

# TRANSNATIONAL LEGAL ENTREPRENEURS AS GLOBAL POWER BROKERS

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Lawyers, and more generally the legal profession, are intrinsically linked to power and particularly state power. From 13th century Europe, where jurists and jurisconsults first emerged as brokers between Church and early State, to the launch of international law in the late 19th century, they have been central to state power in a broad sense. In fact, as noted by renowned Norwegian sociologist of law, Wilhelm Aubert, by the end of the 19th century jurists had constructed for themselves a unique position as the “jacks of all trades”.<sup>1</sup> The 20th century however saw and increased competition among professionals, yet it did by no means imply a farewell to legal arms. Although losing their monopoly on state expertise to other new professional forms of knowledge – economy, political science, etc. – they have remained highly central in numerous ways. Among the various social groups claiming a leading role as “globalizers”, legal entrepreneurs do in fact more than most exhibit the properties of what might be termed a “transnational power elite”.<sup>2</sup>

This paper tests this thesis of the durability of what with a Bourdieusian notion can be defined as “legal capital”<sup>3</sup> by examining the role played by transnational legal entrepreneurs in a number of new areas of global governance. It opens by a critique of the notion of networks by contrasting it to Bourdieusian field theory. It then goes on to examine the role lawyers in terms of transnational entrepreneurs and global power brokers by comparing a case-studies of new fields of legal practice, derived both from the business world (international commercial arbitration in particular) and public law (international human rights law). It concludes by outlining the framework for a more realistic model for network analysis of contemporary transnational law which pays more consideration to questions of power than most mainstream studies.

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<sup>1</sup> W. AUBERT, *Rettens sosiale funksjon* (Universitetsforlaget 1976).

<sup>2</sup> N. KAUPPI & M. R. MADSEN, 'Transnational Power Elites: The New Professionals of Governance, Law and Security', in (Routledge, forthcoming 2012).

<sup>3</sup> P. BOURDIEU, *Le sens pratique* (Minuit 1980).