

# Globalization, Lawyers, and Emerging Economies: The Rise, Transformation, and Significance of the New Corporate Legal Ecosystem in India, Brazil, and China

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*Beginning in the 1990s, India, Brazil, and China have each developed a distinct corporate legal “ecosystem,” comprised of new (or newly repurposed) domestic corporate law firms, foreign law firms competing (on the ground or virtually) to serve both foreign and domestic clients, general counsel offices of both domestic and multinational companies, and law schools either designed or retooled to supply lawyers qualified to practice corporate law. In this Article, we utilize data from an unprecedented set of empirical studies to document the rise of this new corporate ecosystem in these three important emerging economies, and to develop grounded theory about the forces that have produced this transformation and that help to explain differences among the ecosystems that have developed in each jurisdiction. Specifically, we argue that differences in what we call the “micro-level gearing” in the relative importance of the three key elements in the corporate legal ecosystems that have developed in India, Brazil, and China—law firms, clients, and legal education—can be explained, in part, by differences in what we will call the “macro-level gearing” in the relative power of the state, the market, and the bar—both between all three countries and the United States, and among the three jurisdictions. This difference has been most pronounced in China, where the dominance of the “state gear” in shaping the corporate legal market contrasts sharply with both the U.S. “market” driven model, and the influence of the “bar” in shaping the micro-level corporate ecosystems in India and Brazil. We conclude by offering some tentative thoughts about the implications of our findings for a*

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*rapidly globalizing corporate legal services market in which a growing number of states are beginning to exert greater control at the macro-level.*

## INTRODUCTION

It is by now common knowledge that globalization is transforming virtually every sector of the world's economy, and that this transformation has important implications for the rapidly globalizing market for legal services.<sup>1</sup> Moreover, it is also clear that emerging economies in Asia, Latin America, and Africa are playing an increasingly important role in this transformation.<sup>2</sup> In documenting this shift in economic and political power from the traditional centers in the Global North to the emerging Global South, scholars from a variety of disciplines have long debated the role of law and lawyers in facilitating—or undermining—the processes of development in these rising powers.<sup>3</sup> Yet, while there is substantial literature on each of these topics, there has been relatively little attention paid to the intersection among them—particularly from the perspective of the emerging economies themselves.<sup>4</sup> As a result, the analytical field is ripe for theoretical expansion, driven by empirical inquiry into how globalization is changing the broader architecture and dynamics of the legal professions in important emerging economies, and how these changes, in turn, are helping to reshape the global legal services market and the broader economic, political, social, and cultural aspects of globalization in which lawyers play an increasingly important role.

The project on Globalization, Lawyers, and Emerging Economies (GLEE) seeks to fill this empirical and theoretical gap. Launched in 2012, GLEE is a multinational, multidisciplinary, and multi-institutional collaboration of scholars committed to conducting original empirical research on how globalization is reshaping the legal services market in important emerging economies around the world. Specifically, GLEE seeks to map and under-

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1. See JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (2003) (on the impact of globalization); D. Daniel Sokol, *Globalization of Law Firms: A Survey of the Literature and a Research Agenda for Further Study*, 14 *IND. J. GLOBAL LEGAL STUD.* 5 (2007) (on the impact of globalization on the legal profession); James R. Falcounbridge, Jonathan V. Beaverstock, Daniel Muzio & Peter J. Taylor, *Global Law Firms: Globalization and Organizational Spaces of Cross-Border Work*, 28 *NW. J. INT'L LAW & BUS.* 455 (2008) (same); John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 *IND. J. GLOBAL LEGAL STUD.* 35 (2007) (same).

2. See U.N. DEV. PROGRAMME, *HUMAN DEVELOPMENT REPORT 2013*, iv (2013), <https://perma.cc/XC46-7EW4>.

3. See, e.g., David M. Trubek, *Law and Development 50 Years On* (Univ. of Wisconsin Legal Stud. Research Paper No. 1212, 2012), <https://perma.cc/PVV6-3PBZ>; YVES DEZALAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (2002); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 *WISC. L. REV.* 1062 (1974).

4. Dezalay and Garth's pioneering scholarship stands as a notable exception. See YVES DEZALAY & BRYANT G. GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* (2010).

stand the implications of a key change that globalization is producing in the legal professions of these rising powers: the emergence of a distinct corporate legal “hemisphere” of the bar. In an influential book on the social structure of the Chicago bar, socio-legal scholars John P. Heinz and Edward Laumann argued that what is commonly referred to as “the” legal profession in the United States is actually comprised of two distinct professions, or “hemispheres”—one focused on individuals and small businesses, and the other dedicated to serving the needs of large companies and other similar entities.<sup>5</sup> The GLEE project investigates whether globalization is producing a similar division in the legal professions of the world’s emerging economies, and if so, the implications of this development for lawyers and society in these jurisdictions, and for globalization and the market for legal services generally. To date, the GLEE project has produced national studies on India,<sup>6</sup> Brazil,<sup>7</sup> and China,<sup>8</sup> and is beginning work on regional studies in Africa and Southeast Asia.

In this Article, we present evidence from our national studies of India, Brazil, and China to demonstrate that globalization is indeed producing a new corporate legal sector in each of these three important emerging economies, and to explore both the reasons for this development and its implications for our understanding of the broader relationship between what we will refer to as the “macro-level” forces of the state, the market, and the bar.<sup>9</sup> Our thesis is that the relative strength of these macro-level forces is playing a key role in shaping the development of the “micro-level” ecosystem—comprised of law firms, clients, and legal education—that we see de-

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5. See JOHN P. HEINZ & EDWARD LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982) (describing the “corporate” and “personal plight” hemispheres of the bar, and arguing that each hemisphere accounted for approximately 50% of total effort). Twenty years later Heinz, Laumann and other collaborators repeated their study of the Chicago bar and found that the division between the two hemispheres remained, but that the “corporate hemisphere” had grown to occupy almost two thirds of total lawyer effort in the intervening period. See JOHN P. HEINZ, ROBERT NELSON, REBECCA SANDEUFUR & EDWARD LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (1995). Whether the two hemispheres will continue to retain their distinctive characteristics in the new “age of disruption” that began after the Global Financial Crisis in 2008 remains an open question. See David B. Wilkins, *Some Realism About Legal Realism for Lawyers; Assessing the Role of Context in Legal Ethics*, in *LAWYERS IN PRACTICE: ASSESSING THE ROLE OF CONTEXT IN LEGAL ETHICS* 25 (Leslie Levin & Lynn Mather eds., 2011) (arguing that recent changes in the legal profession are eroding at least some distinctions between the hemispheres).

6. *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (David B. Wilkins, Vikramaditya S. Khanna & David Trubek eds., 2017) [hereinafter *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*].

7. *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (Luciana Gross Cunha et al. eds., 2018) [hereinafter *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*].

8. *THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (Sida Liu & David B. Wilkins eds., forthcoming 2020) [hereinafter *THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*].

9. As we explain in Part IV, both the definition of each of these macro gears, and the relationship among them is complex, particularly in China, where the state, the market, and the bar are inextricably intertwined. See *infra* Part IV.

veloping in each of these emerging economies. To capture this dynamic interaction, we refer to these “macro” and “micro” forces as “gears” whose relative strength at any given time helps to shape the overall structure and operation of the corporate legal ecosystem. Understanding the operation of these macro and micro level gears—and the interaction between these two levels—we contend, is critical to explaining why a distinct corporate legal sector developed in each country, and why, notwithstanding their similar origins, there are important differences among the three countries’ corporate legal ecosystems, particularly with respect to China.

The remainder of our argument proceeds in five parts.

Part I sets the stage by documenting India, Brazil, and China’s decision to begin to open their economies in the late 1980s and early 1990s. This “global shift,” we argue, both provided the impetus for the development of a distinct corporate legal sector in each country, and supplied a model—U.S. corporate law firms—for how this new form of legal practice should be structured.

Given its importance as a template, in Part II we explore the evolution of the American Model of corporate legal practice during two distinct periods: the “Law Firm-Led” period during the early to mid-twentieth century, in which large full-service corporate law firms patterned on the “Cravath System” dominated the U.S. corporate legal ecosystem; and the “Client-Led” period that began in the 1980s, in which in-house legal departments led by increasingly sophisticated general counsels (GCs) have become the dominant players, destabilizing both the client and labor markets that had allowed Cravath System law firms to thrive.

In Part III, we use data from our three national studies to answer the core question of whether India, Brazil, and China have developed a distinct corporate legal hemisphere in the years following each country’s global shift, and if so, whether this new sector has been shaped by U.S. models of corporate legal practice. We conclude that the answer is “yes” to both questions, but with two important caveats. The first is that while India, Brazil, and China have all developed identifiable corporate legal sectors, the number of lawyers representing large domestic or multinational companies in each jurisdiction remains small compared to the overall size of the bar, making the designation “hemisphere”—meaning half—inapposite as a numerical description. However, like their counterparts in the U.S., the new corporate lawyers in India, Brazil, and China are already having an influence both inside and outside the profession that is disproportionate to their numbers. Second, although we find significant evidence that U.S. models of corporate legal practice have been very influential in shaping the micro-level corporate ecosystem in each jurisdiction, in none of these three emerging economies has the process been as straightforward, complete, or uniform as a simple diffusion story would suggest. This is particularly true with respect to

China, where the corporate legal sector differs significantly both from the U.S., and from the other two rising powers.

In Part IV, we argue that these differences both between the micro-level dynamics of the U.S. corporate legal ecosystem and the similar sectors that have developed in India, Brazil, and China, as well as the differences between China and the other two rising powers, are due, at least in part, to differences at the macro-level between the relative strength of the state, the market, and the bar in each country.

Finally, in Part V we conclude by offering some tentative thoughts about the implications of our findings about the relationship between macro and micro level gearing for the future of the global corporate legal services market.

### I. THE GLOBAL SHIFT AND THE PULL OF THE GLOBAL GOLD STANDARD IN CORPORATE LEGAL PRACTICE

In 2001, then president of Goldman Sachs Asset Management Jim O'Neil reported that in 2001 and 2002 the real economic growth of emerging economies would exceed that of the G7.<sup>10</sup> Coining the acronym BRICs to represent Brazil, Russia, India, and China—the four most important countries to emerge as players on the world stage—O'Neil's pronouncement captures the cumulative effect of a signal change that occurred in these developing countries during the last decade of the twentieth century. Beginning with the fall of the Berlin Wall in 1989, and continuing through China's membership in the WTO in 2001, the decade of the 1990s saw many countries around the world begin, or move significantly forward with, a process of transforming from a mostly "closed" economic model to one that is increasingly "open" to the global economy.<sup>11</sup> India, Brazil, and China—three of O'Neil's original BRICs—all fit this pattern.<sup>12</sup> Thus, following the balance

10. Jim O'Neil, *Building Better Economic BRICs*, GOLDMAN SACHS GLOBAL ECONOMICS PAPER, Nov. 30, 2001, at 1, <https://perma.cc/DTB2-VMPB>.

11. The quotation marks around "closed" and "open" are significant since no country was completely closed in the period before the global shift, nor fully open thereafter.

12. Although Russia also significantly opened its economy in the 1990s, its pattern of development has differed in important respects from the other three original BRIC countries, particularly with respect to the development of the corporate legal sector. As Kathryn Hendley documents, a decade after the fall of the Berlin Wall, most Russian companies remained deeply skeptical of law as a means of conducting business or resolving disputes, instead preferring to rely on bargaining and self-help. See Kathryn Hendley, *The Role of In-House Counsel in Post-Soviet Russia in the Wake of Privatization*, 17 INT'L J. LEGAL PROF. 5, 11–12 (2010) (providing examples). See also Kathryn Hendley, Peter Murrell & Randi Ryterman, *Agents of Change or Unchanging Agents? The Role of Lawyers within Russian Industrial Enterprises*, 26 LAW & SOC. INQUIRY 685, 706 (2001) (noting that as late as 1998, Russia's commercial courts did not require parties to be represented by lawyers). Indeed, as Hendley notes, while several foreign law firms had opened offices in Russia in the years prior to her study, "[T]he explosion of corporate law firms that has accompanied the economic boom in China has yet to be replicated in Russia, at least outside of Moscow and St. Petersburg.") Hendley, *The Role of In-House Counsel*, *supra*, at 28. In Part IV, we offer some very tentative thoughts about why the corporate legal sector has developed more slowly in Russia than it has in China, notwithstanding the two countries' similar starting point. See *infra* Part IV. A more complete

of payments crisis in 1991, the Indian government abandoned the policy of “Indian Socialism,” which had kept its economy largely isolated (particularly from the West) since the country’s independence in 1947, and began to move toward liberalization in many—though certainly not all—sectors of the economy.<sup>13</sup> Similarly, Brazil, having just ended 20 years of military rule in 1985, adopted a new constitution in 1988 and began a process in the 1990s to further liberalize its economy and open its markets.<sup>14</sup> The 1990s was also the decade in which China consolidated the market-oriented economic reforms begun by Deng Xiaoping in the 1970s, while increasing its ties to the West and distancing itself from overt political crackdowns, such as the one in Tiananmen Square in 1989.<sup>15</sup>

This movement toward greater openness to the global economy—or “global shift” as we will refer to this phenomenon—produced two critical changes in each country. First, as Chart 1 documents, all three countries experienced a significant increase in foreign direct investment (albeit, often with many restrictions). Second, all three jurisdictions privatized many (but certainly not all) state-owned assets and enterprises.<sup>16</sup> As a result, private market forces now play an increasingly important role in all three jurisdictions.

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explanation, however, will have to await the kind of in-depth analysis of the Russian corporate legal sector that the GLEE project has undertaken in China, Brazil, and India.

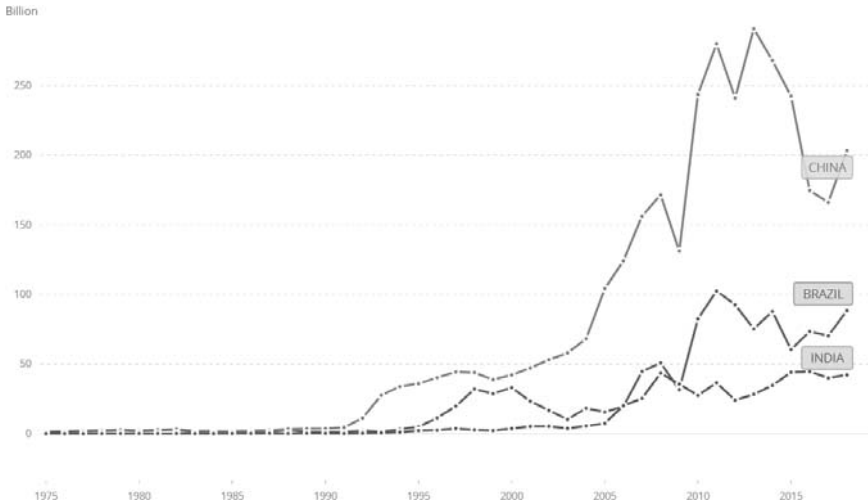
13. See Valerie Cerra & Sweta C. Saxena, *What Caused the 1991 Currency Crisis in India?*, 49 IMF STAFF PAPERS 395, 400 (2002); Baldev Raj Nayar, *Political Structure and India’s Economic Reforms of the 1990s*, 71 PAC. AFF. 335, 347–48 (1998).

14. Luciana Gross Cunha et al., *Globalization, Lawyers, and Emerging Economies: The Case of Brazil*, in THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 7, at 1, 7–8 (describing how in the years following the election of President Fernando Henrique Cardoso in 1994 “Brazil continued to move away from the *dirigiste* policies of the ‘Developmentalist’ period, embracing many of the neoliberal prescriptions favored by the Washington Consensus” and noting that in the 1990s, “state-owned enterprises were privatized.”).

15. KISHORE MAHBUBANI, THE NEW ASIAN HEMISPHERE: THE IRRESISTIBLE SHIFT OF GLOBAL POWER TO THE EAST 235–40 (2008).

16. See David B. Wilkins, Vikramaditya S. Khanna & David M. Trubek, *An Introduction to Globalization, Lawyers, and Emerging Economies*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION 3, 4 (“During [the 1990s], India, Brazil, and China each made a decision to move from a ‘closed’ economic model to one that is increasingly ‘open’ to both foreign investment and private enterprise, including the privatization of many state-owned assets.”). Mattos Filho, *Foreword*, in THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 7, at XV, XiX (“In the early 1990s, two other factors created an enormous and different line of work for Brazilian lawyers. On the one hand, foreigners were permitted to invest directly in the Brazilian capital markets, and Brazilian companies were permitted to issue securities in foreign markets. . . . On the other hand, the process of privatization of state owned companies began, which continue in the form of concessions of activists previously exercised by the state.”).

CHART 1: FOREIGN DIRECT INVESTMENT INTO INDIA, BRAZIL, AND CHINA, 1975-2018 (IN BILLIONS OF CURRENT USD)



Source: World Bank Group.

This shift toward a more market-driven economy, in turn, fueled a rapidly escalating demand for new laws, regulations, and administrative apparatus to facilitate this new economic activity and to interface with the broader global economic and political environment.<sup>17</sup> In short order, India, Brazil, and China began to adopt new (or newly retooled) legal regimes in areas such as investment and trade, mergers and acquisitions, securities regulation, and competition policy.<sup>18</sup> This explosion in the quantity and complexity of laws and regulations governing the economy, in turn, created a growing demand for “new” lawyers, (once again, either totally new or retooled), capable of practicing law within this new legal and regulatory environment.<sup>19</sup> This demand was particularly acute in corporate law and regulatory fields—e.g., mergers and acquisitions, project finance, securities, competition law, and initial public offerings—that were increasingly impor-

17. See Claire Plarre, *BRICSA: The Evolution of Five Legal Markets in Emerging World Economies*, CROSS-BORDER Q., Jan.–Mar. 2007, at 23, 23–27.

18. See T.C.A. Anant & N.L. Mitra, *The Role of Law and Legal Institutions in Asian Economic Development: The Case of India Patterns and Change in the Legal System and Socio-Economy*, HARV. INST. FOR INT’L DEV., Development Discussion Paper No. 662, 1998, at 1, 1–94. See also Daniela Gabbay, Luciana Ramos & Ligia Pinto Sica, *Corporate Law Firms: The Brazilian Case*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 7, at 33; Volker Behr, *Development of a New Legal System in the People’s Republic of China*, 67 LA. L. REV. 1161, 1173 (noting that in anticipation of China’s accession to the WTO in 2001, that “[i]nvariably, corporate law, intellectual property law, banking law, and other areas of economic law had to be developed or modified”).

19. See, e.g., Mihaela Papa & David B. Wilkins, *Globalization, Lawyers, and India: Toward a Theoretical Synthesis of Globalization Studies and the Sociology of the Legal Profession*, 18 INT’L J. LEGAL PROF. 175, 180 (2011) (discussing the demand for corporate attorneys in India).

tant to the growing number of foreign and domestic companies operating in each jurisdiction.<sup>20</sup>

Broadly speaking, emerging economies such as India, Brazil, and China had two options to try to meet this new demand: they could “import” qualified corporate lawyers, or they could “develop” their own domestic corporate bar. The first option was in many ways the easiest. By the 1990s, many U.S. law firms had already followed their clients to the U.K. and Western Europe, and were eager to continue to do so as these companies sought to take advantage of the opportunities presented in emerging markets.<sup>21</sup> Indeed, partially in response to American firms moving into their home market, many U.K. law firms had embarked on even more ambitious programs of global expansion in search of new revenues.<sup>22</sup> As a result, these firms were particularly interested in establishing a beachhead in the newly rising economic powers, many of which like India, and through Hong Kong, China, had strong ties to the former British Empire.<sup>23</sup> But precisely because of their strong desire to free themselves from their colonial pasts and to assert their independence on the world stage, policymakers in India, Brazil, and China had little interest in simply turning over their new corporate legal markets to foreign lawyers—particularly, as we shall see, given the intense lobbying by lawyers in these jurisdictions who wanted to benefit from the new demand for corporate legal services.<sup>24</sup> As a result, while foreign lawyers play an important role in the corporate legal ecosystems that have evolved in all three countries—albeit often in covert ways—India, Brazil, and China have all also employed the second strategy for satisfying the new demand for corporate legal services following the global shift: developing indigenous capacity. As we will see, this second strategy has been reinforced in each jurisdiction by regulations that restrict to a greater or lesser extent the entry of foreign lawyers.<sup>25</sup>

This second option, however, would prove to be more difficult than importing global lawyers. As we discuss below, only a handful of lawyers in India and Brazil had any experience with sophisticated corporate legal prac-

20. Umakanth Varottil, *The Impact of Globalization and Cross-Border Mergers and Acquisitions on the Indian Legal Profession*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 170.

21. John Flood, *Megalawyer in the Global Order: The Cultural, Social, and Economic Transformation of Global Legal Practice*, 3 *INT'L. J. LEGAL PROF.* 169, 188–89 (1996).

22. John Flood, *Institutional Bridging: How Large Law Firms Engage in Globalization*, 54 *B. C. L. REV.* 1297, 1118–20 (2013).

23. *Id.*

24. See *infra* Part IV.

25. Once again, Russia differs from this general pattern, with very few restrictions limiting the practice of foreign lawyers. See Andrey Goltsblat, *Regulation of Russia's Legal Market Is Again on the Agenda*, *LAWYER* (May 23, 2011) <https://perma.cc/J6BP-6THF> (noting that Russia is “one of the few legal markets with no real regulation governing legal practice” and that “as far as the legal profession is concerned it’s about as liberal as it could be” (internal quotation marks omitted)). We offer some tentative thoughts about this difference in Part IV. See *infra* Part IV.



tice in the period prior to the global shift.<sup>26</sup> The situation was even worse in China, which had effectively disbanded its entire legal profession during the Cultural Revolution.<sup>27</sup> Nor did any of the three countries have law schools that were set up to train lawyers in the skills and dispositions needed to service the legal needs of the new corporate clientele.<sup>28</sup> Domestic lawyers seeking to take advantage of this new market opportunity therefore had to quickly build—or appear to build—the capacity to service multinational and domestic clients in the new corporate legal fields created by the global shift from the ground up.

It is not surprising that the lawyers seeking to accomplish this daunting task looked to U.S. corporate legal models for inspiration. By the latter decades of the twentieth century, U.S. law firms were widely recognized as the global leaders in providing corporate legal services.<sup>29</sup> Indeed, virtually all of the law firms seeking to enter India, Brazil, and China were either based in the U.S., or were structured in ways that emulated the core practices of U.S. firms which had diffused to the U.K. and Europe during the preceding decade.<sup>30</sup> Moreover, many of the aspiring corporate lawyers in India, Brazil, and China had received LL.M.s or other degrees in the U.S. or U.K., and therefore had been exposed to the prevailing wisdom that U.S. law firms, and those modeled on their practices, provided the best corporate legal services.<sup>31</sup> Even lawyers in these emerging economies who may not have personally subscribed to the view that the U.S. model was the best way to deliver corporate legal services had good reason to believe that the multinational clients that they sought to serve did, and that it would therefore behoove them to pattern their own practices along these familiar lines.<sup>32</sup>

In Part III, we will examine how successful corporate lawyers in India, Brazil, and China have been in creating U.S. style corporate law firms. But before doing so, it is important to understand how the U.S. model that these lawyers sought to emulate evolved in the first instance.

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26. See *infra* Part III.

27. *Id.*

28. *Id.*

29. See David M. Trubek, Yves Dezalay, Ruth Buchanan & John R. Davis, *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407, 432–34 (1994).

30. *Id.*

31. See Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1, 15 (2011).

32. See David B. Wilkins, *Is the In-House Counsel Movement Going Global? A Preliminary Assessment of the Role of Internal Counsel in Emerging Economies*, 4 WISC. L. REV. 251, 264 (2012).

## II. FROM “LAW FIRM-LED” TO “CLIENT-LED”: THE “CRAVATH SYSTEM,” THE “INSIDE COUNSEL REVOLUTION,” AND THE EVOLUTION OF THE U.S. CORPORATE LEGAL ECOSYSTEM (1900-2008)

When lawyers in India, Brazil, and China were looking to the U.S. corporate legal ecosystem for inspiration in the years following the global shift, few were aware of the circumstances that had allowed the most visible manifestation of this system—U.S. corporate law firms—to develop and thrive in the first decades of the twentieth century. Nor were they aware of the challenge that these law firms were now facing as that century drew to a close. As we indicate below, however, both parts of this U.S. history would prove to have important implications for the subsequent development of the emerging corporate legal ecosystems in each of these emerging economies.

### A. *The “Golden Age” of the Large Law Firm (circa 1900-1980)*

Although large corporate law firms have become the defining symbol of the U.S. corporate legal ecosystem—and, in the eyes of many, the U.S. legal profession as a whole—it is important to remember that law firms of this kind are a relatively recent invention, dating only to the turn of the twentieth century.<sup>33</sup>

Building on the practices of the law firm that would eventually become Cravath Swaine & Moore, a handful of New York lawyers began to develop a new kind of law firm that differed significantly from the sole proprietorships and small and loosely organized law firms that typified even the most sophisticated nineteenth century legal practice.<sup>34</sup> As the socio-legal scholars Marc Galanter and Thomas Palay document, three features would come to define the image—if not always the reality—of this new form of legal practice for the remainder of the twentieth century.<sup>35</sup> First, the business of these new law firms would be big business, with the goal of providing a full range of legal services to corporate clients.<sup>36</sup> Second, the lawyers working in these firms would be hired exclusively from top law schools, as opposed to laterally from other law firms.<sup>37</sup> These “associates” as they would come to be called, would be developed through a process of apprenticeship, after which

33. For a history of the development of “big” law firms in the U.S., see MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991). Prior to this period, most U.S. lawyers practiced alone or in very small informal groupings serving a mix of individuals and businesses, large and small. See generally RICHARD ABEL, *AMERICAN LAWYERS* (1989).

34. See ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* (1969) (describing the Cravath System). For the definitive history of the Cravath firm, see ROBERT SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS: 1819-1948* (1949).

35. See MARC GALANTER & THOMAS PALAY, *The Golden Age of the Big Law Firm*, in *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM*, *supra* note 33, at 20, 20-22.

36. *Id.*

37. *Id.*

the “best” would be asked to stay and become permanent members of the firm, or “partners,” and the rest required to leave the organization to find other employment. Third, all partners shared more or less equally in the firm’s profits and losses, and were entitled to participate in firm decision-making.<sup>38</sup>

The “Cravath System,” as this set of interlocking organizational commitments has come to be called, proved to be very successful. By the 1960s, law firms expressly modeled on the Cravath System were located in every major American city—and more than a few smaller ones as well—and were widely considered to be at the pinnacle of the profession.<sup>39</sup> Although many factors undoubtedly contributed to this success, a key factor was how well “aligned” the three core internal elements of the Cravath System were with the relevant client and labor markets in which these firms operated.<sup>40</sup> With respect to clients, the first half of the twentieth century witnessed the creation of brand new areas of public and private law governing the conduct of corporations.<sup>41</sup> Yet these entities had little or no internal legal resources to address the legal issues that these new laws and regulations created.<sup>42</sup> The Cravath System was well designed to take advantage of this exploding demand by promising to provide a full suite of legal practices that would handle all of a company’s legal needs.<sup>43</sup> At the same time, a growing number of new law schools were turning out bright young law school graduates who had been taught to “think like a lawyer” but who had virtually no training in how to “be” lawyers.<sup>44</sup> These recent graduates had relatively few other options for obtaining employment other than “hanging out a shingle” and learning to practice law on their own, or to work in poorly paid—or even unpaid—and generally unsupervised apprenticeships with established lawyers.<sup>45</sup> The steady stream of corporate work of various degrees of complexity provided by their regular clients allowed Cravath System law firms the freedom to pay these young lawyers a respectable salary, and to maintain the internal training, promotion, and governance practices that ensured that

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38. *Id.* at 30–31.

39. *Id.*

40. On the importance of alignment, see John Mawdsley & Deepak Somaya, *Strategy and Strategic Alignment in Professional Service Firms*, in *THE OXFORD HANDBOOK OF PROFESSIONAL SERVICE FIRMS* 213 (Laura Empson et al. eds., 2015) (illustrating that successful organizations are ones whose strategy is aligned with both their external and internal environments).

41. See Robert W. Gordon, *The Ideal and the Actual in the Law: Fantasies and Practices of New York City Lawyers, 1870-1910*, in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA* 51, 51–67 (Gerard W. Gawalt ed., 1984) (discussing how the explosion of new laws and regulations governing business fueled the demand for Wall Street lawyers).

42. See Ronald Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 *MD. L. REV.* 869, 900–02 (1990).

43. *Id.* at 902.

44. GALANTER & PALAY, *supra* note 33.

45. *Id.*

there would be an abundance of talented graduates from the best law schools eager to join these organizations—with clients absorbing most of the cost.<sup>46</sup>

By the 1960s, this alignment between Cravath System law firms and the client and labor markets within which they operated had created a distinct “corporate hemisphere” of legal practice made up of Cravath System law firms, corporate clients, and the graduates of top law schools. Figure 1 presents a stylized depiction of these three elements.

FIGURE 1: MICRO-GEARS OF THE CORPORATE LEGAL ECOSYSTEM

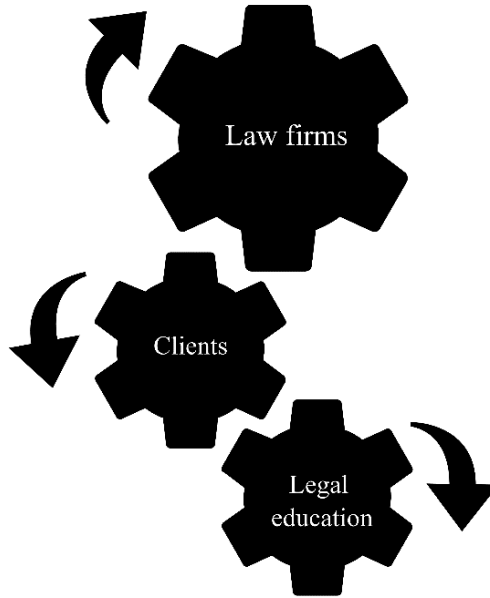


As we indicated in the Introduction, we present these three components of this micro-level ecosystem as interlocking “gears” to capture the dynamic relationship among these elements. The proceeding history illustrates this dynamic relationship. By the middle decades of the twentieth century—a period that Galanter and Palay call the “Golden Age” of the large law firm—Cravath System law firms were firmly in control of both the demand for their services and the supply of labor of elite law school graduates.<sup>47</sup> We therefore call this the “Law Firm-Led” period of the American corporate legal ecosystem. Figure 2 depicts this relationship with the “Law Firm” gear playing the leading role.

46. See David B. Wilkins & Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1629 (1998).

47. See GALANTER & PALAY, *supra* note 33, at 20. Following Galanter and Palay, we place quotation marks around “Golden Age” to underscore that, given the near complete exclusion of women and religious, racial, and ethnic minorities from “Cravath System” law firms for most of this period, this era was only “golden” for the subset of white Anglo-Saxon Protestant men of means who were able to work in these organizations. See also Marc Galanter, *Lawyers in the Mist*, 100 DICK. L. REV. 549 (1995–96) (noting the tendency to sentimentalize the “golden age”).

FIGURE 2: LAW FIRM-LED MICRO-LEVEL GEARING



In the last decades of the twentieth century, this Law Firm-Led model of the corporate legal ecosystem spread to Europe.<sup>48</sup> Just as this expansion of Cravath System law firms in the U.K. and Europe was taking full flight, however, the underlying alignment that had allowed these firms to flourish in the U.S. was beginning to unravel. This unraveling would produce a dramatic restructuring of the micro-level corporate legal ecosystem in the U.S.—and eventually in the U.K. and Europe as well.

*B. The Inside Counsel Revolution and the Re-Gearing to a “Client-Led” Corporate Legal Ecosystem*

As U.S. large law firms proliferated and became more profitable, their growth produced developments in both the client and labor markets that shifted the balance of power among the key elements of the system.<sup>49</sup> The change started with the client gear. As legal costs soared, companies began to turn to sophisticated general counsels (GCs) to upgrade their internal legal expertise.<sup>50</sup> Operating on the basic premise that it is cheaper to buy

48. See Marc Galanter & Simon Roberts, *From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century*, 15 INT’L J. LEGAL PROF. 143, 146–47 (2008) (describing the diffusion of Cravath System law firms to the U.K.); see also Sigrid Quack, *Recombining National Variety: Internationalisation Strategies of American and European Law Firms*, 5 J. STRATEGY & MGMT. 154 (2012) (describing a similar process in continental Europe).

49. Wilkins, *supra* note 32, at 253.

50. *Id.*

wholesale than retail, companies began to hire lawyers from leading law firms and to charge them with building up the company's internal legal capacity.<sup>51</sup> Once installed, these GCs began to take more of the company's legal work in-house, monitor outside firms for wasteful practices, and break up the long-standing relationships between the company and its preferred outside law firm by requiring firms to compete for every new piece of significant business.<sup>52</sup> Indeed, many companies began to perceive their internal lawyers as not only cheaper than those they hired from outside firms, but better because of their understanding of the company's business, allowing in-house counsel to give more business focused legal advice.<sup>53</sup>

By the turn of the twenty-first century, this "inside counsel revolution," as Ben Heineman, former general counsel of General Electric and widely perceived as one of the "revolution's" leading architects, has labeled this phenomenon,<sup>54</sup> had produced six important changes to the in-house legal function. When compared to what these departments looked like during the "Golden Age" of the Law Firm-Led period, in-house legal departments were significantly larger,<sup>55</sup> staffed by lawyers with better qualifications,<sup>56</sup> had near complete control over the legal budget,<sup>57</sup> were much more likely to have the GC report to the CEO and to be an important member of the company's senior management team,<sup>58</sup> were important and respected within the legal profession generally,<sup>59</sup> and who were key spokespersons in public policy debates for their organizations, and for corporate interests generally.<sup>60</sup>

These changes in the client market for corporate legal services helped to fuel—and were accentuated by—a parallel set of changes in the labor market for corporate lawyers. As the number and size of Cravath System law firms grew dramatically during the latter decades of the twentieth century, with many supporting multiple offices in dozens of cities in the U.S., and increasingly around the world, the competition to acquire top talent dra-

51. See Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057, 1060 (1997).

52. *Id.* at 1070.

53. *Id.*

54. BEN W. HEINEMAN, JR., *THE INSIDE COUNSEL REVOLUTION: RESOLVING THE PARTNER GUARDIAN DILEMMA* (2016).

55. George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N. CAR. L. REV. 1635 (2006).

56. *Id.*

57. See Steven L. Schwarcz, *To Make or to Buy: In-House Lawyering and Value Creation*, 33 J. CORP. L. 497 (2008); Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869, 897 (1990).

58. See HEINEMAN, *supra* note 54, at 335–57; John C. Coates, Michele M. DeStefano, David B. Wilkins & Ashish Nanda, *Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 LAW & SOC. INQUIRY 999, 1008–09 (2011).

59. Wilkins, *supra* note 32, at 201.

60. See Ben W. Heineman Jr., *GC's Critical Public Policy Role in an Age of Upheaval*, ACC DOCKET (March 22, 2017), <https://perma.cc/BS95-ZDS5>. See generally Tanina Rostain, *General Counsel in the Age of Compliance: Preliminary Findings and New Research Questions*, 21 GEO. J. LEGAL ETHICS 465, 482 (2008) (discussing the GC's role in compliance).

matically intensified.<sup>61</sup> Moreover, law firms were now also competing with general counsel offices who had begun to hire mid-level to senior lawyers from law firms to fill their expanding legal departments.<sup>62</sup> Finally, by making it clear, in a phrase often employed by general counsels, that “we hire lawyers not firms,” clients helped to break down the long-standing taboo that prevented lawyers from moving from one large law firm to another, as law firms scrambled to find lawyers with the skills and business savvy that clients wanted to hire.<sup>63</sup> The result was a booming “lateral” market for partners and even associates willing to sell their talents to the highest bidder.<sup>64</sup> To hold on to their top lawyers—or to acquire new ones on the open market—many law firms moved away from the “lock-step” model of egalitarian compensation to an “eat-what-you-kill” system in which partners, and even some associates, were paid on the basis of the revenue that they generated for the firm.<sup>65</sup>

The net result of these interconnected changes has been to turn the Law Firm-Led ecosystem of the “Golden Age,” where Cravath System law firms were the dominant gear, on its head. Although the three elements of the ecosystem—large law firms, clients, and legal education—remained unchanged, their relative importance and internal characteristics have been altered significantly, with clients now driving developments in the other two gears. We therefore call this the “Client-Led” period. Figure 3 depicts this new reality, with the “Client” gear replacing the “Law firm” gear at the top of the ecosystem.

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61. See William D. Henderson, *From Big Law to Lean Law*, 38 INT'L REV. L. & ECON. 5 (2014).

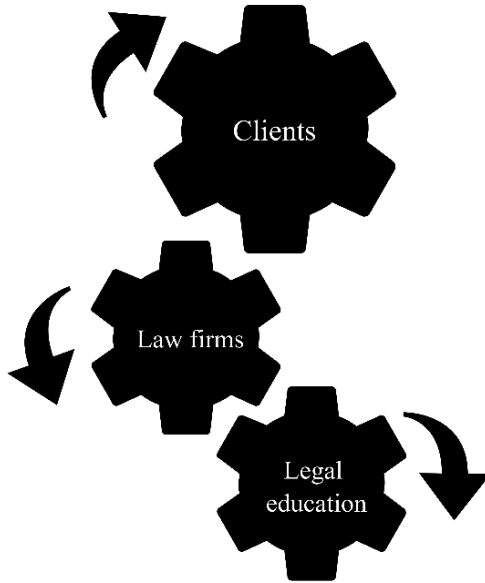
62. Wilkins, *supra* note 32, at 253.

63. *Id.* at 258–59. See also Daniel J. DiLucchio, “We Hire the Lawyer, Not the Law Firm”—Really?, REP. TO L. MGMT., Apr. 2009, <https://perma.cc/5882-WSMV>. As DiLucchio’s use of “Really?” at the end of his title implies, he is skeptical about how often GCs actually abide by this oft-repeated claim. Although the trend toward “convergence” which has led many companies to reduce the number of law firms they engage for “important” work supports DiLucchio’s claim that law firm relationships are stickier than the catch phrase “we hire lawyers not firms” would suggest, there can be little doubt that GCs have significantly destabilized the labor market for partners and even associates by moving work from one law firm to another—often to follow a lawyer who has moved to a new firm. See David B. Wilkins, *Team of Rivals? Towards a New Model of the Corporate Attorney Client Relationship*, 78 FORDHAM L. REV. 267, 280–85 (2010).

64. See generally William D. Henderson & Luke Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000–2007: The Emerging Equilibrium for Corporate Law Firms*, 22 GEO J. LEGAL ETHICS 1395 (2009).

65. David B. Wilkins, *Partner Schmartner!* EEOC v. Sidley Austin Brown & Wood, 120 HARV. L. REV. 1264, 1276 (2007); William D. Henderson, *An Empirical Analysis of Single Tier vs. Two Tier Partnerships in the Am. Law.* 2000, 84 N.C. L. REV. 1691, 1744–45 (2006).

FIGURE 3: CLIENT-LED MICRO-LEVEL GEARING



These changes had become widespread in the United States—and increasingly in the U.K. and Western Europe—by the time India, Brazil, and China were undergoing their global shift.<sup>66</sup> However, because much of this transformation took place below the surface it was harder for those outside the U.S. and U.K. ecosystems to detect the degree to which the actual practices of law firms, clients, and legal education diverged from the ideal elements of the Law Firm-Led period.<sup>67</sup> It was this confusing, contradictory, and fluid pastiche that lawyers in India, Brazil, and China confronted when they sought to build a new corporate legal ecosystem in their own countries in the years following the global shift.

### III. THE RISE OF THE CORPORATE LEGAL SECTOR IN INDIA, BRAZIL, AND CHINA

In Part I, we argued that the global shift that occurred in India, Brazil, and China in the 1990s triggered a set of developments conducive to the

66. For the growth of the in-house counsel movement in the U.K., and to a lesser extent in continental Europe, and the corresponding shift of power toward the “client” gear, see Wilkins, *supra* note 32, at 263–64 (noting the growth of sophisticated in-house legal departments in the U.K. and Europe, particularly in large companies).

67. See Lisa Rohrer & James Jones, *Reforming Partner Compensation at Mattos Filho*, HARVARD LAW SCHOOL CASE STUDIES PROGRAM (Nov. 2015), at 9–10 (describing top Brazilian lawyers seeking to understand how the best law firms were organized visiting a few New York firms and concluding that all the best firms were lockstep).



formation of a distinct corporate legal hemisphere in each country, and that U.S. models of corporate legal practice were likely to play an important role in shaping this process. In this Part, we present evidence from the GLEE Project's national studies of these countries to test these two hypotheses. We divide our analysis into two loose time periods: the Formative Period (circa 1990-2007), in which the corporate legal ecosystem in each country first developed, and the Transformative Period (2008-2015/18), when these markets began to mature and transform into their current structure.<sup>68</sup> As we will see, the evolution from Formative to Transformative in each jurisdiction has been influenced—but far from fully determined—by the prior evolution of the U.S. corporate legal ecosystem from Law Firm-Led to Client-Led more than a decade before.

A. *The Formative Period (circa 1990-2007): The Rise of the Corporate Bar and the Diffusion and Adaptation of the Cravath System in a Law Firm-Led Ecosystem*

1. *Global Diffusion: The Influence of the Cravath System*

As predicted, our national studies document a dramatic growth in a distinct corporate legal sector in India, Brazil, and China in the years immediately following the global shift. Although all three jurisdictions have responded to the new demand created by this market opening by allowing—either *de jure* or *de facto*—some penetration by foreign lawyers into their domestic legal markets, a subject we examine in depth in Section B,<sup>69</sup> each has also developed a small, but significant, indigenous corporate legal ecosystem. Moreover, as was true in the United States when its corporate legal ecosystem developed in the early years of the twentieth century, each of these emerging economy corporate sectors was initially dominated by law firms expressly modeled on the Cravath System.

This phenomenon is easiest to see with respect to China. In China, virtually the entire legal profession was dismantled during the Cultural Revolution.<sup>70</sup> Beginning in the late 1980s and early 1990s as Deng Xiaoping and his successors slowly began to open the Chinese economy, a new legal sector began to emerge, including the rise of law firms focusing on corporate legal work.<sup>71</sup> As Liu and Wu write in their GLEE chapter on the development of Chinese law firms, during the 1990s the Chinese Ministry of Justice

[M]ade a series of policies to encourage the development of large partnership law firms with a corporate structure. The intention of

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68. The different end dates of this latter period reflect differences in when we ended data collection for the three studies: India 2015, Brazil 2017, China 2018.

69. See *infra* Section B.1.b.

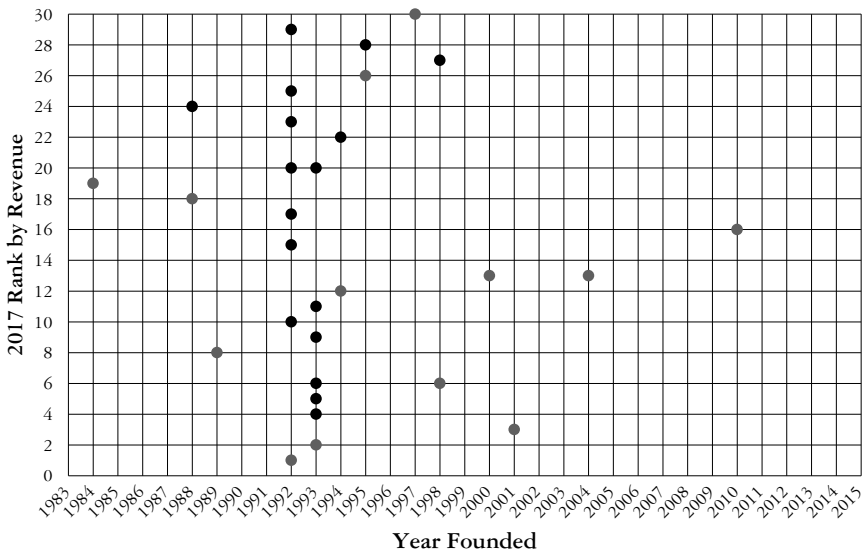
70. Sida Liu, David Trubek & David B. Wilkins, *Mapping the Ecology of China's Corporate Legal Sector: Globalization and its Impact on Lawyers and Society*, 3 *ASIAN J. L. & SOC'Y* 273, 280 (2016).

71. *Id.*

such policies was to change the traditional commission-fee (*ticheng*) system widely adopted in Chinese law firms in order to meet the demand of global convergence after China's WTO accession.<sup>72</sup>

Figure 4, which documents the founding dates of China's top 30 law firms by revenue as of 2017, demonstrates the dramatic results of these policies. Although one of China's top 30 law firms dates back to 1984, all of the rest were founded after 1988, with the overwhelming majority coming into existence in the early 1990s.

FIGURE 4—TOP 30 CHINESE LAW FIRMS BY REVENUE (2017)<sup>73</sup>



Moreover, as the rankings in Figure 4 underscore, the law firms that were created during this period would go on to become some of China's most important: Jun He in 1989, Dacheng and Haiwen & Partners in 1992, King & Wood, Fangda, Zhong Lun, and DeHeng in 1993, Grandall and Links in 1998, and AllBright in 1999.

Finally, these new corporate law firms were expressly designed to mimic the Cravath System—at least on the surface. Emblematic of this process was the founding of King & Wood in 1993, a firm whose very name—there was never a Mr. King or a Mr. Wood connected with the firm—was invented as

72. Sida Liu & Hongqi Wu, *The Ecology of Organizational Growth: Chinese Law Firms in the Age of Globalization*, in *THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 8 (forthcoming 2020) (article manuscript at 10) (on file with authors).

73. Ben Seal, *The 2018 China 45 Ranked by Revenue*, LAW.COM (Sept. 25, 2018, 6:00 PM), <https://perma.cc/6GCJ-BVWD>.

a means of creating international legitimacy in a market dominated by firms with names like Allen & Overy and Davis Polk.<sup>74</sup> Since its founding, King & Wood has self-consciously attempted to emulate the Cravath System in terms of its work, clients, and culture. Thus, King & Wood has always specialized in high-end international business transactions, serving both Chinese and foreign clients.<sup>75</sup> Internally, the firm created a classically Cravath System internal labor market made up of “partners” and “associates,” and even purported to adopt a lockstep compensation system.<sup>76</sup>

Nor is King & Wood alone in attempting to model itself on the Cravath System. As Liu and Wu note, Haiwen, a leading Chinese firm since the 1990s specializing in initial public offerings, also “closely resembles the Cravath System in which associates are drawn from a few elite law schools and then carefully nurtured to partnership in the firm.”<sup>77</sup> Other major Chinese firms during this Formative Period adopted similar policies.<sup>78</sup>

Our research reveals a similar pattern in both India and Brazil, albeit one that also reflects the fact that these latter two emerging economies had commercial law firms that predated each country’s global shift. Figure 5, which shows India’s 40 highest ranking law firms according to RSG Consulting, reflects both the general pattern and India’s distinct history. As Figure 5 indicates, in the years following India’s global shift after the 1991 balance of payments crisis, there was an explosion in the number of important corporate law firms.

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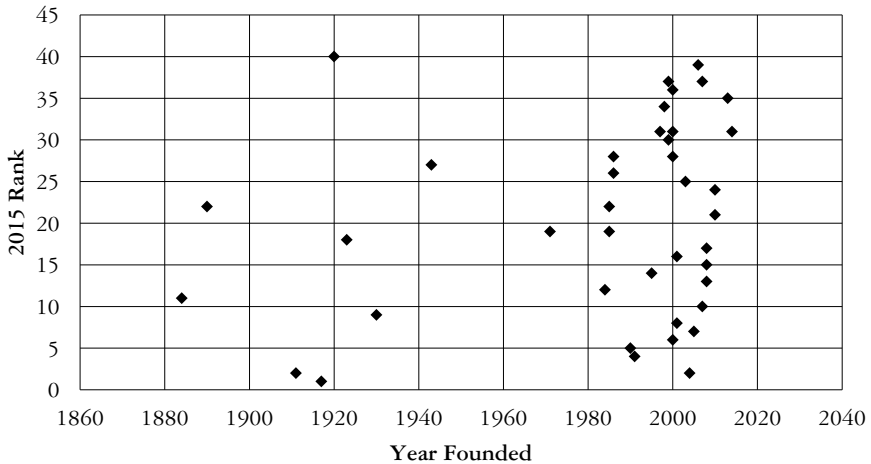
74. Leigh Jones, *What's in a Name? For Chinese Firms Bright is Often Right*, REUTERS (Feb. 8, 2012), <https://perma.cc/7DSL-KTMX> (noting that “[t]here was no Mr. King and no Mr. Wood when the firm was founded in 1993,” and that the name, like those of many other Chinese firms, was selected to be “more comforting than Chinese names to international clients and Western law firms seeking to affiliate with them”).

75. Liu & Wu, *supra* note 72, at 12–15.

76. *Id.*

77. *Id.* at 15.

78. *Id.* at 15, 25.

FIGURE 5: TOP 40 INDIAN LAW FIRMS BY FOUNDING YEAR<sup>79</sup>

AZB & Partners, the second highest ranking firm in Figure 5, is typical of this new breed of Indian law firms. The firm’s founder, Zia Mody, studied at both Cambridge University and Harvard Law School, before working for the U.S. law firm of Baker & McKenzie in New York City “where she learned firsthand about the Cravath Model of the law firm and the corporate transactional work on which it is based.”<sup>80</sup> Although she returned to India to pursue a traditional litigation practice, when the Indian economy began to open up after 1991 she started getting calls from friends and colleagues from the U.S. and the U.K. asking for her help in taking advantage of these new market opportunities. As she explained in a 2012 interview:

After about ten years of wearing my band and gown every day, India started opening up to foreign investment, new policies and laws were being formulated, my friends and clients [from my time studying and working in the United States and United Kingdom] started referring foreign clients to me who wanted to invest into India. So, much to my father’s dismay and eternal regret, I hung up my gown and switched to table practice.<sup>81</sup>

A few years later, Mody joined with two other partners to create a law firm expressly patterned on the Cravath System, including specializing in corporate work such as mergers and acquisitions and initial public offerings, and

79. Ashish Nanda, David B. Wilkins & Bryon Fong, *Mapping India’s Corporate Law Firm Sector*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 74. Firms ranked 1–40, with “1” being the top ranked firm.

80. *Id.* at 79.

81. *In Conversation with Zia Mody*, *LEGAL ERA* (Nov. 12, 2012).

hiring lawyers straight out of law school with the promise that the best might become “partners” in the firm.<sup>82</sup>

The 65 percent of India’s top law firms that were formed in the years following India’s global shift followed a similar pattern. Almost all of these new firms presented themselves as “full-service,” providing a wide range of services to multinational companies and India’s new private and public corporate actors.<sup>83</sup> All were staffed with bright young lawyers who had been educated at the best law schools in India and abroad, some of whom had also worked at foreign law firms.<sup>84</sup> This knowledge and experience proved valuable, as much of the work in India during this period involved cross-border issues and multinational clients.<sup>85</sup>

But it was not just new firms that understood the importance of adopting—or at least appearing to adopt—Cravath System practices. Two of India’s most successful law firms in the 2015 RSG rankings—Amarchand & Mangaldas & Suresh A. Shroff & Co. and Khaitan & Co.—were founded in 1917 and 1911 respectively, decades before India’s global shift. As Nanda, Wilkins, and Fong report, however, in the 1990s, both of these firms embraced “many of the primary attributes—multiple offices and practice areas, structured recruiting, promotion, compensation, and formal governance structures—traditionally associated with U.S. law firms organized on the Cravath Model.”<sup>86</sup> As the authors conclude, “by deploy[ing] their ‘new’ model of legal practice to disrupt existing patterns of hierarchy, both internally within their firms and externally on behalf of their corporate clients,” both Amarchand and Khaitan & Co. were able to move beyond their historic roots and succeed in India’s new post-global shift legal market.<sup>87</sup>

Many of India’s most prestigious pre-global shift commercial law firms, however, were not able to successfully make this transition. By the middle of the nineteenth century, the British had established commercial law firms in India to serve the growing needs of companies doing business in the country.<sup>88</sup> When India liberalized its economy in 1991, these British Raj firms were, without question, the leading commercial law firms in India.<sup>89</sup> But as Nanda, Wilkins, and Fong report, many of these firms refused to accept the

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82. *Id.* We include quotation marks around the word partner to underscore that what it meant to be a partner at AZB or any other Indian law firm during this period was not necessarily the same as what it meant in the traditional Cravath System. We return to these differences in the next section. *See infra* Section III.B.

83. Nanda, Wilkins & Fong, *supra* note 79, at 104.

84. *Id.* at 77–81.

85. *Id.*

86. *Id.* at 75.

87. *Id.*

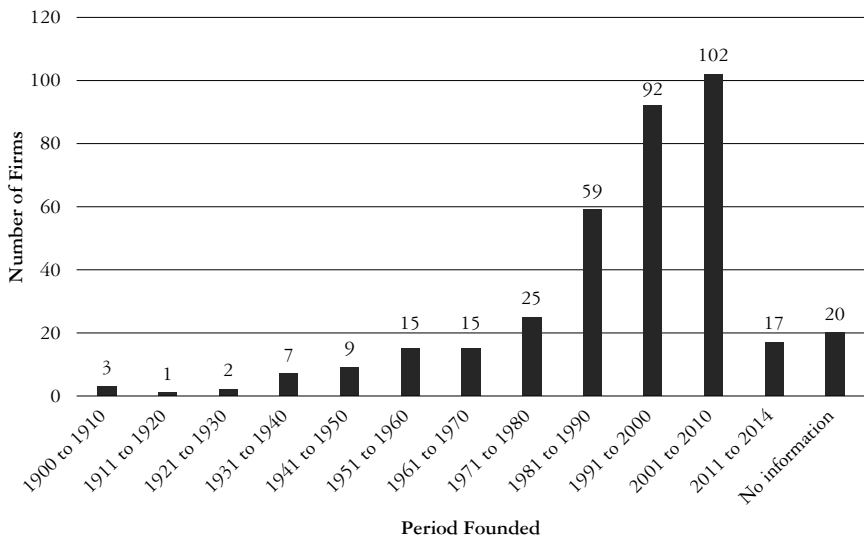
88. Arpita Gupta, Vikramaditya S. Khanna & David B. Wilkins, *Overview of Legal Practice in India and the Indian Legal Profession*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 44–45.

89. *See* Shloka Nath, *India’s Biggest in Law, Amarchand Mangaldas*, *FORBES INDIA* (July 26, 2010, 6:51 AM), <https://perma.cc/DUK2-VL9X>.

new Cravath System practices, instead choosing to “cling to the gentlemanly understanding of law as a noble profession in which a handful of distinguished senior partners dispensed sage advice to their established Indian clients, with the aid of juniors who were seen but not heard, that had been the norm in the imperial era in which they were formed.”<sup>90</sup> As a result, the India report concludes, “these firms left the door open for a new entrepreneurial group of Indian lawyers who were willing to embrace new forms of practice and managerial technologies of the new Cravath Model.”<sup>91</sup>

Our research uncovered a similar pattern in Brazil, although one that again underscores the importance of local factors. As Figure 6 demonstrates, between 1991 and 2000, there were 92 corporate law firms founded in Brazil—the same number that were founded between 1900 and 1980.<sup>92</sup>

FIGURE 6: NUMBER OF CORPORATE FIRMS IN BRAZIL  
BY FOUNDING DECADE<sup>93</sup>



As was the case in India, it is not just that there was a rapid expansion in the number of corporate law firms in the years following Brazil’s global shift. It is also that many of these firms were expressly modeled on the Cravath System.<sup>94</sup> As Gabbay, Ramos, and Sica write in their study of Brazilian corporate law firms:

90. Nanda, Wilkins & Fong, *supra* note 79, at 69.

91. *Id.*

92. Gabbay, Ramos & Sica, *supra* note 18, at 38.

93. *Id.*

94. *See id.* at 42.

Prior to the 1990s, the typical Brazilian corporate law firm was relatively small. A handful of lawyers joined together to form a firm, in many cases led by a “notable”—a lawyer who was well known in the community based on the notable’s legal knowledge and skill. . . . The firms were informally managed with clients developed through social contacts and the reputation of the leading partner—often the notable. The firm’s practice areas were focused on the lead lawyer’s expertise.<sup>95</sup>

All of this changed as a result of liberalization, and with it privatization, during which whole new areas of distinctively corporate and business law emerged—e.g., capital markets, infrastructure, telecommunications, energy, arbitration, competition, and M&A.<sup>96</sup> There was also an influx of new clients, domestic and foreign, seeking to enter previously closed market spaces.<sup>97</sup> Gabbay, Ramos, and Sica note that in the search for new clients, these firms began offering a full range of legal services, not just those linked to the expertise of a single notable lawyer.<sup>98</sup> Moreover, the firms began to adopt internal structures, including around hiring, promotion, and governance, that mimicked the traditional Cravath System.<sup>99</sup>

Unlike in India, however, where the most prominent pre-global shift firms had trouble adapting to the opportunities presented by these economic changes,<sup>100</sup> in Brazil the most prominent corporate law firms established in the years prior to Brazil’s global shift were able to flourish and grow after liberalization.<sup>101</sup> Indeed, Brazil’s most prestigious law firm, Pinheiro Neto (Pinheiro) is also the oldest firm listed in Figure 6, tracing its founding back to the 1940s.<sup>102</sup>

The fact that Pinheiro, and the other older Brazilian law firms were able to maintain their dominant status underscores how a mix of global and local elements shaped the evolution of the Brazilian corporate legal market in the decade following the country’s global shift. Unlike British Raj firms in India, Pinheiro and a few other traditional Brazilian commercial firms had embraced core tenets of the Cravath System prior to the global shift. As Gabbay, Ramos, and Sica note, these proto-Cravath System firms primarily catered to foreign clients, and had often been founded by “expatriates with experience in large law firms in the United States who settled in Brazil, or Brazilians with overseas experience.”<sup>103</sup> When Brazil made the transition

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95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 43.

99. *See id.*

100. Nanda, Wilkins & Fong, *supra* note 79, at 72.

101. Gabbay, Ramos & Sica, *supra* note 18, at 41.

102. *Id.* at 40.

103. *Id.* at 42. *See also* Jayanth K. Krishnan, Vitor M. Dias & John E. Pence, *Legal Elites and the Shaping of Corporate Law Practice in Brazil: A Historical Study*, 41 *LAW & SOC. INQUIRY* 346 (2016).

from military to civilian rule, and began to further open its economy, it was relatively easy for these firms to double down on their strategy of adopting Cravath System practices and thus compete effectively with new Brazilian firms that were adopting similar policies.<sup>104</sup>

The three national reports, therefore, confirm the founding—or re-tooling—of a number of important Cravath System law firms in India, Brazil, and China in the years following each country’s global shift. These reports also underscore, however, that notwithstanding outward appearances, many of these indigenous corporate firms also incorporated important patterns and practices that deviated significantly from this global template. To see these differences, one must look beyond the outward trappings of these new Cravath System law firms to see how these organizations actually work.

## 2. *Local Adaptation: Creating Hybrid Law Firms*

Although Pinheiro Neto’s early embrace of Cravath System practices undoubtedly played a key role in the firm’s ability to seamlessly transition to the new corporate legal ecosystem in the years following the global shift, the firm was also aided by the continuing importance of Brazil’s social structure. As indicated above, well before the 1990s there were elite lawyers in Brazil with international connections and ties to business, and economic resources.<sup>105</sup> This elite typically spoke English or French, had foreign degrees, and was well-connected with foreign multinational companies.<sup>106</sup> As the corporate legal market expanded and globalized, these internationalized legal elites began commanding more power within the Brazilian bar, including its formal bar organizations.<sup>107</sup> It is therefore not surprising that many of these “notables”—as Gabbay, Ramos, and Sica refer to these traditional legal elites—were able to transition their social, economic, and political capital from the older style of law practice, dominated by making appearances before the country’s high courts and issuing opinions on technical issues of legal interpretation, to the new style of transactional and business-focused lawyering increasingly demanded by foreign and domestic clients.<sup>108</sup>

In their study of the “Big 5” law firms that would come to dominate India’s corporate legal market in the Formative Period following that coun-

104. David B. Wilkins & Vikramaditya Khanna, *South by Southeast: Comparing the Development of In-House Legal Departments in Brazil and India*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 7, at 117.

105. Frederico de Almeida & Paulo André Nassar, *The Ordem dos Advogados do Brasil and the Politics of Professional Regulation in Brasil*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 7, at 188.

106. *Id.*

107. *See id.* at 182 (noting that in the OAB 1990s, “[o]ld-style lawyering, based on independent solo professionals and family firms specializing in litigation, was being replaced by big law firms that offered a diverse set of legal services, focused on business matters, and employed an advisory, preventive law approach”).

108. Gabbay, Ramos & Sica, *supra* note 18, at 41.



try's global shift, Nanda, Wilkins, and Fong found a similar continuity in the importance of traditional social hierarchies. As they report, the founders of all five of India's top law firms had important roots in India's traditional legal elite before the global shift.<sup>109</sup> As their study documents, these family ties continued to play an important role in each firm's development. For instance, ownership and control in each of India's Big 5 remained heavily concentrated in the founders and their families throughout the Formative Period.<sup>110</sup> In fact, as Krishnan and Thomas report in a subsequent chapter, this deviation from traditional Cravath System practices prohibiting nepotism was a key factor leading many talented Indian lawyers to "peel off" from the Big 5 to establish "second generation" corporate firms that purported to hew even more closely to the ideals of the Cravath System.<sup>111</sup> As we indicate below, these second generation firms have played an important role in moving the Indian corporate legal market from the Law Firm-Led ecosystem of the Formative Period to the Client-Led ecosystem of the Transformative Period.<sup>112</sup>

In addition to these traditional family and class hierarchies, the GLEE project's research in India also highlights the extent to which deeply embedded caste and communal structures continued to play a critical role in the formation of India's corporate legal ecosystem in the years following the global shift. As the Introduction to the India national report underscores, India has "an embedded social structure based on caste, clan, and kinship networks that operates alongside formal mechanisms of governance and exchange."<sup>113</sup> As Gupta, Khanna, and Wilkins go on to point out, these communal networks have played a key role in the development of the Indian business community for hundreds of years.<sup>114</sup> It is therefore not surprising that these communal ties played an important part in shaping India's emerging corporate legal sector during the years following the global shift.

The national study of the Indian corporate legal market confirms the importance of these connections. As Nanda, Wilkins and Fong report, a key

109. See Nanda, Wilkins & Fong, *supra* note 79, at 77 (noting that two oldest firms—Amarchand Mangaldas and Khaitan & Co—trace their roots back through several generations of prominent lawyers, while the founders of the three firms established around the time of the global shift—AZB & Patners, JSA, and Luthra & Luthra—all came from prominent legal families: Zia Mody is the daughter of India's famed Attorney General Soli Sorabjee; Jyoti Sager, the founder of JSA, is the nephew of Dr. Vidya Sagar, who is considered by many to have been the father of intellectual property law in India; and Rajiv Luthra, who practiced as a tax accountant in his father's firm before going to law school and starting his own firm.)

110. *Id.* at 84–90.

111. See Jayanth K. Krishnan & Patrick W. Thomas, *Being Your Own Boss: The Career Trajectories and Motivations of India's Newest Corporate Lawyers*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 217, 220–24.

112. See *supra* Section II.B.3.

113. David B. Wilkins, Vikramaditya S. Khanna & David M. Trubek, *An Introduction to Globalization, Lawyers, and Emerging Economies: The Case of India*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 16.

114. See Gupta, Khanna & Wilkins, *supra* note 88, at 42.

factor in the success of Amarchand Mangaldas was the long standing and deep relationship between the Shroff family that founded the firm and prominent Gujarati business leaders such as Mukesh Ambani, founder of Reliance Industries and reputed to be India's richest person.<sup>115</sup> As the authors go on to document, "[t]he success of Khaitan & Co. can similarly be traced to its long history in Kolkata and its connections to the Marari business community in that region."<sup>116</sup>

In China, it is party affiliation and personal connections to the state that have proven critically important. Many of China's corporate law firms founded in the early 1990s, including King & Wood and Dacheng, were privatized from government legal offices with the founders being party members.<sup>117</sup> Indeed, as Liu and Wu observe, most corporate law firms have internal Communist Party committees.<sup>118</sup> Although the authors go on to observe that "only a small percentage of Chinese corporate lawyers are party members, and those committees serve merely a symbolic function and have limited influence on the firm's daily operation,"<sup>119</sup> the very existence of a party structure within these organizations underscores that notwithstanding outward appearances, the Chinese law firms that developed in the years following the global shift differed significantly from the traditional Cravath System model. As a report from the U.K. legal publication *The Lawyer* observes:

The prevailing view of many Chinese firms held by their international rivals is that they are not financially integrated, lack any real partnership and that most operate effectively as barrister's chambers, where only costs are shared and numerous offices of the same firm can often be on the wrong end of patchy quality service and an inconsistent experience.<sup>120</sup>

In sum, the corporate law firms that emerged in India, Brazil, and China during this formative period are an amalgamation of global structures and practices expressly patterned on the Cravath System and local features responding to the social, cultural, and political realities of each jurisdiction. As each national report confirms, these hybridized—or "glocal," as Silver, Phelan, and Rabinowitz have labeled hybrid models in the legal profession<sup>121</sup>—law firms dominated the corporate legal ecosystems of each jurisdiction during the Formative Period.

115. See Nanda, Wilkins, and Fong, *supra* note 79, at 78; see also Nath, *supra* note 89.

116. Nanda, Wilkins & Fong, *supra* note 79, at 78.

117. *Id.* See also Sida Liu, *Lawyers, State Officials, and Significant Others: Symbiotic Exchange in the Chinese Legal Services Market*, 206 CHINA Q. 276, 276–93 (2011).

118. *Id.* at 11.

119. *Id.*

120. See Yun Krieglner, *Partner Rewards in the New China*, THE LAWYER, Nov. 2, 2015.

121. See Carole Silver, Nicole De Bruin Phelan & Mikaela Rabinowitz, *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Glocal*, 22 GEO. J. LEGAL ETHICS 1431, 1432–33 (2009).

Although this finding underscores the importance of the Cravath System in the development of the corporate ecosystem in these emerging markets, it also begs the question of why a Law Firm-Led ecosystem—albeit one based on a hybridized version of the Cravath System—emerged in each of these jurisdictions at the very time that the U.S. corporate legal ecosystem was rapidly moving toward one that was Client-Led. Our research suggests that the answer to this paradox lies in the lag between the diffusion of the Cravath System and that of the other two gears of the corporate legal ecosystem—sophisticated in-house counsel departments within corporate clients, and legal education capable of meeting the demands of the new corporate legal sector—in each jurisdiction during this Formative Period.

### 3. *The Lag in Recalibrating Supply and Demand*

Although the global shift in India, Brazil, and China brought about major changes in the law firm sector in each country, we found little evidence of the diffusion of the U.S. model of sophisticated in-house legal practice during this Formative Period. Prior to liberalization, companies in Brazil, India, and China had far less need for internal counsel.<sup>122</sup> As a result, in-house lawyers had very low status in all three jurisdictions, with many of those performing “legal” work for companies only required to have a separate and inferior professional qualification—or in many instances, no legal training at all.<sup>123</sup>

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122. As Gupta, Khanna, and Wilkins observe with respect to India, in the tightly regulated “license raj” in the years prior to the global shift, “the skills commonly associated with corporate law practice (e.g., fine contract negotiation, deal making, and drafting) were less important than compliance with regulatory prescriptions”—which, as the authors go on to state, are “tasks usually carried out by the company secretaries or CFOs (who often were not lawyers) rather than law firms.” Gupta, Khanna & Wilkins, *supra* note 88, at 47. The same was true in China. See Behr, *supra* note 18, at 1163 (reporting that the Chinese economic system was “governed by plans and administrative orders, so there was little need for a body of law to regulate a market economy”). Although Brazil did have more of a market economy in the period before the global shift, as the Brazil study documents “[f]rom 1930 to the end of the 1980s, economic policies basically consisted of state-led initiatives to promote import substitution, industrialization and growth using ‘economic law’ tools, such as state-owned enterprises, economic planning, price control, sectoral regulatory and administrative authorities, and the use of tax and financial incentives.” It was only after the rollback of many of these state-led, economic policies, accompanied by significant new legislation, that companies in Brazil were faced with the “complex, transnational regulatory matrix” that required them to develop internal legal services of any significant measure. Luciana Gross Cunha et. al, *Globalization, Lawyers, and Emerging Economies: The Case of Brazil*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 7, at 7, 8. See generally Wilkins, *supra* note 32, at 268 (reporting that, “in China—there was both a planned economy and a conscious attempt to prevent lawyers from becoming too powerful. But even in India and Brazil, which had much more established legal traditions, there was very little in the way of corporate law.”)

123. See David B. Wilkins & Bryon Fong, *Globalization and the Rise of the In-House Counsel Movement in China*, in *THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY*, *supra* note 8 (forthcoming 2020) (on file with authors) (describing the low status of in-house counsel in China, particularly in state owned enterprises); Sida Liu, *Palace Wars over Professional Regulation: In-House Counsel in Chinese State-Owned Enterprises*, 2012 WISC. L. REV. 549, 563 (2012) (same); David B. Wilkins & Vikramaditya Khanna, *Globalization and the Rise of the In-House Counsel Movement in India*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 119–120 (reporting the low status of in-house lawyers in both

The liberalization that followed the global shift in each country did not immediately alter these existing patterns. The experience in India is typical. As Indian corporations looked to meet the demands of a new and more open economy, they initially turned to those professionals who were already providing their legal and compliance services, typically the CFO.<sup>124</sup> But as regulation increased, and legal matters became more complex, CFOs, who typically had no legal training, “turned to India’s rapidly developing corporate law firms to provide the necessary legal competence, particularly in areas where the overall decrease in regulatory fiat was increasing the importance of fine contract drafting and negotiation.”<sup>125</sup>

Nor were multinational companies anxious to invest the time and money needed to establish significant in-house legal departments during this early period. While the global shift and liberalization offered foreign multinational companies (FMNC) new markets, by their very nature these markets were largely untested and presented considerable risk. Therefore, rather than investing in recruiting a top-flight general counsel and building up an internal legal department (itself a major problem given the lack of experienced business lawyers with knowledge of the jurisdictions during this period), these companies largely decided initially to manage their legal work in emerging markets out of their global headquarters, or from a more established regional office.<sup>126</sup> As a result, most of the legal work that needed to be done in-country was given to law firms.<sup>127</sup>

Given these characteristics of the client market in India, Brazil, and China, it is therefore not surprising that law firms in these jurisdictions gravitated toward the traditional Cravath System. Adopting the patina—if not always the reality—of the Cravath System served both symbolic and operational functions for these aspiring corporate lawyers. Symbolically, as exemplified by China’s King & Wood’s embrace of its mythical but western sounding name, the trappings of a Cravath style office served as a signal of modernity and global connectedness for potential clients, foreign and domestic, who would take comfort in seeing the kind of firm they were familiar with abroad.<sup>128</sup> Functionally, the Cravath System’s full-service model was well adapted to the conditions of the client market in India, Brazil, and

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public and private companies prior to the global shift); Fabiana Luci de Oliveira & Luciana Ramos, *In House Counsels in Brazil: Careers, Professional Profiles, and New Roles*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 7, at 74 (reporting the low status of most in-house lawyers prior to the global shift). As Oliveira and Ramos point out, however, there were some Brazilian companies that did have relatively sophisticated general counsel offices during this period. See *id.*, at 77–78. We return to the importance of these exceptions below. See *infra* Section III.B.1, at note 160.

124. See Wilkins & Khanna, *supra* note 104, at 144.

125. *Id.* at 120.

126. See LOUISE GROSS-CUSTARD, *THE GREAT APAC HEADQUARTERING DEBATE: RUSSEL REYNOLDS ASSOCIATES REPORT ON MULTINATIONAL REGIONAL HEADQUARTERS IN ASIA* (2007), <https://perma.cc/JT8J-94SG> (reporting that over the previous six years that many multinationals were relocating their China operations from their central headquarters or regional headquarters to Shanghai).

127. *Id.*; see also Wilkins & Khanna, *supra* note 104, at 110; Wilkins & Fong, *supra* note 123.

128. See Jones, *supra* note 74.

China in the 1990s and early 2000s in which each country's global shift produced an explosion in the demand for corporate legal services, but for the reasons set out above, very little oversight by, or competition from, in-house lawyers as to how those services were delivered.<sup>129</sup> The Cravath System provided a blueprint for building full service firms capable of meeting this new demand. The fact that the FMNCs coming into these new markets were used to having their legal services delivered by Cravath System law firms further reinforced this market alignment, encouraging the new corporate law firms in India, Brazil, and China to adopt all of the system's traditional trappings—even though, as indicated above, the U.S. and U.K. law firms they were imitating had already abandoned many of these practices.

The dynamics of the labor markets in these jurisdictions further reinforced the tendency to gravitate toward the traditional Cravath System. In each country, the liberalization that followed the global shift produced a sharp increase in the demand for well-trained corporate lawyers.<sup>130</sup> Finding few senior lawyers who could fill this demand, law firms in each jurisdiction embraced the Cravath System's practice of recruiting recent law school graduates.<sup>131</sup> As was true in the United States in the first decades of the twentieth century, firms in each jurisdiction had the luxury of choosing from a large pool of potential prospects. In all three countries, there had been a significant increase in the number of students attending law school in the years leading up to the global shift.<sup>132</sup> Although the majority of the law schools in all three countries were regarded as being of poor quality, a subject to which we return below, by the early 1990s in each jurisdiction there were a few elite law schools with the reputation for producing students of high-quality.<sup>133</sup> In 1987, the Indian government established the first "national" law school in Bangalore, which remains one of the most highly re-

129. See *infra* Section III.A.1–2.

130. See Papa & Wilkins, *supra* note 19, at 179.

131. See Jonathan Gingerich & Nicholas Robinson, *Responding to the Market: The Rise of Corporate Legal Firms on Elite Legal Education in India*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 519 (to satisfy their hiring needs, "law firms have generally not turned to lawyers from the practicing bar, but instead have hired newly minted law school graduates"); Luciana Gross Cunha & Jose Garces Ghirardi, *Legal Education in Brazil: The Challenges and Opportunities of a Changing Context*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 7, at 261 (noting the demands on Brazilian law schools to meet the "acute need" for corporate lawyers trained to meet global standards); Zhizhou Wang, Sida Liu & Xueyao Li, *Internationalizing Chinese Legal Education in the Early Twenty-First Century*, in *THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 8 (forthcoming 2020) (article manuscript at 3) (on file with authors) (noting the demand that China's fast growing corporate legal sector is placing on law schools to produce well trained corporate lawyers).

132. See Gupta, Khanna & Wilkins, *supra* note 88 (in India, for example, the number of attorneys increased from about 88,000, at the time of Independence in 1947, to more than 440,000 by the mid-1990s). Similarly, as Cunha and Ghirardi report, the number of law programs grew significantly in Brazil in the 1980s. See Cunha & Ghirardi, *supra* note 131, at 255. China, which had effectively shut down its entire legal education system during the Cultural Revolution, began reopening its law schools in the 1970s. See Wang, Liu, and Li, *supra* note 131, at 3.

133. See Gingerich & Robinson, *supra* note 131, at 528–30; Cunha & Ghirardi, *supra* note 131, at 253–54; Wang, Liu & Li, *supra* note 131, at 2–3 (on file with authors).

garded law schools in the country. In China, the government reopened some of the county's most prestigious traditional law schools, including Peking University in 1976, Fudan in 1983, Renmin in 1988, as well as creating new law schools connected with prestigious universities, such as Tsinghua in 1995. In Brazil, traditional elite law schools such as the University of São Paulo, the Pontifical Catholic Universities of Rio and São Paulo, and the Federal University of Rio de Janeiro, continued to attract top students. As was the case with Harvard, Yale, and Columbia law schools in the United States in the 1920s, these elite schools became a natural recruiting ground for the new corporate law firms in India, Brazil, and China.

It is important to note that this was not because these law schools were producing graduates who were trained in corporate law. To the contrary, notwithstanding the changes taking place in the economy and in the market for legal services in the decade following the global shift, formal legal education in even the top law schools in these jurisdictions remained highly doctrinal and lacked even rudimentary business law courses.<sup>134</sup> Many of these institutions were focused on training graduates who would improve the standards of government lawyers and the litigating bar.<sup>135</sup>

Instead, these schools, like the elite American law schools during the "Golden Age" of the Law Firm-Led ecosystem, provided India, Brazil, and China's corporate law firms with a reliable sorting mechanism for finding bright and ambitious young lawyers who they could then entice to join their organizations with the promise of better training and better salaries than they could earn as junior apprentices in the chambers of a senior litigator or as a government bureaucrat. Moreover, as was true in the U.S. during the Law Firm-Led period, much of the cost for associate training and salaries could be charged to clients who, during this initial Formative Period, had very little choice but to pay the freight as part of the cost of gaining access to the legal services that they needed but could not produce themselves.

To facilitate this arrangement, law firms—and law students—employed a number of creative means to get around the failure of law schools in each jurisdiction to adapt their practices to the new demands of the corporate hemisphere. In India, for example, law students formed their own "recruiting committees" to make up for the fact that the National Law School in Bangalore, and other prestigious law colleges, had no formal recruiting process for corporate lawyers.<sup>136</sup> These Committees helped law firms further sort potential applicants by collecting resumes and requiring students to rank their priorities among potential employers.<sup>137</sup> These Committees also

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134. *See id.*

135. As Gingerich and Robinson note, the Indian government created the national law schools for this reason. *See* Gingerich & Robinson, *supra* note 131, at 529.

136. *See* Jonathan Gingerich, Vikramaditya S. Khanna & Aditya Singh, *The Anatomy of Legal Recruitment in India: Tracing the Tracks of Globalization*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 555–57.

137. *Id.* at 563.

developed processes to deter the kind of hoarding of offers by top recruits that often distorts law firm recruiting markets in the U.S., by requiring that students commit to accept the first offer they receive or risk being banned from the process altogether.<sup>138</sup>

Similarly, in Brazil, top law firms like Pinheiro Neto and Mattos Filho frequently recruit top students from the University of São Paulo and other leading law schools who have completed their first year of classes to “intern” at the firm during the rest of their time in law school.<sup>139</sup> The firms then select the best of these interns to join the firm as already well-trained and experienced associates.<sup>140</sup> Indeed, in order to complete their training, top Brazilian firms will often provide subsidies for the best of their associates to obtain an LLM degree from a foreign university (most often in the U.S.), frequently facilitating an additional year as a secondee in a foreign (again, most often U.S.) law firm where they will be further immersed in the American model of legal practice.<sup>141</sup>

Chinese lawyers and law firms have also relied on foreign legal education as a way to supplement domestic legal education. Thus, Chinese law firms rely heavily on the growing number of Chinese students obtaining LLM degrees abroad to provide the knowledge about corporate law fields—and about the norms and practices of corporate law firms and corporate clients generally—that they were not receiving from even the best Chinese law schools.<sup>142</sup>

Given the relatively small number of corporate law firms in each jurisdiction seeking to recruit law students in the early years following the global shift, these workarounds worked tolerably well to provide these new institutions with sufficient labor to keep up with—if not fully to satisfy—the escalating demand for corporate legal services.<sup>143</sup> However, as the corporate hemisphere continued to expand in India, Brazil, and China in the new millennium, and the price that companies had to pay for these services continued to escalate, the pressure to find more systematic and stable solutions to the mismatch between the supply and demand for well-trained corporate lawyers increased steadily.<sup>144</sup> As we document below, these twin pressures

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138. *Id.* at 556-57.

139. Gabbay, Ramos & Sica, *supra* note 18, at 61. As one of us has been told by a number of Brazilian LLM students over the years, these internships essentially amount to full time jobs, with students working 40 or more hours a week, spending just enough time at school to take and pass their required examinations.

140. *Id.*

141. See Oliveira & Ramos, *supra* note 123, at 80 (reporting similar hiring patterns among in-house legal departments).

142. See Wilkins, *supra* note 32, at 289 (reporting that lawyers with local law degrees and foreign LLMs are the most desired candidates in law firms and legal departments); Silver, *supra* note 31, at 17-20.

143. See David M. Trubek, *Legal Education Failures, Spontaneous Bypasses, and the Replication of Hierarchy in Brazil: Some Preliminary Thoughts* (Jan. 6, 2020) (unpublished draft) (on file with authors).

144. Wilkins, *supra* note 32, at 275 (“[T]he same pressure to lower costs and increase the integration between business and legal advice that led many U.S. companies to supplement—and in some cases

unraveled the alignment within which the initial generation of corporate law firms had thrived using their version of the Cravath System, paving the way for the kind of Client-Led ecosystem that had already developed in the U.S.

*B. The Transformative Period and the Re-gearing of Client and Labor Markets (circa 2007-2015/18)*

As we indicated in Part II, the proliferation and financial success of Cravath System law firms in the U.S. in the middle decades of the twentieth century paradoxically helped to spur developments in the client and legal education “gears” that eventually led to the transformation from a Law Firm-Led ecosystem, in which Cravath System firms dominated, to the current Client-Led system in which sophisticated in-house counsel play the leading role. Our research in India, Brazil, and China reveal similar growth in the new hybrid Cravath System law firms established in these jurisdictions—with predictably similar results.

In the first decades of the new millennium, law firms in India, Brazil, and China continued to grow rapidly in number, size, and sophistication. In Brazil, Gabbay, Ramos, and Sica report that there were 119 corporate firms founded between 2001 and 2015, including several that would become corporate powerhouses, like Lobo & de Rizzo (founded in 2007).<sup>145</sup> One can see a similar pattern in India, where more than 30% of the country’s top 40 law firms were established between 2000 and 2015, including perennial leaders like AZB & Partners, S&R Associates, Trilegal, and Economic Law Practice.<sup>146</sup> Nor was it just new firms that prospered. Firms that were well-established during the initial Founding Period in the 1990s also grew at an astonishing pace. For example, in 2008, Amarchand Mangaldas, the long-time top ranked firm, had 40 partners; by 2015, it had more than doubled its number of partners to 84.<sup>147</sup> The second ranked firm, Khaitan & Co., went from 190 lawyers in 2008 to over 350 in 2015.<sup>148</sup>

The overall pattern is similar in China, where both the number of new law firms and the size of existing leaders continued to increase at near exponential rates in the years since 2000.<sup>149</sup> With respect to new firms, Yingke, founded in 2001 through the restructuring of a state-owned law firm into a partnership, underscores the continued dynamism in the Chinese corporate law firm market. In less than five years, Yingke grew to become the second largest firm in China, with more than 2,000 lawyers in 20 domestic offices

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replace—outside counsel with more sophisticated internal counsel are now persuading companies operating in emerging economies to turn to U.S.-style inhouse lawyers to fulfill this crucial early advising role.”).

145. See Gabbay, Ramos & Sica, *supra* note 18, at 39–40.

146. See Nanda, Wilkins & Fong, *supra* note 79, at 76.

147. *Id.*

148. *Id.*

149. Liu & Wu, *supra* note 72, at 1.



and a number of overseas offices.<sup>150</sup> By 2016, it was reported to have more than 5,000 lawyers across China, though the precise number is hard to calculate due to its unique online business model.<sup>151</sup> Established Chinese firms such as Jun He, Albright, and King & Wood all grew dramatically in this period, with King & Wood boasting over 1,000 lawyers in China by 2015.<sup>152</sup>

As in the United States, this dramatic growth put pressure on the “client” and “legal education” gears to respond. And like in the United States, it was the client gear in each country that responded first. As we document below, both multinational and domestic companies in all three jurisdictions began to establish increasingly sophisticated in-house legal departments. This growing inside counsel revolution, in turn, put pressure on the new Cravath System law firms established during the Formative Period in all three countries to respond. But just as the Formative Period was more than a simple story about the diffusion of U.S. models, the transformation from a Law-Firm to a Client-Led ecosystem in all three countries has also been shaped by indigenous factors. Chief among these local factors are the importance of various company-types in each market, and the country’s approach to regulating the legal profession, particularly with respect to the entry of foreign law firms. As we will see, both of these factors have played a critical role in shaping the corporate legal ecosystem in all three countries during the Transformative Period, particularly in China.

1. *The Inside Counsel Revolution Establishes a Beachhead in the Emerging World*

By the early 2000s, key elements of the in-house counsel movement finally began to spread to India, Brazil, and China. The data with respect to India is particularly compelling. As Wilkins and Khanna report based on their extensive qualitative and quantitative examination of Indian general counsels:

Our data provides strong support for the hypothesis that in-house departments in India have increased substantially in both size and importance. In particular, the growth in the budgets of Indian in-house departments from 2009-2015, the growth in outside legal expenditures over the same period, and the increase in the number of people working within in-house departments provides strong support for this hypothesis. The expectation of the GCs responding to our survey that both budgets and internal hiring will continue to grow further substantiates this initial hypothesis, as does

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150. *Id.* at 18–19.

151. *Id.*

152. *Id.* at 1.

the increasingly important role that many GCs are playing within their organization.<sup>153</sup>

GLEE's research reveals similar changes in Brazil. As Oliveira and Ramos conclude in their study of in-house lawyers—typically called “legal directors”—in Brazil:

The main conclusion we can draw about the Brazilian situation follows a trend previously identified in this foreign literature—the increasing value and prestige of legal directors inside companies, due to both the numerical growth of professionals working in legal departments as well as the duties taken on by legal directors. As we document, in Brazil this growth has occurred most intensively since the 1990s, precipitated, as indicated in the Introduction to this volume, by the privatization of many state-owned enterprises and the greater opening of the Brazilian market to foreign capital. At the same time, however, despite this heightened value, legal executives continue to express a desire for even more influence.<sup>154</sup>

Indeed, if anything, GCs in Brazil appear to have made more headway in increasing their power and influence, both internally and externally, than have their counterparts in India. As indicated in Section III.A, a few Brazilian companies already employed internal legal counsel even before the global shift.<sup>155</sup> Wilkins and Khanna's study comparing the inside counsel revolution in India and Brazil indicates that Brazilian companies have been able to build on this initial advantage to develop a more robust internal counsel function.<sup>156</sup> For example, in contrast to their Indian counterparts, in-house legal departments in Brazil tend to keep more high-level legal work in-house, including M&A transactions and competition law matters, while sending more low level work such as compliance matters to outside providers.<sup>157</sup> As Ben Heineman argues in his book *The Inside Counsel Revolution*, this pattern is a hallmark of a more developed legal department.<sup>158</sup>

Although the Indian and Brazilian national studies therefore provide strong support for the emergence of an important in-house legal sector in the two countries, these reports also underscore that this development has not been uniform across all company types. FMNCs operating in India, for example, grew their legal budgets at a rate that far exceeded the corresponding growth in domestic Indian companies.<sup>159</sup> As Wilkins and Khanna go on

153. Wilkins & Khanna, *supra* note 104, at 114, 155.

154. Oliveira & Ramos, *supra* note 123, at 74.

155. See *supra* Section III.A.

156. See Wilkins & Khanna, *supra* note 104.

157. *Id.* at 110.

158. See HEINEMAN, *supra* note 54, at 401–402 (describing how keeping more sophisticated work in-house is a hallmark of the inside counsel revolution).

159. Wilkins & Khanna, *supra* note 104, at 157.

to state “[a]lthough there may be many potential explanations for this difference, it is consistent with the intuition that the growing importance of anticorruption initiatives and compliance have caused FMNCs to invest more in strengthening their legal budgets than their Indian counterparts.”<sup>160</sup> Similarly, Indian “business-group” companies—companies that are owned by a powerful family or promoter—were far less likely than other privately owned Indian companies to use a “list of preferred providers” to select their outside law firms, while also being less likely than any other company operating in India, either foreign or domestic, to have “terminated an important law firm relationship” in the previous six years.<sup>161</sup> As the authors speculate, given that being able to select—and to terminate—law firms is one of the key powers that GCs push for as part of the inside counsel revolution, these and other differences between business groups and other companies “provid[e] some support for the claim that notwithstanding the size and complexity of these organizations, they still tend to be dominated by important relationships based on communal or personal affiliations.”<sup>162</sup> Wilkins and Khanna go on to conclude, “this is one of the unique features of the Indian environment that is likely to continue to affect the diffusion of the Western model of the in-house counsel movement.”<sup>163</sup>

Wilkins and Khanna find similar differences among Brazilian legal departments. Thus, FMNCs operating in Brazil “had a budget of \$26,236,000 in 2015, which was almost three times larger than the \$9,066,000 that the average Brazilian domestic company set aside for the legal budget.”<sup>164</sup> Similarly, the authors found that the GCs of Brazilian family owned businesses were more likely to report to the CFO than the GCs of other Brazilian companies, suggesting that as in India, the GCs of these companies are less powerful than their counterparts in either publicly traded Brazilian companies or FMNCs.<sup>165</sup>

These differences among different company types are even more pronounced in China. China has been the last of the three countries to embrace the inside counsel revolution, primarily because of the importance of state-owned enterprises (SOEs) in China’s economy. As late as the early years of the new millennium, in-house counsel in China’s SOEs were separately licensed from lawyers and formed a unique occupational group, namely “enterprise legal advisors” (*qiye falü guwen*), and in-house legal departments in private and multinational corporations were largely unregulated and not

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160. *Id.*

161. *Id.* at 157–58.

162. *Id.* at 158.

163. *Id.*

164. Wilkins & Khanna, *supra* note 104, at 130.

165. *Id.* at 132. The research also indicates that these GCs are also more likely to report to the board, which as the authors note, is not a strong position, since the board in family owned companies is controlled by family members.

considered either lawyers or enterprise legal advisors.<sup>166</sup> Consequently, it is not surprising that China's private companies were the first to develop sophisticated in-house counsel. Indeed, by the second decade of the twenty-first century, some large private companies like Huawei had legal departments as large as 400 lawyers, while many other private companies were gradually increasing the size and sophistication of their internal legal counsel.<sup>167</sup> As Chen writes, "While a dozen-plus lawyers for a company with \$200 million in revenue is hardly startling" the fact that "just over a decade ago, in-house lawyers in China were nonexistent" and that "companies in China—both domestic and multinational—are no longer rushing to costly international law firms for help with every legal question" is a significant change.<sup>168</sup>

As China entered the Transformative Period, however, the Chinese government realized that developing more sophisticated internal legal counsel in SOEs was in the state's self-interest. This campaign began in 2002 when China's Economic and Trade Commission, together with six other departments, issued "Guiding Opinions on Piloting the General Counsel System of Enterprises in National Key Enterprises."<sup>169</sup> Since this date, Chinese regulators have issued regulations seeking to upgrade the in-house legal functions of SOEs.<sup>170</sup>

Although the government therefore focused more attention on the SOE sector in the early years of the new millennium, it is clear that these measures have not always been successful. For example, in 2004, the State-owned Assets Supervision and Administration Commission (SASAC), the ministry that directly regulates Chinese SOEs, stated that it would "establish a general legal counsel system for 53 central enterprises" as well as some other key national and provincial SOEs in "two to three years."<sup>171</sup> In 2007, however, SASAC issued another directive conceding that "the general counsel system has not been established in the 53 large central enterprises" and requiring that "further efforts should be made to ensure that it will be established before the end of 2007."<sup>172</sup> This time, however, SASAC took steps to ensure that its mandate would be followed. Building on a Three Year Plan issued by the government in 2005 to upgrade the legal function in SOEs, SASAC stated that it would hold any governmental unit that failed to

166. Wilkins & Fong, *supra* note 123 (on file with authors); Liu, *supra* note 123, at 550.

167. Wilkins, *supra* note 32, at 284.

168. Vivia Chen, *The Great Leap In-House*, CORP. COUNS. (June 2006), at 92.

169. Wilkins & Fong, *supra* note 123 (on file with authors).

170. *Id.* For example, in 2003, the State Council issued "Interim Regulations on the Supervision and Administration of State-owned Assets of Enterprises," directing that "state-owned and state-controlled enterprises should strengthen internal supervision and risk control, and establish and improve financial, auditing, corporate legal counsel and employee democratic supervision systems in accordance with relevant state regulations." *Id.*

171. *Id.*

172. *Id.*

institute the required reforms directly liable for any resulting loss in state-owned assets.<sup>173</sup>

In 2008, SASAC followed up this directive with a detailed set of Interim Measures for the Administration of the Evaluation of the Professional Position of the Legal Advisor of State Owned Enterprises.<sup>174</sup> That year, SASAC announced six GC candidates for large SOEs under its supervision.<sup>175</sup> All six were licensed as “corporate legal consultants”—and five of the six also were qualified as lawyers.<sup>176</sup>

In 2012, the Chinese government instituted a second three-year plan to further upgrade the general counsel function in SOEs.<sup>177</sup> As Tomasic and Fu note, this second plan was intended to address the realization of the fear, expressed in the quote from SASAC above, that SOEs without a functioning in-house legal department were more prone to incurring legal liabilities, particularly as they venture into foreign markets.<sup>178</sup>

Most recently, in December 2015 (effective January 2016) SASAC issued new “Opinions on Comprehensively Promoting the Construction of the Centralized Enterprise of the Rule of Law.”<sup>179</sup> This new directive requires the “general legal counsel system” be “fully implemented in the central enterprises and their important subsidiaries, and is clearly defined in the company’s articles of association.”<sup>180</sup> Tellingly, this new plan eliminates the special qualification for in-house lawyers, and requires that the general counsel shall have a legal professional background or a legally relevant professional qualification.<sup>181</sup> As the directive goes on to state, the general counsel is required to comprehensively lead the legal management of the enterprise, unify and coordinate the legal affairs in the business management, fully participate in major business decisions, and lead the corporate legal affairs agencies to carry out related work.<sup>182</sup>

As Wilkins and Fong report, these measures to upgrade the legal function in SOEs have clearly had an impact in improving the marginalized status that the GCs of these organizations had during the Formative Period following the global shift. Thus, 80% of all of the SOE GCs in their sample report being members of the Chinese bar, with 57% stating that they report di-

173. *See id.* (quoting SASAC).

174. *Id.*

175. *See Open Announcement of SASAC on the Candidacy of Central Government SOEs General Counsels*, STATE-OWNED ASSETS SUPERVISION & ADMINISTRATION COMMISSION OF THE STATE COUNCIL, <https://perma.cc/5WSH-VQNR>.

176. *Id.*

177. Roman Tomasic & Jane Fu, *Regulation and Corporate Governance of China’s Top 100 Listed Companies: Whither the Rule of Law?* 29 (presented at the Research Committee on the Sociology of Law Annual Conference, Paris, July 11–13, 2005), <https://perma.cc/3YRY-WBNV>.

178. *Id.*

179. Wilkins & Fong, *supra* note 123 (on file with authors).

180. *Id.*

181. *Id.*

182. *Id.*

rectly to the company's CEO.<sup>183</sup> Nevertheless, while these statistics undoubtedly represent a dramatic improvement, SOE GCs still have a distance to go before they can credibly claim to have achieved SASAC's objectives. Thus, the GCs of SOEs are less likely than their peers in Chinese private companies and FMNCs operating in China to participate in senior leadership discussions<sup>184</sup> or frequently counsel their CEOs.<sup>185</sup> Even with respect to managing the core legal function, only 19% of SOE GCs report that all of the lawyers in the organization report to them, as opposed to 56% of the GCs in Chinese private companies and 60% of those in FMNCs.<sup>186</sup> Indeed, only 80% of SOE GCs are in charge of hiring outside lawyers, as compared to 100% of their counterparts in the other two company types.<sup>187</sup> Finally, internal legal departments in SOEs continue to do a much higher percentage of "routine" legal work (48%) than their counterparts in Chinese private companies (30%) and FMNCs (37%), and continue to send a higher percentage of that work to outside law firms (52%), as compared to their counterparts in the two other company types (38% for Chinese privates and 31% for FMNCs).<sup>188</sup> Once again, all of these differences are indications that the general counsel function in China's SOEs is not as developed as in Chinese private companies or FMNCs operating in China—let alone what one would expect to find in comparably sized enterprises operating in the U.S. or Europe.

This gap, as the China national report underscores, is not simply due to the failure of SASAC's various policy directives. Although the Chinese government is clearly intent on upgrading the legal function inside SOEs, this should not be taken to mean that it is interested in having these GCs adopt all of the attributes and practices of their counterparts in the U.S. As we noted in Part II, one of the signal claims of the in-house counsel movement in the U.S. is that general counsels should be "independent," with obligations to the public and the rule of law that go beyond their duties to management.<sup>189</sup> As the recent SASAC directive makes clear, the Chinese government has no interest in the GCs of its state-owned assets playing this role. Instead, that directive requires that the first requirement for all SOE GCs—listed before the requirement that they have full legal qualifications

183. *Id.*

184. *Id.* (reporting that 69% of SOE GCs report participating in such discussions, as opposed to 78% of private company GCs and 89% of the GCs of FMNCs).

185. *Id.* (reporting that 75% of SOE GCs report doing so frequently, compared to 78% of the GCs of private companies and 98% of FMNC GCs).

186. *Id.*

187. *Id.*

188. *Id.* The fact that Wilkins and Fong found that FMNCs keep a high percentage of all legal work in-house is consistent with the conclusion of a report on doing business in China which concluded that: "Most in-house department heads seem to agree implicitly with one in-house lawyer who says, 'My personal idea is if you have a law department in China you should do everything yourself unless you really don't know what you're talking about.'" Dan Walfish, *In-House Counsel in China: Understand How They Think*, 14 CHINA L. & PRAC. 58, 59 (2000).

189. See *supra* Part II.

under the law—is that the applicant “support [ ] the constitution of the People’s Republic of China.”<sup>190</sup> As the regulation goes on to state, the fundamental purpose for upgrading the GC function is to create by 2020 “a system of legal counsel, public lawyers and corporate lawyers that are compatible with economic and social development and legal service needs with Chinese characteristics.”<sup>191</sup> As we will see in the section below, this regulatory mandate is consistent with the way the Chinese government has regulated other aspects of the corporate legal ecosystem during this Transformative Period.<sup>192</sup>

Notwithstanding these important qualifications, however, the data from our three national reports demonstrates that the inside counsel revolution has now come to India, Brazil, and China during the Transformative Period. The invigoration of this “client” gear has had predictable consequences for the “law firm” and “legal education” gears in all three markets.

*a. Spinning the Law Firm Gear: Destabilizing the Relationship Between Law Firms and Clients*

As we documented in Part II, the rise of the in-house counsel movement in the U.S. has dramatically altered the relationship between law firms and clients. Our national reports underscore that the more limited inside counsel revolution in India, Brazil, and China is having a similar—but correspondingly more limited—effect on the relationship between firms and clients in each of these rising powers. Specifically, our data indicates that GCs in these emerging economies are using two familiar mechanisms to break up the traditional monopolies between companies and their established law firms: making law firms compete to get on—and stay on—a list of “preferred providers” eligible to do legal work for the company, and spreading legal work to newer, and often smaller and lower cost, law firms.<sup>193</sup>

Requiring law firms to compete to become one of a company’s “preferred providers” has become a standard way for U.S. companies to drive down legal costs and induce greater competition among established law firms.<sup>194</sup> Surveys of general counsels in all three jurisdictions confirm that legal departments in India, Brazil, and China are routinely deploying this tool.

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190. *Id.*

191. *Id.*

192. See *infra* Section III.B.3.

193. See HEINEMAN, *supra* note 54, at 401–27 (reporting that breaking up these traditional monopolies was one of the primary objectives of the inside counsel revolution).

194. See Coates et al., *supra* note 58 (reporting on the Center on the Legal Profession’s prior survey of legal purchasing decisions by large U.S. companies which documented that eighty percent of S&P 500 companies had such a list, which they used to source most—but not all—of their legal work and to push for volume discounts from the firms receiving legal work). In addition, many GCs also argued that reducing the number of law firms that they use, and concentrating most—but again, not all—of their legal work in these preferred providers, also increased the quality of the services they received by encouraging law firms on the list to “know their client’s business.” See David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 *FORD. L. REV.* 2067, 2067–114 (2010).

Thus, a substantial majority of GCs in Brazil and India (66% in Brazil; 81% in India) report that they currently use a list of preferred providers.<sup>195</sup> Even in China, where the in-house counsel movement is less well established, 73% of GCs—including 86% of all Chinese private companies—report using such a list.<sup>196</sup>

GLEE's national reports also indicate that GCs in India, Brazil, and China are increasingly willing to switch their business to "second generation" corporate firms as a way of destabilizing the influence of established players. As Krishnan and Thomas document with respect to India,

Within the past decade . . . a new generation of firms have become important providers of legal representation to a greater array of clients. These firms, with purposefully bold names like Platinum Partners, Phoenix Legal, IndusLaw, and Tatva Legal, have been in the thick of several noteworthy corporate and transnational deals during the past decade. So too have firms like S&R Associates, Talwar Thakore & Associates, and Bhaucha & Partners, each with lawyers who have tremendous corporate experience.<sup>197</sup>

As the authors go on to note, many of these second generation corporate law firms in India were founded by lawyers who "peeled off" from one of India's original Big 5 firms to establish potent competitors to their old employers.<sup>198</sup> These founders have brought a new and decidedly more global perspective to their practices than India's first generation firms in three respects. First, these new firms eschew the kind of family relationships and communal ties that continue to dominate India's market leading firms.<sup>199</sup> Second, rather than being "full service," many of these newcomers have chosen to specialize in particular areas of corporate legal practice, for example, mergers and acquisitions, intellectual property, or project finance.<sup>200</sup> Finally, these firms are often more client focused than their more established rivals, including being much more flexible about pricing.<sup>201</sup>

Consider, for example, the lucrative field of mergers and acquisitions. As Varottil documents, while India's Big 5 law firms continue to play an important role in this market, many of the deals are now going to second

195. Wilkins & Khanna, *supra* note 104, at 144.

196. See Wilkins & Fong, *supra* note 123 (on file with authors).

197. See Jayanth K. Krishnan & Patrick W. Thomas, *Being Your Own Boss: The Career Trajectories and Motivations of India's Newest Corporate Lawyers*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 217, 219.

198. *Id.*

199. *Id.*, at 221–22.

200. *Id.* at 223.

201. *Id.*



generation boutique firms that specialize in such transactions.<sup>202</sup> As their market share increased, these second generation law firms were also able to lure top lawyers away from established firms, further destabilizing the alignment of the Indian corporate legal ecosystem.<sup>203</sup>

The Brazilian national report indicates that the inside counsel revolution has had a similar effect on relationships between Brazil's top law firms and their clients. As Gabbay, Ramos, and Sica underscore:

[T]he expansion and restructuring of corporate legal departments in the recent decades has fundamentally changed the relationship between companies and outside firms. Traditionally, most large Brazilian companies had long-standing relationships with their lead outside law firm, often cemented through personal relationships between founders and other senior company executives and the lawyers they hired. Today, in the words of this informant, the relationship is much more "arm's length and transactional" with increasingly sophisticated general counsels attempting to break up these long-standing relationships and induce more competition among providers.<sup>204</sup>

In some respects, the story in China is even more dramatic, although it is due as much to the lack of diffusion of the in-house counsel model as to its presence. As indicated above, the fastest growing law firm in China since 2000 has been Yingke, a firm that has expressly rejected the organizational model of China's first wave of "global generalist" firms such as King & Wood, Zhong Lun, and AllBright.<sup>205</sup> Instead, the firm uses a "space rental" model based on professional managers, a "management fee" profit sharing structure that allows lawyers to keep most of what they earn while paying a modest management fee to share in the firm's resources and brand, and a franchise/office sharing system—all fueled by significant outside capital.<sup>206</sup> Although the firm serves a far broader mix of clients than established firms like King & Wood, its extensive network of offices within China, and increasingly around the world, is allowing it to compete for business from China's provincial SOEs and other similar companies—many of which are quite large by any objective measure. This is particularly true with respect to those provincial SOEs that do not have well developed in-house legal

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202. See Umakanth Varottil, *The Impact of Globalization and Cross-Border Mergers and Acquisitions on the Indian Legal Profession*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 176.

203. *Id.*

204. Gabbay, Ramos & Sica, *supra* note 18, at 45.

205. Liu & Wu, *supra* note 72 (article manuscript at 18–20) (on file with authors).

206. *Id.*

departments, and who therefore view the firm's size and global reach as both functionally and symbolically attractive.<sup>207</sup>

All of these new developments have put added pressure on established firms to keep pace. Thus, Gabbay, Ramos, and Sica report that increasing client pressure and competition from new entrants has led Brazil's established firms "to create new structures, systems, and policies better attuned with market demands."<sup>208</sup> Similarly, Nanda, Wilkins, and Fong report that India's Big 5 law firms have attempted to reform their ownership structure to reduce the level of family or founder control.<sup>209</sup> As the authors go on to note, the issue of family control has become particularly urgent following the splitting into two halves of Amarchand Mangaldas after a bitter family struggle between Cyril and Shardul Shroff, the two brothers who ran the firm, following the death of the family's matriarch.<sup>210</sup> Even King & Wood felt the need to respond to the pressures of the new corporate ecosystem in China and the other markets in which it operated by entering into two mergers, the first with the Australian firm Mallesons Stephens and Jaques and the second with the U.K. firm S.J. Berwin.<sup>211</sup>

Although the Cravath System law firms established in all three jurisdictions during the Formative Period have therefore felt the pressure generated by the partial but nevertheless important shift towards a more Client-Led ecosystem during the Transformative Period, their ability to respond to these new challenges has depended in part on how open these markets have been to both innovation and foreign competition. This brings us to the subject of regulation.

*b. Regulating Change: The Burdens and Benefits of Competing in a Regulated Profession*

It is axiomatic that the extent, content, and enforcement of relevant regulation plays an important—although far from determinative role—in shaping the actions of participants in competitive markets. Our national studies underscore that this has indeed been the case with respect to the development of the corporate legal ecosystem in India, Brazil, and China. In each of these jurisdictions, those seeking to establish Cravath System law firms have had to navigate a complex web of regulations governing *who* could practice law in each country, and *how* legal services are to be delivered. Although important from the outset, the extent to which regulation constrained the answers to these two questions became particularly salient during the Trans-

207. *Id.* (article manuscript at 15–18, 24) (on file with authors) (arguing that Dacheng, which is pursuing yet a different strategy of relying on local (and after its affiliation with the U.K. law firm Dentons) global coalitions and political connections, is also benefiting from its national and international coverage with these same clients).

208. *Id.* at 55.

209. Nanda, Wilkins & Fong, *supra* note 79, at 97.

210. *Id.*

211. Liu & Wu, *supra* note 72 (article manuscript at 13) (on file with authors).

formative Period as the corporate legal services market became more competitive in each jurisdiction.

During the Formative Period, the first issue the lawyers who sought to build Cravath System law firms confronted was whether this form of practice was even permitted by existing regulation. Not surprisingly, the answer was uncertain, since the relevant regulation was never intended to apply to corporate law practice. Brazil's regulation of the legal profession is typical. The rules of Brazil's Bar Association (Ordem dos Advogados do Brasil, or "OAB") were based on the public role of lawyers and the vision of law practice as a noncommercial activity.<sup>212</sup> Under OAB rules, law firms are considered simple partnerships, where liability is unlimited and personal and "mercantile forms or characteristics" are prohibited.<sup>213</sup> Nor are law firms allowed to be "companies," which are permitted to engage in business activities.<sup>214</sup>

From the outset, Brazil's growing corporate legal sector presented a challenge to this regulatory framework. For example, while the OAB formally imposes minimum fee schedules and prohibits advertisements, Brazil's new (and newly retooled) Cravath System law firms felt increasing pressure to compete aggressively for business and brand recognition.<sup>215</sup> This pressure escalated dramatically as the competition for both clients and talent increased during the Transformative Period. As Almeida and Nasser document, Brazilian law firms increasingly pushed back against these regulatory restrictions.<sup>216</sup> Although they encountered considerable resistance from regulatory authorities suspicious of this new form of practice, Brazil's corporate law firms eventually were able to get the OAB to create some new rules that facilitated the rise of the corporate sector.<sup>217</sup> As Almeida and Nasser note, this was an important victory:

By making official and legitimate a new model for the organization of legal services based on large-scale, profit-seeking organizations providing specialized and sophisticated services and operating on hierarchical lines, OAB regulation signaled institutional and regulatory acceptance of an increasing process of commercialization of the legal profession in Brazil.<sup>218</sup>

Nevertheless, there continues to be an important gap between OAB's official rhetoric and the realities of corporate legal practice that continues to inhibit the development of the Brazilian corporate bar. Gabbay, Ramos, and Sica explain:

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212. Almeida & Nasser, *supra* note 105, at 181.

213. Gabbay, Ramos & Sica, *supra* note 18, at 36.

214. *Id.*

215. *Id.* at 35.

216. Almeida & Nasser, *supra* note 105, at 187.

217. *Id.*

218. *Id.*

On the one hand, there is evidence that suggests law firms are seeking to adopt more sophisticated, professional, and global forms and practices. On the other hand, these new models often butt up against, and have to operate within, more localized Brazilian culture, norms, and regulations. . . . [There is] a continual tension between continuity and change.<sup>219</sup>

GLEE's research suggests a similar story in India. As in Brazil, there are strict rules regulating the nature of law practice, including limitations on the size and structure of law firm partnerships, and on lawyers' commercial activities.<sup>220</sup> Thus, firms are formally prohibited from advertising, including strict limits on websites, on the logic that law is a profession and not a business. In his review of the Bar Council of India's regulatory practices, Rahul Singh writes, "Indian lawyers advertising themselves is perceived to be against the profession's dignity."<sup>221</sup> Although Indian firms have been less successful than their Brazilian counterparts in pushing for regulatory change, they have created a number of workarounds, including setting up multiple "partnerships" in different cities to get around restrictions on the total number of partners in any single law firm, and establishing "knowledge-based research content" websites that all but advertise their legal services.<sup>222</sup> These and other workarounds have allowed the growth in the Indian law firm sector documented above.<sup>223</sup> Nevertheless, as in Brazil, these regulatory restrictions continue to inhibit the development of the Indian corporate legal sector.<sup>224</sup>

China, however, has followed a very different regulatory path. In the years preceding the global shift, China's regulatory structure was arguably even less hospitable to corporate legal practice than in Brazil and India. After slowly reopening the law schools that had been closed during the Cultural Revolution, the first Provisional Regulations on the Legal Profession issued by the Standing Committee of the National People's Congress in 1980 defined lawyers as "state legal workers," making all law firms "part of the state apparatus, or socialist style 'work units.'"<sup>225</sup> As John Ohnesorge makes

219. Gabbay, Ramos & Sica, *supra* note 18, at 36.

220. See Rahul Singh, *Festina Lente or Disguised Protectionism: Monopoly and Competition in the Indian Legal Profession*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 395.

221. *Id.*

222. *Id.*

223. Aditya Singh, *Globalization of the Legal Profession and the Regulation of Law Practice in India: The "Foreign Entry" Debate*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 363, 368 (documenting regulatory changes and other factors that have made it easier for Indian law firms to compete).

224. See Cyril Shroff, *Deregulating India's Legal Market*, BUSINESS STANDARD (2013), <https://perma.cc/8SGN-WSFE> (describing the many regulatory restrictions that Indian law firms face and noting that these limitations place Indian firms at a significant competitive disadvantage to foreign firms seeking to enter the Indian market).

225. John K.M. Ohnesorge, *Regulation of the Legal Profession in China: A Historical Overview*, in THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 8, at 15 (on file with authors).

clear in his national report on China's regulatory system, "though liberalizing politically," during this period "the Chinese government certainly did not envision a legal profession growing outside of its control."<sup>226</sup> By the end of this decade, however, the Chinese government had instituted a series of reforms that significantly altered the form—if not necessarily the substance—of this control in a way that facilitated the growth of China's corporate legal sector. In 1989, Jun He was founded as the country's first a "cooperative" law firm that allowed lawyers to organize outside of formal government work units.<sup>227</sup> Following Deng Xiaoping's 1992 southern tour, the government went even further and allowed lawyers to create "partnership firms"<sup>228</sup> As Figure 4 demonstrates, many of today's top Chinese law firms were founded shortly after this regulatory reform.<sup>229</sup> Finally, in 1996, the government passed the Lawyer's Law which formally abolished referring to lawyers as "state legal workers."<sup>230</sup>

As the Chinese legal ecosystem grew and matured at the beginning of the new millennium, the government continued to modify the regulatory environment to ease the way for the development of Chinese law firms, even going so far as to orchestrate the merger of three local Shanghai firms into what is now AllBright in order to create a large full-service law firm in this important commercial center.<sup>231</sup> As Ohnesorge reports, "[t]he rise of such firms is completely consistent with the liberalization and integration goals that partly explain China's approach to lawyer regulation."<sup>232</sup> But, as Ohnesorge goes on to note, this impulse towards creating world class law firms that can compete in the global economy has always been balanced against the government's need to ensure that that the legal profession, in the language quoted above, does not "grow [ ] outside of its control":

One set of policy challenges has arisen because China's regulation of the legal profession has always been related to government policy toward economic development and integration with the global economy, while the other set of policy challenges arises because regulation of the legal profession has also always been closely related to the more general political relationship between the government and civil society, in which lawyers are so often key players (Halliday, Karpik and Feeley, 2007; Halliday and Karpik, 1997; Rueschmeyer, 1973). The government's responses to these

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226. *Id.*

227. See Liu & Wu, *supra* note 72, at 6 (on file with authors) (on Jun He); Ohnesorge, *supra* note 225, at 16 (on file with authors) (on the government's policy allowing "cooperative" law firms).

228. Liu & Wu, *supra* note 72, at 16 (on file with authors).

229. See *infra* Section III.A.1.

230. Ohnesorge, *supra* note 225, at 25 (on file with authors).

231. See Liu & Wu, *supra* note 72, at 11 (noting that in 1999, "the Shanghai Bureau of Justice requested three local law firms in the city to merge into a new firm, AllBright, in order to create a large, full-service law firm as a competitor to the leading Beijing firms").

232. *Id.*

two sets of policy challenges have resulted in two imperatives for legal regulation that are in sometimes substantial tension: an “integration” imperative that pushes China toward liberalization in order that the legal profession can play one of its typical roles of facilitating commerce and exchange with the outside world, and a “control” imperative that reflects a desire to limit the political role of lawyers and the legal profession in the service of political control.<sup>233</sup>

In Part V, we will return to the implications of this important balancing act for the future evolution of the Chinese corporate legal ecosystem. For present purposes, we simply note that in recent years the government has continued to strike the balance in favor of regulatory innovations that have facilitated the growth of the Chinese corporate legal ecosystem.

The Ministry of Justice’s decision to allow both King & Wood and Dacheng to enter into relationships with foreign firms using the *verein* structure of the Swiss Civil Code underscores this flexibility. As noted, in 2011, the Ministry allowed King & Wood to utilize this structure to enter into a long-term relationship, colloquially described as a “merger” even though the two firms are not nearly as fully integrated as this term would suggest, with the Australian law firm of Mallesons Stephens & Jaques.<sup>234</sup> In 2015, the Ministry authorized a similar tie up between Dacheng and the U.K. law firm Dentons, creating the largest law firm in the world.<sup>235</sup> By contrast, neither Brazil nor India allows this kind of combination between domestic and foreign firms.<sup>236</sup> This difference highlights an even more fundamental distinction in the manner in which these three rising powers have regulated the entry of foreign lawyers into their domestic corporate legal ecosystems.

In Part I, we noted that India, Brazil, and China had two choices in trying to respond to the new demand for sophisticated corporate lawyers after the global shift: They could “import” global lawyers seeking to follow their clients, or they could “produce” local lawyers with new corporate skills.<sup>237</sup> We also tentatively offered several reasons why emerging economies such as India, Brazil, and China might not want simply to rely on foreign law firms to satisfy their growing demand for corporate legal services. Chief among these concerns was the desire to insulate domestic lawyers in these jurisdictions from foreign competition in order to allow space for the development of an indigenous corporate legal sector.<sup>238</sup> Our national

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233. Ohnesorge, *supra* note 225, at 2 (on file with authors).

234. Liu & Wu, *supra* note 72, at 14 (on file with authors).

235. *Id.* at 9, 19.

236. See Aditya Singh, *Globalization of the Legal Profession and Regulation of Law Practice in India: The “Foreign-Entry” Debate*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 363.

237. See *infra* Part I.

238. *Id.*

studies highlight that both India and Brazil have embraced this “infant industry” rationale by maintaining regulation that places significant restrictions on the entry of foreign lawyers.<sup>239</sup>

India has been the most aggressive in embracing this approach. As Aditya Singh reports, the 1961 Advocate’s Act restricts legal practice to those who are “citizens of India.”<sup>240</sup> Nationals of other countries are only permitted to apply for admission if “duly qualified citizens of India are permitted to practice law in that country.”<sup>241</sup> As Aditya Singh goes on to state, India’s elite law firms, operating under the banner of the Society of Indian Law Firms, have vociferously pressed the Bar Council and the courts to use these regulations to ban the entry of foreign lawyers.<sup>242</sup>

The situation in Brazil is less restrictive, but nevertheless continues to impose important limitations on the practice of foreign law firms in the Brazilian legal market. Thus, in Brazil, foreign firms are permitted to open offices and serve as “consultants” on foreign law.<sup>243</sup> However, they are prohibited from advising companies on Brazilian law or appearing in court.<sup>244</sup> Moreover, while foreign firms with offices in Brazil can hire Brazilian lawyers, these lawyers are limited to dealing with issues involving foreign law.<sup>245</sup> As in India, Brazilian law firms formed an advocacy organization, the Center for Studies on Law Firms in Brazil, which has lobbied hard to use these restrictions as a means of limiting the penetration of foreign law firms in the Brazilian legal market.<sup>246</sup>

Notwithstanding these restrictions, however, foreign law firms continue to play an important role in the evolution of the corporate legal ecosystems in both of these jurisdictions. Even in India where foreign law firms are officially banned, the major U.S. and U.K. firms continue to serve the Indian market through “India desks”—often staffed by lawyers recruited from top Indian law firms and law schools—located in New York, London, Hong Kong, and Singapore.<sup>247</sup> When they need to see their clients or close a deal, these lawyers take advantage of a loophole in the regulations that allows them to “fly-in and fly-out” of India in order to conduct their business.<sup>248</sup> A few foreign law firms have gone even further, by establishing “best friends” relationships with Indian law firms in an attempt to avoid regulatory restrictions.<sup>249</sup> Although bar authorities have pushed back against these ar-

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239. For a general analysis of the infant industry rationale, see Arvind Panagarya, *A Re-examination of the Infant Industry Argument for Protection*, 5 MARGIN: J. APPLIED ECON. RES. 7 (2011).

240. Singh, *supra* note 220, at 364.

241. *Id.*

242. *Id.* at 367–68.

243. Almeida & Nassar, *supra* note 105, at 201.

244. *Id.*

245. *Id.*

246. *Id.* at 187.

247. Singh, *supra* note 220, at 381.

248. *See id.*

249. *Id.* at 381–82.

rangements,<sup>250</sup> most knowledgeable observers concede that foreign law firms have important access to the Indian legal market notwithstanding the formal regulatory restrictions.<sup>251</sup>

Brazilian law firms have been even less successful in restricting the impact of foreign law firms. Given that these law firms are not banned altogether—as of 2013, there were 23 foreign law firms with offices in Brazil, up from 2 in 1997<sup>252</sup>—the primary battle field has been whether foreign firms can create formal affiliations with domestic firms.<sup>253</sup> In 2011 the São Paulo Section of the OAB proposed a set of regulations that would dramatically restrict collaboration between foreign and domestic firms, including prohibiting these two types of law firms from occupying the same building, using common branding or even stating that a foreign firm was acting “in cooperation with or association with” a Brazilian firm, and prohibiting Brazilian and foreign firms from sharing data, client lists, IT, and even HR policies.<sup>254</sup> However, a majority of OAB’s Federal Council struck down these new regulations concluding that they were “not needed” and that associations between foreign and domestic law firms were permissible so long as they are “temporary and restricted to consultancy on foreign law.”<sup>255</sup> As a result, there are currently a small number of Brazilian firms with formal ties with foreign firms.<sup>256</sup>

Although lawyers in India and Brazil have not fully succeeded in their efforts to limit the entry of foreign law firms, our national reports nevertheless support the claim that regulations in both countries continue to play an important role in allowing the domestic law firms to slow the development of a full Client-Led ecosystem in the Transformative Period, with the transition in the Indian ecosystem lagging considerably behind what has taken place in Brazil.<sup>257</sup> One can see this difference in the frequency with which GCs in the two jurisdictions report having terminated an important law firm relationship in the last three years. As we indicated in Part II, one of the hallmarks of the in-house counsel movement is the degree to which GCs have become the chief “purchasing agents” for companies, pushing a philosophy that “we hire lawyers not firms.”<sup>258</sup> One way to measure whether GCs are indeed exercising this authority is by looking at their ability to break up

250. *Id.*

251. Singh, *supra* note 220, at 381–386.

252. See THE PRACTICE, *Bridges to Brazil: How Foreign Law Firms Connect with the Brazilian Legal Market*, 4 THE BRAZ. LEGAL PROF., Sept.–Oct. 2018, <https://perma.cc/UCG9-8HD3>.

253. Almeida & Nassar, *supra* note 105, at 196–201.

254. *Id.* at 197–198.

255. *Id.* at 201.

256. *Bridges to Brazil*, *supra* note 252 (documenting between Brazil’s Trench Rossi & Watanabe and the U.S. firm Baker McKenzie and other similar arrangements).

257. See Singh, *supra* note 223, at 367 (noting that “India-based multinationals and large domestic companies welcome foreign law firms’ entry because competition among law firms will increase, resulting in better quality and competitive prices”); Gabbay, Ramos & Sica, *supra* note 18, at 49–53 (noting the limited but important impact of rules restricting the entry of foreign law firms on the market).

258. See *infra* Section II.B.



the traditional long-term relationships between companies and their primary outside law firms.<sup>259</sup> As Wilkins and Khanna report, Brazilian GCs appear to be using this authority significantly more frequently than their Indian counterparts. Thus, in their comparative study of GCs in the two jurisdictions, the authors report that 27% of Brazilian GCs indicated that they had terminated an important law firm relationship more than a few times during the last three years, with only 32% stating that they had not done so at all—rates that are roughly comparable to those reported by their U.S. counterparts.<sup>260</sup> By contrast, only 10% of Indian companies reported taking similar action, with almost two thirds (62%) acknowledging that they had not terminated any important law firm relationships during this period.<sup>261</sup> As the authors conclude, “it is clear that [law firm] relationships are still far ‘stickier’ in India than they are in either the United States or Brazil.”<sup>262</sup> One plausible explanation for this stickiness is the fact that top Indian law firms are protected from competition from foreign law firms that might destabilize these cozy relationships.<sup>263</sup>

Once again, China has pursued a radically different path with respect to the entry of foreign law firms. Although foreign lawyers are not allowed to practice Chinese law, they are allowed to “provide information on the impact of the Chinese legal environment,” a loophole, as Ohnesorge reports, that is “hard to distinguish from much of what constitutes the practice of law for business lawyers.”<sup>264</sup> Not surprisingly, as Aditya Singh reports, “it is widely acknowledged that foreign law firms are today advising clients on Chinese law.”<sup>265</sup> As Singh goes on to note: “Of course, local law firms have protested, but the benefits of having foreign law firms to Chinese businesses, at least according to the regulators, far outweigh the costs to domestic lawyers.”<sup>266</sup>

Moreover, in addition to lax enforcement of restrictions, China has made several moves that facilitate alliances between Chinese law firms and foreign entities.<sup>267</sup> This includes allowing the legal branches of international ac-

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259. See Wilkins, *supra* note 32, at 258-259.

260. Wilkins & Khanna, *supra* note 104, at 150.

261. *Id.*

262. *Id.*

263. See Singh, *supra* note 223, at 367 (noting the problems created by the fact that “Indian clients who deal with foreign governments and partners generally have to work with foreign law firms based in New York, London, Singapore, or Hong Kong,” and arguing that the “[a]dmission of foreign lawyers and law firms will change this, making it convenient for clients to engage and instruct their lawyers in the same city and time zone”).

264. See Ohnesorge, *supra* note 225, at 23 (on file with authors).

265. Singh, *supra* note 223, at 377.

266. *Id.*

267. *Id.*

counting firms to enter the Chinese market, and more relaxed rules within China's special economic zones and Hong Kong.<sup>268</sup>

The results of these regulatory policies are dramatic. As Stern and Li report, there are more than 250 foreign law firms operating in China.<sup>269</sup> Although many of these offices are small—and, as Stern and Li report, barely profitable—they have nevertheless had a significant impact on the development of the Chinese legal ecosystem.<sup>270</sup> The competition between foreign and domestic firms has made the Chinese corporate market among the most competitive in the world.<sup>271</sup> In-house legal departments have taken advantage of this competition to drive down costs by spreading their work among a number of domestic and foreign providers.<sup>272</sup> This has, in turn, caused many domestic Chinese firms to modify or abandon their initial reliance on Cravath System practices and embrace aggressive lateral hiring of lawyers from both foreign and domestic firms, formalized and increasingly bureaucratic management structures, and compensation systems that can compete with the escalating sums paid to “star” associates and partners in global law firms.<sup>273</sup>

These changes have further exacerbated the demand for lawyers with both the knowledge and skill to provide high-level corporate legal services to increasingly sophisticated global and Chinese clients.<sup>274</sup>

## 2. *Grinding the Gears: The War for Talent and the War to Change Legal Education*

At first blush, it might appear that the growing supply of new law school graduates in each country was sufficient to meet the increasing demand for well-trained corporate lawyers created by the dynamics of the Transformative Period in India, Brazil, and China. In India, for example, the number of applicants taking the Common Law Admissions Test (CLAT) required to gain admission to most law schools nearly tripled from 10,773 in 2008 to

268. Ryan Swift & Enoch Yiu, *As 'Big Four' Move Into Legal Sector, Hong Kong Firms Left to Ponder Independence, Fair Competition*, SOUTH CHINA MORNING POST (Dec. 27, 2018, 8:01 AM), <https://perma.cc/H4ZU-PVA7>.

269. See Rachel Stern & Su Li, *The Outpost Office: the International Law Firm's Approach to the Chinese Legal Market*, in THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 8 (forthcoming 2020) (article manuscript at 8) (on file with authors).

270. *Id.*

271. See Jing Li, *The Legal Profession in China in a Globalized World: Innovations and New Challenges*, 26 INT'L J. OF THE LEGAL PROF. 217, 249-50 (reporting that “[t]he competition for large corporate clients and lucrative business transactions is fierce and will continue to be so, not only within the club of big Chinese corporate law firms, but also between Chinese law firms and international law firms globally”) Wilkins, *supra* note 32, at 293 (reporting increasing cost-pressure in the Chinese legal market).

272. See Li, *supra* note 271, at 236–246 (categorizing changes in China's corporate legal market); see also Wilkins & Fong, *supra* note 123 (on file with authors).

273. See Xueyao Li & Sida Liu, *The Learning Process of Globalization: How Chinese Law Firms Survived the Financial Crisis*, 80 FORDHAM L. REV. 2847, 2849 (2012).

274. *Id.*

27,627 in 2013.<sup>275</sup> As the Indian report on legal education underscores, this increase in applicants was driven, in part, by a corresponding increase in the number of national law schools, which went from three at the turn of the millennium to 18 in 2017.<sup>276</sup> Overall, by the second decade of the twenty first century, there were close to 1,400 law colleges in India, producing between 60-70,000 graduates a year.<sup>277</sup>

The Brazil and China reports tell a similar story. As Cunha and Ghirardi note, following Brazil's return to civilian rule and the adoption of the new constitution, the number of law programs grew rapidly, reaching by one estimate 1,149 as of 2012 and producing more than 93,000 graduates a year.<sup>278</sup> The China report documents a similar "explosion" in the number of law schools, from 200 in 1990, producing approximately 31,000 graduates, to 600 in 2006, graduating more than 280,000.

Although these numbers seem more than adequate to satisfy the demands of each countries growing, but nevertheless still small in absolute terms, corporate legal sector, upon closer examination it is clear that this overall growth in the number of students receiving legal education in each country has done little to alleviate the chronic shortage of well-trained corporate lawyers. As all three national reports underscore, the overwhelming majority of these new law schools are of very low quality, at best teaching students how to cram for the bar exam, or a basic credential that they could use to get a government job or similar employment.<sup>279</sup> Not surprisingly, as the three studies go on to document, neither law firms nor in-house legal departments recruit from institutions of this kind.<sup>280</sup>

There are, however, a few "islands of excellence amidst a sea of institutionalized mediocrity," to borrow the evocative phrase once used by the former Prime Minister of India Dr. Manmohan Singh to describe the original national law schools.<sup>281</sup> As the three national studies underscore, however, in Brazil and India it has been private law schools that have responded most aggressively to the demand for well-trained corporate lawyers.

Brazil was the first to follow this path. In 2002, the Fundação Getulio Vargas (FGV), one of Brazil's most prestigious and respected private institutions, created new law schools in São Paulo and Rio de Janeiro, to fill the "urgent need for new global lawyers in Brazil."<sup>282</sup> To accomplish this goal, the two schools instituted a number of policies that distinguished them

275. *Id.* at 524.

276. *Id.*

277. *Id.*

278. Cunha & Ghirardi, *supra* note 131, at 252.

279. Gingerich & Robinson, *supra* note 131, at 541; Cunha & Ghirardi, *supra* note 131, at 255; Wang, Liu & Li, *supra* note 131, (article manuscript at 1) (on file with authors).

280. See Gingerich & Robinson, *supra* note 131, at 541; Cunha & Ghirardi, *supra* note 131, at 255; and Wang, Liu, & Li, *supra* note 131, (article manuscript at 1) (on file with authors).

281. Shamnad Basheer, *NLU's - Islands of excellence amidst a sea of institutionalized mediocrity*, CA-REERS360 (Oct. 24, 2017, 10:38 AM), <https://perma.cc/TTH9-AYUF>.

282. Cunha & Ghirardi, *supra* note 131, at 256.

from even the best of Brazil's public law schools. These policies included: hiring a core cadre of full-time professors, many of whom have international training, requiring faculty to undertake substantial research and to publish in international journals, creating a curriculum with a significant emphasis on corporate law (including a rigorous master's program in the area) and other global topics, fostering exchange programs and other linkages with leading law schools in the US and Europe, and requiring all students to take courses in English.<sup>283</sup> Although both schools have become leaders in Brazilian legal education, FGV São Paulo has played a particularly critical role in training lawyers for the corporate legal sector—a role underscored by the fact that the founding dean and visionary behind the project was Ary Oswaldo Mattos Filho, the named former managing partner of Mattos Filho, one of Brazil's leading corporate law firms.<sup>284</sup> Given these policies and commitments, it is not surprising that about half the alumni of FGV Direito SP work for law firms—95 percent of which are the most prestigious law firms in São Paulo<sup>285</sup>—with another 30 percent working in in-house legal departments, especially in the banking and financial sectors.<sup>286</sup>

A few years after FGV's founding, a school with a similar mission was created in India. Funded by a generous grant from Naveen Jindal, the scion of the Jindal Steel Company, one of India's most successful business groups, the O.P. Jindal Global Law School (JGLS) opened its doors just outside of New Delhi in 2009.<sup>287</sup> Like FGV, JGLS's mission was to develop a global curriculum, course structure, and program framework. As the school's founding dean and university vice-chancellor, C. Raj Kumar—himself a product of global legal education at Oxford and Harvard Law School—writes in the India volume,

From its founding, the goal of JGLS has been clear: To create an institution of global excellence. While the effort was to develop a global curriculum, a global course structure, and a global program framework, the most important aspects of JGLS's global orientation was to create a globally recognized selection process for the students who attend JGLS, create a globally fluent faculty (including important connections to leading faculties around the world, and develop a global research agenda with a commitment to doing cutting-edge research that would meet international standards.<sup>288</sup>

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283. *Id.*

284. See Ary Oswaldo Mattos Filho, *LATIN LAWYER*, <https://perma.cc/7AD9-VFWT> (documenting his role in both the law school and law firm).

285. Cunha & Ghirardi, *supra* note 131, at 256.

286. *Id.*

287. C. Raj Kumar, *Experiments in Legal Education in India: Jindal Global Law School and Private Non-profit Legal Education*, in *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 6, at 606, 608–09.

288. *Id.* at 609.

Like FGV, a significant number of JGLS graduates go to work in India's most prestigious corporate law firms and in-house legal departments.<sup>289</sup>

Both FGV and JGLS have also forged a number of other important connections with both domestic and foreign law firms and companies. Thus, in both institutions, law firms and companies fund scholarships, support student organizations (including sending students to international moot court and arbitration competitions), offer courses and seminars taught by leading corporate lawyers, and provided dedicated internship programs placing students from both institutions into law firms and companies.<sup>290</sup>

Inspired in part by FGV's and JGLS's example, a small number of other private law schools in each jurisdiction have also created similar linkages to the corporate sector with an eye toward preparing their graduates for corporate law practice.<sup>291</sup> Taken as a whole, however, these globally focused private schools produce no more than a few hundred (in the case of Brazil) to a few thousand (in the case of India) graduates each year, not all of whom go into the corporate sector.<sup>292</sup>

In addition to their full-time enrollment, however, private law schools in Brazil and India, along with a number of for-profit institutions, now offer a significant number of corporate law focused continuing legal education courses for practicing lawyers seeking to upgrade their skills. As Cunha and Ghirardi report:

CLE courses have become a prime locus for the formation of corporate lawyers in Brazil. Unlike law schools, which remain for the most part faithful to their traditional syllabi, the curricula of the CLE courses clearly display concern with the impact of globalization on the practice of law in the country. From the 1990s onward, when for-profit educational institutes were authorized to offer such courses, the number of CLE offerings has expanded dramatically.<sup>293</sup>

Gingerich and Robinson report that JGLS has also entered this space, along with a small number of other public and for-profit enterprises.<sup>294</sup>

Moreover, many law firms and companies have begun offering their own internal training programs to address what they perceive as the inadequacies

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289. *Id.* at 613.

290. See Gingerich & Robinson, *supra* note 131, at 534–37 (describing Jindal's corporate connections); Cunha & Ghirardi, *supra* note 131, at 256–61 (describing FGV's corporate connections).

291. Cunha & Ghirardi, *supra* note 131, at 256 (discussing reactions from Universidade de São Paulo and UFMG); Gingerich & Robinson, *supra* note 131, at 536 (discussing schools like Symbiosis, Amity and the School of Law at Christ University that are pursuing a similar path to JGLS).

292. See Cunha & Ghirardi, *supra* note 131, at 256; Gingerich & Robinson, *supra* note 131, at 542–43.

293. Cunha & Ghirardi, *supra* note 131, at 258.

294. Gingerich & Robinson, *supra* note 131, at 534–37; see also *id.* at 531 (reporting on the rapid increase in the number of “correspondence classes” offered by the National Law School in Bangalore, which are often taken by “practicing lawyers wanting to fine-tune their skills”).

of both formal legal education and available CLE programs. As Cunha and Ghirardi report, these kinds of programs have become “trendy” among top Brazilian law firms and companies, including Pinheiro Neto which has devoted more than 18,000 hours to internal training since 2012.<sup>295</sup> Although slower to develop, some of India’s leading law firms have now moved to create similar programs.<sup>296</sup>

Collectively, these private sector initiatives have put pressure on Brazil and India’s established public law schools to upgrade the character and quality of the legal education they provide. As the national reports of the two countries document, this pressure has resulted in some movement among the elite law schools of both jurisdictions. For example, as Gingerich and Robinson report, India’s leading national law school in Bangalore now requires students to take “two corporate law classes, as well as classes in international trade law, intellectual property, bankruptcy law, and insurance law.”<sup>297</sup> In addition, the law school now has two law firm endowed chairs (one by the U.K. firm Allen & Overy and one by the Indian law firm Singhanian & Company), three chairs endowed by leading Indian companies, and offers an LLM program specializing in business law.<sup>298</sup> Similarly, Cunha and Ghirardi report that FGV’s success “has led other institutions to experiment with new formulas,” most notably the prestigious University of Sao Paulo, which has both implemented changes in its main campus and opened a new location where the curriculum “departs significantly from the more traditional design of its mother institution.”<sup>299</sup> Once again, however, these innovations have typically been confined to a very small number of elite public law schools, affecting only a small number of students.<sup>300</sup> As a result, they have done little to relieve the pressure on the legal education gear to supply India and Brazil’s corporate legal sectors with well-trained lawyers.

Given these domestic limitations, it is not surprising that a growing number of Brazilian and Indian law firms are increasingly seeking out lawyers with foreign legal training to satisfy their demands for globally fluent talent. As Gabbay, Ramos, and Sica note with respect to their research in Brazil, “[t]he majority of the lawyers we interviewed considered international training essential for career advancement, and firms offer incentives for attorneys to complete a master’s program, such as an LLM, at a foreign university.<sup>301</sup> Although interviews with Indian lawyers suggest that this requirement is less established in India—another indication that the Indian corporate legal ecosystem may be less globalized than the corresponding sec-

295. Cunha & Ghirardi, *supra* note 131, at 259.

296. See Cyril Sbroff Explains Ideas, Details Behind CAM’s New 2-3 Day Learning Programs for Fee Earners, Clients, LEGALLY INDIA (Apr. 8, 2019), <https://perma.cc/EX32-GSEV>.

297. Gingerich & Robinson, *supra* note 131, at 530.

298. *Id.* at 530–31.

299. Cunha & Ghirardi, *supra* note 131, at 256.

300. *Id.*

301. Gabbay, Ramos & Sica, *supra* note 18, at 53.

tor is in Brazil—the number of Indian lawyers seeking foreign legal education is nevertheless on the rise.<sup>302</sup>

But obtaining an LLM degree or other relevant educational or practice experience in the U.S., U.K., or Europe is both expensive and difficult to attain.<sup>303</sup> Although as indicated above, some Brazilian law firms have programs to help their lawyers find and pay for these global opportunities, for the most part those seeking foreign credentials or experience must find ways to procure them on their own.<sup>304</sup> As a result, while the number of students seeking LLMs abroad is growing,<sup>305</sup> this option will never constitute a full solution to the problem that law firms and in-house legal departments in Brazil and India face in finding a sufficient supply of globally qualified lawyers.

Once again, the situation in China is significantly different. Like Brazil and India, the changes in the Chinese corporate legal market since 2000 have greatly accelerated the need for lawyers who are educated to a global standard. But unlike these other two emerging economies, “[t]he prestige and wealth of corporate law” has prompted Chinese law schools “to develop courses, curricula, and internship opportunities tailored to the careers of international business lawyers.”<sup>306</sup> Moreover, unlike the situation in the other two countries, where the lead came from private schools, China’s public universities have been the most aggressive in moving to produce globally trained corporate lawyers.

The Peking School of Transnational Law (STL) is a case in point. Like FGV and JGLS, STL is a new law school created specifically to produce globally qualified lawyers.<sup>307</sup> But unlike the former two institutions, STL is a public law school, formally a division of Peking University, China’s oldest and most prestigious institution of higher learning.<sup>308</sup> Founded in 2008, the school was conceived as a way for Chinese students to have access to an elite American legal education without the financial burden of studying in the United States.<sup>309</sup> It was the first law school in China to offer a U.S.-style JD (in English) as well as a Chinese-style Juris Master (in Mandarin).<sup>310</sup> STL hired professors from elite U.S. law schools, incorporated American law cur-

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302. Gingerich & Robinson, *supra* note 131, at 541.

303. See David M. Trubek & Camila Alves, *Legal Education Failures, Spontaneous Bypasses, and the Reproduction of Hierarchy in Brazil: Some Preliminary Thoughts*, BRAZILIAN JOURNAL OF INSTITUTIONAL STUDIES (REVISTA DE ESTUDOS INSTITUCIONAIS) (manuscript at 5) (on file with authors).

304. See Gabbay, Ramos & Sica, *supra* note 18, at 53–55. The fact that these programs are more common in Brazil again supports our finding that the corporate ecosystem is more mature here than it is in India.

305. See Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARD. J. INT’L & COMP. L. 143 (2006).

306. See Wang, Liu & Li, *supra* note 131, (article manuscript at 7) (on file with authors).

307. *Id.* (article manuscript at 27) (on file with authors).

308. *Id.* (article manuscript at 7) (on file with authors).

309. *Id.*

310. *Id.*

ricula into its classrooms, and even brought on the former dean of the University of Michigan School of Law and past president of Cornell University, Jeffrey Lehman, as its founding dean and chairman.<sup>311</sup> Although the school's dream of becoming the first law school outside of the United States whose students would be entitled to sit for the U.S. bar exam ended when the ABA voted in 2012 against accrediting the school, it remains popular with Chinese students, with over 40 percent going on to work in law firms between 2012-2017.<sup>312</sup>

Although no other single institution has gone as far as STL to prepare students for global legal practice, most of the leading Chinese law schools have made important efforts to expand and globalize their curriculums.<sup>313</sup> As Wang, Lu, and Li document, up to half the faculty in elite law schools in China have foreign degrees, and many have published in international journals.<sup>314</sup> These top schools have extensive offerings in economic law and comparative law.<sup>315</sup> Collectively, all of these efforts have further "globalized" the experience of even those Chinese students who do not study abroad.

Moreover, many Chinese law schools are creating programs that make it easier for their students to get at least some international experience. As Wang, Liu, and Li document, following the development of a joint LL.M. degree program between East China University of Political Science and Law and the University of Wisconsin School of Law, a number of leading Chinese universities instituted similar programs, including Shanghai Jiao Tong University, Tsinghua, Fudan, Renmin, and Peking University.<sup>316</sup> As the authors go on to point out:

The increasing popularity of international degree programs has not curbed the demand for student exchange programs and doctoral student visiting programs that involve no degree awarding. For instance, Peking lists sixty-five foreign law schools or departments on its website as collaborative partners for faculty visiting and student exchange. Fudan has officially signed exchange or collaborative agreements with at least thirteen foreign law schools. Renmin has also listed thirty-six similar student exchange partner schools. The newly established law schools are not falling behind either. In addition to the eleven joint LL.M. programs it has developed with law schools in North America and Europe, by 2015 SJTU had founded doctoral student visiting programs with four law schools in England and the United States, as well as student

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311. See Katherin Mangan, *U.S.-Style Law School Won't be Considered for ABA Accreditation*, CHRONICLE OF HIGHER EDUCATION, Aug. 6, 2012, <https://perma.cc/34TA-22LK>.

312. *Id.* See also Wang, Liu, and Li, *supra* note 131, at 26.

313. See *id.* (article manuscript at 24–25) (on file with authors).

314. *Id.* (article manuscript at 32) (on file with authors).

315. *Id.*

316. *Id.* (article manuscript at 27–28) (on file with authors).



exchange programs with more than twenty-five law schools across the world. Tsinghua also lists almost forty collaborative partner schools on its website. The large variety and ample availability of these programs have made these elite law schools attractive places for students who aspire to careers at global law firms and multinational corporations.<sup>317</sup>

Indeed, Chinese students who are studying law abroad are no longer simply seeking LLM degrees. As Ballakrishnen and Silver note, in 2015, Chinese nationals made up 15 percent of all non-U.S. students enrolling in J.D. programs, second only to Canadians.<sup>318</sup>

Nor is this exclusively a one-way process where Chinese students can obtain the benefit of studying abroad. As Wang, Liu, and Li also document “[b]esides sending Chinese students to LL.M. programs in foreign countries, elite law schools in China have also started to develop LL.M. and S.J.D. programs in Chinese law that are taught in English.”<sup>319</sup> Data from the China volume’s study of GCs suggest that many GCs operating in China are choosing to attend these domestic LLM programs over more expensive ones in the U.S. or U.K.<sup>320</sup>

As Wang, Liu, and Li make clear, these efforts to internationalize Chinese legal education are part of a broader initiative by the Chinese government to create “world-class universities.”<sup>321</sup> As the authors report, the Chinese government “initiated a number of state-funded programs such as “Project 211”<sup>322</sup> and “Project 985,”<sup>323</sup> which have invested large amounts of funding and other resources to “comprehensive research universities” (*zonghexing yajiuxing daxue*) and those under direct supervision of the central government authorities (*zhishu gaoxiao*) on an annual basis since the late 1990s.”<sup>324</sup> In order to successfully compete for these funds, and the government rankings on which these distributions are increasingly based, even the best Chinese law schools face tremendous pressure to internationalize:

Top Chinese universities are expected to obtain international recognition and eventually become prominent members of the global

317. *Id.* (article manuscript at 29) (on file with authors).

318. Swethaa S. Ballakrishnen & Carole Silver, *A New Minority? International JD Students in US Law Schools*, 44 L. & SOC. INQUIRY 647, 658 (2019).

319. Wang, Liu & Li, *supra* note 131 (article manuscript at 31) (on file with authors).

320. See Wilkins & Fong, *supra* note 123.

321. *Id.* (article manuscript at 8) (on file with authors).

322. “Project 211” was launched in 1995 as the Chinese central government vowed to fund 100 top universities and facilitate the growth of these leading higher education institutions into world-class universities. *Id.* (article manuscript at 8–9, n.2) (on file with authors).

323. “Project 985” was launched after May 1998, when top Chinese political leaders convened in Beijing University and celebrated the 100th anniversary of this prime institution. The project furthered the work of Project 211 and concentrated even more financial resources on a smaller number of elite Chinese universities. Project 985 gave birth to a league consisting of thirty-nine top Chinese universities. *Id.*

324. *Id.*

community of higher education. Consequently, the ability to produce internationally recognized research and recruit top legal talents who can participate in global legal discourses becomes a key indicator in the evaluation of elite law schools. The successfully internationalized law schools are more likely to gain advantages in the competition for government funding and other institutional supports[.]<sup>325</sup>

In sum, the legal education gear has turned at a significantly greater velocity in China than it has in either Brazil or India—a rate of speed that is largely, although certainly not exclusively, the result of government policies that have given Chinese law schools significant incentives to internationalize their curricula, student bodies, affiliations, and practices. In the next section in this part, we examine how this difference in the legal education gear, as well as the differences between China and the other two emerging powers with respect to the structure and regulation of corporate legal practice during the Transformative Period, have helped to produce a very different corporate ecosystem in China than in the other two emerging economies.

### C. *The State of the Corporate Legal Ecosystem in India, Brazil, and China (circa 2020)*

Taken as a whole, the three national reports provide clear evidence that a new and distinct corporate sector of legal practice has emerged in India, Brazil, and China, and that U.S. models of corporate legal practice have been influential in shaping this process.<sup>326</sup> Moreover, as these economies moved from the initial Formative Period in the years immediately following the global shift, to the Transformative Period following the Global Financial Crisis, the corporate ecosystem in each jurisdiction shifted more or less—and as we have seen the qualification matters—from a Law Firm-Led model, in which Cravath System law firms were the dominant gear driving these new ecosystems, to a Client-Led model, in which increasingly sophisticated in-house counsel are driving developments that are destabilizing both the internal Cravath System practices of law firms, and putting pressure on traditional legal education systems to respond to the rapidly escalating demand for well-trained corporate lawyers.<sup>327</sup> In research not discussed in detail here, the three national studies also demonstrate that corporate lawyers in all three jurisdictions are playing an increasingly important role within the legal profession,<sup>328</sup> in the political economies of the jurisdictions,<sup>329</sup> and

325. *Id.* (article manuscript at 12) (on file with author) (citing Wenhua Shan, *Legal Education in China: The New “Outstanding Legal Education Scheme” and Its Implications*, 13 LEGAL INFO. MGMT. 10 (2013)).

326. *See infra* Section III.A.

327. *See infra* Section III.B.

328. *See* Marc Galanter & Nick Robinson, *Grand Advocates: The Traditional Elite Lawyers*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 455 (describing the impact of

in helping each country interface with key institutions of global governance.<sup>330</sup>

Although each country has therefore followed a similar overall path, our research also underscores that there have been important differences, both between the corporate legal ecosystem that has arisen in all three jurisdictions and U.S. models, as well as among these three important rising powers. With respect to the first comparison, the most obvious difference between the new ecosystems that have developed in all three jurisdictions and the U.S. is size. Although as we have demonstrated, corporate law firms, in-house legal departments, and the law schools that plausibly supply law-

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the rise of the corporate legal sector on India's prestigious supreme court advocates); Pavan Mamidi, *Aggregation of Land for a Growing and Globalizing Economy: The Role of Small-Town Lawyers in India*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 486 (describing how the growth of India's corporate legal ecosystem is impacting solo practitioners in rural India); Swethaa S. Ballakrishnen, *Women in India's "Global" Law Firms: Comparative Gender Frames and the Advantage of New Organizations*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 240 (describing the impact of India's corporate law firms on opportunities for women lawyers); Ariptra Gupta, *Pro Bono and the Corporate Legal Sector in India*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 275 (describing how India's corporate law firms are creating a new approach to pro bono); Fabio de Sa e Silva, *Doing Well and Doing Good in an Emerging Economy: The Social Organization of Pro Bono among Corporate Lawyers and Law Firms in Sao Paulo, Brazil*, in THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 7, at 210 (describing how corporate lawyers are reshaping pro bono policies and practices in Brazil); Maria da Gloria Bonelli & Camila de Pieri Benedito, *Globalizing Processes for Sao Paulo Attorneys: Gender Stratification in Law Firms and Law Related Businesses*, in THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 7, at 159 (describing how Brazil's corporate sector is affecting gender stratification in the legal profession); John Bliss, *Transitioning into Practice: Lawyer Socialization in the Chinese Corporate Bar*, in THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 8, (article manuscript at 5) (on file with authors) (describing how the corporate legal sector is affecting the socialization of Chinese lawyers); Jin Dong, *Do Institutional Variations Impact Chinese Lawyers' Attitudes on Pro Bono?*, in THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 8, (article manuscript at 2-4) (on file with authors) (describing the impact of China's corporate legal sector on attitudes about pro bono).

329. See Bhargavi Zaveri, *How India's Corporate Law Firms Influence Legal Policy and Regulatory Frameworks*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 307 (describing the impact of India's corporate lawyers on legislation); Fabio de Sa e Silva & David M. Trubek, *Lawyer in New Developmentalism: Legal Professionals and the Construction of the Telecom Sector in Emerging Brazil (1980s-2010s)*, in THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 7, at 294 (describing the role of Brazil's rising corporate sector on the privatization of Brazil's telecom sector); Zhizhou Wang, *Raising the Bar: The State Sponsored Professional Project in the Chinese Corporate Bankruptcy Field*, in THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 8, (article manuscript at 6) (on file with authors) (describing the role of corporate lawyers in the creation of China's bankruptcy policy).

330. See Gregory Shaffer, James Nedumpara, Asema Sinha & Amrita Bahri, *Equalizing Access to the WTO: How Indian Trade Lawyers Build State Capacity*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 631 (describing the role of corporate lawyers on India's participation in the WTO); Mark Wu, *Indian Corporations, the Administrative State, and the Rise of Indian Trade Remedies*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 672 (describing the role of corporate lawyers in India's success in trade remedies); Mihaela Papa & Aditya Sarkar, *Rising India in Investment Arbitration: Shifts in the Legal Field and Regime Participation*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 6, at 705 (describing the role of India's corporate legal sector in investment arbitration); Rubens Glezer, Vitor M. Dias, Adriane Sanctis de Brito & Rafael A. F. Zanatta, *Transforming Legal Capacity in Brazil: International Trade Law and the Myth of a Booming Practice*, in THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 7, at 264 (describing the role of corporate lawyers in Brazil's international trade practices).

yers to these institutions have all grown significantly since the global shift, the corporate legal sectors in India, Brazil, and China continue to constitute only a small fraction of the profession in each jurisdiction.<sup>331</sup> Consequently, in none of these countries can its emerging corporate legal ecosystem fairly be called a “hemisphere.”

Nor has either the Cravath System or the inside counsel revolution fully diffused in India, Brazil, or China. As documented above, even when corporate elites in the three countries expressly attempted to emulate Cravath System practices in the 1990s, they simultaneously adapted the model to fit important aspects of the social, political, and economic realities in their particular jurisdiction.<sup>332</sup> As a result, many of the law firms in all three countries have more of the patina of the Cravath System than the reality. Similarly, although in-house counsels have become more important in India, Brazil, and China, in none of the three countries have GCs obtained the power and prestige, either internally within the company or externally with respect to the legal market, that they have obtained in the U.S.<sup>333</sup> This is particularly true with respect to SOEs, where internal counsel continue to be treated more like government employees than lawyer-statesmen.<sup>334</sup> Finally, while globalization has produced important changes in legal education in all three countries, in none of the three jurisdictions has the labor market fully met the growing demand for globally trained corporate lawyers.<sup>335</sup>

Given these differences, the corporate sectors in India, Brazil, and China can best be described as a modified Client-Led ecosystem, with law firms continuing to have more power in these jurisdictions than they currently have in the United States, and with the legal education gear continuing to act as an important constraint, particularly in India and Brazil. Figure 7 presents a stylized model of this relationship among the three gears.

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331. See Wilkins, Khanna & Trubek, *supra* note 113; Cunha et al., *supra* note 14; Sida Liu & David B. Wilkins, *An Introduction to Globalization, Lawyers, and Emerging Economies: The Case of China*, in THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 8 (on file with authors).

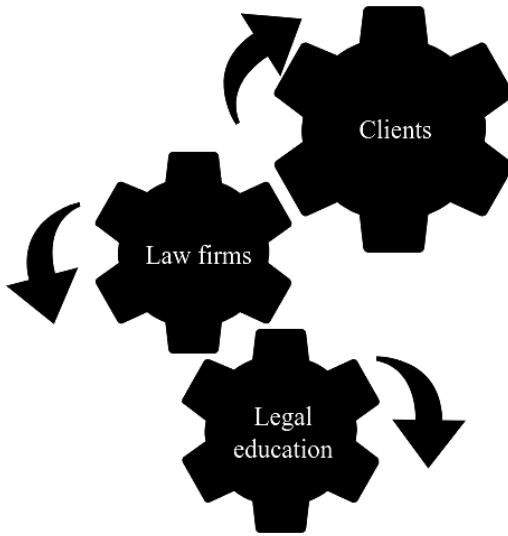
332. See *infra* Section III.A.2.

333. See *infra* Section III.B.1.

334. *Id.*

335. See *infra* Section III.B.2.

FIGURE 7: THE MODIFIED CLIENT-LED ECOSYSTEM IN INDIA, BRAZIL AND CHINA (CIRCA 2020)



Although important differences therefore exist between the Client-Led micro-level corporate ecosystems in these emerging economies and the U.S. model, our research also highlights significant differences among the three countries. These differences are particularly acute between the corporate legal ecosystem that has developed in China and the ones that have emerged in the other two rising powers.

Specifically, the findings above underscore that when compared with both India and Brazil, China:

1. has produced significantly larger corporate law firms, with significantly more variation from the Cravath System;<sup>336</sup>
2. has far fewer regulatory restrictions on domestic firms;<sup>337</sup>
3. is more open to allowing foreign firms to enter the Chinese legal market—and to allowing Chinese lawyers to work for foreign law firms, and, while not formally practicing Chinese law, to “opine on the Chinese legal environment;”<sup>338</sup>
4. is actively promoting the upgrading of the in-house counsel function for SOEs;<sup>339</sup> and

336. See *infra* Section III.B.1.a.

337. See *infra* Section III.B.1.b.

338. *Id.*

339. See *infra* Section III.B.1

5. has done significantly more to internationalize domestic legal education, while taking steps to make it easier for Chinese students to study abroad.<sup>340</sup>

It is important to emphasize that these differences do not imply that there has been more diffusion of U.S. models in China, or that its corporate legal sector is more “advanced” than the ones in India or Brazil. Although Chinese law firms are clearly more *global* than their counterparts in India and Brazil, where even the most important law firms have little or no presence outside of their home jurisdiction,<sup>341</sup> it is not at all clear that China’s biggest law firms are more *globalized* than those in India and Brazil with respect to their internal practices. To the contrary, as our research suggests the largest and fastest growing of these firms, Dacheng and Yingke, do not share even the most basic Cravath System practices that are still considered to be the global standard in law firm organization.<sup>342</sup> Even King & Wood, which as we have documented was expressly created to mimic Cravath System practices, has never fully embraced these standards, operating, as its “merger” with Mallesons underscores, more as a co-branding platform than a fully integrated firm.<sup>343</sup> Indeed, although they are the smallest, and arguably the least global of the three jurisdictions’ law firms, Pinheiro Neto and other elite Brazilian law firms appear to be the most globalized in terms of their transition from a family-based ownership structure to professionalized modes of management and control.<sup>344</sup> Similarly, Brazil’s in-house legal sector exhibits more of the characteristics of the inside counsel revolution than their counterparts in China and India.<sup>345</sup>

These last observations, however, only reinforce the conclusion that China is developing a corporate legal ecosystem that differs significantly both from U.S. models and from the models being developed in other emerging economies. To be sure, the overall size of China’s economy undoubtedly has contributed to some of the differences we see, particularly with respect to the size and global reach of its law firms as compared to those in India and Brazil.<sup>346</sup> It does not, however, explain others, such as why China has not used its economic power to exclude foreign law firms, or why India and Brazil have not devoted more resources to upgrading legal education. To understand these differences, it is important to look beyond the sheer size of

340. See *infra* Section III.B.2.

341. See Nanda, Wilkins & Fong, *supra* note 79, at 55 (noting that none of the major Indian law firms has any significant presence outside of India); Gabbay, Ramos & Sica, *supra* note 18, at 48 (noting a similar lack of international expansion among Brazilian law firms).

342. See Liu & Wu, *supra* note 72, (article manuscript at 15–22) (on file with authors).

343. *Id.*

344. See Gabbay, Ramos & Sica, *supra* note 18, at 60–61. India’s “second generation” law firms also share many of these qualities. See Krishnan & Thomas, *supra* note 111, at 217.

345. Wilkins & Khanna, *supra* note 104, at 110.

346. See Liu & Wu, *supra* note 72, (article manuscript at 10) (on file with authors) (linking the growth of China’s corporate law firms to the country’s “unprecedented economic growth” between 1992 and 2007).

the market in each of these emerging economies, and examine the macro-level relationship between these market forces and the state and the bar in each jurisdiction. We therefore offer some tentative insights from our three national studies that help to illuminate this complex relationship.

#### IV. EXPLAINING CHINESE EXCEPTIONALISM: CORPORATE LAWYERS IN THE FIELD OF STATE POWER

Scholars across a wide range of disciplines and geographies have documented that the legal profession occupies a critical position between the market and the state.<sup>347</sup> As a result, as Liu and Wu acknowledge in their report on the development of Chinese law firms, “economic and political forces are the two major sources of external influence on the development of the profession.”<sup>348</sup> In addition to demonstrating how lawyers are shaped by markets and state power, scholars have also documented many instances in which lawyers, either through formal bar organizations or informally as an interest group, have played an active role in shaping these other two domains.<sup>349</sup> In this section, we examine how the “macro-level” gears of the state, the market, and the profession have helped to shape the micro-level development of law firms, clients, and legal education in each of the three countries we have studied. Specifically, we offer some preliminary thoughts about how in each jurisdiction the relative power and attention of the state, operating through both formal regulations and informal incentives, the market, including both domestic and foreign competition, and the bar, including official organizations and ad hoc interest groups, have both promoted the growth of a Law Firm-Led ecosystem during the Formative Period, and affected the shift to a more Client-Led ecosystem during the Transformative Period. Figure 8 presents a stylized model of the interaction between these two gearing mechanisms.

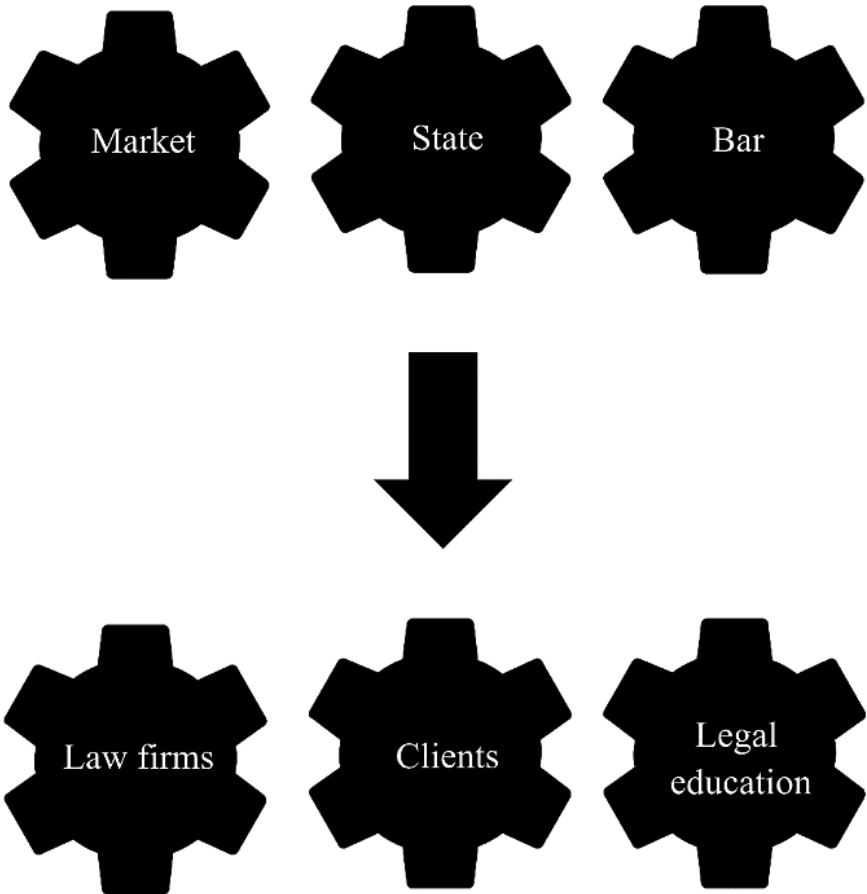
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347. See, e.g., DIETRICH RUESCHEMEYER, *LAWYERS AND THEIR SOCIETY: A COMPARATIVE STUDY OF THE LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES* (1973); *LAWYERS IN SOCIETY, VOLUME 3: COMPARATIVE THEORIES* (Richard L. Abel & Philip S.C. Lewis eds., 1989); *LAWYERS AND THE RISE OF WESTERN POLITICAL LIBERALISM: EUROPE AND NORTH AMERICA FROM THE EIGHTEENTH TO TWENTIETH CENTURIES* (Terence C. Halliday & Lucien Karpik eds., 1997); YVES DEZALAY & BRYANT GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS AND THE TRANSFORMATION OF LATIN-AMERICAN STATES*, (2002); YVES DEZALAY & BRYANT GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* (2010).

348. Liu & Wu, *supra* note 72, (article manuscript at 10) (on file with authors).

349. See, e.g., YVES DEZALAY & BRYANT GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 285 (1998) (describing lawyers as “compradores” who have played a key role in shaping the way that both states and markets respond to globalization).

FIGURE 8: INTERACTION BETWEEN THE MACRO AND MICRO GEARS



As we did in Part II, however, we start with the United States, since the interaction between the macro- and micro-level gears in the oldest and most developed corporate legal market provides important lessons for similar developments in India, Brazil, and China.

#### A. *The United States: Markets rule*

It is accepted orthodoxy that a key hallmark of the U.S. legal profession is that it is “independent” from both the state and the market.<sup>350</sup> The reality of the American corporate legal ecosystem, however, has always been more complex. Although the organized bar typically proposes the rules of professional conduct, these rules only become law when they are expressly en-

<sup>350</sup> See David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 801, 853–868 (1992) (describing this standard claim).



dorsed by state actors such as courts, legislatures, and administrative agencies.<sup>351</sup> As a practical matter, however, these officials actors have traditionally deferred to the American Bar Association and other similar bar organizations in such matters, leaving the state with only a limited role in professional regulation.<sup>352</sup> Moreover, the profession's control over the norms, structures, and practices of lawyering have always provided significant space for entrepreneurship. Thus, as we saw in Part II, in the early years of the twentieth century, entrepreneurial lawyers had free reign to create a new model of the large law firm that aligned with both the growing market demand for corporate legal services and the increasing pool of young lawyers graduating from law school in need of practical legal training.<sup>353</sup>

While the micro-level dynamics of the corporate legal market changed dramatically with the transition from the Law Firm-Led to the Client-Led ecosystem in the latter decades of the twentieth century, the basic relationship between the macro and micro-level gearing of the American system did not. To the contrary, it is precisely because the market gear has always been dominant at the macro-level in the US that in-house lawyers, who the profession had shunned as second-class citizens, were able to establish themselves as the new dominant actors in the micro-level corporate ecosystem.<sup>354</sup> The fact that law firms have responded to the growing market power of GCs by embracing a wide range of market norms in their quest for both clients and talent provides potent proof of the increasing dominance of the market gear in driving the micro-level dynamics of the U.S. corporate legal ecosystem.<sup>355</sup> Figure 9 provides a simplified graphic depiction of this reality.

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351. See Susan P. Konia, *The Law Between the Bar and the State*, 70 N.C. L. REV. 1389, 1510–518 (1992).

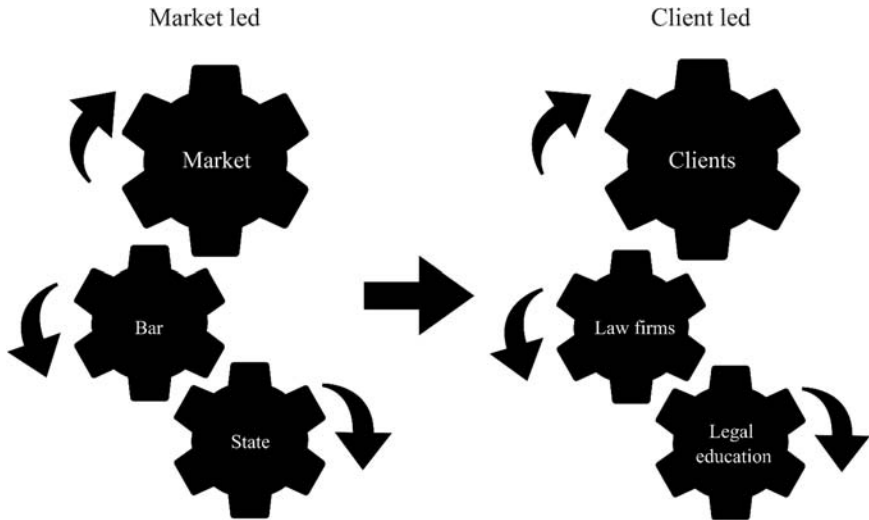
352. *Id.*

353. See *supra* Part II. The fact that the many lawyers who disapproved of these new firms—derisively calling them “law factories” that were destroying the soul of the legal profession—were not able to stop Paul Cravath and his contemporaries from exploiting these market conditions to build law firms that would come to control the micro-level ecosystem of the U.S. corporate legal field is a testament to the ultimate power of the market gear at the macro-level. See Richard H. Sander and E. Douglass Williams, *A Little Theorizing about the Big Law Firm: Galanter, Palay, and the Economics of Growth*, 17 Law & Soc. Inquiry 391, 391 (reporting commentators using this term in 1906 to deride the emergence of law firms as a threat to the “soul of the profession”).

354. See Wilkins, *supra* note 32, at 260–61 (describing how US GCs have wielded their control over corporate spending to enhance their own power and prestige); See generally Robert Rosen, *The Inside Counsel Movement: Professional Judgment and Organizational Representation*, 64 IND. L.J. 479 (1989) (same).

355. See Gilson, *supra* note 57, at 899–903 (describing how the shift in power between clients and law firms has produced a “devolution” in traditional ideals of lawyer independence which were supported by information asymmetries between lawyers and clients during the Law Firm-Led period).

FIGURE 9: U.S. MARKET-DRIVEN MACRO ECOSYSTEM (CIRCA 2020)



*B. Brazil and India: The Power of the Bar*

The macro-level gearing in India, Brazil, and China differs significantly from the U.S.'s market driven model. As we indicated in Part I, all three of these emerging powers have rejected the broad outlines of the Washington Consensus in favor of a development model in which the state plays a far more active role in the economy.<sup>356</sup> Although the state gear is, therefore, likely to be more important in these emerging economies than it has been in the U.S., the extent to which the state has been willing or able to exercise control over the micro-level corporate ecosystem has depended on the ability of the bar in all three jurisdictions to control the levers of state power.

Specifically, as the national reports demonstrate, in India and Brazil the state's primary role has been to protect domestic law firms from foreign competition, and to preserve traditional understandings of lawyer professionalism. This emphasis was especially strong during the Formative Period. Both India and Brazil vigorously enforced regulations protecting the fledgling Cravath System law firms emerging in both countries as "infant industries" by banning (in India's case) or severely restricting (in the case of Brazil) the ability of foreign law firms to compete freely and openly with domestic firms.<sup>357</sup> Moreover, as the national reports underscore, advocacy groups comprised of these new domestic corporate law firms played a key role in maintaining these restrictions.<sup>358</sup> At the same time, bar organizations

356. See *supra* Part I.

357. See *supra* Sections III(A)(2), III(B)(1)(b).

358. See *supra* Section III(B)(1)(b) (discussing the role of the Society of Indian Law Firms and the Center for Studies on Law Firms in Brazil).

in both jurisdictions lobbied for the strict enforcement of rules prohibiting commercial practices that would have helped to facilitate the growth of India and Brazil's corporate law firms.<sup>359</sup> Although the same law firm advocacy organizations have pushed to loosen these restrictions, given the relatively small size of the corporate bar in each country it is not surprising that these efforts have been far less successful when opposed by traditional lawyers and bar organizations who have seen the corporate bar's commercial practices as a threat to lawyer professionalism.<sup>360</sup> As a result, the organized bar in both countries, and the state regulatory agencies that have traditionally deferred to bar leaders in discharging their authority over the rules governing legal practice, have continued to formally embrace—and at least selectively enforce—rules that have inhibited the growth of corporate law firms well into the Transformative Period.<sup>361</sup>

Recent events in India and Brazil provide further proof of the power of the bar at the macro-level to shape the micro-level development of the corporate legal ecosystem in each country. Since 2014, high-level officials in the government of Prime Minister Narendra Modi in India have consistently indicated that they are in favor of removing the restrictions on foreign lawyers that have helped to insulate India's top law firms from the full force of the new Client-Led ecosystem.<sup>362</sup> Yet, notwithstanding these pronouncements, acting on a challenge brought by Indian lawyers and endorsed by the Bar Council of India, in 2018 the Supreme Court of India reaffirmed these traditional restrictions, limiting foreign entry to lawyers who “fly in and fly out” to visit clients and close deals.<sup>363</sup>

Given the crisis brought on by the “Car Wash” investigation and related scandals, it is not surprising that state officials in Brazil have shown even less interest in intervening in the market for legal services than their Indian counterparts.<sup>364</sup> As a result, the OAB has continued to retain significant control over the development of the Brazilian corporate legal ecosystem. As the report on Brazilian legal education makes clear, this control has significantly reduced the pressure on Brazil's 1,100+ law schools to respond to the

359. See *supra* Section III(A).

360. See Aditya Singh, *supra* note 236, at 369–70 (noting that India's litigating lawyers resent the new corporate legal sector); Almeida & Nassar, *supra* note 105, at 183–84 (discussing the fundamental conflict between the “public role” of lawyers based on “noncommercial activity” upon which the Brazilian bar's regulatory system is based, and the “commercial activity” of Brazil's new large law firms).

361. See *supra* Section III(B)(1)(b).

362. See Nanda, Wilkins & Fong, *supra* note 79, at 104 (“[R]ecent actions by the Modi government appear to signal that this long-awaited opening [of the Indian legal market] may in fact take place soon, beginning with allowing foreign law firms to participate in international arbitration in India”).

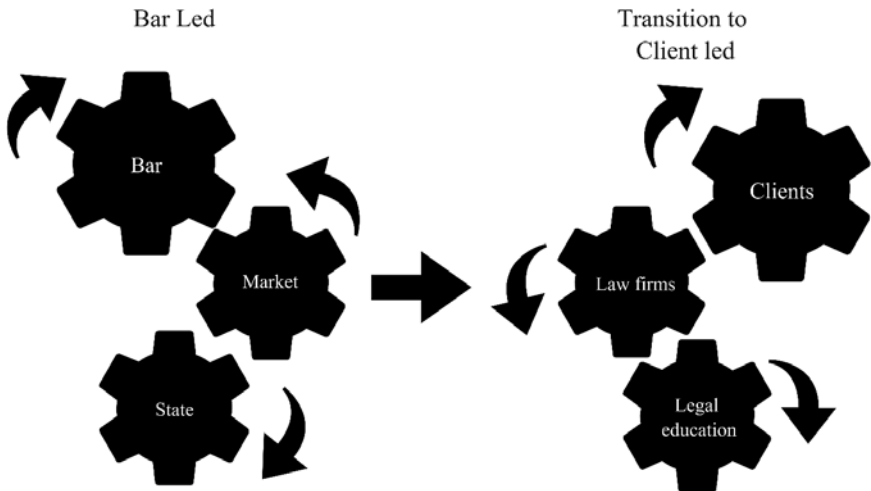
363. See Anna Zhang, *India Rules Against Foreign Firm Bases and ‘Casual’ Criteria for Fly-In, Fly-Out Advice*, LAW.COM (Mar. 16, 2018, 12:00 AM), <https://perma.cc/L64W-PQJM>.

364. For a general description of the Car Wash scandal and its cataclysmic repercussions for Brazil's government and economy, see Jonathan Watts, *Operation Car Wash: Is this the Biggest Scandal in History?*, GUARDIAN (June 1, 2017), <https://perma.cc/44Q2-687D>.

market pressure to produce globally qualified corporate lawyers.<sup>365</sup> Although federal officials in Brazil recently have helped to roll back regulations proposed by the São Paulo bar association prohibiting Brazilian lawyers from rendering pro bono services to individuals, the fact that a measure that was universally opposed by Brazil's large law firms and companies could come so close to being enacted underscores the continuing power of the traditional litigators and notables who still control the Brazilian bar.<sup>366</sup>

In sum, notwithstanding the importance of the developmental state in India and Brazil, with respect to the development of the micro-level corporate ecosystem in each jurisdiction, it is the bar that has played the pivotal role in producing the current shape of the corporate legal market in these two emerging economies. Figure 10 depicts this relationship.

FIGURE 10: INDIA AND BRAZIL'S BAR-DRIVEN MODEL (CIRCA 2020)



### C. China: State Power

The situation in China, however, is radically different. In China, the state is firmly in control of both the market *and* the profession—“China Inc.,” as Mark Wu has aptly dubbed China’s approach to both the economy and governance.<sup>367</sup> With respect to the corporate legal market, the importance of

365. See Cunha & Ghirardi, *supra* note 131, at 255 (“Governmental efforts to regulate law schools have not, unfortunately, translated into high-quality education. On the contrary, traditional legal education practices in Brazil have been so devastatingly ineffective that many now consider them to be a hurdle in furnishing the country with the professionals the new global scenario requires.”).

366. See de Sa e Silva, *supra* note 328, at 238 (discussing the power of the traditional elements of the bar in the pro bono debate).

367. See Mark Wu, *The “China Inc.” Challenge to Global Trade Governance*, 57 HARV. INT’L L.J. 261 (2016).

the state gear has been evident from the outset. As the China report documents, it was the state, not the private sector, that created the regulatory conditions and political space that allowed for the creation of Cravath System law firms.<sup>368</sup> In the intervening years, the Chinese government has consistently eased restrictions on law firm growth and facilitated knowledge transfer by allowing foreign firms to enter the market, and permitting Chinese lawyers to work in these offices.<sup>369</sup>

As China transitioned from the Formative to the Transformative Period, the role of the state in shaping China's corporate legal ecosystem has only increased. In the law firm sector, the government promoted the development of alternative law firm models, such as Dacheng's "franchise" organization and Yingke's "space rental" system, in order to facilitate access to corporate legal services for China's smaller SOEs and private companies, particularly in second tier cities.<sup>370</sup> In the in-house counsel sector, the state promoted the upgrading of the legal function in China's large SOEs, while making clear to these newly empowered GCs that their primary allegiance is to the state.<sup>371</sup> Similarly, as Wang, Liu, and Li make clear, the state has taken a number of actions to upgrade the quality and international focus of Chinese law schools.<sup>372</sup>

Most recently, the state has facilitated both the expansion of Chinese law firms abroad and the ability of Chinese companies investing abroad to procure high quality legal services. As Liu and Wu underscore, the Ministry of Justice has eased regulatory restrictions that appeared to block the Swiss *verein* affiliation between King & Wood and the Australian firm Mallesons Stephens and Jaques, and more recently with the U.K. firm S.J. Berwin.<sup>373</sup> The state further facilitated the combined firm's growth by directing SOEs investing abroad to give their business to this "national champion."<sup>374</sup> For those SOEs doing business in the U.S. who need to hire a foreign law firm, Li and Zhang's present preliminary evidence that the government managers in charge of these organizations prefer to hire lawyers who have U.S. government experience as a means of deflecting the suspicion with which these Chinese companies tend to be viewed in the marketplace.<sup>375</sup> Thus, even when investing abroad, Chinese government officials are seeking to procure legal services that are closer to the field of state power.

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368. Liu & Wu, *supra* note 72, (article manuscript at 11) (on file with authors).

369. *Id.*

370. *Id.*

371. Wilkins & Fong, *supra* note 123 (on file with authors).

372. Wang, Liu & Li, *supra* note 131, (article manuscript at 4) (on file with authors).

373. Liu & Wu, *supra* note 72, (article manuscript at 13) (on file with authors).

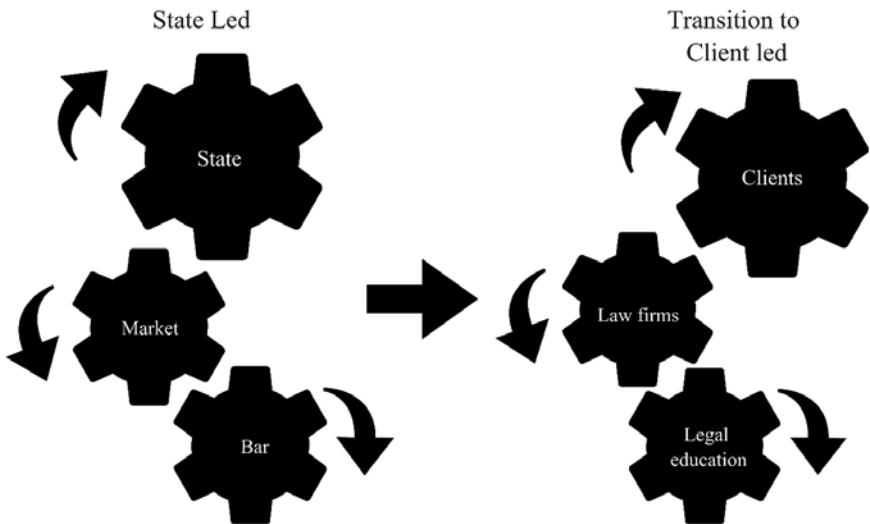
374. See Wu, *supra* note 367, at 271 (reporting that China frequently picks national champions in important industries).

375. See Ji Li & Wei Zhang, *Picking the Advocate's Dragon: How Chinese Investors Select their Lawyers in the United States*, in *THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 8, at 8 (on file with authors).

In pursuing these initiatives, the Chinese state has not had to contend with the kind of resistance from the organized Bar that have opposed change in India and Brazil. In China, the All China Lawyers Association, China's centralized bar organization, is a part of the Ministry of Justice.<sup>376</sup> The fact that King & Wood's founder and chairman, Wang Junfeng, is the chair of this organization underscores the relationship between the state and the legal profession in China.<sup>377</sup>

In sum, China's state-driven macro-level ecosystem differs significantly from both the bar-driven ecosystem in India and Brazil, and the market-driven ecosystem in the U.S. Figure 11 depicts this arrangement.

FIGURE 11: CHINA'S STATE-DRIVEN MODEL (CIRCA 2020)



In many ways, the Chinese approach to macro-level gearing appears to be working to produce a globally competitive corporate legal ecosystem. Knowledgeable observers report that Chinese law firms have become much more sophisticated at doing high-level corporate legal work.<sup>378</sup> Although many factors have undoubtedly contributed to this growth in capacity, the fact that Chinese firms are able to hire Chinese (and even some non-Chinese) lawyers who have been trained in global firms has undoubtedly facilitated this development, as has the fact that the Chinese government continues to

376. See Ohnesorge, *supra* note 225, at 16–17.

377. See *Winners of the Asia-Pacific Innovative Lawyers Outstanding Individuals Awards 2016*, FINANCIAL TIMES (June 2, 2016), <https://perma.cc/R4BB-27GH> (reporting that “Mr. Wang [Junfeng] is President of the All China Lawyer’s Association”).

378. See Stephen Mulrenan, *The Rise and Rise of China’s Legal Profession*, INT’L B. ASS’N (Apr. 11, 2018), <https://perma.cc/8FHQ-RPEG> (reporting the increasing sophistication of China’s law firms).

favor its own national champion law firms for legal work for SOEs and in administrative actions before government officials. As a result, many foreign firms have found it increasingly unprofitable to operate in China, with some like New York's Fried Frank deciding to exit the market entirely.<sup>379</sup> When King & Wood Mallesons essentially acquired the U.K. law firm SJ Berwin, with rumors that it would soon acquire a major U.S. firm as well, China's strategy of using the state gear at the macro-level to produce a micro-level corporate ecosystem capable of developing law firms that could win on the global stage appeared to be vindicated.<sup>380</sup>

But the collapse of the King & Wood Mallesons SJ Berwin merger also underscores the inherent dangers of China's state-led strategy. In 2016, three years after the merger was announced, King & Wood was forced to disband its European operations and unwind the SJ Berwin deal.<sup>381</sup> Although once again there are undoubtedly many reasons for the deal's failure, several sources have reported that a primary cause was the fact that many of SJ Berwin's European partners—and their clients—felt uncomfortable being a part of a law firm where lawyers with close ties to the Chinese government were calling the shots.<sup>382</sup> Additionally, the European partners and clients had concerns about confidentiality, trade secrets, and mandates to provide services to Chinese SOEs at deep discounts.<sup>383</sup>

These types of concerns are only likely to escalate as the Chinese government continues to take steps at the macro-level that make clear that the profession is subservient to the state. As Rachel Stern has documented, the Chinese government is ramping up its control over the legal profession by enforcing the requirement that there be a functioning Party Committees in all Chinese law firms, increasing the number of “ideological” questions on the Chinese bar exam, and honoring lawyers who actively promote the interest of the state.<sup>384</sup> And, as has been well documented, the Chinese government is increasingly cracking down on human rights and criminal defense lawyers, including, in a recent case, corporate lawyers who sought to defend the rights of human rights lawyers in court.<sup>385</sup> All of these actions are likely

379. On the general profit pressure on foreign firms operating in China, see Stern & Li, *supra* note 269, at 9–14. On Fried Frank's decision to close its China offices, see Ellen Rosen, *Fried Frank is Closing Offices in China: Business of Law*, BLOOMBERG (Jan. 21, 2015, 2:16 PM), <https://perma.cc/N4UP-MDVZ>.

380. See Casey Sullivan, *Asia's King and Wood Law Firm, London's Berwin to Merge*, REUTERS (July 31, 2013, 12:35 PM), <https://perma.cc/6RVL-YKH3>.

381. Barney Thompson, *KWM Europe and How Not to Run a Law Firm*, FINANCIAL TIMES (Sept. 4, 2017), <https://perma.cc/7HJR-KSDH> (reporting on the collapse of the combined firm in Europe).

382. Charles Orton-Jones, *Post Mortem: Why KWM Collapsed*, RACONTEUR (Mar. 23, 2017), <https://perma.cc/QQ7G-UGZB>.

383. *Id.*

384. See Rachel E. Stern, *Political Reliability and the Chinese Bar Exam*, 42 LAW & SOC'Y 506 (2016); Rachel E. Stern & Lawrence J. Liu, *The Good Lawyer: State-Led Professional Socialization in Contemporary China*, 45 LAW & SOC. INQUIRY 226, 238–42 (2020); see also Nectar Gan & Mimi Lau, *China's Communist Party to Evaluate Lawyers Based on Political Performance*, SOUTH CHINA MORNING POST (Apr. 14, 2017, 9:02 AM), <https://perma.cc/7L2N-FD92>.

385. See Rachel Stern, *Activist Lawyers in Post Tiananmen China*, 42 LAW & SOC. INQUIRY 234 (2016).

to increase the pressure from international bar organizations, human rights activists, and academic critics to make both foreign and domestic corporate lawyers operating in China more accountable to international professional norms.<sup>386</sup> Only time will tell whether these pressures, or the failure of China's national champions to achieve success outside of China, will lead either the state or the profession to seriously push for re-gearing at the macro-level.

V. CONCLUSION: WHAT THE MACRO AND MICRO-LEVEL GEARING IN INDIA, BRAZIL, AND CHINA MIGHT PORTEND FOR THE RE-GEARING OF THE GLOBAL CORPORATE LEGAL SERVICES MARKET IN THE AGE OF DISRUPTION

In the years following the 2008 financial crisis, many observers have argued that the corporate legal ecosystem has entered a new age of “disruption,”<sup>387</sup> leading many to predict everything from “The Death of Big Law,”<sup>388</sup> to “The End of Lawyers.”<sup>389</sup> Although many of these predictions are undoubtedly overblown—as one of us has argued, stability and predictability will continue to be key attributes of the legal profession, and the rule of law more generally<sup>390</sup>—there is no question that the overall market for legal services is currently undergoing an important restructuring. This restructuring is likely to have important implications for the relationship between the macro- and micro-level gearing in India, Brazil, and China—and in the United States and globally.

Not surprisingly, China is responding to the new disruption in the corporate legal services market by continuing to press the importance of the state gear. For example, the Chinese government is promoting legal process outsourcing, including sponsoring research at elite state law schools such as Peking University and Tsinghua.<sup>391</sup> More generally, leading Chinese tech-

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386. See Jerome Cohen, *Turning a Deaf Ear*, SOUTH CHINA MORNING POST (June 7, 2011), <https://perma.cc/YW7A-3F7C> (challenging foreign lawyers practicing in China to care about the suppression of China's human rights lawyers).

387. See David B. Wilkins & Maria Jose Esteban, *Talking the “Alternative” out of Alternative Legal Service Providers: Remapping the Corporate Legal Ecosystem in the Age of Integrated Solutions*, in NEW SUITS: APPETITE FOR DISRUPTION IN THE LEGAL WORLD (Michele DeStefano & Guenther Dobrauz-Saldapenna eds., 2019) (summarizing the literature).

388. Larry Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749 (2010).

389. RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2008).

390. Wilkins & Esteban, *supra* note 387.

391. See RESEARCH AND MARKETS, *LEGAL PROCESS OUTSOURCING WORLD-WIDE MARKET STUDY 2019: DESPITE CONCERNS THE UNITED STATES LPO SERVICES MARKET GROWS STEADILY* (June 2019), summary available at <https://perma.cc/QSR4-BLM6> (reporting that the “Chinese LPO Market Set to Boom Over Short Term”); Thomson Reuters Legal Insights Europe, *Pioneering Legal Process Outsourcing in China*, THOMPSON REUTERS (Nov. 16, 2017), <https://perma.cc/U9SX-HJ2D> (reporting on Silkroad Law Firm, a Chinese LPO based in Xian). In his report on the Indian LPO industry, Khanna prefigured this



nology companies, such as Alibaba and Tencent—both of which are private, but with strong links to the state—are creating new digital platforms that allow hundreds of millions of consumers to participate in online markets and discussion groups to share information and purchase goods and services, including legal services.<sup>392</sup> Indeed, Tencent’s WeChat is trying to create an online marketplace for legal services that could look like LinkedIn, Amazon, Avvo, and Legal Zoom all rolled into one.<sup>393</sup> Alibaba has similar plans for its platform, AliPay.<sup>394</sup> Indeed, the GCs of both these Chinese mega companies—both of whom are, not coincidentally, American with extensive experience in U.S. and U.K. companies and law firms—have indicated that they want to bring this same level of innovation to the way Alibaba and Tencent purchase and consume legal services.<sup>395</sup>

China, however, is far from the only country that is relying on the state-gear to drive innovation in the corporate sector in the age of disruption. The government of Singapore, for example, recently announced its intent to make that city the primary hub for legal innovation around the world.<sup>396</sup> To accomplish this goal, the government is investing tens of millions of dollars to create world class “innovation hubs” for legal startups, and partnering with leading global law firms such as Clifford Chance and Allen & Overy to create new technologies that will both facilitate and disrupt corporate legal practice.<sup>397</sup>

Indeed, the U.K. government itself has now firmly made it clear that the state-level gear in that country will be at least as important as the profession’s traditional organizations in structuring the market for legal services. Beginning with the passage of the Legal Services Act in 2007,<sup>398</sup> and accelerating through the years following the global financial crisis, the U.K. government has exercised increasing control over the market for legal services, including authorizing “multidisciplinary practice” and new “alternative

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growth. See Vikramaditya S. Khanna, *The Evolving Global Supply Chain for Legal Services: India’s Role as a Critical Link*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY, *supra* note 8, at 419, 444 (concluding that the LPO market “touches many more countries than just the United States and India, making it a truly global phenomenon”).

392. Wilkins & Fong, *supra* note 123 (on file with authors); see also Barney Thompson & Nian Liu, *China Leads the Way in New Legal Technology Patents, New Figures Show*, FINANCIAL TIMES (Feb. 16, 2019), <https://perma.cc/HBQ7-L6J7> (reporting that 51% of the 933 legal technology patents filed world-wide were filed in China, with 23% filed in the U.S., and 11% in Korea).

393. Wilkins & Fong, *supra* note 123 (on file with authors).

394. *Id.*

395. *Id.*

396. See Mark A. Cohen, *What Happens When a Nation State Endorses Legal Innovation*, FORBES (Oct. 15, 2018), <https://perma.cc/T8HL-W2P4> (“Imagine if an entire nation were to fashion a plan for innovation earmarking the legal industry of its integrated multidisciplinary plan? That’s precisely what’s happening in Singapore. The Singapore government has targeted law as part of a wider initiative to drive innovation and to position the tiny nation as a regional and global legal hub.”).

397. *Id.*

398. See John Flood, *Will There Be Fallout From Clementi?*, 2012 MICH. ST. L. REV. 537 (2012) (describing the government initiative that resulted in the U.K. Legal Services Act).

business structures” which are already beginning to alter the micro-level corporate ecosystem in that country and beyond.<sup>399</sup> Several other countries in Europe and Asia have followed suit, or are actively considering doing so.<sup>400</sup> Moreover, when combined with the many emerging economies where the “bar” gear has always been weak at the macro-level, it is not surprising that the corporate legal ecosystem in many countries now has a fourth gear comprised of “alternative” service providers seeking to take market share from both law firms and in-house legal departments.<sup>401</sup> To take just one example, all of the Big Four accounting firms are now authorized to provide legal services in the U.K., and dozens of other countries, with PwC Legal already employing 3,600 lawyers around the world.<sup>402</sup>

Needless to say, all of these developments will have important implications for the U.S. corporate legal ecosystem—and the ability of the U.S. to continue to project its model of corporate law practice around the world. Although direct government intervention in the U.S. legal services market is probably unlikely, corporate clients are already ramping up their efforts to change the corporate legal ecosystem in part by providing more space for the fourth gear of alternative legal service providers. The Corporate Legal Operations Consortium (CLOC) exemplifies these efforts. Started just a few years ago by a handful of professionals charged with exploring how technology and new delivery methods could reduce the cost of legal services, CLOC now boasts over 2,000 members in the United States from virtually every major sector of the economy, and has recently opened offices in Hong Kong, London, and Australia.<sup>403</sup> As an indication of its understanding of the interplay between macro- and micro-level gearing in shaping the contours of the market for legal services, CLOC has made lobbying governments to reduce or eliminate existing regulatory restrictions on the unauthorized practice of law, which the organization believes inhibits innovation in the legal sector, among its top priorities.<sup>404</sup> The fact that bar organizations in the District of Columbia and California—two of the most important legal markets in the

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399. For the importance of the U.K. legal services sector on the U.K. economy, see THECITYUK, LEGAL EXCELLENCE, INTERNATIONALLY RENOWNED: UK LEGAL SERVICES 2017 (2017), <https://perma.cc/AM2S-V4J4> (documenting the government’s continued support for the U.K. legal services sector, which accounts for 31.5B pounds in revenue, including 22B pounds from the top 100 corporate law firms and over 300,000 jobs). For the U.K.’s support of the Big 4 and other “alternative” legal service providers, see Wilkins & Esteban, *supra* note 387, at 39–47.

400. See Wilkins & Esteban, *supra* note 387, at 19.

401. *Id.*

402. See David B. Wilkins & Maria J. Esteban Ferrer, *The Integration of Law into Global Business Solutions: The Rise, Transformation, and Potential Future of the Big Four Accountancy Networks in the Global Legal Services Market*, 43 LAW & SOC. INQUIRY 981, 996 (2018) (reporting that the Big 4 have all been granted ABS status). See also Jonathan Derbyshire, *Big Four Circle the Legal Profession*, FINANCIAL TIMES, Nov. 14, 2018, <https://perma.cc/8KGW-NUZ3> (reporting PwC as having 3,600 lawyers around the world).

403. Wilkins & Esteban, *supra* note 387, at 50.

404. See Connie Brenton & Jeffrey Franke, *CLOC Reshaping the Corporate Legal Services Industry* (Oct. 2017), <https://perma.cc/HL7H-JPKL> (indicating reform of unauthorized practice laws as an “institutional level” CLOC agenda).

United states—are actively considering allowing certain forms of alternative business structures underscores how much the bar in the U.S. responds to the market at the macro-level.<sup>405</sup>

It is far too early to tell how these developments will affect the shape of the global corporate legal services market, or whether China's state driven macro-gearing, the United States' model of market driven macro-gearing, or the bar dominated macro-gearing model that still is in force in India and Brazil, will ultimately prove more effective in producing a micro-level corporate legal ecosystem capable of competing effectively in the new global age of more for less. We simply assert that those interested in the future of the market for corporate legal services in the U.S. and around the world would do well to pay close attention to how these ecosystems are being reshaped at the macro- and micro-levels, particularly in the Global South where, as our three national reports underscore, legal innovation is increasingly taking place.

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405. See Deborah Cassens Weiss, *DC Bar Considers Relaxing its Already-Lenient Rules to Allow Nonlawyer Ownership of Law Firms*, ABA J. (Jan. 27, 2020, 10:40 AM), <https://perma.cc/P278-WFKH> (noting that California, Utah, and Arizona are also contemplating similar changes to their state ethics rules).

