CHAPTER 21

JOHN BRAITHWAITE AND PETER DRAHOS AND *GLOBAL BUSINESS REGULATION**

Perhaps the greatest frontier for the study of law in society is the global. The production and maintenance of "law" in its global dimensions has generated new forms of interaction, interdependence, and international institution building. Students and scholars seeking fodder for exciting new projects are drawn to a topic as ripe and intriguing as globalization. History reminds us, however, that excursions into frontiers are frequently difficult and dangerous. Here the challenges are not of life and limb, of course, but of resources and intellectual energy. Are you able to locate all of the pieces of the puzzle that contribute to the "global" pattern? Can you find the time and money necessary to get you where you need to go? Then, can you bring theoretical meaning or order out of an evolving and complicated mess of interaction?

While studying even a single field or institution poses challenges enough (see, respectively, Dezalay and Garth, Chapter 18, and John Hagan, Chapter 22), what must empirically minded scholars do to capture a portrait of globalization processes across many substantive areas? Some of the answer provided by John Braithwaite and Peter Drahos in their monumental volume, Global Business Regulation, *deserves a mixture of respect, appreciation, and trepidation: ten years, over five hundred interviews, and a final text 629 pages in length. Yet, in other respects, their experience provides some reassurances. English was nearly universal, for example, and much of the story of globalization remained concentrated in relatively few places – the power centers of the United States and Europe. As they explore in this interview, the perpetual issue of access may have been made easier by their world travel. Even more important, finding the global comes down to what happens in the local: the skill and art of getting past the secretary, leading a good interview, and finding a way to squeeze meaning out of the data.*

Methodological Keywords: interviews, multiple interviewers, snowballing, note taking, documentary research including primary materials, participant observation

*Global Business Regulation (Cambridge: Cambridge University Press, 2000).

Question: How did your collaboration come together? Were you looking for a particular mix of disciplinary background, skills, and experience?

Drahos: The collaboration was serendipitous, like a lot of good things. It began, as I recall, over a barbecue and some drinks. I think the mix of disciplines that we had between us – anthropology, criminology, law, philosophy, and sociology – turned out to be useful.

Braithwaite: The other thing that was important was that I started on my own and then Peter joined the project fairly early on. One of the reasons for that was that I quickly came to the realization that the intellectual property regime was the one where the most dramatic things were happening in terms of globalization. The history of the subsequent decade proved that to be correct and I found that technically very difficult. I really would have been in trouble if Peter hadn't come on board with that substantive competence as well.

Question: When you began in 1990, were there any assumptions or hypotheses helping you to frame the initial project?

Braithwaite: We went into it with the standard set of globalizing hypotheses, about the decline of the nation state, which turned out in a significant way not to be true. The most significant actor across the largest number of domains was the United States. It was not so much a decline of the clout of states as the rise of many different dimensions of influence, a rise of the regulatory state, and the rise of regulatory capitalism, where there are many different kinds of actors, but where the state control of resources was very important. We were assuming that some domains would be globalizing more than others and we were interested to find out why.

Drahos: Yes, we were actually very open to where the fieldwork led us. We had ideas about aspects of what we were looking at, such as Jon Elster's idea of mechanisms, that perhaps one couldn't explain all of globalization with some giant general theory but one could explain aspects of it, using, for example, this idea of mechanisms.[1] So we had theoretical ideas rather than a lot of hypotheses.

Question: What strategy did you have for entering the field and collecting the empirical data?

[1] Jon Elster, *Nuts and Bolts for the Social Sciences* (Cambridge, U.K.: Cambridge University Press, 1989).

Braithwaite: I guess we had a kind of an action orientation – find the actors and follow the networks through which those actors worked, starting with some middling actors. I had initially thought that it would be a matter of starting with the lead players in the Australian regulatory regime, sort of middling players in global regimes, and then move up from them. But that's not really how we did it. Preliminary reading and early conversations quickly generated a list of key targets to talk to. Then we would ask them who would be even more important people than themselves. In the case of the intellectual property regime, that very quickly led to the discovery of these legal entrepreneurs and policy entrepreneurs operating out of small offices in Washington. They had come up with the idea of the regime and sold it to a couple of CEOs who then sold it to a bigger set of CEOs who then sold it to the President of the United States. So it was quickly cutting to the chase. We really didn't have much idea of where to start when we started but a few good names very quickly led to better and better names. We were also able to maintain the momentum just because it was so much fun. The people who we were interviewing were really interesting, clever people, people who had the imagination to be actors who would craft regimes – bold people. They were interesting to talk to.

Drahos: We did some interviews in Australia on the intellectual property issue and rapidly discovered that the Australian players were, essentially, irrelevant. They were simply not players. So we realized that we ultimately had to go to the United States and Europe. I think one of the geographical findings of the book is that there are only a few cities in the world out of which globalized regulation happens. Although we did quite a lot of follow-up work in developing countries – following the trails that led from core cities out to the periphery – we kept on going back to Brussels, to Washington, to Geneva, and London occasionally for some things like marine regulation. It was just a few key cities where these networks of individuals or key actors congregated.

Question: If the project aims at understanding some aspect of the global system, there would seem to be a tension for creating an efficient research strategy. One may expect to learn the most in a few places but it would be difficult to defend a project that didn't go out to other countries.

Drahos: One year I did quite a lot of follow-up work in newly industrializing countries, so I went to Taiwan and South Korea to look at

competition regulation, financial regulation, and intellectual property regulation. The purpose was really ultimately to check hypotheses and information that we'd gotten out of Washington or Brussels. It was enough for just one person to go and do this kind of checking.

Braithwaite: The interviews we were doing together were mostly the most important ones and we were really planning to do them together. The solo ones tended to be more serendipitous. I represented Australia at an ISO standards-setting conference in Tunisia. There was no particular reason for targeting Tunisia to interview trade bureaucrats and others, but I did. There's an efficiency in being able to get stuff done if globalization is your topic. What would be the most interesting kind of people to talk to about our project in Tunisia?

Drahos: What was interesting about those interviews was they profoundly corroborated the story that we were getting from Europe and the United States. Although a lot of our fieldwork was focused out of necessity around these key cities, we did follow the trails that led from those cities out to the periphery and the semiperiphery because that was one of the initial assumptions that we made – that there would be the core states, the states on the semiperiphery, and the peripheral states, a sort of general systems theory.

Question: The people you interviewed were elites – unquestionably, very important people. How difficult was it to get them to give you some of their time?

Braithwaite: Well, I think we had an advantage in coming from afar. In those days, perhaps a bit more than today, people might think, "These guys really want to come all the way across the world to talk to me?!" We'd often have patched into the letter a few little sentences about why in particular we wanted to talk to them. We got very few outright rejections, though we did get a lot of nothing coming back. Then I think it's the skill of how you get on the phone and talk in a way that makes you and the project seem interesting to the PA. It's mostly about persuading Personal Assistants. That's the part that takes most skill: that assertive phone call follow-up when they're just not interested enough to do anything about it.

The other thing that I think which is quite a good tip is to say, for example, "We'll be in New York for all of such-and-such a week. We can see you at any time, but can we propose 11 AM on Tuesday morning?" We would do this six weeks in advance so that it was easy

for them to say, "Oh well, they're coming from the other side of the world and that's a long way in the future. I'll block that off and agree to it." If it had been a week before they'd probably say they were too busy. Once we were locked into traveling a long way to come and see them, I think the politeness carries you a fair way.

Drahos: We followed a basic pattern in which we would describe the project, indicate some of the issues that we'd like to talk about, and then send the letter by fax to the CEO of the particular corporation or the head of the particular department or whoever it happened to be. That produced a remarkably high positive response rate. So, for example, we wrote to Bill Gates. We did not get to interview Bill Gates but it was a very effective way of getting access to the people that really mattered in Microsoft – those who understood the IP issues, who understood what Microsoft's position on the patentability of computer software was and how it differed, for example, from IBM's position, and so on.

Braithwaite: That's right. The right method is to write the letter that says, "Dear Mr. Gates, we realize that you're an extraordinarily busy person. If you could refer us to the right person in your office..." And the easy thing for Bill Gates' PA to do then is not to bother him with it but to pass it down two or three levels in the organization to someone who really has control of what's going on in that issue. And if a suggestion comes down from Mr. Gates' office to take care of the query, you get the interview.

Drahos: I also think that simple technique of sending a fax is even more important today because people are flooded by e-mails, so much so that they may well just forget to reply. We would only ask for forty or forty-five minutes of people's time, yet often we would end up being given a couple of hours. People were very generous in their time. They were very interested in the project.

Braithwaite: Yes, especially the ones who really had played a big role in shaping regimes. Their accomplishment was one that was quite an obscure one to their mums and dads. To be able to tell the story to someone who really appreciated its significance and was going to write about its significance was important. I think that's why a lot of our informants would give us hours and were open to us coming back and follow-up telephone conversations to clarify. They would tell these interesting stories that brought to life the way they operated.

Drahos: A good example of a very powerful person who wanted to tell his story is Jack Valenti. At that time he was the single most powerful lobbyist in Washington. He was the Head of the American Motion Picture Association. Even now that association is described as the "little State Department." They hold enormous power in American politics. Valenti wanted to talk about the kind of influence he had brought to bear in the intellectual property area – not just at the multinational level but at the bilateral level. He wanted to say, "Look, this is the kind of thing that I'm doing behind the scenes."

Question: Did you use the same approach for seeking access to actors in developing countries?

Braithwaite: No, although the developing country work in the end is easier, I think, once you've learned how to do it. You arrive at the capital and you set yourself up in a reputable hotel. You are seen to be inviting some important people to dinner in the public space. Then other people want to find out what you're doing. And over time, once you get on a roll, it's easier, so long as you don't really put a foot wrong and come to be regarded as dangerous – or some terrible story goes around about you, which can happen through no fault of your own.

Question: How did you prepare for the interviews?

Drahos: There was generally a lot of preparation. The reading was important, particularly for technical areas like banking regulation. Part of getting good responses from your interviewees is the ability to project credibility. I remember one interviewee who clearly didn't want to see us. At the time he was the assistant to Mickey Kantor the then United States Trade Representative, so a very senior person in the United States trade office. He was extremely busy as you can imagine and impatient when we went into his office. But then John launched into an introduction about the study in which he was able to project a tremendous amount of credibility about the project. I could see our interviewee thinking, "Gee, these guys really do know something about this area. They're not fools."

Braithwaite: He also had a better analysis. He was a very clever man. And so he wanted to tell us his analysis: "What you say is interesting but you missed this and you missed that..."

Drahos: If you're dealing with smart players you have to be able to project that credibility in the interview. So we would discuss the interview questions beforehand, what kind of hypotheses we were going to test in this particular interview, and so on.

Braithwaite: Often the conversations between us were in the taxi on the way to the interview. You've got to be efficient in the way you structure these things. There were lots of discussions over breakfast as to who we'd be interviewing that day and what the priorities were to focus on. But there were also interviews where we weren't well enough prepared. It happens a lot when you're busy. That's why the logistics are important. There are always points where you fall behind, where you haven't done the reading that you should have done, or where you set up the appointment and you just go ahead with it. We certainly did interviews that were almost a complete waste of time because we made idiots of ourselves. They could see we didn't know what we were talking about and they would send us packing fairly quickly. You learn from those.

Drahos: Yes, I remember one interview we did in the U.S. Internal Revenue Service. But really we should have been at the U.S. Treasury because we wanted to know all about international tax harmonization. Much of that policy comes out of Treasury. We were in the wrong place, but we soldiered on. So some of the interviews were not very productive. When it happened the first few times I expressed disappointment but John said, "Well, that's life as a fieldworker." So there were highs and lows.

Braithwaite: There's a lot of virtue in picking a project where if some people don't cooperate or some interviews don't work out you can always move on to someone else. If it's a study of Ministers, for example, and the Minister won't talk to you, you're in difficulties.

Question: You talked there about the importance of projecting credibility. Were there other strategies or techniques for making interviews with elites successful?

Drahos: The other thing we tried to do was to put the person in a state of reflective equilibrium about what it was they were doing. There's no recipe for doing this but one of the things I noticed was that a lot of interviewees quite liked the opportunity to sit back and reflect on what they had done. By the end of an interview, because by then people

had relaxed into the process, you would get good reflections. One way to do that would be to try for some sort of simple summary hypothesis of what was happening: "What do you think of that as a hypothesis that explains this particular area?" People in these busy positions don't necessarily engage in that kind of self-reflection.

Braithwaite: Humor is important for getting people relaxed too. One of the simple strategies there is to retell a funny story already told to you by another interviewee. Interviewees will generally reciprocate with a like tale of their own. The other thing that's important is to make them feel important and fairly quickly get to a point where you can ask a question about what their role was in a particular issue. When they are a real player they will sometimes really get off in telling you exactly what they did – that's the thing, of course, that they're most knowledgeable about. So it's sort of moving backward and forward between their action and the abstraction.

Question: Did you encounter any interview situations that were especially difficult?

Drahos: I think there is a real challenge for any fieldworker having to deal with a group interview. They're much harder to conduct, a lot tougher. In that group situation the people are sort of checking each other. I don't think you get as much honest reflection and as much casual talk as you would in a one-on-one situation. I always thought that when we encountered those group interview situations, they weren't as successful. That's a difficult one for fieldworkers to handle because from the organization's perspective it's efficient for them to bring five or six people around a table together. Somehow you have to find ways of engaging with all of those people around the table, find out what their position is in the organization. But of course while you're talking to one person the other people can drift off. It's really difficult I think.

Question: Was it an advantage having two of you doing the interviewing?

Braithwaite: Yes, one of the difficulties of taking notes when you're on your own is getting the judgment right between maintaining eye contact to keep the flow going and taking good notes. But with the two interviewers you alternate – one is working hard at maintaining the rapport and smiling and nodding and looking at them while the other is working hard at the writing.

There are also some moments when a bit of arguing with each other makes interviewees more comfortable. You've got this problem with elite interviews of the person being a bit of a politician and sticking to the traditional party line, or a senior bureaucrat just saying what their Minister would want them to say. If one of you tries being provocative and says, "Well, we spoke to people at such-and-such a department who had a completely different analysis," then the other might make the interviewee feel more comfortable by disagreeing or partially disagreeing. So the other might respond, "But you know those guys in that department, they were trying to take the mickey out of you, weren't they?" Your interviewee might then say, "No, what he says is right." It has broken open the shell and created a kind of comfort. Again, I don't think you can cookbook how to do that but it's having a natural sense of openness and enquiry yourselves. That's what I mean by the importance of having these sort of "disagreements" with each other and creating a comfort all round so they're not seeing you as, maybe, leftwing academics or anti-American.

Question: Did you record your interviews?

Braithwaite: No, we took notes and wrote the notes up that evening and talked about it over dinner. I tend not to tape interviews. It's a practical reason for me. I'm a fairly sleepy sort of person. If the interview gets boring I figure it's generally my fault. You need to work hard at setting a new direction that will not be boring and irrelevant. If you've got the tape recorder running, it's easy to just drift and let them be in charge. You might think that you've done a great job and got a lot of data, but unfortunately they may not be as relevant than if you were testing the interview against the quality of what you're writing in the notes as it unfolds.

I use the method of handwriting the notes with lots of spaces. When there's a juicy quote, I try and get the keywords with gaps between the words so you can get the verbatim quotes. It might be embarrassing to the interviewee for you to put your head down and scribble this rather confronting, politically sensitive quote. So you just get those odd keywords down and keep them going. You can let the interview wander on to something that's of great interest to them but not of great interest to you, building up their rapport. And while they're talking about this thing, you're furiously writing. They think you're writing what they're saying at that point but you're really going back and getting that juicy quote down in detail. That's an important part of the skill.

While you're writing the notes you're also writing in key theoretical words. Then over dinner that night you're arguing over the interpretation of that bit of the text. In fact, the interpretive bits of the notes are much more important than the juicy best quotes, at least in this kind of research.

Drahos: There is something about the note-taking method that makes you a more active participant in the process. It also forces you to re-engage with the interview that night. You have to do that because you know that there are gaps in the notes, that you've left spaces deliberately for you to do that.

Braithwaite: It's also cost-effective because you get back home with all the notes that you need done. You're not spending weeks getting things transcribed or transcribing them yourself where what's transcribed is not what you actually want. If you've got the whole transcript with every word that was uttered, then it becomes a very big ask to be reading all the way through again and again.

Question: Even so, the volume of data you must have had when you finished the fieldwork must have been very imposing. How did you begin analyzing it?

Drahos: We were constantly thinking and having conversations about the data along the way. So over time certain categories of analysis would begin to emerge. The book has an explanation of globalization in terms of these basic categories of principles, actors, and the mechanisms of globalization. It's a simple structure, but those categories of analysis provided a way of beginning to organize the data. It was sort of actor-led, so a natural structure really evolved out of the material. That then allowed us to write up the empirical chapters.

Braithwaite: I use a fairly crude method compared to a lot of people – physical piles of material. For this project I had a very inefficient method of photocopying bits of fieldwork notes and dropping them in different piles. So let's say I was doing air transport regulation. There are all sorts of interesting theoretical insights, both in the interviews that connect to that regime and in the books and articles that connect to that regime. They're all in this big pile together. And of course when we were writing up there was an "actors" subpile, then a "mechanism" subpile, a "principles" subpile. It's a bit like the taping I guess. If you put them into End Note they go into a hole and they get forgotten.

You need a sort of a crude redundancy about your engagement with the materials and I think piles and a messy office does that for you.

Question: Is there anything in retrospect that you feel didn't work well or anything that you might do differently?

Braithwaite: I think we wasted some time trying to get to see bigshots. For example, I put a fair bit of energy into getting an interview with Bob Hawke, who was the Australian Prime Minister for ten years during this period. A lot of research time went into setting it up. In the end it was very lacking in focus. A lot of these guys are more about being front stage, winning the election. He didn't really have an understanding of the things I was trying to interview him about. I think we put a bit too much energy in trying to track down people in important positions who weren't that important.

Drahos: Yes, I think the politicians were disappointing. But that in itself is an important finding in a way – probably one that doesn't really come through in the book. Ultimately it is these clever technocrats behind the political figures that really understand the system. If you want to know about the evolution of the system, those are the people you have to talk to, not the politician who in a sense is a transient figure in all of this.

Question: You conducted over five hundred interviews, around the world. Is there any less resource-intensive way of doing the data collection?

Drahos: I'm a great believer in doing the fieldwork myself. If you're interested in building theories and you do so on the basis of data collection it should be you that goes out and collects that data. It's just going to be hard for junior people to be able to gather the data and order it and interpret it and do that on the spot in the way that you can.

Braithwaite: If you're sufficiently clear about what you want to ask – that you feel those precise questions would work – then perhaps you should send a questionnaire off and have standardized answer formats. But if you're trying to discover and interpret an unfolding story with a history where you can't predict its twists and turns in advance, then you've got to be there. Or, to put it another way, if a research assistant is so good that he or she can handle the most important part of the research process without you, then they probably should be the senior author.

Question: Is the scale and ambition of a global, multisector project such that it would be too difficult for junior scholars to undertake?

Drahos: I think it's only because John had the confidence that the project could be done that we undertook it. It took someone who has a lot of experience and a sense of confidence about the outcome. It was a very long-haul project. There's no guarantee that you are going to come out at the end of the day with anything that will make people sit up and take notice. What junior academic could go to a dean and say, "I'm going to embark on a major paradigm-changing piece of scholarship, it'll take ten years to produce, and nothing will be produced along the way. Do I have your OK to do that?"

Braithwaite: You've got to have self-belief to do a project like that, because nothing was published out of that project in the first seven years. Our attitude was, "Don't be distracted by doing pieces along the way. Push on so you will get to the conclusion of the two big books at the end." There are very few academics who have been as privileged as I have to have my time freed up for research over a large number of years. I think the obligation with that is to take on the projects that you could only take on if you're in that position. It's a matter of gradual confidence-building. My career has been about taking on bigger and bigger projects and being more focused on the long haul and longer term.

Question: What are your feelings about how the book's been interpreted and used in literature?

Braithwaite: I think people have been fairly kind to it. It's not been savaged much, but it's never been used as much either. There's something a bit terrifying about a book that big. It's daunting I think. And yes, we get a lot of doorstop jokes about it!