many developing countries had tried to insulate themselves from the world economy. They focused on building domestic industries, protected them by high tariff walls, and placed limits on foreign investment. The state played a central role in the economy, and many sectors were dominated by state-owned enterprises (SOE). But by the 1990s, this model had become exhausted, and other possibilities had become available. Inspired in part by the model of the Asian Tigers, emerging economies began to shift to export-led growth. That, in turn, increased the need to make domestic industries competitive and attract the kinds of foreign investment that would strengthen export capacity. It also pointed to the benefits from privatizing at least some SOEs. The turn to the market and the outside world was encouraged by core countries that saw in these liberalizing and rapidly growing emerging economies prospects for new markets, opportunities for high-yielding investment, and sources of labor. Through the WTO, BITs, and the use of conditional development assistance that required market-oriented reforms, core countries helped shape global norms in ways that facilitated their entry into these emerging markets.

This Americanization process was driven in part by the dynamics of the legal profession. Legal and corporate elites are key players in transplanting and/or implementing new legislation or professional models from developed countries (Dezalay and Trubek 1998). The impact produced by globalization in corporate law and practice depends on how it is translated by the elites involved. While traditional legal elites in many emerging economies looked to Europe for cultural inspiration and legal models, a new "modernizing" faction in countries like Brazil built closer ties to the United States. By deploying this US-oriented expertise during debates over the grand transformation, these rising elites helped steer reform in one direction while simultaneously advancing their own position within the Bar and the state.<sup>5</sup>

Focusing on Brazil, Dezalay and Garth described a "classic pattern" in which a legally trained elite dominated the field of state power in the nineteenth and first half of the twentieth centuries. Generalist lawyers, often trained in Europe, occupied key positions in both the legal field and the state. This socially and politically conservative elite served as a brake on efforts to modernize the economy. By the 1960s, however, this elite was losing influence. And when the military took power in 1964, the legal elite was sidelined and legal institutions, never too strong, were weakened.

Dezalay and Garth note that during the 1980s, as the military regime waned, elements in the legal elite sought to turn this situation around by exploiting US links, building on US legal ideas, and getting support from US institutions. One example they give was the development of the Pinheiro Neto law firm, which broke with the Brazilian pattern of small, family-dominated business law firms to create a US-style, full-service, corporate law firm with close ties to Wall Street firms. Another is the role played by the graduates of the Centro de Estudos e Pesquisas no Ensino do Direito (CEPED) legal education experiment. This project, which was supported by USAID and the Ford Foundation, trained several hundred Brazilian lawyers. Dezalay and Garth note that this project, run by Brazilian lawyers with close connections to international companies and contact with US-style law firms, and including visiting professors from the United States, introduced students to US legal ideas and global lawyering models. It also offered some of them access to US legal education. Once they completed the course (and some returned from LL.M.s in the United States), this group of CEPED alumni was able to parlay these credentials into important positions in business law, academia, and government. When Brazil began to restructure its economy

<sup>5</sup> For subsequent applications of Dezalay and Garth's framework to analyze the legitimation of business law in Brazil, see Engelmann (2012).

in the 1990s, privatize state-owned firms, and attract foreign investment, there was a cadre ready, willing, and able to use its US-oriented expertise to help shape the new legal environment and build the public and private institutions it demanded.<sup>6</sup> This included efforts to make the legal order more autonomous.<sup>7</sup>

While GLEE builds on the insights of scholars like Dezalay and Garth, the project also seeks to address critical new issues. Among them is the role of the new corporate law sector once it grew to be a major element of the profession. Dezalay and Garth and other pioneering students of law and globalization studied the early years of legal response to the global shift; GLEE has looked at this development after two decades of rapid growth of the new corporate legal sector. The GLEE project is the first effort to provide detailed data on the growth of the sector, including both in-house offices and outside law firms; to trace the interaction between Brazilian law firms and foreign ones; and to study the impact of a robust corporate law sector on other parts of the legal system.

In addition to taking account of over two decades of rapid growth of the sector, GLEE deals with changes in global and Brazilian governance and policy that have occurred since the 1990s, when the study of law and globalization began. GLEE operates in a world in which traditional ideas about the “core” and the “periphery” and the dominance of the neoliberal Washington Consensus that animated the reforms of the 1990s are far less clear than they were even a decade ago. With the rise of a “new developmental state” in the twenty-first century, Brazil saw the reemergence of industrial policy and a more robust social policy, which have created new conditions for the operation of the corporate law sector (Trubek et al. 2013).

### III THE TRANSFORMATION OF BRAZIL IN THE 1990S: LIBERALIZATION, PRIVATIZATION, INTERNATIONALIZATION, DEMOCRATIZATION

Brazil was late to industrialize.<sup>8</sup> As the country broke free from Portuguese colonial power (1822) and abolished slavery (1888), coffee production became the driver of the first transformation in its economic structure. Capital accumulation funded by coffee exportation led to an incipient urban bourgeoisie,

<sup>6</sup> For detailed information on the CEPED experience, see Falcão et al. (2012).

<sup>7</sup> Ironically, according to Dezalay and Garth, the dominance of lawyers in the state in the earlier period had discouraged efforts to make law autonomous from power.

<sup>8</sup> This section draws on Trubek (2012) and Trubek et al. (2013).

while government incumbents at the federal level emphasized investments in heavy infrastructure, particularly in railroads (Furtado 2007).

From the 1930s to the 1950s, stronger and more conscious industrialization efforts were put in place. In the wake of the crash of 1929, Brazil took a route that would be later known as *import substitution* (Furtado 2007; Tavares 2011). This included both protectionist trade policy and stronger state activism in the economy. Imports tariffs were raised, local currency devalued, and commodity surpluses purchased by the state, thus creating resources that could be used for further industrial investments by domestic capitalists. Also, the state itself became an economic agent, whether by getting directly involved in basic industry – such as in metalwork via SOE *Volta Redonda* and oil production and processing via SOE *Petrobras* – or by funding investment projects in heavy infrastructure via the national investment bank *BNDES*. From 1930 until the end of the 1980s, economic policies basically consisted of state-led initiatives to promote import substitution, industrialization and growth using “economic law” tools, such as state-owned enterprises, economic planning, price control, sectorial regulatory and administrative authorities, and the use of tax and financial incentives.

However, between 1988 and 2004, Brazil partially dismantled these structures and policies and shifted to more market-oriented approaches. In 1988, after twenty-four years of military dictatorship and in a context of a threat of hyperinflation,<sup>9</sup> Brazil passed a new constitution that has influenced and shaped policy ever since. The 1988 Constitution is a social-democratic document that includes both civil, political, and social rights and several policy goals like building a free, just, and solidarity society, fostering national development, acquiring technological autonomy, eradicating poverty and marginalization, and reducing inequalities. Many of its provisions have direct effect on government policy and budgetary allocations.

In 1989, immediately after the new constitution came into force, President Collor de Mello was elected. Adopting a rhetoric based on the need for “modernization,” Collor de Mello abruptly started a liberalization period that included drastic tariff reduction, privatization, as well as flawed attempts to control inflation.<sup>10</sup> Under Itamar Franco, the vice president who replaced

<sup>9</sup> In January 1990 inflation in Brazil reached 56 percent per month, raising to 73 percent in February and peaking at 84 percent per month in March. During the same period, inequality reached its worse level ever since it started to be measured (the Gini coefficient peaked at 0.647, according to IBGE, the Brazilian Office of Statistics).

<sup>10</sup> Paradoxically enough, Collor harshly confiscated savings and deposits owned by Brazilian citizens. This controversial measure has raised several discussions in the Brazilian judiciary.

Collor de Mello after he was impeached, a stabilization plan (Plano Real) was successfully adopted and inflation controlled.<sup>11</sup> Also, new legislation on social assistance and welfare for the poor was passed. Franco's Minister of Finance, Fernando Henrique Cardoso, known popularly as FHC, became the next president in 1994. During Cardoso's eight years in office, Brazil continued to move away from the *dirigiste* policies of the "developmentalist" period, embracing many of the neoliberal prescriptions favored by the Washington Consensus.<sup>12</sup>

In the Cardoso period, state-owned enterprises were privatized, direct subsidies for certain industries scaled back, areas of the economy deregulated, import barriers reduced, competition fostered and enforced, intellectual property rights tightened, efforts to attract foreign capital undertaken,<sup>13</sup> and fiscal responsibility enhanced. Also, the currency (real) was constantly kept overvalued, and monetary stability was pursued and attained.<sup>14</sup> Foreign investment increased and Brazilian firms could raise money in the international capital market. In place of direct state control of sectors like telecommunications and state ownership of major enterprises in steel, mining, and aircraft production, many SOEs were sold to private groups.

This process was accompanied by a veritable flood of new legislation, much of it new to the Brazilian scene. US-style independent regulatory agencies were created to monitor and regulate the newly privatized sectors. Antitrust law was updated and enforcement strengthened. New laws governing capital markets were passed and a vibrant capital market began.

These changes created whole new areas of law and generated new demands from corporate clients. Companies and governmental entities found themselves operating in a new, complex, transnationalized regulatory matrix. This created a huge demand for corporate legal services. Many of the new laws were both complex and unfamiliar to most Brazilian practitioners: for example, the independent regulatory agencies were based on foreign models that were shoe-horned into Brazilian legal categories. Lawyers had to deal with new clients and unfamiliar transactions. More and more Brazilian companies

<sup>11</sup> As Castro notes, "Despite that, a period of strong deterioration of the Balance of Payments began, which led the current-account deficit to achieve 4.0 percent of the GDP in 1998 (Castro 2008).

<sup>12</sup> FHC has always rejected the neoliberal label and claimed that his goal simply was to modernize the economy.

<sup>13</sup> Among the measures were a series of bilateral investment treaties protecting foreign investors that were signed but never ratified.

<sup>14</sup> Ban notes, "The goal of price stability has remained sacrosanct and the instruments for achieving this goal have been in line with the latest international fashions: central bank independence and inflation targeting" (Ban 2013, 6).

found themselves working with foreign corporations. Transactions rarely seen in Brazil like transnational mergers and acquisitions and overseas bond and stock issues were introduced. Moreover, some of the new legal rules were derived from international sources like the WTO requiring Brazilian lawyers to master international texts and understand international institutions.

Such measures marked the beginning of a process which would ultimately led to a substantial reform of the Brazilian State. It aimed at fostering development within the new global reality by modernizing Brazilian society and economy to strengthen Brazil's position in global market. The bulk of this process, which took place between 1990 and 2000, was carried out by means of amendments to the Constitution, substantial changes in legislation and institutions, and the creation of new regulatory agencies.

While from a legislative standpoint, this new regulatory framework emerged as a result of intense political negotiation involving different social actors, its effectiveness required the existence in the country of practicing lawyers able to deal with the new reality. Regulation could only work if Brazil could count on legal professionals who, working both in the public and the private sectors, had the skills to respond to the needs of a global market whose dynamics were often at odds with the country's legal tradition and practices. Such a demand ended up by profoundly reshaping the legal profession in Brazil as it inevitably led, notably from the 1990s onward, to transformation of Brazilian law firms and to competition among them.

#### IV BRAZIL'S REDEMOCRATIZATION REVIVES THE RULE OF LAW AND GIVES THE LEGAL PROFESSION A CENTRAL ROLE

While primarily economic forces were influencing change in the laws affecting business and creating new demands for legal services, political developments affected the nature and status of the Brazilian legal profession and strengthened its role in the country. During the military regime (1964–1985) the profession was somewhat marginalized as technocrats took over lawmaking and political repression limited lawyer's role in civil affairs. But by the end of the 1970s social movements, in which lawyers played a prominent role, had started the transition from a military regime toward democracy. A group of legal professionals, organized around a commitment to liberal values and the rule of law, emerged and gave the country's legal elite a prominent role in the new Brazilian political and social scene. With the rule of law enshrined as a fundamental principle, this elite played a role in the development of the new environment, including the laws affecting business and the creation of the new corporate law sector.



The reemergence of the Brazilian legal elite during redemocratization was the result of actions by individual lawyers and the *Ordem dos Advogados do Brasil* – the Brazilian Bar Association or OAB. They fought for human rights and defended political prisoners during the military regime. With democratization, they pushed for reforms to guarantee civil rights, protect social and economic rights, and improve access to justice. These efforts culminated in the Federal Constitution of 1988.

The 1988 Constitution ushered in other changes that strengthened the rule of law and thus increased the importance of legal professionals in the Brazilian economy, polity, and society. These included strengthening the Public Prosecutor's Office and the Judiciary which ensured greater scrutiny of executive and legislative adherence to the law and the Constitution. These measures enhanced the role of legal professionals as guardians of the new rule of law order. This capacity was used to defend clients of all types, from victims of civil rights violations to corporations, and ensured that lawyers would be in high demand as the economy grew.

#### V THE TRANSFORMATION OF THE CORPORATE LEGAL HEMISPHERE, 1990–2014

The global shift deeply affected the Brazilian legal market. Apart from a boom of new practice areas (e.g., capital markets, ADR, mergers and acquisitions, antitrust), there have been changes in the profile of clients, who became significantly more demanding in an increasingly competitive legal market.

Prior to the global shift, the typical Brazilian law firm in the corporate sector was relatively small. A handful of lawyers joined together to form a firm. In many cases, they were led by a “notable,” a lawyer who had gained a reputation as one learned in the law. These legal notables combined intellectual and social capital built on family connections, academic positions, and publications of doctrinal texts. The firms were managed informally and developed clients through social contacts and the reputation of the leading partner. The practice would be focused on the area of the lead lawyer's expertise. There were some exceptions, particularly in that part of the sector that catered primarily to foreign clients. There you could find larger firms offering a fuller range of services, more professional management, and emphasis on the firm's brand, not just that of an individual notable. In some cases, these firms were founded by expatriates with experience in large law firms in the United States who settled in Brazil or Brazilians with overseas experience.<sup>15</sup>

<sup>15</sup> See Krishnan et al. (2016).

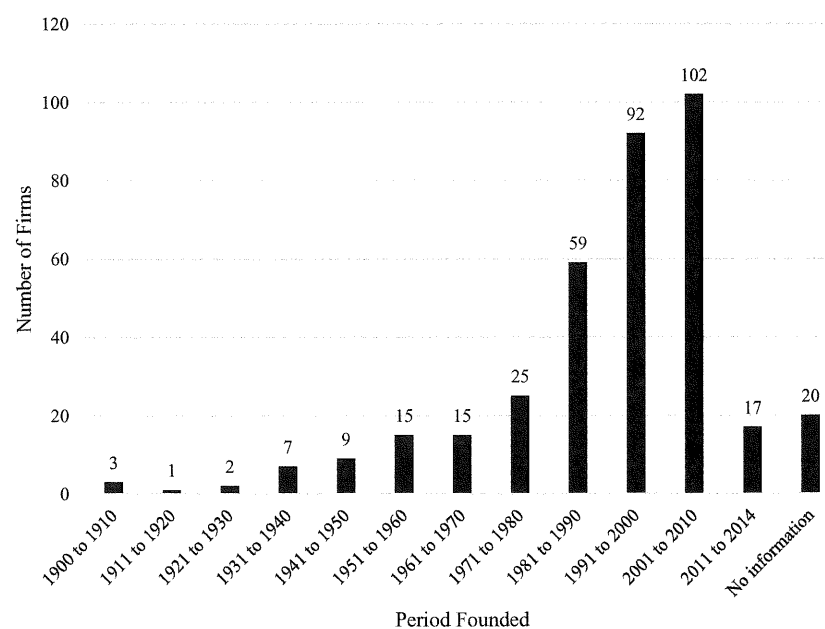


FIGURE 1.1 Number of law firms by decade.

Source: Gabbay, Ramos, and Sica, chapter 2, this volume.

But even the largest of these firms in the pre-1990s period was small by global norms or today's Brazilian standards.

All that changed after 1990. Figure 1.1 shows the rapid rise of the corporate sector in the 1990s after the economy was opened and privatization began. As Chapter 2 of this volume develops, in the two decades starting in 1991 more corporate law firms were added (194) than had been created in the entire period since 1900 (136). Not only did the number of firms grow rapidly after 1991; there was an increase in the size of law firms driven in part by the emergence of new practice areas so that by 2014 there were 10 firms with more than 300 lawyers and many with more than 100.

The privatization drive and other changes created whole new areas of law affecting business. Take, as an example, telecommunications. This sector had previously been a state monopoly but in the 1990s it was privatized, opened to foreign firms, and subjected to new forms of regulation including the creation of a US-style regulatory agency called ANATEL.<sup>16</sup> All of a sudden, corporations were faced with a legal regime that had no precedent in the country. This

<sup>16</sup> For a detailed discussion of the transformation of telecoms market and regulation, see Sa e Silva and Trubek in Chapter 10 of this volume.

created a big demand for lawyers who had both knowledge of the new telecoms laws and international expertise. Similar things happened in other legal fields. As demand increased and the economy grew, mergers, spin-offs, and associations between law firms occurred and new firms were created. The old "gentleman's agreement" against poaching lawyers from other firms eroded as the market became more competitive.

While many firms grew substantially and began to resemble global full-service firms to one degree or another, these two decades also saw the rise of "boutique" firms claiming a high level of specialized expertise. Many firms refer to themselves as boutique firms to achieve greater prestige and to differentiate themselves from generalist law firms, which are sometimes associated with somewhat impersonal services.

In addition to the growth of corporate law firms, in-house offices also grew in size, sophistication, and importance within the corporation (see Chapters 3 and 4). Since the expansion of legal departments in Brazil, which gained strength in the 1990s with privatizing of companies and further opening of the Brazilian market to foreign capital, the profiles and the careers of legal directors have undergone several transformations, culminating in more value and more prestige being given to those professionals inside companies. These transformations have a series of implications for the corporate legal sector, ranging from changing the criteria for hiring professionals, to creating new demands for more sophisticated legal services.

#### VI THE RISE OF THE NEW DEVELOPMENTAL STATE AND ITS IMPACT ON LAWYERING

In the heyday of neoliberalism, it might have seemed that the era of the developmental state was over and industrial policy a thing of the past. But Brazil never fully accepted neoliberal reforms and the role of the state continued robust even under Cardoso. With the election of Lula, ideas of developmentalism returned and more attention was paid to industrial policy. This trend accelerated in Lula's second administration and was further deepened under Dilma with the enactment of the *Brasil Maior* (Greater Brazil) plan. While the Lula-Dilma developmental state maintained elements of past forays into industrial policy, there was no effort to reprivatize major industries like minerals giant Vale or the recently privatized telecoms sector. Rather, this new developmentalism operated more like a public-private partnership with various incentives provided to firms that contributed to industrial policy goals. The new political economy of development affected lawyering in various ways, including creating a need for new skills and negotiating tactics

as corporate lawyers found themselves dealing with state agencies of various types that sought to shape investment and output. These policies seemed to work well for a while, but with the end of the commodity boom the Brazilian economy went into decline. Efforts to deepen state engagement to keep growth going may have aggravated the situation and the country fell into a steep recession. In 2016, Dilma was impeached, and Michael Temer assumed the presidency, resulting in the formation of a conservative government. While this government has pledged to reduce the role of the state in the economy, as of the date of writing, relatively little had been changed and many of the forces affecting lawyering were still in place.

#### VII THE SCOPE OF THE STUDY

The GLEE Brazil Project aimed at identifying the globalization process and its impact by asking a set of questions specifically focusing on the corporate law environment in Brazil, including its structures, organizations, and actors. Key research questions were as follows:

1. What impact has globalization had on law firms serving corporate clients in Brazil? Has a new model of law firm arisen and what does it look like?
2. How have in-house legal departments responded to the new business needs, including the new international dimensions of Brazilian companies? What major changes have in-house legal departments undergone as a result of such changes?
3. What role has the corporate legal sector played in creation of new legal regimes designed to manage Brazil's role following the global shift?
4. What skills do lawyers working in new-model law firms and new in-house offices require? Where do they secure the needed skills and knowledge? How has the rise of the corporate sector affected Brazil's many law schools?
5. To what extent are the changes in law, lawyering, and law office organization influenced by foreign, especially US, models? What tensions has that created?
6. How did the regulation of the legal profession, including that of law offices, respond to globalization, in general, and to the internationalization of legal services, in particular?
7. How has the corporate law sector responded to calls for corporate social responsibility and pro bono services, and how has the rest of the profession reacted?

8. What is the structure of the new mass-litigation law offices and how do they work and how do they affect access to justice?
9. How have new kinds of law offices in the corporate and mass-litigation areas impacted gender issues?
10. How has Brazil responded to the need to prepare lawyers to handle trade-related litigation including WTO cases as well as antidumping and other trade remedies?
11. How has the reemergence of industrial policy under Lula and Dilma affected corporate legal practice?

#### VIII MAJOR FINDINGS

Taken together, the chapters offer a detailed overview of the Brazilian corporate legal sector and the transformations it has undergone since the 1990s. Although the papers cover a wide range of topics, a complex overall picture emerges. As Maria da Gloria Bonelli and Camila de Pieri Benedito point out in Chapter 5 of this volume, discourses on globalization and professions should always use both terms in the plural, not the singular. Professional globalization is not a one-way street, in which the North exports expertise to professionals in the South, who, in turn, merely absorb and implement the technological advances generated abroad. And legal professions are not monoliths. The GLEE research suggests a multidirectional movement and a complex interplay between foreign models and Brazilian institutions and practice. The ten most important findings follow.

##### *A The Rise of the Corporate Legal Sector Has Transformed an Important Sector of the Brazilian Legal Profession*

Since the 1990s, the landscape encountered by the legal profession has changed substantially especially in the Southeast region where most of the corporate headquarters and most of the corporate lawyers are located. Changes can be found in all dimensions including the laws themselves, legal institutions, lawyering practices, the profession's hierarchical structures and the political dynamics of actors in the legal field. They are the result of the interaction of various actors in the profession, including traditional elites and newcomers, domestic and foreign lawyers, in-house legal directors and outside law firm management, local bar officials and national OAB leadership, as well as government agencies such as the Ministerio Publico (Public Prosecutors).

##### *B These Changes Have Been Driven by a Boom in New Laws That Were in Part Created by Corporate Lawyers*

With the opening of the economy, privatization of state own enterprises, and increasing flow of foreign investment, new laws had to be produced to structure changes and govern new forms of economic activity. Corporate lawyers played a role in the making of this boom which then created new demands for their services.

##### *C Many Developments Have Been Influenced by Diffusion of Global Models and Styles, but There Has Been Resistance*

Global processes of diffusion have had an influence but the impact has varied from area to area. In some, Brazil has followed global trends. The role of in-house counsel is an example: Brazilian corporations, following global models, have raised the stature of the general counsel within the company, increased the sophistication of the company's legal staff, expanded the size of in-house offices, and changed the relationship between the in-house offices and outside firms. Even with respect to in-house counsel, however, there continue to be important differences between Brazilian practices and the in-house counsel movement in the United States. In other areas, global actors, models, and processes have encountered resistance. Imported laws and legal institutions have not always worked as expected, and hybrids have emerged. While the global law firm model, based largely on the US approach, has influenced the growth of the corporate law firm sector, it has also met resistance from the rest of the profession and there is tension between the US-influenced corporate firm's operation and the regulatory structure governing law offices.

##### *D The Organized Bar Has Been a Source of Resistance*

In some cases, diffusion has led to direct conflict. A lot of resistance has come from the organized Bar – the OAB. The Bar has adopted a conservative stance, seeking to protect existing markets against innovations like pro bono; limit the role of foreign firms in the country; and police alliances between Brazilian and foreign law firms. Thus, the effort by elite corporate firms to follow global models for pro bono was initially blocked by the OAB forcing the firms to seek creative ways to maintain such programs which are important for their relationship with major clients, and to their image as “world-class” firms. The OAB has also placed strict limits on the role of foreign law firms established in Brazil, although the firms have found ways to circumvent the restrictions.



Finally, efforts by some Brazilian firms to create formal, visible, and permanent alliances with foreign firms met with stiff resistance by the Bar which essentially outlawed such relationships.

#### E *The New Legal Services Market Has Demanded a New Type of Lawyer*

The growth of the corporate sector and the internationalization of corporate law practice created a demand for a new kind of lawyer. To succeed in this new environment, lawyers must not only have basic legal skills and knowledge of the Brazilian system; they must also have knowledge of advanced and specialized disciplines like international economic law; understand business practice, and be familiar with global lawyering styles.

#### F *Women Have Found Employment Opportunities in the Globalizing Sectors but Still Face Gender Inequality*

In two sectors affected by globalization – large corporate firms and mass-litigation outsourcing firms – women have found new job opportunities. More than half the associates in large corporate firms in São Paulo are female as are 65 percent of the lawyers in JPM Advogados, the leading mass-litigation firm. But women lag behind men in the senior ranks of the large corporate firms and most jobs in mass litigation are low-paying, routine, and low quality. A similar story can be told with respect to in-house legal departments. While women constitute a significant percentage of the lawyers employed by these departments, there are far fewer women general counsels – although, as in the United States, their percentage in these positions is increasing and is still greater than it is in equivalent positions in leading law firms.

#### G *Diffusion and Resistance Have Led to Hybridization*

The overall process of diffusion and resistance has led to the creation of hybrids in many areas as global models interact with Brazilian tradition, custom, practice, and law. Such hybrids can be found in law firms, in-house legal departments, legal education, pro bono, and gender relations. For example, the clash between corporate lawyers wishing to develop US-style pro bono efforts and resistance by the organized Bar led to a hybrid pro bono practice unique to Brazil. Other examples include the Bar's restriction on the foreign law firms, which have led to new strategies and relations between local and foreign law firms that ensure they are effectively inserted in global networks and international operations. However, small even such

small changes are still largely absent in the educational area, where for the most part law schools have resisted change and kept traditional curricula and methodologies untouched.

#### H *Brazilian Law Schools Have Failed to Prepare Lawyers for Global Practice*

GLEE studies the ways that Brazilian lawyers developed the capacities needed for global lawyering. We found that law schools have been very slow to respond to the need for such training. To secure the needed skills and experiences, Brazilian lawyers have relied more on continuing legal education, study abroad, and training in law firms and GC offices than on formal legal education.

#### I *The Rise of the New Developmental State Has Created New Challenges for Corporate Lawyers*

Finally, the reemergence of the developmental state had an effect on the corporate law sector. GLEE observed these effects in two areas. In the field of telecommunications, corporate lawyers are seeking to cope with a series of demands from the state inspired by new developmental state industrial and social policy. This has changed the nature of advocacy in this sphere. Another major impact of the new developmental state on the profession can be seen in the area of international trade law. In the early 2000s, the Brazilian government and the private sector worked together to create a cadre of lawyers who could handle WTO cases. However, as WTO litigation declined, demand for this kind of work declined and there was an oversupply of trade law experts. The return of industrial policy changed the situation. Concerned with the impact of imports on domestic manufacturers, the government strengthened domestic antidumping laws thus creating a new market for lawyers with trade expertise.

### IX CHAPTER SUMMARIES

#### A *Rapid Growth of Corporate Law Firms since 1990*

Gabby, Ramos, and Sica argue in Chapter 2 of this volume that in the twenty-five years since 1990, the corporate law firm sector in Brazil has grown substantially. The number of firms has more than doubled and average firm size increased dramatically. At the same time, firms have changed their methods

of operation, recruitment, and management. Until 1990, the sector was small and largely focused on serving local clients; today it includes many large firms as well as numerous specialized “boutiques” serving both domestic and foreign corporations. Many of these firms have instituted management systems, hired professional managers, and employed technology to control operations and maintain communication. The firms have paid attention to branding, marketing themselves as collective entities with stress on the firm’s capabilities, not those of an individual notable. They have established career ladders and regular performance reviews. Brazilian firms have sought foreign as well as domestic clients and have looked for ways to work with foreign law firms in the growing number of transactions with transnational elements.

Starting in the late 1990s, foreign law firms began establishing themselves in Brazil. In 2013, there were twenty-three such law firms operating in Brazil. Under OAB rules, these firms can only serve as consultants on foreign law and cannot advise on Brazilian law or appear in court. But they have found ways to get around some of these restrictions and to build alliances with Brazilian law firms.

The changing nature of the Brazilian corporate law firms is the product of rising overall demand for business law services as well as new client requirements. The arrival of more foreign corporations, and the increased importance and sophistication, of the in-house offices in both foreign and domestic companies, has led to demands for great sophistication in the services performed by outside firms as well as new lawyering styles and skills.

The rise of the corporate sector has created tension between an emerging model of professional organization and practice and traditions of the Brazilian legal profession including some OAB regulations. This has sometimes been manifested in a certain distance between what people say about how lawyers can and should operate and what is actually going on. Thus, while the Bar imposes minimum fee schedules and prohibits advertising, the new-model corporate firms compete actively for business and have engaged in various methods to market their brands. Similarly, while the Bar has sought to impose restrictions on alliances between domestic and foreign law firms and limit the activities of foreign firms established in Brazil, the largest Brazilian law firms are inserted in global networks of international operations and foreign firms operating in Brazil find ways to get around the restrictions on their practice. Finally, while corporate law firms are not “companies” under Brazilian law and thus are not supposed to be “entrepreneurial,” and the Bar prohibits law firms with “mercantile forms or characteristics,” the new-model corporate law firms operate like business entities as they respond to market demand and adopt corporate management technologies. The result is that there

is often a gap between rhetoric and reality in the corporate law sector, as well as the development of hybrid organizational forms as the new-model law firms seek to adopt global forms and practices to Brazilian culture and regulation.

#### B *The “In-House Counsel Movement” Begins to Take Hold in Brazil, but with Important Differences from Both US Models and Similar Developments in Other Emerging Economies*

By almost any measure, one of the most significant developments in the corporate legal services market in the United States over the past thirty years has been the growth in the size, stature, and influence of internal legal counsel (Wilkins 2012; Heineman 2016). This “in-house counsel movement,” as the American legal scholar Robert Eli Rosen aptly labeled this transformation (Rosen 1989), has been based on three interrelated arguments: *economic value* (i.e., that handling legal work internally is more efficient than hiring outside law firms), *substantive expertise* (i.e., that because of their proximity to the business, in-house lawyers can give better advice than outside counsel), and *professional independence* (i.e., that because general counsel are better able to understand and protect the company’s long-term interests and reputation than law firm partners that they are more likely to uphold the legal profession’s traditional ideal of the “Lawyer Statesman” who counsels clients to conform their conduct to the public purposes of the legal system) (Kronman 1993; Heineman 2016). Two chapters in this volume examine the degree to which this movement has come to Brazil, and how developments in that country compare with the evolution of internal lawyering in India, where the GLEE project is also conducting research.

Oliveira and Ramos begin this analysis in Chapter 3. Using quantitative data on a large cross section of Brazilian companies, as well as qualitative interviews of legal directors from prominent Brazilian firms, the authors investigate whether Brazil’s legal departments exhibit six characteristics that have come to define the growth in status and influence of general counsels in the United States and other jurisdictions in the Global North: (1) the overall size of the legal department; (2) the demographic and educational profile of in-house lawyers (particularly of the GC); (3) the degree the GC exerts control over external law firms and other legal providers; (4) the prestige and authority of the GC within the company; (5) the status of in-house counsel within the legal profession as a whole; and (6) the participation and influence of GCs within wider debates over legislation and public policy (Wilkins 2012). Based on this data, Oliveira and Ramos conclude that since the expansion of

legal departments in Brazil, which began during the 1990s coinciding with the increased privatizing of companies and the opening of the Brazilian market to foreign capital, the profiles and careers of legal directors have undergone several transformations, culminating in more value and prestige being given to these professionals within their companies. Prior to this period, few domestic Brazilian companies had in-house legal departments. By the end of the 1990s, however, with growing globalization and the arrival of more foreign capital in Brazil, it became increasingly necessary for legal professionals working in the corporate world to have a more complete background, including knowledge of corporate law disciplines, as well as of business, accounting, and international law. Legal departments therefore increased in size, and the legal directors operating these departments became increasingly sophisticated and influential. These transformations, in turn, generated a series of implications for the country's corporate legal market, changing the criteria for hiring in-house lawyers – including foreign law firms, which GCs now view as an important part of the Brazilian legal market.

Although the authors therefore conclude that important aspects of the in-house counsel movement have indeed come to Brazil, they also document how the structure and functioning of internal legal departments in Brazilian companies continues to differ from the US model. Thus, while many legal directors are moving from solely occupying the role of “cop,” perceived as a necessary evil involved in managing the business's legal risks, to the role of “counselor,” balancing legal risk management, compliance, and business recommendation, few have made the transition to an “entrepreneur” role where they play a key role in the company's strategic decision making. The stature and prestige of legal directors promised by the in-house counsel movement in the United States and other countries is therefore still a work in progress in Brazil. Nevertheless, the trajectory toward greater importance for the role is strong, and there are likely to be further changes in this direction in the coming years.

In Chapter 4, Wilkins and Khanna extend this analysis by examining how Brazil's internal legal departments compare to those in India. Given the similarities between these two rising powers, it is not surprising that some version of the in-house counsel movement has come to both jurisdictions. Like Brazil, India also underwent a global shift in the 1990s when the country moved from a closed socialist economy to one that is now more or less open, creating the kind of foreign direct investment and privatization that fuels the demand for sophisticated internal counsel. Notwithstanding these broad similarities, however, there are important differences in the economic structure, proximity to the West (particularly the United States), and the state of the legal profession

in Brazil and India that plausibly impact how the in-house counsel movement develops in each country.

To explore these potential similarities and differences Wilkins and Khanna present the results of a comprehensive survey of general counsels in Brazil and India. The samples in each jurisdiction are broadly representative of large companies, including foreign multinationals (FMNCs) as well as domestic companies, and capture a significant percentage of Brazil and India's market capitalization, and an even greater percentage of the respective economic activity. As a result, Wilkins and Khanna are able not only to chart the growth in the size, sophistication, and impact of general counsel offices in each jurisdiction, but can also examine differences between FMNCs and domestic companies within each country's corporate counsel sector.

As predicted, the survey demonstrates that important aspects of the in-house counsel movement have come to each country. Legal departments in both jurisdictions have grown larger, and general counsels more sophisticated, across all company types. Consistent with the core tenets of the in-house counsel movement, GCs in both countries exercise primary control over the company's legal function, including putting together the list of “preferred providers” who do the company's outside legal work. Notwithstanding these changes, however, legal departments in both jurisdictions continue to spend more than half of their budgets on outside counsel and other legal service providers, with half of their overall budgets going to routine legal work. And while Brazilian and Indian GCs spend more time on public policy matters than they have in the past – and expect to spend even more time on these matters in the future – in neither country are these issues as important a part of the GC's job as they are in the United States and other more developed legal markets.

In addition to these core similarities, however, the survey results also underscore important differences, both between Brazil and India, and between domestic and FMNCs. The legal budgets of companies in Brazil are far larger than those in India, particularly with respect to FMNCs operating in the two jurisdictions. GCs in Brazil also appear to be more integrated into the company's senior management and business decision making than their Indian counterparts, with the former being more likely to advising the board, participate in senior leadership discussions, and counsel the CEO than GCs in India. Brazilian legal departments also tended to keep a greater percentage of the company's “high value” work in-house than similarly situated departments in India, while sending more “routine” work to outside providers. These differences, which are similar across both domestic and foreign companies in both jurisdictions, are consistent with the hypothesis that Brazil's more open

economy and proximity to the United States has led to greater diffusion of the American model of internal lawyering where law is integral to business, and where GCs are considered both important members of the senior leadership team and capable of handling more sophisticated legal work. And while GCs in both countries report that they terminate important law firm relationships infrequently – significantly less frequently than GCs in the United States – Brazilian legal directors are more likely to do so than GCs in India. Once again, this difference underscores that the shift in power between inside and outside lawyers that has been at the core of the in-house counsel movement in the United States is currently more firmly established in Brazil than it is in India.

Taken together, these two studies provide ample support for the hypothesis that the US model of internal lawyering is diffusing through the Global South, led by FMNCs who are looking for the same levels of support and function from their legal departments in countries like Brazil and India that they receive in their home jurisdiction. But while this aspect of the American Mode of the Production of Law (Trubek et al. 1994) appears to be more firmly entrenched in Brazil than in India, neither country has yet to achieve the level of transformation on the six indicators identified by Wilkins as characterizing general counsel offices in the United States. Moreover, given the potential for “disruptive innovation” to transform the way that companies produce and consume legal services, it is far from clear that the evolution of internal lawyering will follow the established tenets of the in-house counsel movement in these and other rapidly changing emerging economies – particularly as law is increasingly absorbed into broader “business solutions” that may not need to be handled by specialized legal departments.

#### C *Women Find New Employment Opportunities in Globalized Practices but Encounter Barriers to Promotion in Large Firms and Low-Quality Jobs in Mass-Litigation Firms*

Bonelli and Benedito argue in Chapter 5 that globalization has had an important impact on gender relations in the Brazilian legal profession. The traditional Brazilian law firm tended to be male dominated; if women were hired they rarely made partner. Globalization has changed this situation not only in the elite corporate law firm sector, but also in mass-litigation law firms that emerged in the 1990s to handle a litigation explosion.

As indicated in Chapter 2, the large-scale corporate law firm is the best-known product of globalization in Brazil. But mass-litigation firms are the product of globalization as well. Starting in the 1990s, corporations in Brazil

began to outsource mass litigation to specialized firms set up for this purpose. Like the elite corporate firms, they represented a major break with the traditional law firm pattern as they employ business methods, handle thousands of small-scale, relatively routine cases and employ assembly-line methods.

A study of gender roles in a sample of corporate law firms in São Paulo and in JBM Advogados, the largest mass-litigation firm, shows that both of these “globalized” practices are more likely to hire and promote women than is the case in the traditional law firm sector. In the corporate law firm sector, half the associates and up to a quarter of the partners are women. While women lag behind men in gaining partnership in this sector, they do better than in traditional firms. Women also have found employment opportunities in JBM Advogados which hires hundreds of low-paid lawyers to handle routine tasks in what some describe as “factory-like” conditions. At the time the study was done, 65 percent of JPM’s lawyers were women, and women equaled or outnumbered men in managerial positions.

Globalization has therefore created more opportunities for women at both the top (corporate) and bottom (mass litigation) end of the profession. But gender hierarchies still remain: men are more likely to make partner in the corporate sector, and most of the jobs in the mass-litigation sector are low quality, paying little and involving routine work under close supervision in assembly-line conditions.

#### D *The Rise of New-Model, Large-Scale Corporate Law Firms and the Arrival of Foreign Law Firms Create Regulatory Challenges for the Brazilian Bar Association (OAB)*

The rise of the corporate law sector has presented regulatory challenges for the Brazilian Bar Association (Ordem dos Advogados do Brasil or OAB) which has had to deal with new forms of organization, employment, and lawyering styles, new kinds of practice, as well the presence of foreign firms. OAB regulations played an important role in the growth of the corporate law firm sector. Almedia and Nassar argued in Chapter 6 that as Brazilian lawyers began to adopt corporate law firm models from the United States and other developed countries, the OAB was faced with a new entity that operated differently than the traditional Brazilian law firm. These “new-model” firms were relatively large, highly specialized, organized in a hierarchical fashion, and profit seeking. Although there were concerns that this “commercialized” approach to law practice was at odds with principles of professionalism, the OAB created a regulatory framework that accommodated the new model, allowing the corporate sector to grow substantially in the 1990s and early 2000s.

The rise of the corporate sector created a new actor in OAB politics. The Association had been dominated by two groups: the traditional elite of prestigious lawyers who had dominated the profession since the beginning, and the OAB's organizational elite of elected Bar leaders who occupied important posts within the Association and were responsive to the great mass of members. With the rise of the corporate law firms, a third elite made up of business lawyers from large law firms entered the picture.

These three elites struggled as the OAB dealt with two issues that arose as a result of globalization and the rise of the corporate sector: (1) the rules governing pro bono practice and (2) the regulation of foreign law firms and their relationship with Brazilian firms. The struggles took place within the complex federal structure of the OAB with various actors seeking to secure rulings at levels most favorable to their claims. This meant that some issues remained at state level while others ended up in the OAB's Federal Council.

The first case arose because the large law firms, influenced by global trends, wanted to create pro bono units but ran into opposition from the São Paulo State Bar Association who voted to ban the practice to protect the solo practitioners and small law firms that constitute the bulk of the Bar's membership business lawyers, joined by prestigious representatives of the traditional legal elite, challenged the ruling. Bar leaders, however, fought to maintain the ban on pro bono, which their constituency feared threatened a lucrative legal and market for lawyers under São Paulo's judiciary system. After considerable debate, the alliance of traditional and business lawyers could strike a compromise with the São Paulo Bar Association under which pro bono was allowed but only for NGOs without resources to hire lawyers. This compromise lasted for more than a decade until the Federal Prosecutor's Office challenged the ban on pro bono for individuals. Faced with a possible constitutional proceeding, the Federal Council of the OAB weighed in, suspended the São Paulo ban on individual pro bono, and announced that it would allow this practice in the future.

In the second regulatory debate, some among the new corporate elite wanted the OAB to outlaw alliances between foreign law firms and local firms. The controversy arose after a few Brazilian corporate law firms had created formal alliances with foreign firms, including some that were licensed to practice foreign law in Brazil and others operating outside the country. Once again the issue erupted in São Paulo, home of most of the large law firms. Many of the large firms favored strict restrictions on such alliances and supported actions of the São Paulo Bar that punished several firms for establishing alliances.

However, large firms benefiting from this practice disagreed and sought a ruling from the Federal Council. This generated a debate on the issue of

foreign firm alliances with some large-law firm leaders pushing for draconian restrictions and others proposing more limited ones. Some members of the traditional elite weighed in, supporting some but not all the proposed restrictions. With the São Paulo business law elite split and the traditional elite not in favor of all the proposed restrictions, the issue could not be contained at the state level and gravitated to the Federal Council. In the face of strong opinions on all sides of the issue, the Federal Council issued a very general opinion stating that permanent and visible alliances with foreign firms licensed to operate in Brazil were not allowed but leaving room for other kinds of relations both with such firms and those outside the country.

E. *Competing Interests, Local Institutions, and Diverse Interactions  
across Borders Affect the Diffusion of US Practices and Ideologies:  
The Case of Pro Bono*

In Chapter 7, Sa e Silva extends the regulatory debate concerning the rise of pro bono in Brazil referenced in the proceeding section to provide a more comprehensive examination of how globalization has influenced the development of this increasingly important practice. By the time the global shift was taking place and impacting the legal profession in emerging economies, pro bono – traditionally defined as free legal services for the poor – was becoming a core institutional feature of US corporate law firms and access to justice practices. But whereas this trend quickly saw correspondence among local entrepreneurs in Brazil, pro bono found less chance to grow and prosper among Brazilian corporate lawyers and law firms showing the limits to diffusion of US practices and ideologies. Competing interests and institutions at the local level, along with diverse interactions across the North/South border have produced a unique meaning for pro bono in São Paulo.

Initially, pressures from clients seeking to advance corporate social responsibility projects and support from traditional elite lawyers allowed pro bono to grow. But struggles for shares of the legal market at both the top and the bottom of the bar's structure constrained its institutionalization among corporate lawyers and law firms.

As indicated above, to mediate these conflicts, the bar enacted regulations allowing pro bono services to be offered only to NGOs and in transactional matters, not litigation. And while law firms initially resisted these restrictions, over time some of them compromised with the bar leadership as part of a wider bargain that also restricted the entry of foreign law firms into the Brazilian legal market. Faced with this strong opposition by the bar and some corporate elites, pro bono promoters responded by not only reinforcing



the “traditional” roots of pro bono, but also by developing strong alliances with public defenders, litigation-oriented NGOs, and human rights advocacy groups. The result is a very different profile for pro bono in Brazil than what tends to exist in the United States and other jurisdictions, where this practice focuses primarily on individual representation.

As indicated in the prior section, the deal struck in São Paulo limiting pro bono to work for NGOs lasted for over a decade. But recently the Federal Prosecutor’s Office’s threat to challenge the ban on individual representation has led the OAB to void the restrictions. This leaves pro bono in Brazil at a crossroads, which can lead to many different forms of engagement among both pro bono activists and corporate lawyers and law firms. These can be more traditional or more innovative; more technical or more politicized; more systematic or more ad hoc.

*F Brazilian Law Schools Fail to Meet the Challenge of Globalization, and Aspiring Lawyers Seek Alternative Paths to Acquiring Needed Skills and Experience*

In Chapter 8, Cunha and Ghirardi shine a light on changes in legal education in Brazil. The transformation of the corporate law sector created demand for new skills. Corporate law firms and GC offices sought lawyers with basic legal skills, knowledge of advanced areas of corporate and international economic law, familiarity with global lawyering styles, and a grasp of business fundamentals. Brazilian law schools failed to respond to this demand. With minor exceptions, the established law schools resisted changes. While a wave of new law schools was created, often by profit-seeking institutions, these new entrants concentrated on low-level, mass legal education, replicating traditional curricula and focusing on preparation for the bar exam. While a few law schools in Rio and São Paulo have introduced innovative undergraduate law programs and addressed global issues, the mass of law schools failed to respond to the new needs.

As a result, aspiring corporate lawyers had to seek alternative paths to gain the capacities required by the new market. These paths included continuing legal education programs which have proliferated, study abroad principally in the United States, internships in foreign law firms, and in-house training. Some of the institutions that created new, internationally oriented law undergraduate courses have also started offering MA programs and high-level continuing education courses. They thus meet a substantial portion of the local market demand for lawyers with new skills and knowledge. Although continuing education has helped provide knowledge of advanced legal

subjects it rarely if ever offers training in business fundamentals or global lawyering styles. These capabilities are best found through foreign degrees and internships as well as training programs directly offered (in-house) or financed by law firms, including a growing number of executive education programs in the United States and United Kingdom that cater to a global clientele. Many students, having finished the undergraduate course in Brazil and often doing some work in corporate firms, have gone abroad for LL.M.s and internships and many law firms now offer substantial in-house training.

*G Lawyers Trained in WTO Law Find New Outlets for Their Skills in the Surge of Trade Remedies Generated by New Industrial Policies*

Glezer, Dias, Brito, and Zanatta in Chapter 9 describe how Brazil’s entry into the WTO created a demand for lawyers who could understand the WTO’s rules and defend Brazil’s interests in the organizations’ dispute resolution system. Lawyers were needed who could use WTO law to support Brazilian exporters seeking access to foreign markets and protect domestic policy against complaints in the WTO. To meet this need, the Brazilian Ministry of Foreign Affairs, working with the private sector, created a program in Geneva to train lawyers from the public and private sector in WTO law. This project created a cadre of lawyers familiar with the mechanics of foreign trade and WTO law and procedure. An elite group, trained in the Geneva Program and/or through study and work abroad, emerged. Most found work in large full-service law firms.

While the initial idea behind capacity building was to create a cadre of lawyers who could work in the WTO itself, the decline of WTO cases involving Brazil, and the need for legal expertise in other areas of trade law including antidumping and customs law, has changed the profile of the trade law bar and the work its members do.

The initial capacity-building efforts actually created an oversupply of trade law experts. With WTO litigation work declining, these lawyers needed to find other outlets for their skills. When New Developmental State industrial policies led to a tougher antidumping law, legal capacity that had been developed for WTO litigation was adapted and deployed in trade remedy litigation and foreign trade consulting. Demands by Brazilian and foreign clients for representation in antidumping actions grew. WTO-trained lawyers became active in the Brazilian trade remedy system and set themselves up as consultants offering economic and business as well as legal analysis. Stimulated by this new demand, work increased and new organizational models for legal practice emerged. The trade law bar has increased participation in

global consulting networks, created “foreign desks” in large-scale law firms, gone to work for firms specializing in government relations, and lobbied government agencies. These moves have ensured employment for the trade law elite, helping to absorb the oversupply. A few lawyers are added to the field from time to time, largely through in-house training. But most trade lawyers do not predict major growth in the future.

### *H Corporate Lawyers Help Create the New Regime*

Much of the GLEE study explores how changes in economic policy led to legal changes which in turn generated demand for new kinds of lawyering. But there is another side to the story. As Sa e Silva and Trubek argue in Chapter 10 of this volume, corporate lawyers did not sit back passively waiting for technocrats and legislators to create the postglobal transformation legal regime: they actively participated in the creation of the new laws, procedures, and institutions. To explore this issue, GLEE studied one important area – telecommunications. Until 1990, telecommunications was a state monopoly and the sector was run by Telebras, a major state-owned enterprise. In the 1990s a decision was made to privatize the sector and seek foreign investment. To make the sector attractive to foreign investors, it was subjected to new forms of regulation including the creation of a US-style regulatory agency called ANATEL.

GLEE looked at four incidents in the history of this process. The first two stories focus on the transition between state monopoly and a regulated market (late 1980s–1997). They reveal two ways in which corporate lawyers contributed to that process. Initially, corporate lawyers sought to provide legal legitimacy and the necessary legal tools for ongoing attempts to open the telecom sector: they engaged in creative interpretation of existing laws and produced suggestive drafts of administrative norms that could enable private participation in the telecom sector. None of these efforts were sufficient to produce an atmosphere favorable to private investment. When the government made a more decisive move to open the sector and seek foreign investment, it was convinced of the need to make a major change in Brazilian laws in order to make the sector more attractive to foreign investors. This reform, which involved creating a regulatory structure based on foreign approaches to industry regulation and administrative law institutions not recognized in Brazilian law, required a distinct kind of legal assistance. Corporate lawyers helped the government identify specialized professionals who could get the job done.

The third story focuses on the initial operation of the sector as an aspiring regulated market operating under an imported legal structure (1998–2007).

This time, corporate lawyers ensured that the previous legal reforms were administered the way they were intended. Initially, the new legal forms conflicted with an enduring technocratic ethos held among ANATEL directors, who had been socialized in the context of the Telebras system. By undertaking opaque and idiosyncratic regulatory practices, which translated into demands that companies saw as exceeding legitimate regulatory concerns, these old-style technocrats tried to pour the old wine of developmentalism into the new bottles of the regulatory state. But by imposing legal constraints on regulatory discretion through the use of Courts and administrative proceedings, corporate lawyers curbed the powers of these technocrats. At the end of this period, with regulation operating under stricter legal constraints and ANATEL placing more value on the law and legal reasoning, corporate lawyers had acquired considerable professional power, which they could use to place substantive constraints on the workings of the agency and drive the sector toward the original aspiration of a regulated market in which private companies exercised substantial discretion.

The fourth story focuses on the changing scene in the sector with the emergence of a new developmental state in the late 2000s. Now, reinvigorated state activism informed by concerns for social inclusion and industrial development led to new demands on the companies and new challenges to the legal infrastructure inherited from the 1990s. Corporate lawyers have resisted these moves by continuous legal mobilization and production of market-friendly legal ideologies. But they confront a more effective state apparatus and increased social and public participation in the sector, potentially limiting their ability to resist the new policies. There is a tension between two approaches: resistance and challenge to the legitimacy of the procedures used and new demands being made, and pragmatic advocacy which accepts the legitimacy of government action and seeks the best deal possible in that context. The outcome of this struggle is unclear. Yet it shows that the rise of a new developmental state is changing the context in which corporate lawyers act and may influence their orientations in ways that challenge the some of the theories concerning lawyers and globalization.

This final chapter, therefore, provides a fitting conclusion to this volume. As indicated at the outset, the GLEE project’s primary goal is to open a new field of study in Brazil and other emerging economies, as opposed to resolving the complex questions raised by our research regarding the evolving relationship between the emergence of a new and increasingly defined corporate legal hemisphere and broader issues of economic, political, and social development. We hope that Brazilian and international scholars will be inspired by the work we have done here to pursue these questions.

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## 2

## Corporate Law Firms

*The Brazilian Case*

Daniela Monteiro Gabbay, Luciana Ramos,  
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## I INTRODUCTION

In the nearly three decades since 1990, the corporate law sector in Brazil has been dramatically transformed. The number of firms has more than doubled, firms have grown substantially in size, and the methods of management and operation and have all been revolutionized. Prior to the early 1990s, the corporate legal sector in Brazil mostly consisted of small firms focused on serving local clients. Today, the sector includes a combination of full-service corporate firms as well as specialized boutiques, each serving large domestic and foreign companies.<sup>1</sup>

As Chapter 1 addresses, many of these developments resulted from a "global shift" in the Brazilian economy that occurred in the early 1990s and resulting in a set of major legal changes. For instance, at that time, Brazil began moving away from the centralized, state-dominated, and closed economy model that had prevailed since the 1930s. Facing a financial crisis and a sluggish economy, the country sought to revive growth by opening to the world economy, attracting foreign investment, and privatizing many state-owned enterprises. These developments were accompanied by a legislative "boom" that created new areas of law designed to govern these newly privatized sectors, to attract additional foreign direct investment, and to stimulate domestic investment. New regulations were passed, creating the need for professionals capable of operating in areas such as capital markets, infrastructure, telecommunications, energy, arbitration, competition, and mergers and acquisitions (M&A).

These changes, along with the increasing presence of national and multinational corporations and foreign investors in the market, altered the demand for

<sup>1</sup> For an analysis of the growth of foreign lawyers in Brazil and their partnerships with local Brazilian firms, see Krishnan et al. (2014).