

March 2, 2012

# The Legal Profession in Brazil: Competition and Opportunities

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A speech delivered at "Brazilian Legal Profession in the Age of Globalization", a workshop held on March 2, 2012 at FGV Law School in São Paulo, Brazil, as part of Harvard Law School's Globalization, Lawyers, and Emerging Economies (GLEE) initiative.

### The Legal Profession in Brazil: Competition and Opportunities

The practice of law has always been the prototypical *liberal profession*. The lawyer provides a professional service within a system of trust. In general, the unwary client doesn't quite comprehend what his lawyer does. The client does not understand basic questions such as why procedures take so long or why only certain decisions can be appealed, but not others. He also hasn't the slightest idea of why it is possible that a legal provision that is written in the Code may be considered not to be in force, while a legal principle that is written nowhere may be considered both cogent and decisive in a case. To the non-initiated, a professionalized system of justice sometimes resembles an anthology of irrational practices.

In the collective imagination of ordinary Brazilians, the lawyer often assumes the role of a scoundrel or swindler. This is neither a new nor an exclusively Brazilian perception. Franz Kafka famously quipped: "a lawyer is a person who writes a 10,000-word document and calls it a 'brief'." I used to be an attorney in the US, and I remember this one amongst many other jokes the Americans told about their lawyers: the trouble with the legal profession is that 98% of its members give the rest a bad name! Now, leaving jokes on the side, it's certainly not just hatred or disdain that constitutes the collective imagination's view of the lawyer. The lawyer is also regarded as someone that helps the justice system. He (or she, to be fair) is also seen as one that can competently reason about several world affairs. This is so not just because he has higher education - and definitely a university degree, something still somewhat uncommon in Brazil - but also because the lawyer studies the laws. And the laws crystallize human history into syntax.

In Brazil, much more so than in the US where I lived for a few years, the following situation has happened to me at least a hundred times. I meet someone, he finds out I am a lawyer (or law professor, my current occupation), and then says to me: *I'm going to law school one day*. These people explain themselves in the following way: I'm going to go to law school so I can then get a more interesting job, so I won't be fooled *again*, or for pure dilettantism since the law is so interesting. To be sure, not all of them set foot into a law school administrative office: sometimes because they don't have the time; sometimes because they don't have the money; and sometimes because the material is just so dry.

But whatever the image of lawyers that Brazilians construct, the fact is that this image, in some way or another, is often associated with an upper-middle class fellow who wears a suit and tie and works in a relatively calm and controlled environment. There's the first misinterpretation right there: I don't think that a lawyer's job has ever been calm. But in any case, today it is much busier than it has ever been. The competition between lawyers in Brazil today is quite intense, just because there are so many of them. It is estimated that there are more than half a million active lawyers in Brazil, and over 150,000 active lawyers only in the state of São Paulo. Now, evidently, in most cases, these lawyers are not the members of the privileged classes, as they have been in the

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\* Selected works available at: [http://works.bepress.com/bruno\\_meyerhof\\_salama](http://works.bepress.com/bruno_meyerhof_salama).

past. Of course, there are still many lawyers who are exceptionally bright, influential and well-connected - some of them have spoken here earlier today - but as a whole, the legal profession in Brazil has been proletarianized.

In part, this has occurred for political reasons. Upon the end of the dictatorship in Brazil in the late 80s, the political class looked to the law and the legal profession as a decisive mechanism for social change via evolutionary rather than revolutionary means. On one hand, the courts (and the Brazilian Supreme Court in particular) were given the status of the country's *new moderating power*, an expression famously coined by the dean of this law school, Oscar Vilhena Vieira. On the other hand, our Constitution of '88 is inspired by the belief that the law will protect society's freedoms while simultaneously increasing access to such freedoms, ensuring efficiency and initiating the distribution of income, guaranteeing human rights, social rights, and diffused rights, all while changing the world, if not refounding man himself. That's the constitutional dream.

One of the practical implications of this dream was that the Brazilian state invested heavily in its Judiciary Power. A report entitled *Judiciary and Economics*, made available by the Ministry of Justice's Secretariat for Judicial Reform in the middle of the last decade, showed that in 1990 Brazil spent an equivalent of 3.66% of its budget on maintaining the judicial system. This expenditure was the highest when compared to 35 other countries reviewed by the World Bank. Unsurprisingly, during that period, Brazil also spent, in proportional terms, triple the average expenditure of other country's Judiciaries.

In any case, the report is unfortunately no longer available on the Secretariat's website (we can only guess why), and I don't doubt that the World Bank may have made a mistake here or there when collecting and analyzing such controversial data. Nevertheless, it is certain that in the Brazilian political arrangement - but not necessarily in that of other countries - the Judiciary Power has a very important role, and the importance of this role is also measured in financial figures. Symptomatically, Brazilian judges are well paid. They earn more than their American counterparts and around 30 times the minimum wage salary in the country.

Another important implication of the political democratic pact of 1988 was the opening of several law schools throughout Brazil. The idea of expanding the number of law students - there are now over 600,000, a truly impressive number - brought together several converging interests: the government's interest in educating the population; the population's interest in studying law (especially on account of the dream of obtaining a government job), and the schools and universities' interest in opening new and profitable law programs. In fact, during the past two decades the number of law schools in the country jumped from around 200 to around 1,000.

This much greater number of lawyers has both an advantageous and disadvantageous effect. On one hand, it generates constant political pressure to maintain at least some level of *rule of law*. In a country that has adopted 6 different constitutions during the 20th century, this not an irrelevant matter. If we were to revert to a dictatorship, thousands of people would probably be out of work. And we all know that sustaining the system is also a matter of political interest. The large number of lawyers helps maintain a basic sense of stability (although imperfect) for the rules of the game. In this respect, the 1988 Constitution's bid placement seems to have worked out for the best. Therefore, when one says that the OAB (the Brazilian Bar Association) is a guarantor of democracy, one is telling the truth. But that of course does not mean that every action of the OAB is strictly inspired by Republican goals. Although restrictions on competition for lawyers in Brazil are not as strong as in other places (such as those prevailing for example in the US or in India), the Brazilian Bar is composed by lawyers who are, after all, only too human...

Thus greater competition in the Brazilian market also has, as I just mentioned, disadvantages. The great quantity of lawyers is lowering the bar for the average professional since it makes the profession as a whole *less elitist*. In this case, the quality of legal service offered to the average client can also deteriorate considerably. This observation must be balanced against the fact that bar exams have now become much harder than they used to be, to the point that the passing rate in the country dropped to around 20-25%. In any case, one should bear in mind that the negative effects of competition are not obvious: competition could theoretically induce lawyers to study harder, update their expertise more frequently, and battle lawsuits more vigorously. Nothing is clear-cut here.

In the past, the small number of lawyers and law schools in Brazil curbed competition within the legal profession. The low level of competition was also secured by legal restrictions on advertising and private ownership, a controlled minimum hourly wage, bar exams, etc. Protected by the sacrosanct cloak of non-mercantilization of the profession, lawyers were basically guaranteed elite membership in society. But political change in Brazil was coupled with two other radical changes, which in turn made the legal profession also change in a rather radical manner.

The first change was technological evolution. E-mail, computers, electronic proceedings, and online depositions – all of this set a new day-to-day rhythm for the lawyer. Technological change has impacted everyone. Even the larger firms that previously had the competitive advantage of owning (among other things) large private libraries are now faced with competitive pressures of all kinds. As all laws are available online, it is no longer necessary to subscribe to the extremely expensive legislative collections of the past. Law books are still expensive, but the digital revolution will also probably change this situation in the near future. And, anyway, the legal articles and sample pieces for motions, complaints and appeals that are now spread across the Internet are much more effective than most of the good old private libraries of the past.

The second change was economic globalization, and in its wake, the process of making professional lawyering available to the masses. Brazil has a huge, upcoming mass of new consumers. And consumers, as is well known, are often in trouble and therefore require legal services. As a result, serving as the attorney for multinational and other very large private companies is no longer the privilege of the Brazilian white-shoe law firms. Banks, telephone companies, service providers and suppliers of products of all sorts now require the services of the average legal professional. Accordingly, the average professionals' clients have oftentimes gone from being the somewhat naïve individual with personal problems to becoming a general counsel. And general counsels, as opposed to the unwary clients of the past, know the law and are careful because they are paid based on their results; and in any case, they can't be easily fooled. Moreover, the general counsels measure their performances in large part on their ability to reduce spending on outside counsels, a fact that in itself fuels up the competition amongst lawyers.

At the same time, here in Brazil a certain legal elite of internationally-connected, large firms was created. For them, the concept of the liberal professional makes less and less sense. Competition is increasingly global. Survival depends more and more on substituting an internal power structure - the partner makes an order and the rest obey accordingly - for a real business plan, careers incentives, benefits and all the little extras recommended by HR consultancy firms. These large firms are real players in a business-focused market. They are managed professionally, compete for top talent and suffer (or profit), along with their clients, with the economic-cycles.

And where is the legal profession going in Brazil? First, I believe charging per hour worked will become increasingly uncommon. The hourly pricing system assumes a level of trust in the lawyer which in today's circumstances is often inconceivable. Additionally, hourly pricing converts the price into per unit cost. It's a *cost-plus* system,

so it is contrary to the business principles where prices should depend on how much the customer is willing to pay as well as the market-established price.

Second, there is no reason to believe that the law profession in Brazil can go back to being a cartel of gentlemen lawyers like it was in the past. Law in Brazil is becoming an industry – the legal industry. This means that the life of the lawyer will be as hard as that of any other professional. For example, the speed with which the lawyer responds to the client will be an increasingly decisive factor of his/her success. Lawyers must be online, promptly answer emails and keep up with the accelerated pace of present day. In law offices, especially in large firms, I believe that the business model approach will make the commitment to merit increasingly clear – under penalty of becoming a competitive disadvantage for the firm. And attracting customers and revenue is clearly a measure of merit, something that the young intern learns ever so quickly. So an additional point to be noticed is that enhanced competition is also internalized within law firms.

Third, the space for the generalist will shrink even more; but also, becoming a specialist will not be the only option. With commoditization, legal service for the masses offers a refuge (with low wages) for many professionals. It also provides an opportunity for lawyers with entrepreneurial tendencies who wish to build large service platforms that profit based on quantity, information technology and economies of scale. Not to mention the next wave which will be the coming of the "legal engineer", that is, a software platform developer who designs a system to be operated by corporate clients whose lawyers do nothing but fill in the blanks. So the future is as uncertain as it has always been but opportunities for those holding a law degree still seem to be everywhere.

Thank you very much.