

Reflections on Regulation & the Keynote Address

Harvard Law School, Oct. 9, 2013

*Preparing for the Future: Changes in
Structures, Technology & Regulation*
IBA BIC Showcase Panel



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Global Lawyer Regulation is in Flux



Putting the Pieces Together

The relationship between lawyer regulation developments *and* the structural changes highlighted in the *Keynote Address*

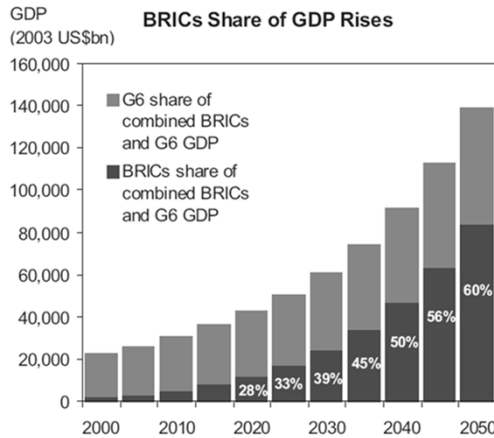


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#1: Globalization's Effect on Regulation

- **WHO regulates?**
 - New global actors (the WTO, FATF, the Troika)
- **WHERE regulation occurs**
 - Shall local regulators monitor global firm activity?
 - Client choice & choice of law issues (double deontology)
- **HOW regulation occurs**
 - Do global clients need one-size fits all regulation?
- **Now common for all regulatory questions:**
 - Cross-cultural & cross-professional comparisons

Globalization Visuals



GS BRICs Model Projections. See text for details and assumptions.

Sources: WTO Secretariat Background Report on Legal Services, S/C/W/38 (June 2010), at ¶¶ 5,7; Goldman Sachs, *Dreaming With BRICs: The Path to 2050*, Global Economics Paper #99 (2003), <http://www.goldmansachs.com/our-thinking/archive/archive-pdfs/brics-dream.pdf>

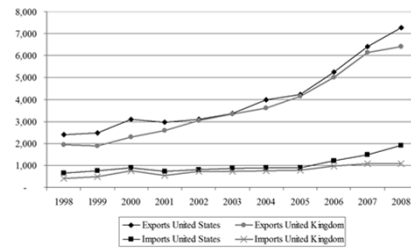
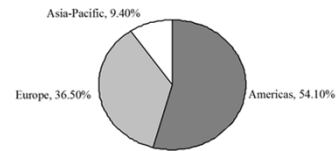


Chart 2: Global Legal Services Market Segmentation: 2008
Percentage share by value



#2: Technology's Effect on Regulation

- **WHAT** is regulated?
 - Technology has led to new providers. Regulated?
 - Legal services aren't limited to lawyers
- **WHERE** does regulation occur?
 - Technology creates a mismatch between virtual practice and geography-based regulation
- **WHEN & HOW** regulation occurs?
 - Technology facilitates cross-cultural comparisons


#3: Blurred Categories and Regulation

- **Shift in focus from inputs to outputs**
 - Day 1 studies in Australia, Canada, the UK & US
 - Europe: Bologna Process requirements
 - US: Changed ABA accreditation standards
- **Reduction in “Information asymmetry”**
 - It affects WHO, WHY & HOW issues of regulation
- **Effect of rise in networks**
 - *E.g.* International Conference of Legal Regulators (London, Sept. 2012; San Francisco, Aug. 2013)

Conclusion

The structural changes & themes
cited in the *Keynote Address*
have affected lawyer regulation

WHO regulates?	Self- regulation? Co-regulation? Other? <ul style="list-style-type: none"> • See global changes; The Troika? WTO? • The Financial Action Task Force (FATF)?
WHAT is regulated?	Providers or Services? <ul style="list-style-type: none"> - Which providers? Paralegals? ABS? - Entities and/or individuals?
WHEN to regulate?	Prospectively or Retroactively? <ul style="list-style-type: none"> • [See New South Wales' ILP results]
WHERE to regulate?	Mismatch between geographic regulation & virtual practice (via technology)
WHY regulate?	The “Regulatory Objectives” Movement
HOW to regulate?	<ul style="list-style-type: none"> • Outcomes focused regulation? • One size fits all regulation? • Antitrust & regulatory reform initiatives




To Read More About It...

- **ABA Commission on Ethics 20/20**
 - http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html
- **CCBE Committees Page**
 - <http://www.ccbe.org/index.php?id=25&L=0>
- **UK Legal Services Board, SRA &BSB Consultations**
 - http://www.legalservicesboard.org.uk/what_we_do/consultations/index.htm
 - <http://www.sra.org.uk/consultations/>
 - <http://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/>
- **International Conference of Legal Regulators**
 - <http://www.international-conference-of-legal-regulators.org/>
- **APEC Legal Services Inventory**
 - <http://www.legalservices.apec.org/overview.html>

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More Sources to Read All About It...

- **International Association of Legal Ethics** (and the biennial International Legal Ethics Conferences including BANFF ILEC V)
 - <http://www.stanford.edu/group/lawlibrary/cgi-bin/iaole/wordpress/>
- **LawWithoutWalls Materials**
 - <http://www.lawwithoutwalls.org/>
- **Archived program materials from conferences at, *inter alia*, Harvard, Stanford, Georgetown, Fordham, McGeorge, MSU, Akron, & Hofstra**

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To Read More About It...by Laurel Terry

- Laurel S. Terry, Steve Mark, Tahlia Gordon, *Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology*, 80 Fordham L. Rev. 2661 (2012)
- Laurel S. Terry, Steve Mark, Tahlia Gordon, *Adopting Regulatory Objectives for the Legal Profession*, 80 Fordham L. Rev. 2685 (2012)
- Laurel S. Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 Northwestern J. Int'l L. & Bus. 527 (2008)
- **NOTE:** All articles (and presentations) available online here:
- <http://www.personal.psu.edu/faculty/l/s/lst3/>

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My Presentations Webpage:

> **Global Developments in general** (See [1-11](#), [9-09](#) and [11-08](#)) (See also 2008 Service Providers article, "[The Legal World is Flat](#)", and other "Global Legal Practice"

To read my law review articles (or testimony) on the topics listed below, please visit my "Publications By Topic" section of my webpage

> **Alternative Business Structure (ABS)** developments (including the UK's Legal Services Act 2007, Australia's publicly traded law firms, EU, and OECD dev

> **Antitrust initiatives** directed towards the legal profession, including the EU's Professional Services Competition Initiative (See [5-08](#), [4-08](#))

> **the APEC Legal Services Initiative** (See [10-09](#))

> **Australian Legal Profession Developments**. (See [8-08](#); [5-09](#))

> **the Bologna Process** (See [3-06](#), [1-05](#); see also [1-11](#))

> **Classification Systems for Counting Legal Services** (See [10-04](#); [4-07](#))

<http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm> 13