

Legal Elites and the Fading History of Global Legal Imperialism

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YVES DEZALAY and BRYANT G. GARTH. *Law as Reproduction and Revolution: An Interconnected History*. Oakland, CA: University of California Press, 2021.

INTRODUCTION

Legal elites are products of domestic politics and global imperialism. In world history, they have reincarnated in many places and times, from canon law scholars in twelfth-century Bologna to corporate lawyers in twentieth-century America to legally trained politicians in twenty-first-century Asia. Yet, the logic of elite reproduction in those reincarnations is highly durable, as Yves Dezalay and Bryant G. Garth argue in their book *Law as Reproduction and Revolution: An Interconnected History* (2021). Following Pierre Bourdieu (1986), they present the stories of legal elites as a highly consistent process of capital conversions, a global and intergenerational reproduction of family, academic, economic, political, and legal capital. As various forms of imperialism originating from Western Europe and the United States dominated the rest of the world, elite lawyers and legal academics also expanded their global footprint and contributed to the economic and political orders, as well as legal revolutions, in vastly different social and historical contexts.

This book is the culmination of three decades of empirical research that the two authors jointly conducted in the United States, Europe, Latin America, and Asia (Dezalay and Garth 1996, 2002, 2010). It combines original interviews and archival research with meticulous readings of the secondary literature on the legal profession. Spanning across eight centuries, the case studies include historical cases in Western Europe (Bologna, Prussia, France, Italy, and Britain), the United States in the nineteenth and twentieth centuries, and five contemporary cases in Asia (India, Hong Kong, China, South Korea, and Japan). There is arguably an underlying logic of institutional diffusion from the “core” countries to the “peripheries” (Wallerstein 1976) in this research design. However, Dezalay and Garth’s main theoretical objective is not to construct a world system of legal elites, but to demonstrate the commonality and persistence of their social reproduction over space and time.

Although the book also draws on Harold J. Berman’s (1983) seminal study *Law and Revolution*, its Bourdieusian roots are far deeper. Unlike Berman’s focus on doctrinal law

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in the formation of the Western legal tradition, Dezalay and Garth's emphasis is on legal actors, especially law professors and corporate lawyers in elite institutions. These privileged legal professionals possess either family capital from their social origins or academic capital from their education, or both, which enables them to accumulate legal capital and take dominant positions in the legal field as well as related fields such as politics or the financial market. The transnational development of the legal profession also provides opportunities for legal elites to gain "cosmopolitan capital" (34) between interconnected states or markets. The importance of various forms of capital may shift over time, but the logic of elite reproduction remains.

FROM BOLOGNA TO BEIJING: A GLOBAL HISTORY OF LEGAL ELITES

Dezalay and Garth trace the origin of this process of capital accumulation and conversion to the Gregorian Reform in medieval Europe, which led to the rise of legal education at the University of Bologna and produced an elite group of canon law scholars through the fusion of Roman civil law and canon law. As the prestige of the new learned law increased, wealthy families began to send their children to study law as a way of improving their chances in the competition for powerful positions in church or state. This combination of academic capital and family capital became a solid foundation for the formation of European legal elites. These elites were a transnational group from the very beginning—the interactions of the European city-states and the Catholic church created abundant opportunities for canon law scholars to gain cosmopolitan capital through diplomacy and commercial activities. As a result, they assumed the critical role of "brokers" and "capital converters" between markets and states.

Despite variations in the approach to legal education across time and jurisdiction, the association between elite law schools and the social reproduction of economic and political elites is a general pattern observed in all cases examined in the book. The next major revolution in legal education after Bologna, as the authors demonstrate, was Christopher Columbus Langdell's introduction of the case method at Harvard Law School in the late nineteenth century. Dezalay and Garth argue that Langdell's modest family background and his dissatisfaction with the New York City bench and bar during legal practice shaped his strong beliefs in legal science and academic merit. In his reform, Langdell "did not want to make it easy for those with family capital to gain a law degree" and "fought against the system controlled by gentlemen" (64). With the support of his allies in the legal academy and Wall Street law firms, Langdell helped bring meritocratic scholarship to the elite of the legal profession.

This alliance between elite law schools and the emerging corporate law firms proved to be a cornerstone for the American legal elite and its rising global influence in the twentieth century. In contrast to the colonial approaches of old imperialist powers like Britain or Spain, American imperialism was aimed not primarily at conquering territories, but at constructing an "anti-imperial" and "legalist" empire with "civilized standards" of the rule of law (69–70). The flourishing of "law and development" projects across the globe in the postwar era was a good example of this new approach, which promoted a "moral imperialism" in the name of modernization based on legal

rights and institutions. It situated law at the center of the US-dominated international order. In the authors' words, "[l]aw is a field with hierarchies of authority, and a price of playing within the field is submitting to that hierarchy" (71).

Scholars and students in elite law schools, as well as corporate law firms, were active participants of this global expansion of US influence. They came from both the left and right of American politics. From the New Deal to the Civil Rights Movement, from the War on Poverty to the Washington Consensus, domestic political struggles in the United States were closely tied to the globalization of American law throughout the twentieth century. For instance, the Ford Foundation worked with the liberal establishment in elite law schools and the corporate bar to expand public interest law domestically in the 1970s and then made "analogous investments in the global human rights movement" (86). On the other side of the political divide, the rise of the Federalist Society in the 1980s not only remade the conservative legal establishment through new legal theories (e.g., originalism in constitutional law) but also contributed to the globalization of neoliberal ideology. Nevertheless, as the authors remind us, "[t]he disagreements between the two sides mask the fact that both are closely connected to corporate power" (93).

Indeed, the export of American law in the late twentieth century was carried out by the same coalition that emerged a hundred years ago, namely the alliance between corporate law firms and elite law schools. In all the five Asian cases discussed in Part IV of the book, titled "From Law and Development to the Neoliberal Revolution," American legal influence was exercised through the two interconnected channels of legal education and corporate law. Take South Korea and Japan. Despite the different outcomes of their legal education reforms in the early twenty-first century, in both countries the new system of legal education was appropriated from the US-style JD model. Meanwhile, the small number of elite Japanese and Korean corporate law firms actively recruited from elite law schools and offered their new associates opportunities to study abroad, usually in the United States, in order to compete with Anglo-American law offices in Seoul or Tokyo. In India, where foreign law firms are not permitted to set up offices to this day, the Ford Foundation and Indian legal scholars trained in elite UK and US law schools were key to the development of legal education and public interest law. The emergence of Indian corporate law firms in the 1990s (Ballakrishnen 2021) and the establishment of Jindal Global Law School in 2009 also drew on American models to challenge the dominance of the traditional bar elite in India.

China presents a more difficult case for applying Dezalay and Garth's theoretical approach. The authors focus their analysis on the old generation of Western-educated legal scholars who survived the hardship of the Mao era and paved the road for China's legal reforms in the 1980s, as well as a few elite law schools in Beijing and Shanghai that pioneered internationalization. But the logic of elite reproduction has its limits in this case. The US-style JD model remains marginal in Chinese law schools and Chinese corporate law firms have diverged from the Anglo-American model in their growth and global expansion (Liu and Wu 2016). Although elite law schools and the "Red Circle" firms are closely connected, the production of the contemporary Chinese legal elite is primarily a domestic process (Zhu, Zhao, and Liu 2020). Furthermore, Chinese legal "revolutions" are state-led, top-down bureaucratic reforms that make a sharp contrast to the Bologna or Harvard models. Local innovations with American influence did

happen occasionally, such as the School of Transnational Law in Shenzhen, yet their contributions to any major revolution in China's legal education and legal profession are insignificant.

DECENTERING THE ELITE REPRODUCTION APPROACH

Is China simply an exceptional case, or does it reflect a more general problem in the elite reproduction approach? To be fair, Bourdieu's field theory is not only about the elite—the subordinate actors and their positions are also important for understanding the structures and power dynamics of a field (Bourdieu and Wacquant 1992). In Dezalay and Garth's (2002, 2010, 2021) studies, however, the focus has always been on legal elites and their relations with other elites, as if less prominent or powerful actors play no role in the legal field. In the case of India, where the total number of lawyers exceeds a million, the relatively new corporate law firms, even combined with the traditional "grand advocates" (Galanter and Robinson 2013), account for merely a tiny proportion of the Indian legal profession. The same problem exists in not only large nations like India and China but also smaller jurisdictions. An elite reproduction approach cannot fully grasp the complex patterns of stratification and inequalities in the legal profession. Nor is it able to account for bottom-up legal transformations led by grassroots practitioners or Global South scholars (de Sousa Santos and Rodríguez-Garavito 2005). Even when civil society or public interest law is discussed in the book, its development seems to be driven by legal elites at the top of the status hierarchy.

A related theoretical question regarding the "law as reproduction and revolution" perspective is that it conceptualizes legal change as revolution without revolutionaries. Legal elites always stand alongside the state and the capitalist market. Lawyers, left or right, are presented as prestige-driven, power-hungry agents who struggle for dominant positions in the legal field using their capital and habitus. This reflects an inherent weakness in Bourdieu's field-theoretic approach, that is, human beings are often reduced to agents without emotions or beliefs. Accordingly, Dezalay and Garth present elite lawyers in vastly different social contexts as power brokers and capital converters. Empirically, however, there are many cases in which elite lawyers, judges, or legal academics revolt against their family or academic privileges and participate in social movements and political revolutions against colonial or illiberal states (Halliday, Karpik, and Feeley 2007, 2012). Perhaps they are the minorities in the legal elite, yet their contributions to legal and political changes around the world cannot be neglected.

Furthermore, there is an implicit imperialistic orientation in this "interconnected history" as it travels from Europe to North America and then to Asia. Although the origin of this history is Continental Europe, the hero in the book is the United States and the twentieth-century American empire. The global reproduction of legal elites is a process of institutional diffusion and isomorphism, as neo-institutionalists would argue (Boyle and Meyer 1998). In this process, US legal norms and ideologies were transplanted to Asia, Latin America, and other parts of the world in the heyday of the American empire. There is no doubt that this interconnected history is centered on the United States.

The best illustration of this imperialistic orientation is the chapter on Hong Kong, which the authors call “a paradigm case.” As an “open market” and a “colonial entrepôt” (121), Hong Kong is an exceptional case for studying the globalization of legal education and corporate law firms. Dezalay and Garth situate Hong Kong in a subordinate position of the global hierarchies and argue that its legal transformation from a British colony to a Chinese special administrative region reflects the shifting global power balance. As a peripheral place in the global order, Hong Kong’s legal elite is not produced locally, but through educational and work experiences in metropolises such as London, New York, and more recently Beijing and Shanghai. Anglo-American expatriates used to dominate corporate law firms and law schools in Hong Kong, but in recent years they have been gradually replaced by Hong Kong and mainland Chinese lawyers with degrees from elite US or UK law schools (Liu et al. 2022).

For Dezalay and Garth, the case of Hong Kong is paradigmatic because it illustrates the logic of elite reproduction on a truly global scale. But is this case really about global elite reproduction? Or is it a case of decolonization and, possibly, a new legal revolution? The character of Hong Kong’s legal profession, including legal education, is rapidly changing, especially after the political turmoil of the 2019 anti-extradition bill protests and the subsequent coronavirus pandemic. The exit of Anglo-American expatriates offers fresh opportunities for locally trained lawyers, judges, and legal scholars to occupy elite positions in Hong Kong’s legal field. The growing presence of mainland Chinese lawyers and law firms in Hong Kong is not a new colonial power replacing the old (Liu and Au 2020). Instead, it is a hybridization of legal expertise between common law and civil law and, to borrow the authors’ Bourdieusian terms, a conversion of Chinese cultural capital and US academic capital into legal capital in Hong Kong. The outcome of this ongoing process of decolonization and hybridization remains uncertain, yet it is certainly something more creatively destructive to the Hong Kong legal profession than the old logic of global elite reproduction.

Hong Kong is only one of many cases of decolonizing law happening in today’s world. After Brexit, the US-China decoupling, border closures during the coronavirus pandemic, and rising populist attacks on the neoliberal global order, whether the US-led global legal imperialism will continue to dominate the world in the mid-twenty-first century is in question. It is foolish to speak of “the end of history,” and legal elites in different nations will surely emerge again in this new era of looming global conflicts. However, the next chapter in the history of the global legal elite is likely to be more decentralized and multicultural than the imperialistic histories documented in Dezalay and Garth’s ambitious book. In this new history of the legal profession, there will still be power brokers and capital converters, but our scholarly gaze must be expanded to the prophets, hermits, martyrs, and grassroots practitioners whose blood, toil, tears, and sweat make the history anything but the reproduction of a cosmopolitan elite.

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