



Center on the Legal Profession

HARVARD LAW SCHOOL

Globalization, Lawyers and Emerging Economies (GLEE) Evidence from India, Brazil, and China and Implications for ASEAN

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From Open Markets to Corporate Law to Corporate Lawyers

- Since the 1990s, many countries in Asia, Latin America and Africa have achieved unprecedented economic development
- One key factor is liberalization of the economy and a move toward more open markets
 - Rapid increase in FDI
 - Privatization of many state-owned institutions
- This in turn created a need for new laws and legal institutions to spur and regulate these markets, and the interface between the domestic and global economy
- And with new laws has come the need for lawyers capable of operating within these new legal systems, and interfacing with everything from global companies to the institutions of global governance.
- This new “corporate legal ecosystem” is in turn reshaping the legal profession and the political economy of these states, and increasingly the global legal, political and economic system generally

The GLEE Project

- Little systematic attention to this process
- The project on Globalization, Lawyers, and Emerging Economies (GLEE) is designed to fill this void
- GLEE is a multinational, multidisciplinary, multi-institutional project to create systematic, unbiased research
- To date, we have more than 50 researchers and several affiliated institutions studying the development of the new “corporate” legal sector in important emerging economies around the world including the growth and operation of distinctly “corporate” law firms and sophisticated in-house legal departments, to how these developments impact areas from legal education to the growth of pro bono and CSR, to legal capacity building both domestically and internationally, to technology and innovation

GLEE'S Four Primary Research Questions

1. How have “global” models of corporate legal practice shaped development of a new corporate legal “ecosystem” in each country, and what factors have contributed to this process?
2. How has each country’s unique political, economic, professional, and social environment shaped these global transplants and the corporate ecosystem generally to produce distinctly indigenous institutions and practices?
3. How is this new corporate ecosystem influencing developments in other sectors of the legal profession, e.g., legal education, professional regulation, innovation and technology, the role of lawyers in the state, etc.?
4. How is it transforming each country’s economic, political, and social development and growing influence in the world?

Phase 1: India, Brazil, and China

The Indian Legal Profession in the Age of Globalization

The Rise of the Corporate Legal Sector
and its Impact on Lawyers and Society

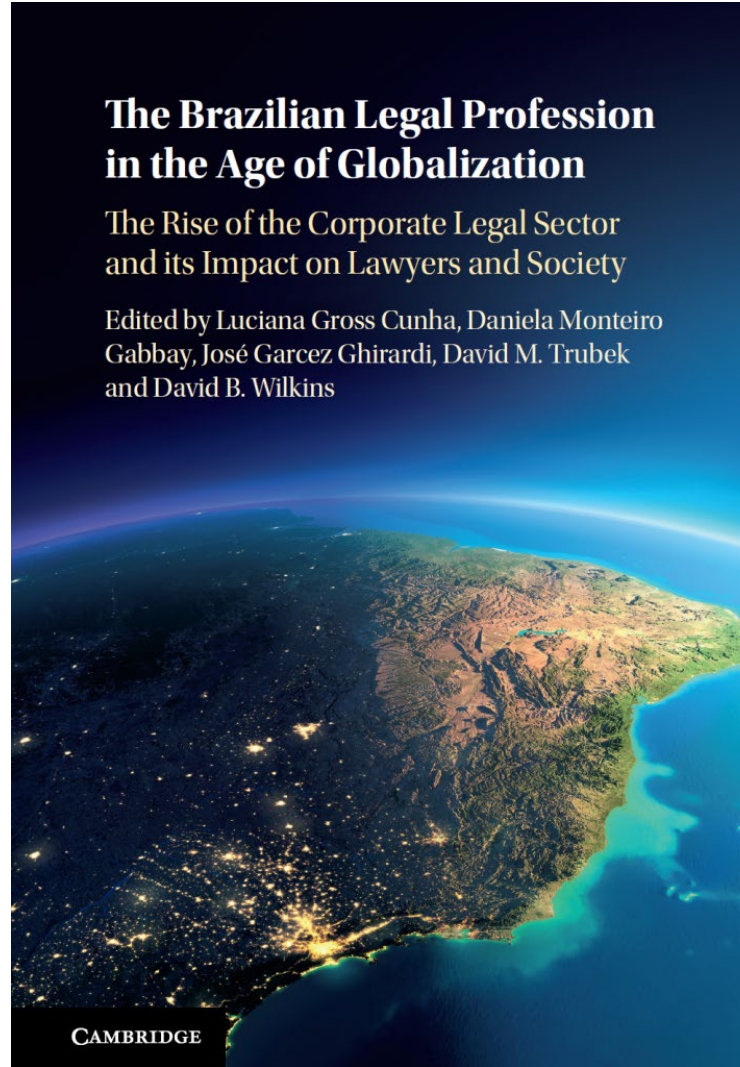
Edited by David B. Wilkins,
Vikramaditya S. Khanna, and David M. Trubek



The Brazilian Legal Profession in the Age of Globalization

The Rise of the Corporate Legal Sector
and its Impact on Lawyers and Society

Edited by Luciana Gross Cunha, Daniela Monteiro
Gabbay, José Garcez Ghirardi, David M. Trubek
and David B. Wilkins



The Chinese Legal Profession in the Age of Globalization

Forthcoming

Cambridge University Press

Phase 2: Bringing the Project to ASEAN (and Beyond)

- GLEE was originally intended to be a BRICS (Brazil, Russia, India, China, and South Africa) project in which we would study Asia through the prism of China
- But it was always clear that Asia was far more than China, and that in the middle decades of the 21st century ASEAN will be far more important as a site of global development than Russia and the CIS states – an area that the war in Ukraine has obviously made even more difficult
- And that ASEAN's importance will extend far beyond traditional labor arbitrage (which of course remains important), and will reach beyond simple North-South, and even South-South, dynamics to play a key role in defining a new multipolarity at both the regional and global level
- Finally, ASEAN is already a new hub of innovation – Starting of course with Singapore, but increasingly other countries in the region as well – as both domestic and global players seek to address problems of development, sustainability, inequality, diversity, and generational change that, while affecting ASEAN, will increasingly be felt in every region of the world

There are Historical Reasons as Well

- The BRICS countries were not the the first nations to achieve rapid development in the post-WWII era
- Beginning in 1960s and accelerating through the 1970-1980s, Singapore and the other “Asian Tigers” Korea, Hong Kong, and Taiwan all went through a similar pattern of rapid development
- And, of course, before these Tigers, there was the original Asian success story Japan, which transformed itself from an isolated and devastated nation after WWII into the world’s second largest economy
- Singapore now stands as an important bridge between these original success stories and the emergence of the BRICS and other rising powers since the 1990s
- Indeed, all of the original Tigers now play a critical role in ASEAN – as do the BRICS, particularly China and India – and therefore offer an alternative to Anglo-American models of development generally, and in the corporate legal ecosystem in particular
- For all of these reasons, ASEAN is a critical place to study the core issues we hope to address in GLEE

Studying the Corporate Core

- Are ASEAN countries developing a distinctive corporate legal hemisphere?
- If so, what are its core elements (e.g., law firms, in-house legal departments, new players?) and how do these elements differ both among ASEAN countries, and from those in the Global North, and other models in the Global South?
 - Clear that there is some diffusion of Anglo-American corporate legal models, particularly in Singapore
 - But our research in India, Brazil, and China underscores that simple diffusion is neither desirable (given economic, political, and social differences) nor possible (given the rapid changes in the global corporate legal sector)
 - **India:** Family, region, class, caste all remain important factors within firms and between firms and clients; **Brazil:** Social class and historical pedigree remain important factors; **China:** Connections to the state and party play a key role, but also experimentation
 - In-house counsel stronger in Brazil than in India or China, although Chinese government is now pushing to upgrade the function
 - Innovation (e.g. LPOs) more important in India, but Brazil and China now pushing change

Foreign Competition

- How are global corporate players seeking to serve the ASEAN market and how are ASEAN corporate elites reacting to their entry?
- Once again, our prior work suggests that there will be substantial variation:
 - India: Traditionally a full-ban; fly-in-fly-out. But recently formally opened
 - Brazil: Strict – but not complete – limitations; Brazilian lawyers can work for foreign firms but give up bar membership, some limited “cooperation” agreements
 - China: Much more open as a means of attracting FDI; foreign lawyers can “opine on the Chinese legal environment”
- In ASEAN, there is growing interest by foreign firms to enter various markets, particularly in Singapore but increasingly throughout the region
 - Many are entering into alliances/networks with ASEAN law firms
 - Several are engaging in “capacity building” and “rule of law” projects
- Even greater presence by in-house legal departments of FMNCs
- And, of course, the Big 4 are already here, and are increasingly active in pushing “multidisciplinary solutions” – and have acquired some of the region’s most innovative players such as Zico Law

And in ASEAN, South-South will be as or More Important than North-South

- What is this interaction with respect to corporate players from the Global South as opposed to the Global North?
 - China, Indian, Korean, and Japanese law firms have all established offices in the regions
- At the same time, Singapore firms are following their clients around the region, with firms from Malaysia and other ASEAN jurisdictions following close behind
- And ASEAN companies are rapidly following the “In-House Counsel Movement” and creating regional and even global departments

Ripples from the Core

- How is the development of a new ASEAN corporate sector affecting:

Other parts of the legal profession, e.g., legal education, solo or small firm lawyers, traditional elites such as senior advocates and judges, gender and social hierarchies;

- Creation of global law schools (e.g., Kumar: Jindal Global Law School)
- Effect on existing schools (e.g., Khanna, Gingerich, Robinson: Recruiting)
- Gender (e.g., Ballakrishnen: law firms vs. traditional litigation offices)
- Traditional elites (e.g., Galanter and Robinson: senior advocates)
- Solo practitioners (e.g., Mamidi: globalization and small town lawyers)
- Economic, political and social developments within particular countries, including the process of legislation and policymaking, approaches to economic development, and the political economy of governance
 - Zaveri (lobbying and legislative drafting)
 - Trubek and Silva (telecom deregulation)
- The connections among ASEAN countries and between these countries and the institutions of regional and global governance
 - Shaffer (capacity building for WTO dispute resolution)
- In ASEAN, this will go even further: The global market for legal services, and the redefinition of this market from North-South to South-South, regionalism, and multi-polarity

Development, Law, and Lawyers

- Law and development are inextricably intertwined
- Focus has been on developing substantive law and legal institutions, particularly courts and legislatures
- Although important, this focus underplays the role that practicing lawyers themselves play in development
- Particularly true with respect to the role of “corporate” lawyers who represent the commercial interests – both foreign and domestic – that are increasingly at the heart of economic development
- And it misses entirely the degree to which this emerging corporate legal sector is reshaping the rest of the legal profession, and the political economy of these emerging economies generally and their role on the global stage

The Corporate Sector and Development in ASEAN

- These concerns are likely to be particularly salient in some ASEAN countries where concerns about the rule of law and corruption are seen as a major block on development
- The new corporate elite has the potential for promoting these goals by:
 - Promoting economic development
 - Providing access to justice
 - Protecting individual rights and enhancing political accountability
 - Preserving sovereignty by building capacity in international institutions
- But experience in the Global North – as well as our research in India, Brazil, and China – also underscores that the growing influence of the corporate sector can simultaneously undermine these goals
- And experience to date in ASEAN underscores that the challenges are likely to be even greater, given the greater involvement of the state in the corporate legal market

The U.S.: Market Driven Ecosystem

- Although U.S. lawyers have sought to define themselves as independent from both the state and the market, the corporate legal profession is largely the product of market forces
- Thus, while the state has created the explosion of new laws regulating business since the turn of the twentieth century that has fueled the growth of the corporate legal sector, it largely leaves it to the market to determine how that demand will be fulfilled
- And while for much of the country's history, the legal profession has been able to exert strong control over the boundaries, norms, and practices of the legal market, that control has never been absolute
- The rise of the in-house counsel movement and the salary wars underscore that even powerful professional interests in the U.S. are ultimately subject to the laws of supply and demand

India and Brazil: Profession Driven Ecosystem

- India, Brazil, and China have all rejected key elements of the Washington Consensus in favor of a strong developmental state
- But in India and Brazil, the state has largely not played a significant role in the development of the corporate legal ecosystem
- Instead, both countries have largely allowed the legal profession to control the shape of this evolving market
 - Clearest in India, where until recently the profession has barred the formal entry of foreign lawyers, and continues to maintain severe restrictions on the commercial practices of domestic firms, and on the content of legal education
 - Even the Modi government has been unsuccessful in dislodging these rules
 - But even in Brazil, where the bar has been less successful at barring foreign firms (although not for lack of effort), and has been forced to abandon some restrictions on commercial practice, the bar still maintains strong control over legal practice and legal education in ways that continue to determine the shape of the corporate ecosystem

China: State Driven Ecosystem

- In China, the state is firmly in control of both the market and the profession
 - Notwithstanding China's opening and entry into the WTO, China Inc. continues to exert significant control over China's economy (Wu 2016)
 - Profession to date has very little independent force: China rebuilt its legal profession from scratch after the cultural revolution, with lawyers regulated by the Ministry of Justice and SASAC
- Unlike India and Brazil, the state has invested heavily in the development of China's corporate ecosystem
 - Facilitating new corporate forms and knowledge transfer from global players
 - Picking national champions
 - Protecting state-owned assets
 - Ensuring adequate supply of globally trained lawyers

The Future?

- Since 2008, national corporate legal ecosystems are increasingly undergoing two significant transformations
 - Even more rapid and complete global integration, with growing global regulation of trade in services
 - Increasing “disruption” of existing service models caused by the combination of new technologies and deregulation
 - Creating new “alternative service providers” (ASPs), from Axiom (venture backed “gig economy” provider of high end legal services), to Ravel Law (behind our “free the law” project, now acquired by Lexis), to AI providers like IBM Watson and Kira Systems; to the Big 4 (who have reentered the market for legal services all over the world except for the US)
- Much of this change is being pushed at the state level – and not just by China
 - UK: Legal Services Act (government initiative deregulating legal services market paving the way for Alternative Legal Service Providers)
 - Singapore: Legal Tech Initiative (government spending tens of millions of dollars to partner with tech companies like Microsoft and global law firms like Clifford Chance to make Singapore the Silicon Valley of legal tech)
- ASEAN is already at the forefront of these changes
 - Limited existing infrastructure, and therefore the need to create new solutions in everything from creating new ways of doing business (e.g., mobile banking), to legal education (e.g., on-line education), to access to justice (DIY Nigeria and Bitland Ghana)

Studying These Issues In ASEAN Will be Incredibly Complex

- Which countries should we study?
 - Project was hard enough in large countries such as India, Brazil, and China, but ASEAN is a large region with significant variation among and within countries
 - And yet, we cannot study every country – particularly not in depth (although we hope to encourage others to build on our work)
- Specific topic focuses ASEAN
 - E.g., What about the development of large law firms in ASEAN (or a specific jurisdiction) is most important?
- Evolving topics areas
 - E.g., The role of technology and innovation in the profession not nearly as prevalent in GLEE 1.0 as they are now
- How do we assemble a team of researchers with both the expertise and knowledge to conduct this work?
- How do we fund a project of this scale?

Toward a New Partnership

- To meet this challenge will require collaboration among all stakeholders
 - Academics: research on professional practice, training students and practitioners for the new reality, and convening leaders
 - Professional associations and policymakers: open debate about the profession's multiple – and sometimes conflicting – goals and purposes
 - Practitioners: willing to share ideas, information, and resources – both money, which is critical, but even more importantly time – to support this work
- Which is why I am so excited about today's session!