

Transplanting Commercial Law Reform

Developing a 'Rule of Law' in Vietnam

John Stanley Gillespie

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ASHGATE

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List of Abbreviations

ADB	Asian Development Bank
AFTA	ASEAN Free Trade Area
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BTA	Bilateral Trade Agreement
CDL	Council of Democracy and Law
CIAC	Central Internal Affairs Commission
CIEM	Centre Institute for Economic Management
CPOC	Central Party Organising Committee
CPV	Communist Party of Vietnam
DRV	Democratic Republic of Vietnam
EL	Enterprise Law
EPF	Equipment Procurement Construction
FDI	foreign direct investment
GCOP	Government Committee on Organisation and Personnel
GTZ	Gesellschaft für Technische Zusammenarbeit
ICP	Indochinese Communist Party
IFC	International Finance Corporation
IP	intellectual property
JICA	Japan International Cooperation Agency
LAB	Legal Activities Board
LNA	Legal Needs Assessment
MPDF	Mekong Project Development Facility
MPI	Ministry of Planning and Investment
NA	National Assembly
ONA	Office of the National Assembly
OPE	Ordinance on Public Employees
PAR	Public Administration Reform
PSF	Public Sector Forum
RV	Republic of Vietnam
SOE	state-owned enterprises
TRIPS	Trade-related Aspects of Intellectual Property Rights
UCCP	Uniform Commercial Credit Practice
UK	United Kingdom
UN	United Nations
UNCDC	United Nations Capital Development Corporation
UNCTAD	United Nations Conference on Trade and Development

UNDP	United Nations Development Programme
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
US	United States
USAID	US Agency for International Development
VAT	value-added tax
VPF	Vietnam Business Forum
VCCI	Vietnam Chamber of Commerce and Industry
VCGL	Vietnam General Confederation of Labour
VWP	Vietnamese Worker's Party
WTO	World Trade Organisation

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Introduction

Law Reform

by Legal Transplantation

Since the collapse of the Soviet bloc in the early 1990s, global social, economic and political interconnections have proliferated, stimulating renewed interest by large trading nations and international agencies in global legal harmonisation.¹ In the opinion of global lawmaking elites, financial and trading stability in developing countries require Western legal structures, such as rights-based commercial law, and above all else the 'rule of law'.² By attributing the East Asian financial crisis in 1997 to poor laws and governance procedures, the World Bank reinvigorated pressure for legal harmonisation in developing Asian states.³

Against this backdrop of legal globalisation, socialist transforming states in Asia (China and Vietnam) are attempting to use laws and institutions to engineer rapid economic development. Like Japan during the Meiji Restoration (1868), these states are trying to open up, industrialise and become world forces—in short, to catch up with their regional neighbours and the West.⁴ Rather than waiting decades to distil commercial law from internal practices they have decided to borrow Western commercial law.⁵

1 See Gunther Teubner (1997), "'Global Bukowian': Legal Pluralism in the World Society' in Gunther Teubner (ed.), *Global Law Without a State*, Dartmouth, Aldershot, 1–11; William Twining (2000), *Globalisation and Legal Theory*, Butterworths, London, 1–10; Peter De Cruz (1999), *Comparative Law in a Changing World*, 2nd edn, Cavendish Publishing, London, 488–94.

2 See World Bank (1999), *Entering the 21st Century: World Development Report 1999/2000*, Oxford University Press, Oxford, 23. See generally Ugo Mattei (2003), 'A Theory of Imperial Law: A Study on US Hegemony and the Latin Resistance', 3 *Global Jurist Frontiers* (1), available at <www.bepress.com/gj/frontiers>.

3 The literature is vast but see generally Asian Crisis Home Page <www.stern.nyu/globalmacro/>; and Home Page Second Global Law and Justice Conference; <www4.worldbank.org/legal/ljro1/>.

4 See Masaji Chiba (1997), 'Japan', in Pho-Ling Tan (ed.), *Asian Legal Systems*, Butterworths, Sydney, 99–108.

5 The term Western legal systems is used to denote systems in Western European countries and former European colonies largely settled by Europeans, especially the United States, Australia and Canada. See Ugo Mattei (1997), 'Three Patterns of Law: Taxonomy and Change in the World's Legal Systems', 45 *American Journal of Comparative Law* (5), 12–40.

Most comparative theorists discussing the transfer of laws across national and cultural boundaries draw on North American and European experiences.⁶ Working in 'rule of law' societies, they see law in state-centred terms as emanating from the state, uniform for everyone, exclusive of other legal sources and administered by state institutions. Laws consist of institutionalised rules, doctrines and epistemologies.⁷ Transplantation theorists rarely consider comparative scholarship about functional equivalents to state-based law in non-Western legal systems. Instead, they assume that legal transfers will have an ordering, 'rule of law' effect in recipient countries. Even internal critics of this strand of comparative law such as Ewald and Legrand, for the most part, do not challenge these main assumptions.⁸

The legal, political and economic factors shaping legal transfers into socialist transforming Asia seem far removed from the conventional debates dominating much comparative discourse in Western industrial countries. The presumption that laws are central to economic and social stability does not readily correspond to elite, but especially non-elite, understandings of the 'role of law' in East Asian societies.

Legal transfers into Asia are under-researched and under-theorised. Most writings discuss Japan, and to a much lesser extent Southeast Asia and China.⁹ In comparison, Vietnam has been largely ignored.¹⁰ This is a missed opportunity because this country has absorbed an abundance of imported legal traditions. In successive historical periods—Chinese, French colonial, socialist, and Western commercial—legal ideas have created a layered legal architecture, the new overlaying the old. More significantly for this study, the commercial regulatory regime is growing increasingly complex and sophisticated, with many laws modelled on those from Western countries. Even more importantly, the theoretical basis of law seems to be

6 For a useful review of this literature, see David Nelken (2001), 'Towards a Sociology of Legal Adaptation', in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures*, Hart Publishing, Oxford, 7–51.

7 See William Twining (2000), *supra*, 184–86. See generally Brian Tamanaha (1995), 'An Analytical Map of Social Scientific Approaches to the Concept of Law', 15 *Oxford Journal of Legal Studies*, 501.

8 See, for example, William Ewald (1999), 'What Was it Like to Try a Rat?', 143 *University of Pennsylvania Law Review*, 1889; Pierre Legrand (1995), 'Comparative Legal Studies and Commitment to Theory', 58 *Modern Law Review*, 262.

9 See, for example, Masaji Chiba (1986), 'Introduction', in Masaji Chiba (ed.), *Asian Indigenous Law: An Introduction to Received Law*, KPI, London, 4–6; Andrew Harding (2001), 'Comparative Law and Legal Transplantation in South East Asia: Making Sense of the "Nomic Din"', in Johannes Feest and David Nelken (eds), *Adapting Legal Cultures*, Hart Publishing, Oxford, 199–220; Jianfu Chen (1999), 'Market Economy and the Internationalisation of Civil and Commercial Law in the People's Republic of China', in Kanishka Jayasuriya (ed.), *Law, Capitalism and Power in Asia*, Routledge, London, 69, 76–86.

10 See generally Penelope Nicholson (2000), *Borrowing Court Systems: The Experience of the Democratic Republic of Vietnam, 1945–1976*, unpublished PhD Thesis, University of Melbourne (which discusses the court system); John Gillespie (2002), 'Transplanted Company Law: An Ideological and Cultural Analysis of Market-Entry in Vietnam', 51 *International Comparative Law Quarterly*, 641 (which discusses corporate governance).

changing as Vietnam cautiously moves away from a socialist-inspired instrumental approach to law towards a conception of the rule of law in which laws bind both citizens and state officials.

This study argues that we cannot easily recognise Vietnam in conventional theories of legal transplantation. They provide misleading criteria for understanding this phenomenon in developing East Asia. If we are to transcend current ways of thinking it is necessary to find better ways to understand how legal transfers interact with host-country systems. What is needed is a theoretical framework in which to describe and analyse the selection, adaptation and implementation of legal transfers in Vietnam.

This study will first attempt to make sense of Vietnam's extraordinary history of commercial legal development by devising a set of working postulates that bring us closer to the processes shaping legal transplantation. It will then apply these postulates to a series of case studies to develop a model that explains how legal transplants are adapted and implemented in Vietnamese (and other developing East Asian) legal and social systems.

What is Legal Transplantation?

Legal transplantation is generally understood as the transfer of laws and institutional structures across geopolitical or cultural borders. It can be imposed or voluntary, encompass entire legal systems or single legal principles and integrate similar or different cultures. Within host countries, legal transfers may permeate state and non-state social institutions, or in the case of many developing countries, reside in state law superimposed on indigenous legal structures. It is increasingly linked to international legal harmonisation projects sponsored by large trading nations and international donor agencies.

Legal Transfers are not New

For millennia, legal systems around the world have developed through legal transfers. Some of the best-documented transplantation occurred during the military expansion of the Roman Empire.¹¹ Roman jurists equated *ius gentium*, which applied to colonised people, with *ius naturale* (law that should be observed by humanity).¹² They considered 'universal laws of nature' capable of linguistic expression through universal legal codes. In the belief that differences between legal systems denied universal human attributes, natural law codes based on Roman morality were superimposed over indigenous cultural beliefs and practices.

11 See Ellen Goodman (1995), *The Origins of the Western Legal Tradition*, Federation Press, Sydney, 131–36.

12 See Barry Nicholas (1962), *An Introduction to Roman Law*, Clarendon Press, Oxford, 54–59; Ellen Goodman (1995), *The Origins of Western Legal Tradition: From Thales to Tudors*, Federation Press, Sydney, 131–39.

Later, until its displacement by rights-based law over the last two centuries, natural law legitimatised European colonisation of non-Christian peoples.¹³ According to natural law doctrine, all humans had a right to salvation—and colonial laws were in theory not permitted to abrogate indigenous cultural practices and laws. French legal transplantation to Vietnam frequently ignored this tolerant formulation and invested central authorities with power to regulate or prohibit local customs (see Chapter 2).

Entire Systems Transfers

The substance of legal transfers varies enormously. At one extreme, the European conquest and colonisation of North America and Australia involved not only the displacement of indigenous populations and cultures, but also re-engineering the natural and built environments. The agricultural economy of northern Europe, including livestock, pasture, plant and tree species, displaced and supplanted indigenous species.¹⁴ In addition to agriculture, colonists transplanted state institutions, religious orders, a mercantile economy and architectural preferences. For colonists surrounded by a facsimile of Europe, borrowing legal systems appeared both plausible and desirable.¹⁵ Theoretical and moral objections to imposing foreign laws on indigenous populations were conveniently removed by the *terra nullius* doctrine that denied pre-existing legal entitlements. It was only after independence that a distance in legal perspective from the 'motherland' slowly emerged.¹⁶

More recently, extensive legal transplantation took place between West and East Germany following reunification.¹⁷ Not only laws, but also legal personnel including judges, court officials and lawyers from western Germany were seconded to eastern Germany to administer the transplanted Western system.

Legal Transfers and Superpower Hegemony

Large-scale legal transfers are possible without colonisation or national reunification. During the 'Cold War', the USSR and United States used legal transfers as a weapon in their struggle for military and political supremacy. The nexus between political hegemony and law is well illustrated by legal transfers into the divided Vietnam from 1954 until 1975. As Chapter 2 discusses in more detail, Soviet legal ideas

13 See Michael Barry Hooker (1986), *The Laws of South East Asia*, Volume II, Butterworths, Singapore, 28–47. See generally H. McCoubrey (1987), *The Development of Naturalist Legal Theory*, Croom Helm, London.

14 See Tim Flannery (2001), *The Eternal Frontier*, Text Publishing, Melbourne, 312–48.

15 For a discussion linking Western law to colonization, see Peter Fitzpatrick (1992), *The Mythology of Modern Law*, Routledge, London, 107–11.

16 See Elizabeth Mensch (1982), 'The History of Mainstream Legal Thought', in David Kairys (ed.), *The Politics of Law: A Progressive Critique*, Pantheon Books, New York, 19–26.

17 Norbert Horn (1991), 'The Lawful German Revolution: Privatization and Market Economy in a Re-Unified Germany', 39 *American Journal of Comparative Law*, 725.

began influencing the early communist moment in Vietnam in the 1920s. Large-scale legal transplantation began after the nation was divided in 1954 and irreconcilable political fault lines emerged between the Democratic Republic of Vietnam (DRV) in the North and the Republic of Vietnam in the South.

In the North, the Soviet Union became both the institutional model and source of most law. Legal transplantation was comprehensive. The DRV imported an entire political-legal system including ideology, political and legal institutions, codes and procedures. Urban colonial capitalism and village subsistence agriculture were partially transformed into a Vietnamese version of a Soviet command economy. Thousands of Vietnamese were sent to Eastern Bloc countries from the 1960s until 1990 to learn the skills needed to manage and implement the imported system.

Although the Republic of Vietnam in the southern half retained much of the French colonial system, from 1954 to 1973 it increasingly succumbed to US legal influence. Inspired by US legal reforms in Japan, Latin America and elsewhere in the 'free world', Vietnamese scholars and jurists were sent to the United States for legal training and US academic institutions conducted training courses in Vietnam. Following reunification in 1975, Soviet law was transplanted by the victorious North to the South.

After the Soviet Union collapsed, US legal hegemony entered a new phase. Francis Fukuyama in his influential book *The End of History and the Last Man*, published in 1992, epitomised the euphoria that greeted the demise of Soviet communism and the perceived victory of Western liberal democracy. As he put it, 'for a very large part of the world, there is now no ideology with pretensions to universality that is in a position to challenge liberal democracy and universal principles of legitimacy other than the sovereignty of the people'.¹⁸ A decade later his triumphalism seems premature. Chinese and Vietnamese communist regimes are still firmly entrenched and various orthodox Islamic organisations are mounting a radical challenge to liberal democratic values.

Undeterred by a growing literature showing the difficulties in transferring commercial legal models across cultural, political and economic borders, there is a largely US discourse that postulates an 'end of history' for competing legal systems.¹⁹ For example, in discussing international corporate governance laws, some authors assert that 'over time, then, the standard [US] model is likely to win the competitive struggle ... because no important competitors to the standard model of corporate governance remain persuasive today'.²⁰ They dismiss longstanding European corporate governance regimes that privilege worker and stakeholder representation

18 Francis Fukuyama (1992), *The End of History and the Last Man*, H. Hamilton, London, 45.

19 See Brian Cheffins (1999), 'Current Trends in Corporate Governance: Going from London to Milan via Toronto', 10 *Duke Journal of Comparative and International Law*, 5; Henry Hansmann and Reinier Kraakman (2001), 'The End of History for Corporate Law', 89 *Georgetown Law Review*, 439.

20 Hansmann and Kraakman (2001), *supra*, 451, 454.

on boards of directors as less economically efficient than the deregulated US model. As a corollary, they assert that the US corporate governance model should become the international standard.

Commentators querying legal harmonisation point to evidence that corporate governance regimes in Britain, France and Germany, as well as in East Asia and Latin America, function effectively with different legal, political and economic logics.²¹ They also show that attempts to transplant US corporate governance to the Russian Federation failed to induce corporate accountability and other anticipated benefits.²² Further challenging the globalisation thesis, recent comparative studies suggest that, after an initial period of convergence, transplanted corporate regimes increasingly diverged from the original template.²³

Some commentators attribute the trivialisation of regional economic, cultural and political differences found in much legal harmonisation literature to a conscious strategy to promote the laws and legal institutions required by liberal capitalism.²⁴ In discussing attempts by US agencies to influence legal development in Latin America, Yves Dezalay and Bryant Garth pondered why the 'law and development' movement in the 1960s is dismissed in US literature as a failure (discussed below), whereas more recent but equally uninformed projects are considered more successful.²⁵ They conclude that perceptions about the possibility and desirability of legal transplantation are inextricably bound up in broader contests for political and economic power.

Law and Development Reforms

Legal transplantation into developing East Asia has been profoundly influenced by 'law and development' movement. The early literature drew from Max Weber's causal links between industrial development and the 'rule of law'—one cannot proceed without the other.²⁶ Developing countries were urged to copy the 'modern'

21 See Curtis J. Milhaupt (1996), 'A Relational Theory of Japanese Corporate Governance: Contract Culture and Rule of Law', 37 *Harvard International Law Review* (1), 3; Katharina Pistor *et al.* (2002), 'The Evolution of Corporate Law: A Cross-Country Comparison', 23 *University of Pennsylvania Journal of International Economic Law*, 791.

22 See Bernard Black *et al.* (2000), 'Russian Privatisation and Corporate Governance: What Went Wrong?', 52 *Stanford Law Review*, 1731, 1752–57.

23 See Katharina Pistor *et al.* (2002), *supra*, 865–66.

24 See Douglas Branson (2001), 'The Very Uncertain Prospect of "Global" Convergence in Corporate Governance', 34 *Cornell International Law Journal*, 321.

25 See Yves Dezalay and Bryant Garth (2001), 'The Import and Export of Law and Legal Institutions: International Strategies in National Palace Wars' in Johannes Feest and David Nelken (eds), *Adapting Legal Cultures*, Hart Publishing, Oxford, 241–56.

26 For overviews of the law and development movement, see David Trubek (1985), 'Reconstructing Max Weber's Sociology of Law', 37 *Stanford Law Review*, 919, 920–26; Sally Ewing (1987), 'Formal Justice and the Spirit of Capitalism: Max Weber's Sociology of Law', 21 *Law Society Review* (3), 487, 487–500; Brian Tamanaha (1995), 'The Lessons of Law-and-Development Studies', 89 *American Journal of International Law*, 470.

institutional features of Western countries, such as judicial independence, legal education, the rule of law and especially the enactment of rights-based commercial laws. But law and development scholars conveniently ignored Weber's cautioning that law develops over time by interacting with local socioeconomic environments—processes that induce path-dependent development.²⁷

Informed by 'Third World' development failures and a 'home-grown' US crisis of faith in the ability of Western law to induce political plurality, two leading 'law and development' exponents recanted. In a singularly influential article published in 1974, David Trubek and Marc Galanter accused Western legal assistance of 'ethnocentricity and naiveté' in assuming that transplanted Western law could be grafted onto host-country institutions and social conditions.²⁸ In their estimation these movements sought to impose a historically contingent legal system based on the rule of law and liberal democracy, values that were not easily received by other societies.

Debates about the crisis in the law and development movement were informed by a broader disenchantment among Western scholars with neoliberal economic prescriptions for reform. 'Basic Needs' theorists, for example, believed that neoliberal markets produced harsh outcomes because states did not redirect welfare income to the poor.²⁹ However, like neoliberal theorists, they urged states to make markets work for the poor by eliminating institutional blockages.

Transforming institutionalists presented a more radical challenge to neoliberalism.³⁰ Using neo-Marxist theory, they argued there were no 'natural' or 'free' markets and developing countries needed to address their dependency on globally dominant economic classes. From this perspective, legal harmonisation should be tightly controlled because it favours stronger nations.³¹ Other theorists gave indigenous elites more credit for shaping their own destinies. What united these approaches was the belief that development theory must focus on the way the legal

27 See David Trubek (1972), 'Toward a Social Theory of Law: An Essay on the Study of Law and Development', 82 *Yale Law Journal* (1), 1 (distinguishes Weber's theories from the law and development movement).

28 See David Trubek and Marc Galanter (1974), 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States', *Wisconsin Law Review*, 1062, 1080–83; also see John Merryman (1977), 'Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement', 25 *American Journal of Comparative Law*, 457.

29 Gunnar Myrdal (1968), *Asian Drama: An Inquiry into the Poverty of Nations*, Pantheon, New York.

30 See Dietrich Reuschemeyer and Peter Evens, 1985 'The State and Economic Transformation' in Peter Evens, Dietrich Reuschemeyer and Theodora Evens (eds), *Bring the State Back In*, Cambridge University Press, New York, 44.

31 See Mwangala Kamuwanga (1987), 'The Teaching of International Trade and Investment Law in a "Law and Development" Context': A View from Zambia', 5 *Third World Legal Studies*, 131.

order shapes institutions and fosters the emergence of elites who use markets for their own ends.

Undeterred by Western theoretical scepticism, interest in market-based legal systems increased in developing Asia (including Vietnam) during the 1990s, particularly after the East Asian financial crisis in 1997. This new wave of legal transplantation was supported by 'law and governance' and legal harmonisation projects backed by international agencies such as the World Bank, Asian Development Bank and bilateral donors (for example, USAID).³²

Douglass North famously speculated that transplanted Western commercial laws require compatible dispute resolution forums, debt enforcement and bankruptcy mechanisms.³³ His reasoning persuaded legal assistance programs in socialist-transforming East Asia (including Vietnam) to concentrate resources to refashion (capacity building) institutions into a Western legal mould.³⁴ As we shall see in subsequent chapters, legal aid programs in Vietnam aim to perfect legislative drafting techniques and strengthen the courts and legal training.³⁵ Strong theoretical and empirical evidence that laws are not bare sets of prepositional rules and that legal transplants are most likely to produce desired outcomes in culturally compatible countries have not appreciably influenced the thinking of many foreign donors.³⁶

Legal Evolution

Legal harmonisation projects are predicated on an evolutionary convergence theory. According to this thesis, legal change is a 'natural' Darwinian process in which less developed systems will evolve towards the more mature ones.³⁷ Since Western legal systems are more systematised than those in East Asia, the logical corollary

32 See Asian Development Bank, *Bulletin on Law and Policy Reform*, published from 1995 until 2002. Also see Katharina Pistor and Philip Wellons (1999), *The Role of Law and Legal Institutions in Asian Economic Development 1960–1995*, Oxford University Press, Oxford, 63–112.

33 New Institutional Economic theorists such as Douglass North and Joe Stiglitz have been especially influential in reshaping multilateral development projects. See Douglass North (1995), *The New Institutional Economics and Third World Development*, Routledge, London, 17–27; Joe Stiglitz (1999), *Whither Reform? Ten Years of the Transition*, unpublished paper presented at the Annual World Bank Conference on Development Economics, Washington, DC, 28–30 April. Also see W.W. Rostow (1990), *Stages of Economic Growth: A Non-Communist Manifesto*, Cambridge University Press, New York.

34 See Randall Peerenbom (2002), *China's Long March towards the Rule of Law*, Cambridge University Press, Cambridge, 150–53.

35 See Per Bergling (1997), 'Theory and Reality in Legal Co-operation: The Case of Vietnam', in Per Sevastik (ed.), *Legal Assistance to Developing Countries*, Kluwer Law International, Dordrecht, 64–66.

36 See Carol Rose (1998), 'The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study', 32 *Law and Society Review* (1), 93, 126–35.

37 See Lawrence Friedman (1969), 'On Legal Development', 24 *Rutgers Law Review* (11), 26–64. For an evolutionary account of legal reform in post-communist Russia, see

is that East Asian systems will evolve or converge towards the West. This view has gained prominence with the emergence of globalised culture brought about by increased international communication, travel, education and entertainment. It is also hotly contested by those who point to the narrow range of elites participating in globalisation and the many examples of international cultural divergence.³⁸

Legal evolution may occur when international treaties bind two or more nations to common (generally Western) legal rules.³⁹ Members of the World Trade Organisation (WTO), for example, are required to harmonise their domestic law with a wide range of customs, trading and intellectual property conventions and protocols. Much commercial legislation in developing East Asia, including Vietnam, is drafted with the objective of complying with WTO or other trade agreements. Legal harmonisation projects of this kind are often supported by international donor agencies.

Global business transactions are another potential catalyst for legal evolution.⁴⁰ According to Lawrence Friedman, businessmen and practising lawyers are the contemporary 'carriers of transnational law' and 'there is a tremendous amount of globalisation in businesses and the economy, and the law follows along'.⁴¹ Globetrotting lawyers, financial advisers and related professions transfer laws to protect capitalist investors throughout the world. Western (primarily Anglo-American) commercial law is also globalised by 'offshore' dispute resolution centres.

Pressure for legal evolution is felt strongest in countries that are integrated into US and European global trading, investment and legal networks. Subsequent chapters consider whether Vietnam is receptive to this form of legal transfer.

Coming to Terms with Terms

Much confusion has been generated in the literature concerning legal transfers by the multiple terms and metaphors used to describe and explain this process.

Gianmaria Ajani (1995) 'By Chance and Prestige: Legal Transplants in Russia and Eastern Europe', 43 *American Journal of Comparative Law*, 93–99.

38 See David Nelken (2001), 'Towards a Sociology of Legal Adaptation', in Johannes Feest and David Nelken (eds), *Adapting Legal Cultures*, Hart Publishing, Oxford, 31–35.

39 See Lawrence Friedman (1996), 'On the Merging Sociology of Transnational Law', 32 *Stanford Journal of International Law*, 65, 70–72.

40 See David Trubek, Yves Dezalay, Robert Buchanan and John Davis (1993), *Global Restructuring and the Law: The Internationalisation of Legal Fields and the Creation of Transnational Arenas*, Working Paper on the Political Economy of Legal Change No. 1, University of Wisconsin, Madison, Wisconsin; John Merryman and David Clark (eds) (1978), *Comparative Law: Western European and Latin American Legal Systems: Cases and Materials*, Bobbs Merrill, Indianapolis, 285–342.

41 Lawrence Friedman (1996), 'Borders: On the Emerging Sociology of Transnational Law', 32 *Stanford Law Review*, 65, 67. Also see Yves Dezalay and Bryant Garth (1996), *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*, University of Chicago Press, Chicago, 6.