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Globalization through the Lens of Palace Wars: What Elite Lawyers' Careers Can and Cannot Tell Us about Globalization of Law

Frank Munger

- DEZALAY, YVES, and BRYANT, GARTH. 1996. *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. Chicago, IL: University of Chicago Press. Pp. x + 343. \$26.12 paper.
- DEZALAY, YVES, and BRYANT, GARTH. 2002. *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*. Chicago, IL: University of Chicago Press. Pp. xv + 331. \$28.50 paper.
- DEZALAY, YVES, and BRYANT, GARTH. 2010. *Asian Legal Revivals: Lawyers in the Shadow of Empire*. Chicago, IL: University of Chicago Press. Pp. vii + 289. \$25.13 paper.

Yves Dezalay and Bryant Garth's three studies—Dealing in Virtue (1996), The Internationalization of Palace Wars (2002), Asian Legal Revivals (2010)—trace the globalization of law through “palace wars” among elites for positions in the “fields of state power.” They conclude that globalization occurs through links among elites engaged in their domestic palace wars, which independently establish the symbolic power of law in each state. The article argues that while Dezalay and Garth provide an invaluable new starting point for further research, they do not adequately consider an emerging field of research documenting alternative pathways of legal development pursued by local activists inside and outside the new states of the Global South.

INTRODUCTION

Yves Dezalay and Bryant Garth's trilogy of studies are the most consistently conceptualized and far-reaching examinations of the globalization of law to date. There are good reasons why sociolegal scholars of globalization should read them. Their in-depth, historical, and comparative research examines important examples of global legal institution building—international commercial arbitration, US Latin American foreign policy from the Cold War to the present time, and global influence on the legal evolution in seven Asian states from colonization to the Washington Consensus. Further, Dezalay and Garth's analysis employs simple and powerful insights to explain the globalization of law. One is the reciprocal relationship between law and power—law creates power but law also depends on support from power holders, limiting what law

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can do to what local institutions allow. Another is that law develops through “local palace wars,” the ongoing contests for power among the “carriers” of law and other elites. The economy of these authors’ conceptualization, comparative framework, and wealth of detail make for illuminating and often compelling analyses of global legal exports and imports.

But Dezalay and Garth’s focus on elite lawyers has arguably skewed their understanding of globalization. Their research elaborates insights they first gleaned from interviews with the most prominent and self-promoting carriers of law—elite lawyers, who are, in turn, a point of entry into the much larger terrain of politics where elites compete to construct the force of law. Few will contest Dezalay and Garth’s vision of a permeable boundary between law and politics, but Dezalay and Garth argue not only that the force of law is constructed in elite contests, but also that law has little force until elite lawyers construct it. This argument is at odds with the insights of scholars from a growing and diverse range of globalization studies that begin from different points of entry, far removed from elite lawyers, especially for studies of law’s constitutive and emancipatory capacity in the Global South.¹

Given research suggesting the importance of many pathways for globalization of law, which other scholars find persuasive, Dezalay and Garth’s argument raises an important question: Does the force of law ultimately depend on the outcome of domestic palace wars, or do palace wars intersect and compete in more complex ways with the multiple pathways of globalization of law that other scholars are beginning to explore? With the increasing penetration and power of elite institutions in most developing states, this issue has both theoretical and practical importance.

The first two parts of this article describe Dezalay and Garth’s research and most important contributions to our understanding of globalization of law. The remaining sections discuss my reservations about their conceptualization of law and consider alternative perspectives developed by other scholars and in my own research on globalization in Thailand.

POINT OF ENTRY TO GLOBALIZATION RESEARCH

The globalization of law, as Yves Dezalay and Bryant Garth’s studies remind us, has occurred throughout the history of contact among societies, carried by conquest, missionaries, commerce, and migration. Once left to legal anthropologists (Moore 1958; Nader and Todd 1978; Starr 1978; Galanter 1984) and a few other scholars with a special interest in comparative law or international relations (Trubek and Galanter 1974; Abel 1982), the field of study has grown quickly from the end of the Cold War, paralleling the rise of human rights advocacy and the so-called Washington Consensus.²

1. The term “Global South” is generally understood to refer to so-called developing societies located primarily, but by no means exclusively, in the Southern Hemisphere.

2. Named by policy analyst John Williamson in 1994, the Washington Consensus refers to neoliberal global policies for economic development pursued by the IMF and World Bank with leadership from the United States, key elements of which include fiscal discipline, redirection of public expenditure from direct investment to market infrastructure, deregulation and tax reform, privatization and security for property

Scholars are being drawn to examine the consequences of Global North activism, including the effects of programs for privatization and development, movements for democracy and liberation, rapid global spread of human rights, and the growing international discourse of law and rights.

Paralleling early development of the general field of sociolegal research, many contemporary studies document the “gap” between Global North claims for law and Global South experiences with legal transplants, showing that transplanted laws have not delivered their promised benefits (Comaroff and Comaroff 2006; Antons and Gessner 2007; Halliday and Carruthers 2009; Heckman, Nelson, and Cabatingan 2010). Some are concerned about whether legal transplants support exploitation by the Global North. Others examine the use of legal transplants by local activists to achieve human rights, economic justice, or greater democracy (Sarat and Scheingold 2001; Santos and Rodriguez-Garavito 2005; Halliday, Karpik, and Feeley 2007). These globalization studies raise questions, often explicitly, about Washington Consensus policies, human rights transfers, and other legal transplants, while embracing the value of law, human rights, and, at least implicitly, democracy.

Legal exports by the United States and its collaborators are also the backdrop for research by other scholars who focus on the many other pathways for globalization of law. Global media and mass migrations have created unprecedented opportunity for law’s constitutive influence (Perry and Maurer 2003; see generally Appadurai 1996). A growing number of scholars study the role that law plays outside the Global North, drawing their insights from well-developed fields of study about institutionalization of law and its constitutive effects. Yet as many of the scholars acknowledge, law’s constitutive role in globalization is not simply one more item in an increasingly global marketplace of cultural production. Global media and migration have contributed to the blending of cultures, but much of law’s global influence has been initiated through the agency of public and private institutions of the Global North that select and shape the exports and often fund, reward, or sanction importation and implementation.

In spite of growing interest in research on legal transplants and legal development, few studies have attempted systematic explanation of the differences in function or effectiveness of legal transplants, and fewer still combine these inquiries with examination of the reasons for recent decades-long efforts to export law in spite of numerous failures and puzzling counterintuitive developments (Carothers 2006). Dezalay and Garth’s massive³ research projects explore the construction of legal exports from the Global North and their reception internationally and in societies of the Global South. Using micro biographies of the carriers of law, typically elite lawyers, as a point of entry, they show that domestic political contention among elites—the palace wars of the Global North—generate competing views of law’s role at home and abroad as an export, explaining both the content of legal exports and shifts over time. Elites are also part of their story of importation, as contending power seekers attempt to use the symbolic

rights, and promotion of trade liberalization and foreign direct investment. Washington Consensus policies are also associated with strengthening the rule of law, civil society, and, as an element of the latter, human rights (Twining 2009, 337).

3. *Dealing in Virtue* is based on “almost three hundred interviews, in eleven countries, with the average interview running almost two hours . . . [and with] informants . . . from twenty-five countries” in Europe, North American, the Middle East, Asia, Latin America, and North Africa (1996, 9).

power of law, especially in ways legitimated by societies of the Global North, within constraints of different political and social systems. Looking at legal transplants through the broader lens of comparative politics, Dezalay and Garth show how domestic struggles for power in the Global North and Global South as well as contention over the construction of international legal institutions influence each other.

Asian Legal Revivals: Lawyers in the Shadow of Empire (2010) is the collaborators' third study about the empowerment of elite lawyers in national and transnational governance, carrying forward ideas developed in two earlier explorations of elite lawyers in different contexts. *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (1996) describes the role of elite lawyers who constructed, and then competed in and profited from, the field of international commercial arbitration. *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (2002) traces the interconnected political roles of two groups of elite experts who competed for power during the Cold War and post-Cold War periods in the United States and four Latin American countries (Argentina, Chile, Columbia, and Mexico). *Asian Legal Revivals*, by far the most ambitious of the three studies, examines the introduction and development of law as a resource in the critical palace wars marking the political evolution of seven former Asian colonies, now new states⁴ (Malaysia, India, Singapore, Indonesia, South Korea, Hong Kong, and the Philippines). Along the way, the authors have produced an impressive number of edited volumes and essays about the history and theory on which their principal projects have been based.⁵

Dezalay and Garth suggest that each of the legal fields they have studied—international commercial arbitration, US policies of legal exportation to Latin America, and postcolonial legal development in Asia—is best understood as a “virtual space” that “provides strategic opportunities for competitive struggle engaged in by *national* actors” over the form and content of law (1996, 3, original emphasis).

CONSTRUCTING FIELDS OF POWER

To place the projects of social construction of law that they study in a common theoretical framework, Dezalay and Garth have turned to the “reflexive/constitutive” sociology of Pierre Bourdieu. While other contemporary approaches to globalization of law may also incorporate a constitutive dimension, Dezalay and Garth maintain that none pays sufficient attention to conflict and competition over the constitutive process itself. In contrast, Dezalay and Garth give priority to “the question of boundaries to see how a given domain . . . is regulated and how institutions develop and change” (1996,

4. Daniel Lev uses the term “new state” to describe postcolonial adaptation of modern nation-state structure in a society of long duration under indigenous traditional governance (2000).

5. The project dates from the early 1990s. A study, undertaken with other scholars, to examine and reorient the field of globalization studies appeared in 1994 (Trubek *et al.* 1994), followed a year later by “Merchants of Law as Moral Entrepreneurs” (Dezalay and Garth 1995). While the three volumes described in the text are the principal reports of their research, along the way they have produced an impressive array of more detailed studies on particular theoretical and historical underpinnings for these projects, including Dezalay and Garth (2001, 2002a, 2006, 2008), as well as numerous working papers.

15). Similarly, Bourdieu's concept of "field" incorporates the competitive relationships the authors observe by describing an action space that is both "sufficiently open and sufficiently systematic to facilitate the exploration" of the emergence and contests over rules and institutions. Lawyers are key players, and in many cases *the* key players, in important national and transnational fields of power, serving and legitimating power holders, and participating in the construction of institutions of power as a byproduct of getting on with their own careers.

Further, lawyers are what Dezalay and Garth term "double agents" who maintain the legitimacy of their clients on one hand but also stand for the independent authority of law on the other. The authority of double agency can be used to limit the authority of a powerful client, or to act as tribune for clients who do not have a position in the field of state power, but only where the institutional autonomy of law gives the lawyers independence to confront those in political power. While the double agency of lawyers in such countries as the United States is relatively noncontroversial, double agency is a risky survival strategy for lawyers in the unfolding narratives of new states in postcolonial societies where law has far less institutional independence.

With the aid of these relatively straightforward conceptual tools, Dezalay and Garth explore the process of constructing law through domestic and international contention for power. The usefulness of their open-ended mappings through interviews with elite lawyers can perhaps be best appreciated by following them on a portion of each of their journeys as they describe and conceptualize competition and social construction. *Dealing in Virtue*, Dezalay and Garth's study of the field of international commercial arbitration, begins by describing the perspectives of the players themselves, "discovering" the very meaning of the "field" as it emerges through the strategies reflecting key players' "careers, ambitions, and interests" as well as their "personal investment at a particular time and place" (1996, 3).⁶ The individuals who founded the field in Europe were "grand old men," whose impeccable academic credentials, long experience, and high prestige were sufficient to legitimate their arbitrations without much reference to law or legal method. In ever-widening circles the book proceeds to chart a major shift in the field of arbitration, involving a radical shift in the locations of international commercial arbitration and in the people who conducted it. The field, once dominated by a few well-respected European academics who had great prestige and symbolic authority but little formal method, increasingly became the province of experienced US practitioners who brought skills in litigation and legal combat.

Important parts of this changing picture required further exploration, especially how the changeover in dominant players related to contextual factors, primarily the

6. As they explain, they began with prominent practitioners and scholars, and as their understanding of the centers and players in arbitration grew, they "gradually moved out from the inner core of this international commercial arbitration community." As their "map" grew, so did the pool of interviewees. The book is organized, they acknowledge, "to reflect the process of gathering and examining the data . . . that begins with centrally placed individuals and moves outward, combining micro- and macro-level analyses, individuals and institutions, narratives and structures" (1996, 10, 14). In presenting their findings, they say that "it is important to show the numerous structural links characteristic of reality where things happen precisely because of a number of connections and factors" (1996, 14). Thus, through their methods of research and presentation they attempt to remain faithful to the social constructivist explanations on which the narratives themselves, as well as Bourdieu's theory, are based.

increased demand brought on by the oil crises of the 1970s. Huge petrodollar projects of the 1970s and 1980s motivated the investment in a new framework for arbitrations, “a transnational law—*lex mercatoria*—and a private justice that could purport to be universal, applicable to business disputes around the world”⁷ (1996, 11). Although these factors explained the genesis and direction of a major shift in international commercial arbitrations, they could not explain the rise of particular arbitrators or the particular procedures that became identified with international commercial arbitration. On both sides of the Atlantic, as well as in the new centers of arbitration in the Middle East and Asia, palace wars influenced the emergence of leading national contenders for international commercial arbitration business by credentialing them in ways that were convincing to potential clients. Finally, the story moves on in time to other consequences of the shift, the emergence across the globe of new centers of competition among arbitrators and institutions of arbitration and other effects of internationalization on domestic palace wars.

As Dezalay and Garth make clear in their opening chapter, the historical sequence and details are also points of entry to larger theoretical questions about law and lawyers. Their multiple centers of inquiry are related to each other in part by strategies for the “production of credibility” of the competitors in the contests for business arbitration. The most important strategy is to provide reasons for potential clients to choose one arbitrator over another or one arbitration forum from among many that are available. The emergence of US arbitrators requires explaining—why that particular group of legal specialists (and not necessarily from the largest or most powerful domestic law firms) won the new international clients in the 1970s and 1980s, and similarly why the International Chamber of Commerce dominated other potential European centers of arbitration.

Contests over the legitimacy of different “merchants of law” occur in part because what is law is not fixed. The symbolic power of law is determined by demand. Demand arises from economic and political factors outside the field of arbitration, but also through the symbolic contests between lawyers offering different interpretations of the meaning of “arbitration.” Clients choose the process, location, or credentials that most appeal to them. The outcome of the symbolic contests over meaning determines the nature and boundaries of a lawyer’s “moral entrepreneurship” offered to clients in order to win the case or arbitration.

In *Palace Wars* and in *Asian Legal Revivals*, Dezalay and Garth connect parallel national stories of elite competition in states of the Global North and the Global South. They describe how particular legal exports were selected or defined, through conflict among elites in the exporting country and, subsequently, how the symbolic resource takes on meaning through the palace wars of the importing state. In addition, these books describe two other processes of globalization that are only implicit in the early study: first, the importance of initial colonial investments in law, and second, the path dependency of the later stages of legal evolution in each postcolonial state.

7. The shift from Europeans and informal arbitration to Americans and a litigation model for arbitration is embedded, they explain, in the geopolitics of oil but also in other general factors such as “decolonization, the growth of international trade, and the power of Anglo-American law firms (in turn bolstered by their clientele)” (1996, 33).

Palace Wars is a study of strategies of institutional construction by lawyers, but with the added complexity of rising competition for influence over US foreign policy between lawyers and economists. As with Dezalay and Garth's narrative in *Dealing in Virtue*, the back story of this change in US foreign policy and its consequences has many overlapping strands, including the rise of lawyers to prominence in US foreign policy in the first place⁸ and the participation of prominent members of the academy in originating and legitimating new ideologies of state power. Universities, like law firms, courts, philanthropies, and religious institutions, are centers of strategic production and support for ideologies of state power, and especially foreign policy. In the United States, the hegemony of lawyers in the US foreign policy establishment was challenged by upstart economists at the University of Chicago who rapidly established a new elite, hostile to law's traditionally central role in foreign policy. In Latin America, the influence of economists was first felt in the academy through US Cold War programs funding higher education. Especially in Chile, the diminishing US support for liberal rule of law and increasing support for neoliberal, private market theory helped undermine the credibility of a traditional, European-oriented ruling class that favored moderate policies that the United States deemed too tolerant of communism. In response, leading liberal intellectuals, pushed aside by neoliberal economists, participated in the development of a human rights movement centered in the academy and in philanthropies that supported centers of resistance to authoritarian governments in Latin America and elsewhere. At the same time, US philanthropic support for human rights was channeled through the most viable independent institutions, the Catholic Church in Chile but a wider variety of institutions in both Brazil and Argentina, reflecting their different national institutions and class structures.

US foreign policy changed again after the Cold War, and by the end of the Reagan administration, a new orthodoxy emerged that returned law, and especially human rights, to a position of prominence in a foreign policy that retained its focus on neoliberal principles of economic privatization but now included democracy as well as human rights. With the change, Latin American states were free to follow different interpretations of these mandates guided by the pro-market policies of the World Bank and the World Trade Organization. Again, the background of these changes is fascinating and complex, involving parallel confrontations in Latin America between elites riding the crest of neoliberalism from the United States and establishment elites who opposed their authoritarian governments. Then, with a rapprochement between opposing elites in the United States, the new orthodoxy became a catalyst for realignment among elites in Latin America, with many dissidents who supported human rights reentering positions of power in more democratic governments alongside still powerful economists.

Asian Legal Revivals also concerns the connections between the palace wars of the Global North and the Global South. Dezalay and Garth's story begins in Europe and the United States to remind readers that the patterns of double agency and political brokering developed in the societies of the Global North and in concert with evolution of their legal institutions and states. Far from being architects of the modern state, lawyers inserted themselves by finding ways to legitimate the claims of others to hold

8. This story is the subject of chapters in *Palace Wars* and *Asian Legal Revivals* and developed more fully in an independent essay (Dezalay and Garth 2008).

power, especially with respect to the centralization of power in the state. Family and economic capital granted access to this role through education at particular universities. As governance evolved, so did the roles of lawyers, here legitimating accretion of power for patrons, there using their social capital to broker disputes, or, as new claimants emerged, becoming “tribunes” for them. Both Europeans and Americans tried to pattern colonies on their own experience but shaped to serve the needs of contemporary palace wars.

The Asian side of their story begins with first contact with colonizers. Over the following two and a half centuries, exposure to the law of Western colonizers and hegemonies unfolds through palace wars at both ends and lawyers using double agency to maneuver in the fields of domestic power. Dezalay and Garth’s model is again one of path dependency. Initial colonial investments in law set each state on a different course to the next period, where yet another source of related but different encounters with the West alters their paths, but in different ways. After initial European or US investment in law and legal institutions in each colony, “decoupling” occurred, and law’s evolution in each colony and postcolony began, often resulting in roles for law that were distinct from those in the West. Reflecting on this pattern as a lesson about transplants, the authors explain that what occurred in the colonial settings “was less a failure than a reenactment of the genesis of the legal fields within the fields of state power in Europe,” which turned on “valuation of legal capital at particular times and within the specific colonial power and according to the approach to governance of any given colony” (2010, 34).

Dezalay and Garth’s narrative is organized by time periods—colonization, movements for independence, Cold War globalization under US hegemony, and post-Cold-War globalization under the Washington Consensus. In each period, the differences between exporting states and between contexts for imports in the Asian states permit useful comparisons that point to the continuing importance of initial investments and the strategic behavior of legal elites. Cycles of investment and disinvestment alter the symbolic power of law. Colonial investments created a weak foundation for law in Hong Kong, Singapore, South Korea, Malaysia, and Indonesia and placed law and lawyers at the margins of politics. In contrast, far deeper and broader colonial investments in India and the Philippines allowed lawyers to function with far greater independence and to challenge state authority. In none of the states is legal capital completely disconnected from social or family capital, which played a continuing role in determining who becomes a successful carrier of law and when the symbolic power of law has greater independence. Global policies following World War II have also coincided with changes in the strength of law. A shift to US hegemony and its Cold War foreign policies tended to devalue law. After the post-Cold War shift in US foreign policy, bringing in human rights and dominating US corporate law firms, law has experienced a “revival” in some Asian states, again becoming a powerful resource for elites and their clientele among nonelites.

WHAT CAN WE LEARN FROM THE CAREERS OF ELITE LAWYERS?

Dezalay and Garth make a strong case that their research yields a better understanding of transplants. First, they argue that few other sociolegal scholars consider the

full transplant cycle, from law's origins in the hegemonic states of the Global North to its reconstruction in the states of the Global South. Second, they argue that scholars who consider the problems of transmission and reinstitutionalization of law ignore conflicts over construction of the legal field itself at every stage of this process. What has the legitimacy of *law* is a construction that varies in place and time. Third, the "legal field," whether in the hegemonic states of the North or the "peripheral" and "developing" states of the South, is viewed by them in exactly the same way, as the product of competition. Law has no necessary part in any of the struggles among elites; rather, law's role is the result of politics and history. No small benefit, I would add, is that their approach counters the implicit moral superiority of "developed" societies by showing that self-serving ambition contributes to the institutionalization of law in both the Global North and the Global South.

As I discuss below, I think that Dezalay and Garth's choice of elite lawyers as a point of entry to the construction of law in the international and transnational fields of power may impose important limitations on their work; nevertheless, this point of entry also yields dividends. Elites are important actors in the workings of the state, and it is hardly surprising that the central political dynamic discovered and explored in the three books is the palace war. Dezalay and Garth's mapping of connections between major private and public institutions to elite struggles, to foreign policy, and to legal transplants is a major contribution to our understanding of law's place in our own political system and in those affected by the interventions of dominant international actors. Among the other important features of this map of influence is the identification and placement of the many institutions that have become part of the foreign policy establishment, either as its competitors or its offspring. Dezalay and Garth are often able to illuminate the process by which these connections and choices were made without resorting to a reductionist theory of conspiracy. The philanthropies and nongovernmental organizations (NGO) that are part of a shadow foreign policy establishment sometimes align with the State Department and military and sometimes are in dissent, but nearly all reflect the centrist values shared by US elites.

Further, Dezalay and Garth's studies remind us about the strength of comparative research. Comparison allows plausible inferences about influence of context, through networks, "fields," and institutions, on the actions of legal entrepreneurs in each country. Comparing arbitrations in different European states isolates the conditions that favor the development of France into a dominant international center. Similarly, using the success or failure of lawyers' strategies for entering the field of state power (whether through political office, academia, or legal career) as a point of comparison in *Palace Wars* highlights precisely those institutional features that maintain the force of law in the United States and reduce law to political dependence in Latin America. Comparison among Latin American states permits Dezalay and Garth to draw conclusions about the importance of elite fragmentation and institutional placement that increases or reduces the power of elite carriers of legal transplants. In *Asian Legal Revivals*, comparisons among careers of local elites who entered the legal profession reveal how credentialing took on value, ultimately explaining the political roles that elite lawyers played. They then argue that lawyers' independence from the state in each Asian society is a plausible measure of the power of law.

Another important benefit of Dezalay and Garth's comparative approach is a fresh look at lawyers themselves. Tracing the connections between lawyers and state power through careers reveals striking differences in the position of lawyers in the United States, Europe, and societies in the Global South. The most consequential difference is the mobility of the US lawyer, in contrast to lawyers in Europe and the Global South. A lawyer in the United States may be a solo practitioner at one stage of a career, a corporate lawyer at another, a judge or successful politician or government official at later stages, and return to practice thereafter. The more limited career prospects of French lawyers reflect the segmented structure of their profession, divided among the judiciary, notariat, and the hierarchy of practicing lawyers with different functions. In the contemporary global climate for practitioners (and educators), dominated by US business law firm pragmatism, European models of practice are not as attractive as are US ones. Asian and Latin American lawyers present yet another pattern of mobility. Law is weakly institutionalized, and attainment of success in law by itself adds little to political mobility without additional resources that secure social standing or another means of political access.

The comparative mobility of lawyers in different societies is of central importance to palace wars because of the relationship between moral entrepreneurship and political support for law independent of elites who dominate the state. In each of their studies, Dezalay and Garth consider the position of lawyers who use the symbolic power of law to challenge the authority of the state. In the United States, lawyers have much greater freedom to oppose the state without facing serious political consequences than do lawyers in the former colonies of Latin America or Asia. Elite members of the profession, as well as the political elite generally, accept the independence of law and lawyers for this purpose. In Latin America, elite lawyers in dissent under authoritarian governments played an important political role in NGOs only as long as the NGOs were well-supported and protected by US benefactors. However, the lawyers who opposed the state had no domestic protectors from the dominant political faction and, in particular, the elite corporate bar did not defend the legitimacy of cause lawyer advocacy.

Some Asian societies yielded narratives similar to Latin America, for example, in South Korea and Indonesia where NGOs that have challenged state authority have depended on relationships with elite global law firms, which provide a degree of legitimacy, including access to international sponsors and guidance on strategies. Other Asian societies bear a closer resemblance to the United States, for example, India and the Philippines, where law has become institutionalized and to some degree independent of the ruling political party. Although these comparisons provide helpful insights into the importance of power, they are also interpreted by Dezalay and Garth as justification for a research strategy that does not look deeply into the local contests for power that take place at the many lower levels of governance or outside the capital.

Pursuing careers of elites as agents of palace wars works especially well for research about the fields where elites dominate. *Dealing in Virtue* explores development of a virtual space for resolution of disputes over international commercial transactions. Development of this space served the interests of parties to these transactions and their trusted representatives. Lawyers, drawing on the roles they have long played in their national legal systems and in preexisting transnational institutions, were prime

contenders for these new roles, and beyond that, creators of the competing processes for resolving disputes. By following the arbitrators, largely from the legal profession, Dezalay and Garth trace contests between the advocates for different forms of international commercial dispute resolution and the underlying interests, commitments, and institutional ideals that the contenders represent. Evolution of this space leads the authors to important observations connecting domestic contention among elites, the international-state-level conflicts that national elites become a part of, and the construction of international arbitration. Because elite lawyers have become essential players in each of these processes, the landscape Dezalay and Garth describe has a satisfying causal closure—action by the lawyers is ultimately what makes up much of the field they are studying.

Palace Wars and *Asian Legal Revivals* describe elite lawyers on considerably more open terrain, in which they may be minor players. The political space of struggle for power within states is not virtual space created for the convenience of clients and dominated by lawyers. This political space is one in which elites may have a leading role, but the processes of the political domain need not be law centered, despite occasional suggestions by Dezalay and Garth to the contrary.⁹ As their own research (especially in postcolonial societies) reveals and builds on, when lawyers are among the lead players, the value of law training itself is in play.

At the US end, *Palace Wars* examines prototypical palace wars rather than tectonic shifts in US power (of which there have been few), and relational biography yields a rich lode—the development of the foreign policy establishment over the twentieth century; the links between major establishment institutions, the US government, and international agencies such as the World Bank; and the credentialing of Latin American elites. But at the Latin American end, where major upheavals in state power occurred, lawyers, as lawyers, are less central to the story. While Dezalay and Garth's comparisons between the roles of lawyers and economists in the two domains make their point about competitive global markets in expertise, the parallels between the United States and Latin America are also limited. In the United States we see experts competing to make policy. In Latin America, the experts come with the policy that the United States is mandating; they are not creating that policy through contention with lawyers in their own countries. Thus, two elements of the southern political dynamic are different: first, the power of US intervention and, second, the fact that the domestic politics involved much deeper and more violent contention—people died, institutional roles were violated and changed, deeper political turmoil involved more than elite contenders. What happened in Latin America, and its ruling classes, can be understood only to a limited extent in terms of the expertise of elites.

Asian Legal Revivals takes Dezalay and Garth still further into political contention that lies well beyond palaces. The starting point for colonization yielded a moment in which law was introduced, but that introduction was unlike any of the palace wars that

9. For example, in *Palace Wars*, they take as a "starting point the finding that law is so integral to local 'palace wars' that it can be used to gain entry into larger questions" (2002, 7). In *Asian Legal Rivals*, they write: "Colonial states are imported states in the sense that they are produced in substantial part by the activities of lawyers and laws exported by the colonial powers" (2010, 32). To similar effect, in *Asian Legal Revivals*, they equate "law" with imported law: "Law came with colonialism . . . then transformed and further hybridized in relation to colonial politics" (2010, 4).

they considered in Europe (but much like ones that did occur after war and conquest). Elites, and especially lawyers, are only part of the story, and even opportunistic and effective deployment of law, once introduced as a “legitimate” resource, was by no means limited to elites. At some points, Dezalay and Garth disavow any intent to study the political dynamics of the states that received transplants, but at others, they suggest that there could be no meaningful use of law in these states without some form of elite lawyer involvement. Their open-ended explorations reveal religious, educational, and philanthropic missions of many different types carrying law-related knowledge, values, and other resources to nonelite communities and audiences found in almost every corner of the terrain they examine. They argue that these nonelite centers of globalization are inevitably dependent on the support of domestic or international elites.

OTHER CANARIES IN THE MINE? LIMITS OF ELITE LAWYER NARRATIVES

Dezalay and Garth have not been alone in their efforts to place legal transplants in larger political and institutional frameworks in order to explain their influence. They acknowledge their debt to world systems theory, but note that law has not been among the topics explored by its proponents. Other theories, among them new Institutionalism, transnational activism networks, and the influence of epistemic communities, have been employed by other scholars to explain the process of legal transfer, but Dezalay and Garth argue that the scholars have ignored contention and conflict that shapes the exports and their reception as imports (2001, 2002a). Notwithstanding their claim, constitutive conflict over exports and imports has not gone unnoticed by other scholars, and there is much that recent studies have to offer. The range of approaches helps put Dezalay and Garth’s point of entry in perspective.

Three recent studies of Global North programs for legal transfer, each of which uses a different point of entry, complement many of the conclusions reached by Dezalay and Garth. Through a comparative study of international social movements for human rights, Risse, Ropp, and Sikkink (1999) develop a “spiral model” of the long-term and interactive effects of international pressure and domestic social movements that sometimes succeed in reorienting the domestic politics and law of developing states. Their model considers both elite and nonelite points of entry by which legal transfers enter a society’s politics. Like many other scholars who have studied local movements inspired in part by human rights causes, Risse, Ropp, and Sikkink view the locally based actors as potentially independent from elite political actors in their own society and capable of having an influence on the responses of power holders, which may be true under various conditions in some new states.

Halliday (2011), drawing on extensive research on the Global North’s hegemonic efforts to reform bankruptcy laws on a global scale, describes parallel politics generated by the power-shifting implications of similar bankruptcy reforms proposed in the United States and in countries of the Global South.¹⁰ Halliday, like Risse, Ropp and Sikkink,

10. The research of Halliday, Karpik, and Feeley on the value of the “legal complex” (2007) is specifically criticized in *Palace Wars* for its focus on elite lawyers only in their role as moral entrepreneurs.

considers the stakes of different elites within state institutions, paying close attention to the fractions of state power occupying different bureaucratic roles that divide a ruling elite on policy questions. In Halliday's understanding, as in Dezalay and Garth's, palace wars may be critical, but for him important players are located in government and corporate roles divided by bureaucratic as well as economic and political interests. As in the research of Risse, Ropp, and Sikkink, the "state" is revealed as more complex institutional terrain for imports and linked in many ways to both elite and nonelite actors.

Merry (2006) examines the construction of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) at the international level and then traces its influence in a multisite ethnographic study of CEDAW's reconstruction at the local level. She and her collaborators delve still more deeply into the influence of local actors over global imports, influence that may bypass palace wars among elites altogether. She finds that the most important advocacy inspired by CEDAW's principles may occur during "translation into the vernacular" of local relationships and institutional roles. The networks of influence examined in this work share many of the social and psychological complexities observed by social scientists studying influence within networks in other contexts. The networks also reflect the unique understandings of role and identity in local contexts, evidence of important constitutive processes outside the legal field.

Dezalay and Garth's understanding of transplants depends heavily on using elite lawyers as their canaries in the mine, lawyers whose careers they consider a sensitive indicator of the local climate for law. They focus primarily on elites because elites are most able to use law as a symbolic resource, and argue, for example, that human rights advocacy in Latin America failed after elites abandoned it. Similarly, they link the limited scope of public interest litigation in India to elites who pursue it "for show" rather than as serious contention for power. Yet there are many examples worldwide of nonelites who have engaged in local or national struggles for legal rights that are sometimes successful (e.g., Abel 1995; Klug 2000; Perelman and White 2010) and for whom the availability of support from powerful international actors may or may not have been crucial. Further, law's constitutive power clearly extends to the relatively disenfranchised as well as the enfranchised participants in the field of state power (McCann 1994; Bowen 2003; Polletta 2006). New sources of conflict and power arise from the actions of nonelites, as Dezalay and Garth's acknowledgment of the importance of social movements (*sans* lawyers) in Latin America and Asia affirms.

Members of an elite class, by definition, rely on multiple forms of capital, of which the symbolic power of law may be only one. Where the law itself is poorly institutionalized, lawyers who wish to maintain elite status may at times be required to choose between different sources of capital, for example, social and family capital, status among elite global lawyers, or moral entrepreneurship in opposition to established political authority. Social upheaval often forces such choices. In *Asian Legal Revivals*, Dezalay and Garth describe co-optation of radical social upheaval in Singapore and the Philippines by lawyers who led the revolutions but then became complicit in governments that undermined revolutionary ideals. The lawyers' strategies for maintaining their own

However, as I explain in the text, his analysis of the importation of bankruptcy laws in Asia is sensitive to the parallel politics and constitutive effects of similar legal changes in the United States and Asian states.

power illustrate the process by which elites tack between reliance on different forms of capital, altering the value and meaning of law in the process.

However, elite tacking characterizes the strategies of only one important group of players, and it does not provide a window on the importance of law in the lives and strategies of nonelite actors. While *transformismo* in the Philippines may have returned the same elites to crony roles after leading an uprising against an authoritarian ruler, the process may also have influenced the terms on which the system's legitimacy can be maintained in the future. Elite lawyers alone do not make a revolution, or a demographic or economic transformation that brings new actors into politics, and we learn little from them about the law's constitutive role in the participation of other key actors (similarly, Lev 2000; Benton 2002).

In sum, transplants are about law, not lawyers. If elite lawyers succeed but the transplanted laws and ideals fail (in the eyes of the exporters), that seems to support precisely the point that Dezalay and Garth wish to make about legal transplants. Distinguishing the actions of lawyers from the fate of law is essential to understanding what happens to transplants. On the other hand, when elite lawyers fail, or fail to represent liberal legal ideals, the ideals may nevertheless have lasting influence on others. Revolutions often march without elites, and daily lives of ordinary people move forward, with the hope of justice. Commonplace ideas about justice are constructed through the interplay of many different factors, including globalization of law.

Dezalay and Garth acknowledge how open-ended their accounts of the legitimization of law are with the following observation.

The exportation of these policies is in one sense top down, with US global actors such as the Ford Foundation and the Asian Foundation ever present in promoting and funding reforms. From another perspective, however, the relative success of the exportation comes from the ability to link to local strategies that suit locally embedded actors. (2010, 169–70)

The narratives Dezalay and Garth offer about the value of law are always part of a much wider account of the rise and fall of traditional elites, a commercial middle class, social movements and who joins them, as well as other sources of transnational and domestic economic, social, and political change. Because their studies arrive at conclusions by following elite, globalized lawyers and their networks comprised of other elites and their clients who are relatively close to the exporters of hegemonic law, we learn about what the hegemon has targeted. We do not learn about what may have happened in contexts outside this network, or when law is imported by other means, or in contexts where other beliefs about law or justice enter the field of state power (which is certainly an important part of the story about what happens to legal imports, as in Pakistan). In sum, their exploration of the “field of state power” leaves them with an incomplete map, with large gaps and patches of uncharted political terrain.

I have been particularly interested in the implications of Dezalay and Garth's work for the study of cause lawyers. A major subfield of research has grown from observation of this exceptional form of US law practice (e.g., Sarat and Scheingold 1998). Many of the scholars in this field of study are committed to the view that, under the right circumstances, cause lawyering has become a meaningful form of globalization of the best ideals of the law (Cummings and Trubek 2008; Perelman and White 2010; for more

skeptical commentary, see Abel 2008). Although I am persuaded that Dezalay and Garth have raised serious questions about the independence of cause lawyers from domestic sources of political power, others, with whom I also agree, are strongly inclined to challenge some of their conclusions.

Santos and Rodriguez-Garavito (2005) have rejected conclusions drawn by Dezalay and Garth with a challenge of their own.

Missing from this top-down picture are the myriad local, non-English-speaking actors—from grassroots organizations to community leaders—who albeit often-times working in alliance with transnational NGOs and progressive elites, mobilize popular resistance to neoliberal legality while remaining as local as ever. . . . The analysis [also] misses differences among sectors of the elites that are as real as the links among them. . . . [T]his partial picture, far from being a nonprescriptive description, has a normative connotation. Collapsing highly diverse actors and organizations into a generic category of elites and very different agendas into a catch-all category of global orthodoxies yields a politically demobilizing picture of law and globalization. (11–12)

Santos and Rodriguez-Garavito suggest not only that Dezalay and Garth's mapping of actors is incomplete, but that their conceptualization of global influence conflates networks of influence with "deterministic" control. Global funders and legitimators may facilitate or limit certain forms of resistance to authority, but they do not control the commitments or strategies of their beneficiaries, or the spread of values and beliefs that may have important long-term consequences for social movements and contention for power.

Santos and Rodriguez-Garavito also argue that the independence of law can be supported in local, as opposed to national, fields of power and by transnational counterhegemonic ideology. I have already drawn attention to the fact that Dezalay and Garth's exclusive attention to the influence of Western law seems to underplay the importance of indigenous law. Over generations following colonization and independence, indigenous forms of governance typically blend with imports, altering the meaning of and expectations for later imports (Lev 2000; Benton 2002; Bowen 2003). The last cycle of legal "revival" in Asia took place in the 1980s and 1990s, following long histories of imports and blends in each of the countries, shaping perceptions of authority and legitimacy. A full understanding of the role of the long history of imports in the political evolution of Asian societies would also require a broader and deeper study of indigenous law and culture, with special attention to the role of the lower levels of administration and local governance, which also may be sites of law's construction as important as the palace wars of the capital.

THAILAND—THE FORCE OF LAW WITHOUT ELITE LAWYERS

For some years I have been conducting my own mapping of advocates for law in Southeast Asia, principally Thailand¹¹ with some attention to its neighbors. My

11. To simplify a long history, I refer throughout to Thailand rather than to Siam even though the modern name was adopted in 1939 and represents an important shift in the perspectives of ruling elites.

research was inspired in part by Dezalay and Garth's two earlier books, but my methodology differs from theirs in an important respect because I have interviewed primarily lawyers who are activists for local causes. Cause lawyers are my canaries in the mine, their work marking the outer limits of law's symbolic power. I am convinced by Dezalay and Garth's arguments that cause lawyers act in the "field of state power." Cause lawyers, by definition, represent a politically weak or excluded cause, challenging control of the state's resources on behalf of those who are themselves outside the field of power. Yet, in the Thai context, Dezalay and Garth's story of elite domination of law's evolution seems incomplete and, in some respects, misdirected. One of the most important factors influencing contention in the field of state power is the organization of the state itself. Asian bureaucratic states in societies that have never been colonized, such as China, Japan, or Thailand, illustrate the central importance of this factor. Another important factor, anticipated by Santos and Rodriguez-Garavito, is demand (or lack of demand) for governance and law, which may influence the state in ways not initially visible from Dezalay and Garth's distant vantage point at the very highest levels of the national government.

Dezalay and Garth's mapping of Asian colonies begins with initial investments in law by colonial powers, which set colonies on different paths. Thereafter, initial legal investments are constantly in tension with traditional social or economic bases for power, sometimes placing lawyers at the fulcrum of transitions in governance. Carriers of law, such as lawyers, seldom initiate the colonial investments that they help construct, but they dominate some aspects. Merchant-judges of early Asian colonies did not determine colonial policy, but they directed some aspects of their implementation. Brahmin lawyers of colonial and postcolonial India did not direct colonial policies, which were the product of England's palace wars, but once established by the colonizers, the influence of India's legal elite was important in the drive for independence as well as postcolonial government. During the contemporary revival of law in some Asian states, lawyers have become a principal vector of the Washington Consensus economic policies and human rights.

The same conceptual starting point yields a different picture for Thailand. Thai elites initiated importation of Western law. Their decisions were, no doubt, given urgency by a growing European commercial presence backed by military force,¹² but they were also motivated by a considered desire to become a modern state. In the last quarter of the nineteenth century, King Chulalongkorn (Rama V) began importation of what some scholars have characterized as cabinet-style governance and bureaucratic administration typical of European administrative states (Wyatt 1969). According to this view, the Thai monarch attempted to reorganize government into ministries with defined responsibilities and overseen with the help of a cabinet serving the whole rather than each minister's personal stake in a particular office. But Chulalongkorn was

12. France colonized Vietnam and present-day Laos to the east while the British were established in Burma and Malaysia to the west. Thailand's escape from colonization depended in no small part on the rivalries between these two colonial powers. In 1855, the Bowring Treaty granted extraterritorial rights to British citizens, guaranteeing that British law would apply to commercial transactions with Britain and introducing Western commercial law in much the way it emerged in Indonesia and India. However, the creation of extraterritoriality to British subjects did not lead to British domination of further reforms of the legal system (Baker and Phongpaichit 2005).

dedicated not to defensive imitation but to Thai adaptation, believing that Thai culture was fully equivalent to those in European states but that Thailand lacked the practical technology and knowledge for effective territorial governance required of a modern state. In this vision of a strong centralized administration, lawyers, and to a great extent courts, were a detail (Engel 1975). Lawyers were needed by the state itself for their knowledge of legal administration and law, but not their advocacy. Courts extended the benefits of an orderly state more widely. The nationalist intent of the monarchs may have even reflected a somewhat distant vision of a broader state comprised of citizens with rights, but penetration of state politics and administration much beyond the capital and elites lay far in the future.

Whatever the purpose for Chulalongkorn's reforms might have been, his initial investments in administration, governance, and law took their own course. The struggle to achieve reorganization lasted many decades and left the imprint of monarchical origins on today's Thai governmental administration (Muscat 1994; Funston 2001). Chief among these is a difference in status between ordinary Thai and government officials, who consider themselves superior, servants of the King (not the people), and more knowledgeable about the welfare of the country than its people. Other features include dependence on patronage, and for many decades rent seeking from public office. As late as mid-twentieth century, long after the end of the absolute monarchy, the Thai state was described as a "bureaucratic polity" that effectively incorporated elite challengers for power by making them clientele of the ruling traditional elites and the military (Baker and Phongpaichit 2005). The term "bureaucratic polity" implied that there was no meaningful political constituency outside the state itself.

Additional investments in law that might have legitimated law's independence from the state were long discouraged not only by the self-contained bureaucratic polity but also by the influence of the imported bureaucratic legal ideology, freed from the influence of European natural law, that placed law at the service of the state rather than above it (Jayasuria 1999; Lev 2000; Garcia-Villegas 2006). This underlying predisposition was reinforced by the careful cultivation of the Thai monarch as a unifying symbol, even though after 1932 he reigned under constitutional law or at the pleasure of military dictators. As in many other Asian societies, Thai rulers traditionally also drew on nonlegal sources of legitimacy and power through vertical relational ties and social hierarchy. These traditional sources of legitimacy have been weakened by a long-established and active bureaucracy and by the growing importance of private-sector entrepreneurs. Nevertheless, the legitimacy of both parliaments and military dictatorships has been supported in no small measure by symbolic subservience to the monarch, with a corresponding reduction in government's dependence on the legitimacy afforded by law. At no period in Thailand's history as a modern state did elite lawyers as a group play a leading role in struggles over the legitimacy of state authority.¹³

13. As in Japan, businesses were connected with the state by a web of mutually beneficial relationships (Jayasuria 1999). Thus, there was little pressure for bureaucratic rationalization, much less oversight by third parties such as courts. This picture may be changing, which explains the support of the business community for the 1997 constitution. Constitutional drafting committee debates about the establishment of a system of

Governance in Thailand, notwithstanding periodic military coups and ineffective parliaments, has been stabilized by its large and relatively competent bureaucracy. There were few "colonial" investments in law, but massive training and technical advice, which was provided by the United States and US philanthropies during the Cold War, might be considered a near equivalent. Whole bureaucracies considered important for economic development were sent to the United States for training, while experts from the United States served in their place. US philanthropies contributed to an enormous increase in the size and competence of university programs in key areas such as medicine, economics, agriculture, and management, training new cadres of well-educated government employees.

As universities expanded during the 1960s, a new generation of Thai gained access to higher education. Thailand's second¹⁴ critical break with its authoritarian traditions of governance came in 1973 when a student-led revolt in Bangkok led to the overthrow of a military dictatorship and articulated a demand for greater democracy. Influenced by US and European student uprisings and the flowering of both education and upward mobility, the student leaders were far from being guided solely by Western legal or human rights imports, but also drew some of their inspiration from a revolution closer at hand in China, and set their moral compass according to a source still closer to home. Banners under which the students marched for a free society carried pictures of the Thai royal family (Reynolds 1978).

Notwithstanding the absence of elite lawyers and courts from this description of Thailand's evolution, there is evidence of a movement toward a stronger position for law, an evolution essentially without the leadership of elite lawyers. At the most symbolic level, this evolution has been suggested by the adoption of a liberal constitution in 1997 (Ginsburg 2009a), establishment of an effective administrative court system in 2000 (Leyland 2009), and signs of a judiciary awakening to its responsibility to enforce a new constitutional bill of rights. These signs of the growing force of law are at best ambiguous. In 2006, another military coup ended the life of the 1997 People's Constitution, political turmoil has continued, and both the police and the military have been guilty of serious human rights abuses, with, in some cases, widespread public support (Connors 2009).

The question that Dezalay and Garth's approach is not well-suited to answering is this: If elite lawyers' strategies are not critical, who are the carriers of law and how does the force of law change? A partial answer is suggested by a recent study of cause lawyering in France (Kawar 2011), which suggests that in states with strong administrative systems where cause lawyering by private attorneys is weak, officials working for

administrative courts to monitor government officials reveal that much of the discussion was dominated by overwhelming concern for bureaucratic corruption and insider deals. Ginsburg (2009b) suggests that the shift also may have been driven by three additional factors: the increasing complexity of the economy and need for impartial oversight of administrative quality, the interest of international businesses in leveling the playing field, and the 1996 Asian fiscal crisis, which highlighted mismanagement at the highest levels of Thailand's banking industry.

14. The first was the palace revolution in 1932, which ended the absolute monarchy, brought constitutional rule, and a liberal, European-educated prime minister to power. Pridi Banomyong established the first university that was open to commoners in order to educate the next generations of government servants through training in law as well as political and moral science (Banomyong 2000).

the state itself may have greater resources and flexibility to become social cause advocates. In Thailand, the tendency to embed activists in the state might have been particularly pronounced because of the state's domination over the evolution of both law and politics. Until very recently, government bureaucracy provided the best career opportunities by far for educated Thai who might have become social advocates outside the state if the private sector had offered equivalent (or even modest levels of) prestige, security, and opportunity (Munger 2008–2009).

There is little evidence that government lawyers as a group have become the leading activists in Thailand. Yet interviews with social cause advocates in Thailand repeatedly led back to networks that permeated the formal boundaries of the state. Because courts were seldom involved in bringing about change in government action, networks that incorporated members of the bureaucracy served this role. Some social cause advocates have been able to mobilize the authority of the state by invoking the power of higher-level bureaucrats, through relationships with lower-level officials based on long-standing mutual support, or the authority of their expertise. Others employ different strategies. Their role as advisors, collaborators, and advocates for new norms may be used to persuade or even to “discipline” lower-level officials resistant to accommodating the needs of those over whom they had authority (Munger 2008–2009; Munger, Rivas, and Kottakis 2010). Often, the point of contention between NGO staff members and frontline government officials such as police, immigration inspectors, labor department investigators, or health officials has been competing visions of the public interest, between bureaucratic traditions serving “insiders” and a more expansive view of public responsibility and, in some cases, rights.¹⁵

The implications of such strategies for longer-term construction of state power may be subtle but important. Even in the absence of higher-level “palace wars,” there are many other reasons why legal evolution occurs. Co-optation of key frontline officials in a Thai ministry may not survive the particular players in the network. Nevertheless, over time, strategic advocacy may lead to more stable social construction of authority based on investment by mutually interacting players, often anticipated by longer-standing but unenforced formal rules, and that either reduces conflict with or wins the support of influential outsiders. This may be especially the case, but by no means a prerequisite for change, if the NGO's approach is reinforced internally, for example, by a few frontline officials with a sympathetic understanding of the NGO's cause, or externally, for example, by the discourses and pressures from Global North agencies, governments, scholars, media, philanthropies, and other social advocacy groups. NGO activity that brings about short-term investments by officials at different levels of government may reduce agency costs as workloads and work routines are adjusted to the mutually agreed norms. Therefore, such investments may persist. Further, social cause advocacy can help importing governments with one of the most vexing problems of globalization, by “delegating” management of conflicts between domestic political

15. Western constructions of “crony capitalism” and “corruption” often turn on just such disagreements, with bureaucrats in systems of traditional authority responding to long-standing institutionalization of limited polity and a more democratic ideal of serving the public (Connors 2003, 96).

expectations and the rule of law expectations of Western governments and agencies to the NGO staff members.¹⁶

Over time, Thailand's ruling elites, like those in other new Asian states, have encountered an expanding circle of internal and global constituencies that they must coerce or persuade of their legitimacy. Education and economic globalization have greatly expanded the demands of internal constituencies for governance (Baker and Phongpaichit 2005). The growing importance of a commercial and capitalist class has created a demand for more technically competent bureaucratic administration. In recent decades, allegations of corruption, growing regulatory complexity, and fiscal crisis, as well as pressure from competing transnational business interests, may have created greater demand for rationalization and third-party monitoring of the performance of government officials. These factors may explain a notable rise in the importance of administrative courts in new states throughout the region, including Thailand (Ginsburg 2009b). Elites have played a part in each of these changes, but they have not acted alone. Individual elite lawyers may have had a role in some of them, but not in ways that have created a place for the profession in the field of state power.

The growing role of nonelites has also been notable. In Thailand, the establishment of administrative courts occurred as one element of an acclaimed liberal "People's Constitution" enacted in 1997. Although fiscal crisis, loss of faith in government by the business community, and elite concern about corruption were important factors, the face of the constitutional movement was a coalition of NGOs that had originated in the aftermath of the student uprising in 1973 and, by the mid-1990s, had gained legitimacy through popular and international support. Winning political space for NGOs, which created contexts for social advocacy both inside and outside of government, is an important element of the narrative of Thailand's evolving field of state power. In the afterlife of the constitution, now repealed during a military coup in 2006 and replaced by a constitution that preserves many of the 1997 constitution's most important rule of law elements, popular participation has become an increasingly important factor in Thailand's tumultuous politics (Phongpaichit and Baker 2010).

Through this brief description of the development of law and politics in Thailand, I mean to suggest that by choosing elite lawyers as a point of entry into politics, Dezalay and Garth may not only have underestimated the importance of local actors in local contexts who contribute to a more varied landscape of struggle with the state, but may have also overlooked important features of the bureaucratic state itself. Dezalay and Garth's mapping of elites reduces the extent and complexity of the state by focusing attention at the very top, where national politics and the most visible elites gather. Governance in Thailand, and in many other long-established states in Asia and elsewhere, is characterized both by the complexity of its interactions with the society and,

16. Conflicts can take many forms that cannot be fully considered in this article. For example, conflicts between the priorities of different ministries of government, between domestic law and the frontline construction of law by bureaucrats, and between expert norms and international political demands. Thai-style advocacy groups are distinct from Western counterparts because of the authority the government seems to concede to them based on their superior expertise and technical capacity, as well as the authenticity of their concern for the social needs of clients (see Munger, Rivas, and Kottakis 2010).

until recently, the relatively limited role of elite lawyers in establishing, maintaining, or challenging the exercise of government authority.

CONCLUSION

Dezalay and Garth's path-breaking research broadens and deepens not only our understanding of the globalization of law, but also our understanding of law and the legal profession. Their studies of the development of international and domestic fields of law show that what is law is always contested because different ways of constituting law or an appropriate role for law are inevitably linked to competing groups of elites and their contests in the field of state power. Because of law's influence in the field of state power, legal transplants are involved the contests among elites in both the exporting and importing societies. Thus, not only a nation's domestic political contests but also its international relations are central to elite contests that determine the power of law and the legal profession.

In each of their books, Dezalay and Garth present an illuminating geography of legal development and transnational influence. They tell an especially compelling story about how lawyers come to be involved in governance in Asian societies, and the variety of ways in which they do so. At the same time, their narratives of Asian societies seem especially disconnected from the grassroots and traditional elements of indigenous cultures. Of course, colonizers disrupt, making it easier to present a history of modern governance somewhat disconnected from the roots of traditional authority, economy, and social structure. Nevertheless, an essential part of the narrative has been kept in the background and, as I have argued, this limitation is one that affects all their research.

Focusing almost exclusively on elite lawyers cannot help us understand how important that group of actors is in relation to other actors who contribute to the construction of law. By placing elite lawyers in the foreground, and by linking every major political development to them, Dezalay and Garth risk suggesting that these lawyers have played a determinative role, not only in the evolution of former Asian colonies, but everywhere. I am not sure that sociolegal scholars will agree with these implications where Dezalay and Garth have allowed them to creep into the narrative. Countries they do not discuss, such as Thailand, suggest some missing narrative themes. Further, there is a great deal of research about the importance of nonelite actors, who have shared in the social construction of law and its symbolic power.

Dezalay and Garth offer a new and powerful theory challenging those who conduct research in order to establish the liberal promise of law. They have described a political process by which lawyers reach for power in new states as well as old through "double agency." They have shown how lawyers, as elites, technicians, and symbolic entrepreneurs, have taken root on non-Western, and non-northern, political soil, though law itself may be given new meanings and play different roles. Despite my concerns about their point of entry to this research, I have found their work an enormously valuable, and provocative, resource for my own research. Their work will be an important starting point not only for other scholars deeply interested the globalization of law, but for all scholars examining the emergence of authority in new states and in the global fields of law.

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