

IS THE IN-HOUSE COUNSEL MOVEMENT GOING GLOBAL? A PRELIMINARY ASSESSMENT OF THE ROLE OF INTERNAL COUNSEL IN EMERGING ECONOMIES

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INTRODUCTION

In 1989, the American legal scholar Robert Eli Rosen wrote an important article chronicling the dramatic growth in the size, prestige, and influence of internal legal counsel in large U.S. corporations.¹ In fewer than twenty years, these lawyers had gone from a position of marginality and subservience—think “house counsel,” as in “house pet”—to being “General Counsel,” playing a pivotal role in both defining and serving the legal needs of their powerful corporate clients.² This “in-house counsel movement,” as Rosen aptly labeled this

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1. Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgment and Organizational Representation*, 64 *IND. L.J.* 479 (1989).

2. See Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 *STAN. L. REV.* 277, 294 (1985); 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, 1057–59 (1997).

transformation to signal the key role that internal lawyers themselves were playing in furthering their growing economic power and professional standing, was in turn producing an important transformation in the structure, norms, and practices of the bar as a whole.³

In the more than two decades since Rosen's article, the apparent power and prestige of in-house lawyers in the United States has only continued to grow. Internal legal departments routinely employ dozens of lawyers, with many large U.S. companies having general counsel offices that rival the size of large outside law firms.⁴ These lawyers now regularly perform legal work traditionally done by outside counsel.⁵ Specifically, today's general counsel (GC) routinely act as both "diagnosticians" of their company's legal needs, and as the primary "purchasing agents" deciding whether those needs will be served by an inside lawyer or by an outside firm—and if the work is sent outside, which firm will receive the business.⁶ As a result, the number of lawyers employed by in-house legal departments in the United States has expanded dramatically.⁷

In-house legal departments in the United States now also rival large law firms as a destination of choice for talented lawyers. Although most GC offices do not recruit directly from law school,⁸ they

3. See, e.g., Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869, 913–15 (1990).

4. See John C. Coates, Michele M. DeStefano, Ashish Nanda & David B. Wilkins, *Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 LAW & SOC. INQUIRY 999, 1006 (2011) (describing the size of in-house counsel offices in S&P 500 companies).

5. See Steven L. Schwarcz, *To Make or to Buy: In-House Lawyering and Value Creation*, 33 J. CORP. L. 497, 499 (2008) ("In-house lawyers may now be performing work as high in quality as outside lawyers and . . . the reputational value of outside lawyers may be significantly diminishing.").

6. See Gilson, *supra* note 3, at 889–90, 893.

7. George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1654 (2006) ("Corporate legal departments have exhibited significant growth since the early 1980s and have continued this trend in recent years. Between 1998 and 2004, the 200 largest in-house legal departments grew from a total of 24,000 to 27,500 lawyers." (footnote omitted)). Although the growth of the in-house segment of the bar has been impressive, particularly given the low status of these positions prior to the 1980s, it is important to note that the overall rate of growth in the number of internal counsel has been slower than the expansion of the bar as a whole. See Eli Wald, *In-House Myths*, 2012 WIS. L. REV. 407, 420 (reporting that while the number of in-house lawyers grew by nearly forty percent between 1980 and 2000, the bar as a whole grew by almost one-hundred percent).

8. In an additional sign of the growing importance of these positions, even this traditional practice is beginning to change as some companies such as Pfizer now hire a small number of lawyers directly from law school. See Martha Neil, *Some Corps*

now have their pick of talented mid-level associates and junior partners from the best law firms, with senior in-house lawyers frequently recruited from the top-ranks of the partnerships of outside firms.⁹ Indeed, in a move that would have been unthinkable just a few years ago, outside law firms have begun to recruit partners laterally from in-house legal departments in order to acquire their experience and connections, strengthen relationships with existing clients, and to recruit new ones.¹⁰ All of this has profoundly restructured traditional mobility patterns and prestige hierarchies within the U.S. legal profession.

This restructuring is also evident in the increasingly important role that internal counsel now play in policy debates, both within the bar and in broader discussions about law and legal institutions. In the 1990s, for example, the Association of Corporate Counsel (ACC) was a driving force behind the effort to get the American Bar Association (ABA) to change its rules regarding multidisciplinary practice.¹¹ Although that effort ultimately proved unsuccessful, ACC has emerged as a force to be reckoned with within the bar and is currently flexing its muscles in a variety of debates over the structure and ownership of law firms, professional regulation, and legal education. Similarly, both individually and collectively general counsels now routinely weigh in on important public policy debates on everything from free trade to human rights to corruption.¹²

Cut Costs by Hiring Law Grads to Work In-house Instead of Using BigLaw Associates, A.B.A. J. (Aug. 11, 2011), http://www.abajournal.com/news/article/some_corps_cut_costs_by_hiring_attorneys (describing Pfizer's program and quoting the general counsel of HP as saying that such hiring was likely to be "the wave of the future").

9. See RONIT DINOVIETZ ET AL., AM. BAR FOUND. & NALP FOUND. FOR LAW CAREER RES. & EDUC., AFTER THE JD II: SECOND RESULTS FROM A *NATIONAL STUDY OF LEGAL CAREERS* 26, 27 tbl.3.1 (2009) (indicating that in-house counsel positions were the preferred destination of lawyers who had started their careers in large law firms).

10. See, e.g., James Swift, *Covington Hires Partner from BAE Systems*, LAWYER (Aug. 19, 2010), <http://www.thelawyer.com/covington-hires-partner-from-bae-systems/1005339.article>.

11. See ABA COMM'N ON MULTIDISCIPLINARY PRACTICE, REPORT TO THE HOUSE OF DELEGATES (2000), reprinted in ANDREW L. KAUFMAN & DAVID B. WILKINS, PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 637, 647 (4th ed. 2002) ("The American Corporate Counsel Association has adopted a resolution urging that the ethical barriers to the establishment of multidisciplinary partnerships be dismantled."). See generally Michele D. Beardslee, *If Multidisciplinary Partnerships Are Introduced into the United States, What Could or Should Be the Role of General Counsel?*, 9 FORDHAM J. CORP. & FIN. L. 1 (2003).

12. See Tanina Rostain, *General Counsel in the Age of Compliance: Preliminary Findings and New Research Questions*, 21 GEO. J. LEGAL ETHICS 465, 465 (2008) ("Corporate counsel organizations, such as the Association of Corporate

This heightened public profile has, in turn, helped to cement the general counsel's standing as a member of the company's senior leadership team. Indeed, many top in-house lawyers have traded in the legal sounding title of "general counsel" for the more corporate sobriquet Chief Legal Officer (CLO) in order to clearly signal that they are a part of the "C" suite of top executive officers in the company.¹³ In addition to their responsibilities as legal diagnosticians and purchasing agents, many CLOs now oversee a variety of related functions, including government relations, public relations, human resources, compliance, and corporate social responsibility.¹⁴ Many also participate either formally or informally in high-level discussions about general corporate strategy and policy. The fact that several CLOs have ascended to the CEO seat in recent years has only served to cement the image of these former low-status line functionaries as powerful members of the corporate elite.¹⁵

Although the in-house counsel movement has therefore been remarkably successful in the United States, until quite recently the status of internal lawyers in most other jurisdictions remained similar to what it had been in the United States prior to the 1970s. Since the turn of the twenty-first century, however, there are a number of signs that the in-house counsel movement has crossed the Atlantic. The rise in status and influence of internal counsel is easiest to see in the United Kingdom, where a number of top U.K. companies boast large and

Counsel, routinely survey their members to determine what issues are pressing and develop a shared agenda for action.").

13. See Rees Morrison, *What's the Difference between General Counsel and Chief Legal Officer?*, L. DEP'T MGMT. (Mar. 22, 2006), http://lawdepartmentmanagement.typepad.com/law_department_management/2006/03/whats_the_diffe.html ("CLO also elevates the legal leader to the so-called C-Suite, the titular peer of the Chief Financial Officer (and why not the 'General Bookkeeper?'), Chief Marketing Officer, and Chief Technology Officer (so where is the Chief Human Officer?) and others in the executive teepee.").

14. See *id.* ("Chief Legal Officer connotes to me a broader portfolio, such as compliance, risk management, ethics, lobbying and the like."); see also Coates, DeStefano, Nanda & Wilkins, *supra* note 4, at 1029 (discussing other functions reporting to the CLO).

15. To name only two prominent examples, until recently the CEOs of two of the largest U.S. drug companies had both previously spent time in the general counsel seat in their respective organizations. See David Lat, *Skaddenfreude: In-House Salaries, Please*, ABOVE L. (Nov. 1, 2006, 9:58 AM), <http://abovethelaw.com/2006/11/skaddenfreude-in-house-salaries-please/> (reporting on Jeff Kindler at Pfizer and Ken Frazier at Merck). The fact that Pfizer's Jeff Kindler was recently and rather unceremoniously deposed after only a brief tenure in office provides a cautionary note (to both GCs and boards) about how far this trend is likely to go. See Peter Elkind et al., *Inside Pfizer's Palace Coup*, CNNMONEY (July 28, 2011 5:00 AM), <http://features.blogs.fortune.cnn.com/2011/07/28/pfizer-jeff-kindler-shakeup/>.

sophisticated in-house legal teams.¹⁶ But there is also increasing evidence of the growing power and prestige of general counsel among large European companies.¹⁷

In this Article, I explore whether some version of the in-house counsel movement is likely to move even further East—and South—to the newly emerging economic superpowers such as Brazil, India, and China. I make these observations on the basis of preliminary research that I and my collaborators are conducting on the changing role of in-house counsel in emerging markets as part of a wider research initiative that I direct entitled *Globalization, Lawyers, and Emerging Economies (GLEE)*.¹⁸ GLEE is a multinational and multidisciplinary empirical research initiative that seeks to understand how globalization is transforming the market for corporate legal services in important emerging economies—particularly Brazil, India, and China (“BIC countries”)—and how this transformation is in turn reshaping other key sectors of the legal service industry in these countries, and the global market for legal services generally.¹⁹ To date, most of the attention both by academics and in the popular press concerning the development of a sophisticated corporate legal services market in the BIC countries has been focused on the growth of large commercial law firms in these jurisdictions, and the resulting competition between these new entrants and global law firms based in the United States and United Kingdom who are also seeking to serve these markets.²⁰ If the U.S. experience is

16. See *infra* text accompanying notes 47–54.

17. See *infra* text accompanying notes 49–51.

18. In each of the three jurisdictions in which I am currently working, I have the privilege of conducting this research with other scholars who are far more familiar with the local legal market than I am: Vikramaditya Khanna (India); Yan Lao and Tiezheng Li (China); and Fabiana Luci de Oliveira (Brazil). Each of these scholars has contributed significantly to the preliminary ideas presented here.

19. See *Globalization, Lawyers, and Emerging Economies*, HARV. L. SCH., <http://www.law.harvard.edu/programs/plp/pages/glee.php> (last visited Feb. 9, 2012), for more information on the GLEE project. Other topics GLEE is investigating include: the growth of elite corporate law firms in emerging economies and the resulting competition with global law firms; the rise of new legal service providers such as legal process outsourcing companies; cross-border M&A, and particularly the shift from in-bound investment into emerging economies to outbound capital flows from these jurisdictions into both developing and developed markets; the regulation of legal practice both domestically and globally; the transformation of legal education and public interest practice; and the manner in which governments and business interests are using the emergence of the new corporate legal elite to build legal capacity to represent their public and private interests in the institutions of global governance such as the WTO, IMF, and commercial and investment arbitration.

20. See, e.g., Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 LAW & SOC'Y REV. 771 (2008). Professor Liu is a key member of the GLEE team overseeing research on the development of large law firms in all three of our primary research sites.

any indication, however, how this competition is ultimately resolved, as well as the shape of the corporate legal services market in emerging economies generally, will be greatly influenced by whether some version the in-house counsel movement takes hold in the BIC countries. We have therefore made investigating this question a central objective of the GLEE project.

On the basis of preliminary research, including conversations with over one-hundred general counsels of both “local” and “foreign” companies in the BIC countries, we have determined that there are already important indications that the in-house counsel movement is indeed “going global” to these emerging economies. At the same time, this preliminary evidence also suggests that the processes by which this largely U.S.-inspired model is diffusing in the BIC countries is likely to produce important differences in the way that internal counsel conceive of and operationalize their roles both within and among these important jurisdictions.

The remainder of this Article fleshes out these preliminary observations and describes the factors we intend to study to investigate the role that general counsel are playing in the BIC countries, and what this new role may portend for some of the core beliefs of the in-house counsel movement. Part I briefly explores why the in-house counsel movement took hold in the United States and why it has been spreading, albeit with some important differences, in the United Kingdom and Europe. Part II then uses Kathryn Hendley’s excellent study of internal lawyers in Russia (the “R” in the more familiar BRIC acronym) to present a snapshot of what in-house counsel offices have typically looked like in emerging economies.²¹ Although there are some features of Hendley’s account that are undoubtedly unique to Russia, and even more specifically Russia in the 1990s, our preliminary work in Brazil, India, and China suggests that the portrait she paints is generally representative of the traditional role of internal counsel in these countries as well—a portrait that suggests caution about assuming that the in-house counsel movement will automatically take root just because the BIC countries have liberalized their economies. Part III then examines why notwithstanding Hendley’s cautionary tale we might expect to find a different model of in-house lawyering in the BIC countries at the beginning of the second decade of the twenty-first

21. 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 (2010) [hereinafter Hendley, *In-House Counsel*]; 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 (2001) [hereinafter Hendley, *Unchanging Agents*].

century than Hendley found in Russia in the 1990s. Specifically, I examine three forces identified by globalization scholars that are likely to spread the in-house counsel movement to the BIC countries and other important emerging economies around the world. These forces, I will argue, are largely responsible for spreading the movement to the United Kingdom and Europe, and are likely to play a similar role in the BIC countries in the coming years. Indeed, because these forces of globalization are increasing in intensity, it is plausible that the diffusion of the in-house counsel movement's basic commitments and practices could be even more rapid in these new jurisdictions than it was in the United Kingdom and Europe.

Part IV then sets out how we intend to investigate whether or not these three forces of globalization are in fact producing an in-house counsel movement analogous to what has taken place in the United States and other Western jurisdictions. Specifically, we will be investigating six areas where one might expect to see dramatic changes in the work, characteristics, and functions of internal counsel if the in-house counsel movement has indeed taken hold: the size of in-house legal departments; the credentials and demographics of the lawyers employed in these offices; the division of authority between inside and outside lawyers; the internal status and responsibilities of internal counsel; their external status within the bar; and the extent to which in-house lawyers actively participate in public policy debates at the national and global levels. Although the in-house counsel movement in the West (particularly the United States) made progress in all of these areas, I will suggest that the metrics for gauging this success are more complex than generally understood—and are likely to be even more so in the BIC countries, particularly in light of the large scale forces that are currently reforming the global market for corporate legal services generally. Finally, the Article's Conclusion will discuss what difference all of this is likely to make for the larger goals of the in-house counsel movement, the legal profession, and the broader public purposes of law.

Before beginning, however, a note of caution is in order. As indicated above, the GLEE project in general, and our work on general counsels in particular, is still in its early stages. Moreover, as will become clear from the discussion, events on the ground in the BIC countries are changing so rapidly that it is very difficult to predict what will happen in any one country—or even in a single company—let alone how something as fluid as the role of in-house counsel may be transformed across all three of the BIC countries. What follows, therefore, should be viewed as an attempt to stimulate conversation rather than an effort to resolve the question posed by the title to this Article.

I. THE RISE OF IN-HOUSE COUNSEL IN THE UNITED STATES, UNITED KINGDOM, AND WESTERN EUROPE

A hallmark of the success of the in-house counsel movement in the United States is that it is difficult to remember a time in which general counsels of major companies were not considered powerful and respected members of the bar. Although this history is well documented,²² it is nevertheless worth pausing briefly to remember the in-house counsel movement's central claims and how these claims succeeded in sweeping the field, first in the United States and then throughout much of the Western world.

As Rosen documents, beginning in the 1980s general counsels in large companies began to make three distinct claims about the contemporary market for corporate legal services that collectively justified increasing the power, authority, and standing of those who held these positions.²³ The first was strictly *economic*. As legal fees paid to outside firms continued to skyrocket, GCs argued that they were in the best position to help companies control legal costs, both by taking work inside and by reigning in unnecessary and abusive practices (e.g., unnecessary and duplicative work, exorbitant expenses for Xeroxing and travel, running the meter with no strategic direction) that many business leaders believed were endemic to most law firms.²⁴ As a result, companies like General Electric (GE), whose legendary General Counsel Ben Heineman would become the face of the in-house counsel movement,²⁵ built up internal legal departments that were as large (or in GE's case larger) than many of the large law firms that continued to serve them.²⁶ At the same time, these increasingly sophisticated internal lawyers sought to break up the long-standing relationships that tended to exist between companies and law firms by requiring firms to compete for every new piece of significant business and choosing the winner based on some combination of price and perceived expertise of the particular lawyers who would be working on the matter. "We hire the lawyer, not the law firm" became the rallying cry of the day, with

22. For my own take on this history, see David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 *FORDHAM L. REV.* 2067 (2010).

23. See Rosen, *supra* note 1, at 487.

24. See generally Daly, *supra* note 2, at 1059–60.

25. The banner headline over the cover story in *Corporate Counsel* magazine in which Heineman describes his role during this period captures Heineman's pride of place: "In the Beginning." See Ben W. Heineman, Jr., *In the Beginning*, *CORP. COUNS.*, Apr. 2006, at 63. In the interest of full disclosure, Heineman is a Senior Distinguished Fellow at the Harvard Law School Program on the Legal Profession.

26. *Id.*

long-standing relationships with outside firms relegated to the graveyard of history.²⁷

As the movement gathered steam, however, many general counsels began to supplement this economic argument with a *substantive* justification for taking work away from outside counsel—and, even more importantly, for giving internal lawyers more power and authority inside the company. Not only are inside lawyers cheaper than their external counterparts, proponents of the inside counsel movement began to declare, but the advice they give corporate managers is likely to be better as well. Traditionally, companies looked to outside counsel to play the role of “trusted advisor” who could guide them through the web of complex problems at the intersection of law and business.²⁸ But precisely because the long-standing relationships that gave rise to this traditional role for outside lawyers were being systematically dismantled, inside counsel could credibly claim that even senior partners in law firms were no longer in a position to provide this kind of advice. Instead, general counsels asserted, it is the inside lawyer located inside the corporate hierarchy who is in the best position to understand the company’s business and to engage in the kind of risk assessment and preventative counseling that managers need to survive in an increasingly complex and turbulent legal environment.²⁹ As a result, it is the general counsel who should be entrusted with the role of being both a “partner” to the business in achieving its objectives and the “guardian” of the company’s long-term reputation and values.³⁰

Finally, this substantive claim furthered a third *professional* argument for increasing the standing and prestige of internal counsel. As the pejorative sobriquet “house counsel” underscored, internal counsel traditionally labored under the assumption that their employed

27. See, e.g., Daniel J. DiLucchio, ‘We Hire the Lawyer, Not the Law Firm’—Really?, LEGAL INTELLIGENCER (Jan. 29, 2009, 12:00 AM), <http://www.law.com/jsp/pa/PubArticlePA.jsp?id=1202427822427> (“This statement has been used for years, and will probably continue to be used . . . [because t]his is what the general counsel want you to believe . . .”). As DiLucchio’s use of “Really?” at the end of his title implies, he is skeptical about whether this oft-repeated claim is in fact true. I return to his skepticism below.

28. 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 Wall Street lawyers came to occupy this role in the post-Civil War period).

29. See Deborah A. DeMott, *The Discrete Roles of General Counsel*, 74 FORDHAM L. REV. 955 (2005).

30. Not surprisingly, Heineman has been the most vocal and articulate spokesperson for this view. See Ben W. Heineman, Jr., *Caught in the Middle*, CORP. COUNS., Apr. 2007, at 84 (arguing that general counsel must be both “partners” and “guardians”).

status made them less independent—and therefore less professional—than their external law firm counterparts. Reversing this second-class status was a major goal of the in-house counsel movement. To accomplish this goal, these lawyers employed a version of what Professor Eli Wald has termed in a different context “the flip side of bias.”³¹ Rather than being ashamed of the fact that they practice law from within corporations, the new breed of general counsel claimed that their status as corporate insiders gave them a unique perspective from which to give advice that was every bit as independent as the “wise counselors” who the bar had always assumed populated prestigious outside law firms.³² Indeed, in an age in which many critics believe that law firm partners have abandoned their traditional ideal of law as an independent and public profession for a slavish devotion to power and profit, some commentators have gone so far as to suggest that internal lawyers can best fulfill the gatekeeping role of ensuring that companies comply with both the letter and the spirit of the law that their counterparts in large law firms have largely abandoned.³³

As indicated above, by the end of the twentieth century these three central tenets of the in-house counsel movement had taken on the aura of accepted orthodoxy in the United States. This is not to say that the legal departments of even the largest American companies are functionally identical. To the contrary, as I will document below, there remains more variation in the size, structure, and functioning of in-house legal departments than many commentators generally acknowledge. Nevertheless, the *ideology* of the in-house counsel movement is now broadly accepted throughout the U.S. legal profession. Thus, by the late 1990s, general counsel in the model of Ben Heineman—indeed many literally Heineman’s protégés—occupied important positions in virtually every major company in the United States.³⁴ These sophisticated lawyers, and the increasingly credentialed and experienced lawyers they have hired into their legal departments, had taken over much of the work that had previously been sent to

31. See Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 *FORDHAM L. REV.* 2245, 2276–86 (2010) (describing how stereotypes about women can “flip” from having negative to positive contexts in certain circumstances).

32. As Rosen notes, internal lawyers gravitated to the appellation “corporate counsel” because “[t]his name has a denotation that extends beyond members of corporate legal departments” and includes elite law firm practitioners who serve on corporate boards. Rosen, *supra* note 1, at 532.

33. See ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 283–84 (1993) (speculating that in-house lawyers may be able to carry on the lawyer-statesman ideal that outside counsel are no longer capable of performing).

34. See DeMott, *supra* note 29, at 960.

outside lawyers while also taking control over the process by which legal work that continued to go to firms was sourced, priced, and managed.³⁵ Indeed, in most instances it was fair to say that the general counsel has become the client of the outside law firm—leaving the top business people to be represented by in-house lawyers.³⁶

In addition to exercising their role as sophisticated legal purchasing agents, most U.S. general counsels had also embraced some version of the in-house counsel movement's claim to substantive expertise and professional independence. Although there has been relatively little systematic study of the actual work of in-house lawyers, what evidence there is suggests that these lawyers believe that they are better situated to give their clients both effective and independent advice than outside firms. Thus in a qualitative study of general counsel conducted in the late 1990s, the socio-legal scholars Robert Nelson and Laura Beth Nielsen concluded that even the least active members of their sample acted as "cops" whose responsibility was to act as "gatekeepers" who "polic[ed] the conduct of their business clients."³⁷ As an informant who exemplified this paradigm explained, the company had brought him in from a prestigious law firm so that it would have the benefit of having someone who could be "independent within the corporate environment."³⁸ Although the lawyer conceded that the management of legal cost and legal risk was a "major" part of his job, he insisted that the essence of what he did was to provide the kind of "independent professional judgment that is so essential" to the company.³⁹

More importantly, those who viewed themselves solely as "cops" constituted only 17% of Nelson and Nielsen's sample.⁴⁰ The overwhelming majority of the respondents in their study went even further in embracing the in-house counsel movement's claim to provide both *better* and *more professional* advice than outside firms. Thus 50% of Nelson and Nielsen's sample saw themselves as "counselors" who built on their legal knowledge and functions to act as "consigliere" for senior executives giving advice on matters at the intersection of business and law.⁴¹ And a third—nearly double the number who saw themselves only as cops—considered themselves to be "entrepreneurs,"

35. See generally Daly, *supra* note 2.

36. See ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 58 (1988).

37. Robert L. Nelson & Laura Beth Nielsen, *Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations*, 34 LAW & SOC'Y REV. 457, 463–64 (2000).

38. *Id.* at 463.

39. *Id.*

40. *Id.* at 468.

41. *Id.* at 465, 468.

who viewed their legal role as “not merely a necessary complement to corporate functions,” but as one of a number of ways in which these lawyers can further the business interests of the company.⁴² Indeed, the authors report that even those lawyers who saw themselves primarily as “counselors” “often speak in entrepreneurial terms.”⁴³ As a result, the authors conclude, “in the contemporary period corporate counsel have taken on an explicitly entrepreneurial orientation.”⁴⁴ And yet notwithstanding this orientation, the authors also found that “the salience of business concerns did not detract from [corporate counsel’s] self-identification as lawyers” for even the most entrepreneurial general counsel—precisely the orientation that one would expect from lawyers who had fully internalized the ideology of the in-house counsel movement.⁴⁵ The fact that on many of the issues that are most associated with professionalism today—e.g., diversity, pro bono, and civility—general counsel are widely seen as being the leaders who are attempting to push recalcitrant law firms into upholding the profession’s core commitment to equality, access to justice, and the rule of law.⁴⁶

Given how thoroughly and completely the in-house counsel movement had triumphed in the United States by the late 1990s, it is surprising how little the role of internal counsel had changed elsewhere in the world by that time, even in other industrialized nations. In many European countries, for example, “employed” lawyers were prohibited from being members of the bar and were required to surrender their law licenses if they joined an in-house legal department.⁴⁷ Even in

42. *Id.* at 466, 468.

43. *Id.* at 487.

44. *Id.*

45. *Id.* at 489. As the authors go on to state, they are “less sanguine” than others about whether this dual identification will lead in-house lawyers to perform the independent gatekeeping functions trumpeted by the in-house counsel movement to promote the public good. *Id.* at 490. I return to this question in the Conclusion.

46. See, e.g., PRACTICING LAW INST., PRO BONO SERVICES BY IN-HOUSE COUNSEL: STRATEGIES AND PERSPECTIVES (David P. Hackett, ed. 2010); David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”*: *The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1556–58 (discussing the role of general counsel in pushing for diversity in the legal profession).

47. In France, for example, in-house attorneys are referred to as “juriste d’entreprise” who are not allowed to be members of the French bar and generally may not appear in court. See *The Role of In-House Counsel: Global Distinctions*, ASS’N CORP. COUNS. (Sept. 18, 2010), <http://www.acc.com/legalresources/quickcounsel/traicgd.cfm>; see also LINDA S. SPEDDING, TRANSNATIONAL LEGAL PRACTICE IN THE EEC AND THE UNITED STATES (1987); Jean Van Houtte, *Law in the World of Business: Lawyers in Large Industrial Enterprises*, INT’L J. LEGAL PROF., Mar. 1999, at 7 (reporting on the low status and credentials of in-house lawyers in most countries in Europe and around the world).

common law jurisdictions such as the United Kingdom where in-house counsel did not suffer from any of these formal restrictions, these positions remained relatively low status throughout the 1990s.

Since the turn of the twenty-first century, however, the in-house counsel movement has come to the United Kingdom and Europe. This trend is easiest to see in the United Kingdom, where general counsels of large British companies have begun a conscious campaign to assert their authority both within their organizations and in the wider public policy arena.⁴⁸ But even in Europe where the formal status of in-house lawyers remains largely unchanged, there is evidence of the growing power and influence of general counsel, particularly in large companies.⁴⁹ Given the European Union's complex legal landscape of centralized directives which are implemented by decentralized laws enacted by member states many European companies have begun to develop increasingly large and sophisticated internal legal departments to help them understand and navigate these differing—and often competing—standards.⁵⁰ In recent years, this trend has been reinforced by corporate scandals such as Enron, WorldCom, and Parmalat, and the new regulatory requirements that have followed in their wake, which have further convinced many European companies of the value of a robust in-house legal department that can anticipate and help to avoid these regulatory pitfalls.⁵¹ To be sure, the recent decision by the European Court of Justice affirming that internal lawyers are not entitled to the benefit of the attorney-client privilege underscores that the professionalism project of in-house lawyers in Western Europe is

48. See MARIE SAKO, *GENERAL COUNSEL WITH POWER?* (2011) (arguing that key forces of globalization similar to the ones I identify below are transforming general counsels in the United Kingdom into “agents of change”). Indeed in 2005, the general counsels of the United Kingdom's largest companies formed a new organization called the GC100 in order to better project their status within the profession and to exert influence on important regulatory debates. Michelle Madsen, *Corporate Counsel: High-Profile but Low-Key—Has GC100 Lived Up to Its Promise?*, CORP. COUNS., Jan. 29, 2008. As the title implies, the author raises questions about how successful the new group has been at promoting the latter objective.

49. See ASS'N OF CORP. COUNS., *THE ROLE OF THE GENERAL COUNSEL IN EUROPE: LEADING PRACTICES IN LAW DEPARTMENT MANAGEMENT* (2009). See generally Richard Stock, *The Future for In-House Counsel*, INSIDER CORP. LEGAL, June 2008, at 1 (“In-house legal departments were the fastest-growing ‘legal services sector’ around the world over the last five years. In some markets, the growth reflects a compound increase of 15% per year.”).

50. ASS'N OF CORP. COUNS., *supra* note 49, at 45.

51. *Id.* at 11. The fact that this is a publication of the leading corporate counsel association in the United States is itself a product of the kind of global knowledge transfers discussed below.

far from complete.⁵² The widespread criticism of this decision, however, demonstrates just as powerfully how far the in-house counsel movement has taken hold in Europe over the last decade.⁵³

Given the overall direction of the global market for legal services, it is not surprising that the in-house counsel movement has increasingly migrated east to the United Kingdom and Europe in the first decade of the twenty-first century. During the preceding two decades, a good deal of the U.S. model of law firm organization and practice—dubbed “Cravathism” for its emphasis on large, full-service law firms filled with entrepreneurial lawyers closely tied to business interests—crossed the Atlantic as well.⁵⁴ To be sure, one can debate whether there are still significant differences between U.S., or more generally Anglo-American, corporate practice and a distinctly “European mode of production of law,” representing a hybrid blend of Cravathism and norms and practices traditionally found in many European countries.⁵⁵ Nevertheless, it is clear that U.S.-style large law firms now hold a dominant position in much of Europe.⁵⁶ It is therefore understandable that lawyers and clients increasingly steeped in the American model of lawyering in the law firm context would be open to incorporating the American model of in-house lawyering as well.

It is against this background that the GLEE project plans to investigate whether similar changes are taking place in the BIC countries and other emerging economies. Although there are many differences between these countries and the United Kingdom and Western Europe that are likely to affect how ideas about legal practice diffuse across borders, there are important similarities as well. Thus, notwithstanding the absence of the kind of similarities in legal structure (unlike the United Kingdom, both China and Brazil are civil law jurisdictions), political accountability (the state plays a much larger role in the economy in all three BIC countries than in the United Kingdom and most of Europe), regional coordination (there is no equivalent of the European Union pushing harmonization), and cultural affinity (even India has not had particularly close connections to the United States for

52. See Marcia Coyle, *European Court Limits Attorney-Client Privilege for In-House Counsel*, NAT'L L.J., Sept. 14, 2010.

53. See, e.g., Robert J. Anello, *Preserving the Corporate Attorney Client Privilege Here and Abroad*, 27 PENN ST. INT'L L. REV. 291 (2008).

54. David M. Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of the Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407 (1994).

55. *Id.* at 426.

56. See John Flood, *Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice*, INT'L J. LEGAL PROF., Mar. 1996, at 169.

much of its history) that arguably facilitated the migration of the American mode of the production of law to the United Kingdom and Europe, we have nevertheless seen the development of many large U.S.-style law firms in each of the BIC countries.⁵⁷ It is reasonable to ask, therefore, whether like their U.K. and European counterparts these jurisdictions are also likely to import the U.S. model of internal lawyering championed by the in-house counsel movement.

Before discussing how we plan to conduct this investigation, however, it is helpful to review what we know about what happened to internal counsel in the first of the “emerging economies” to attract the attention of the global market for legal services.

II. THE RUSSIAN EXPERIENCE

As indicated above, there is very little systematic research about how in-house counsel have been affected by globalization, particularly in emerging economies.⁵⁸ The best study to date is by the political scientist Kathryn Hendley. In 1997, Hendley and her team of researchers conducted a survey of 328 Russian enterprises to see how these companies were using internal legal expertise in the eight years since the fall of communism.⁵⁹ In 1998, Hendley followed up her survey with in-depth case studies of six of the companies in her sample, including direct observation of the work being done by the internal lawyers at each firm.⁶⁰ To Hendley’s surprise, both the 1997 survey and the subsequent case studies demonstrated that almost a decade after the opening of the Russian economy and the introduction of significant market reforms, in-house counsel continued to occupy a marginal position inside Russian companies.⁶¹

Specifically, Hendley and her collaborators found that far from being the influential senior advisors portrayed in the in-house counsel movement, Russian internal counsel worked almost exclusively on low-level routine work and were almost never consulted about important

57. For the growth of large law firms in countries such as China, India, and Brazil, see, for example, Liu, *supra* note 20; D. Daniel Sokol, *Globalization of Law Firms: A Survey of the Literature and a Research Agenda for Future Study*, 14 *IND. J. GLOBAL LEGAL STUD.* 5 (2007); Jennifer Moline, *Merger Creates India’s Largest Law Firm*, *NAT’L L.J.*, July 26, 2006.

58. See Daly, *supra* note 2, at 1067 (“Unfortunately, scholarly writers and researchers have paid very little attention to the combined effect of the growth in number, prestige, and power of in-house counsel and the globalization of the business and capital markets.”).

59. Hendley, *Unchanging Agents*, *supra* note 21, at 688.

60. Hendley, *In-House Counsel*, *supra* note 21, at 6–7.

61. *Id.* at 7.

business decisions, even when those decisions clearly involved legal inputs or could result in significantly adverse legal consequences.⁶² Indeed, rather than being considered an important part of the legal team, Hendley reports that senior managers treated internal counsel as largely irrelevant, adding no real value.⁶³ Many companies dispensed with lawyers altogether, and even those that had a separate legal function often had non-lawyers perform important legal work.⁶⁴ Adopting Nelson and Nielsen's typology, Hendley found that internal counsel in Russia were "reluctant to exercise" even the basic gatekeeping role of being a "cop," and that she and her researchers "saw nothing that even remotely approached the entrepreneurial function that Nelson and Nielsen found to be a growing trend among American in-house lawyers."⁶⁵ In the final analysis, Hendley concludes that the role of internal counsel was little changed from what it had been in the former Soviet Union under Communism.⁶⁶ Given the tremendous legal changes facing Russian enterprises during this period, Hendley finds this state of affairs both surprising and potentially troubling.⁶⁷

Hendley offers a number of possible explanations for the continuing marginality of Russian in-house counsel even in the face of the important changes taking place in the Russian economy. Her first explanation is structural. In Russia, as in many other civil law countries, in-house counsel continued to be members of a separate "profession" with different and clearly less rigorous entry requirements.⁶⁸ This professional deficit, Hendley argued, was also accompanied by a political one—and a reinforcing demographic one as well. As Hendley documents, in-house lawyers were far less likely to have been members of the communist party during the Soviet era, and

62. Hendley, *Unchanging Agents*, *supra* note 21, at 688.

63. *Id.* at 696.

64. Hendley, *In-House Counsel*, *supra* note 21, at 10 ("[Russian managers] failed to appreciate the potential contribution that a *iuriskonsul't* might make. In the most extreme cases, managers saw no need to have a legal department or to consult with outside lawyers.")

65. *Id.* at 7. For Nelson and Nielsen's typology, see Nelson & Nielsen, *supra* note 37, at 460.

66. Hendley, *In-House Counsel*, *supra* note 21, at 27–28.

67. *Id.* at 30 ("The transition away from a planned economy towards a market economy in Russia had a profound influence on enterprise management. . . . Law provided the building blocks for this transition, yet *iuriskonsul'ty* got let out.")

68. *Id.* at 8–9 (describing the difference between *advokatoy*, who are entitled to appear in court and must meet rigorous educational and licensing requirements, and *iuriskonsul'ty*, who work inside industrial enterprises and face far less entry barriers).

far more likely to be women.⁶⁹ Both statuses reinforced the low prestige of the position within the bar, and within Soviet society generally.

Finally, Hendley cites the fact that the former Soviet Union had no real legal tradition and no real use for lawyers, particularly in the commercial area, where the sole responsibility of companies was to make their production quotas.⁷⁰ Although the creation of a market economy and privatization introduced many new laws, the basic skepticism toward law and legal solutions remained. Indeed, the economic courts where most “business to business” litigation occurred continued not to require that litigants be represented by lawyers.⁷¹ Moreover, given backlog and delays, companies preferred to use bartering and self-help to resolve disputes, seeking to preserve contractual relationships rather than maximize short-term gain.⁷² Management therefore considered contract disputes to be nothing more than business risks that business owners were capable of resolving themselves. As a result, Russian companies did not use outside law firms much either, viewing them as expensive and even less trustworthy than internal counsel—particularly foreign law firms.⁷³ As a result, more than a decade after privatization had begun the Russian corporate legal market was still underdeveloped. Given this environment, it is not surprising that the in-house legal market was particularly so.

Hendley’s analysis provides a valuable snapshot into the traditional role of in-house counsel in emerging economies as well as an important caution to the claim that opening markets or privatization alone will necessarily produce a role for internal counsel that looks anything like the one portrayed by the in-house counsel movement. As Hendley herself is careful to note, her conclusions may only apply to Russia—and indeed Russia at a particular time in that country’s history.⁷⁴ The 1990s were a time of particular turbulence in Russia. As the Russian government has stabilized over the last decade (although given the unrest surrounding the disputed return of Vladimir Putin to Russia’s presidency, few would argue that the country is fully stable), there has been an explosion in legal and administrative regulation of business enterprises that could very well give rise to the demand for the kind of sophisticated internal legal advice championed by the in-house counsel

69. Hendley, *Unchanging Agents*, *supra* note 21, at 694–95.

70. *Id.* at 709.

71. *Id.* at 706.

72. Hendley, *In-House Counsel*, *supra* note 21, at 11–12 (providing examples of bargaining and self-help).

73. Hendley, *Unchanging Agents*, *supra* note 21, at 697–99.

74. *See id.* at 708–11

movement.⁷⁵ Notwithstanding these changes, however, Hendley remains cautious about whether internal counsel are likely to seize the opportunities presented to them by Russia's growing market economy.⁷⁶ This caution seems equally prudent when examining the claims that are increasingly being made about the in-house counsel movement's spread to the BIC countries.

Like Russia, prior to liberalization Brazil, India, and China had very little need for commercial law. The situation in China is, not surprisingly, the most analogous to Russia in that there was both a planned economy and a conscious attempt to prevent lawyers from becoming too powerful.⁷⁷ But even in India and Brazil, which had much more established legal traditions, there was very little in the way of corporate law.⁷⁸ The economy of each of these countries was almost as tightly controlled as Russia's and China's, and there was very little internal competition or foreign investment.⁷⁹ As a result it is not surprising that the largest law firm in each of these countries had only a handful of lawyers.⁸⁰

The status of internal counsel in these jurisdictions was even worse. Once again, China is the most analogous, with internal lawyers holding a separate (and inferior) professional distinction.⁸¹ Thus,

75. See *id.* at 711.

76. Hendley, *In-House Counsel*, *supra* note 21, at 30 ("Lawyers have traditionally been tolerated rather than lionized in Russia.")

77. See William P. Alford, *Of Lawyers Lost and Found: Searching for Legal Professionalism in the People's Republic of China*, in *RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA* 287, 290–91 (William P. Alford ed., 2007).

78. See Ronald J. Gilson et al., *Regulatory Dualism as a Development Strategy: Corporate Reform in Brazil, the United States, and the European Union*, 63 *STAN. L. REV.* 475, 482 (2011); Nicholas Calcina Howson & Vikramaditya S. Khanna, *The Development of Modern Corporate Governance in China and India*, in *CHINA, INDIA AND THE INTERNATIONAL ECONOMIC ORDER* 513, 557–58, 567–69 (Muthucumaraswamy Sornarajah & Jianguo Wang eds., 2010).

79. See David M. Trubek, *Introduction to LAW, STATE AND DEVELOPMENT IN LATIN AMERICA* (David Trubek et al. eds., forthcoming 2012) (noting that Brazil had a "closed economy" until the late 1990s); Dani Rodrik & Arvind Subramanian, *From "Hindu Growth" to Productivity Surge: The Mystery of the Indian Growth Transition* 3–4 (Int'l Monetary Fund, Working Paper No. WP/04/77, 2004) (noting the same state of affairs in India prior to liberalization).

80. See, e.g., Christine Garg, *Affiliations: Foreign Law Firms' Path into India*, 56 *N.Y.L. SCH. L. REV.* 1165, 1169–70 (2012) (noting that after liberalization there has been a significant increase in the number of Indian large law firms); Michael E. Burke IV et al., *China Law*, 36 *INT'L LAW* 815, 847 (2002) (noting a similar increase after liberalization in China); Oscar Vilhena Vieira, *Public Interest Law: A Brazilian Perspective*, 13 *UCLA J. INT'L L. & FOREIGN AFF.* 219, 256 (2008) (noting a similar change in Brazil).

81. Indeed, as Professor Liu notes elsewhere in this volume, the Chinese model for regulating state-owned enterprises was expressly patterned after the one used

lawyers working for Chinese state-owned enterprises (SOEs) do not have to be qualified as attorneys. Instead, beginning in 1997 these “corporate legal consultants” have had to pass a special qualifying examination separate from the bar examination for Chinese lawyers.⁸² Although the relevant regulations recommend that these legal consultants have some legal training before taking the exam, it is not actually required.⁸³ Moreover, because SOEs in China remain firmly under governmental control, the lawyers who work in these organizations have traditionally thought of themselves more as government bureaucrats than as members of the legal profession. Indeed, it is not uncommon for senior in-house lawyers at important Chinese SOEs to be promoted to other high-level leadership positions elsewhere in government—for example, becoming a mayor or governor—after leaving their service as the company’s chief corporate legal consultant.⁸⁴

The traditional situation in Brazil and India was very similar. Although Brazil does not have a separate qualification for in-house counsel, the lawyers who traditionally worked in the large legal departments of state-owned companies have typically had more in common with low-level state bureaucrats than the lawyers who work in private law firms.⁸⁵ Similarly, in Indian state-owned companies, in-house lawyers were essentially low-level bureaucrats, as they were in Russia and China. To the extent that companies had important legal work, it went to outside law firms.⁸⁶ Even in private Indian companies, the legal function was often under the express or de facto control of the company secretary, a statutorily mandated position in public companies with responsibility for preparing and signing various legal documents, and for issues of corporate governance generally.⁸⁷ As many of our

in the former Soviet Union. See Sida Liu, *Palace Wars over Professional Regulation: In-house Counsel in Chinese State-owned Enterprises*, 2012 WIS. L. REV. 547.

82. *Interim Regulation on Corporation Legal Consultant Qualification Examination, 1997*, CHINALAWINFO.COM, <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=18862> (last visited May 2, 2011) (in Chinese).

83. For example, applicants are permitted to have majored in economics “or other relevant subjects,” or “have worked in either the field of law or economics.” *Id.*

84. Confidential Interview with the CLO of a Chinese SOE (June 2011).

85. Confidential Interview with a Brazilian CLO who works closely with Brazilian SOEs (Aug. 2011) (noting that although Brazilian SOEs had large legal departments, the lawyers working inside these offices earned low wages and had low prestige within the Brazilian bar).

86. Confidential Interviews with Indian CLOs (Oct. 2011). This trend was identified in several interviews with CLOs in both SOEs and private companies in India.

87. See generally THE INST. OF CO. SECRETARIES OF INDIA, *ROLE OF COMPANY SECRETARIES: A NEW PERSPECTIVE* (2010).

interviewees in India stressed, those who occupied this function were not required to have legal training.⁸⁸

As indicated above, since 2000 Brazil, India, and China have all opened their markets significantly to global competition. Consequently, each country has adopted an enormous number of new statutes, procedures, and rules regulating everything from securities, to competition, to consumer protection.⁸⁹ Given that these changes did not produce a corresponding change in the function of internal counsel in the “R” in the BRIC countries, however, it is legitimate to ask why one should expect things to be different with respect to the countries that represent the other three letters in this new economic fearsome foursome?

In addition to raising an important caution to the far too common assertion that liberalization will inevitably produce institutions in the new world that are identical to those that are currently found in the old world, however, Hendley’s excellent analysis also offers some important clues as to why the evolution of the corporate legal market in general, and the role of in-house lawyers in particular, might be different in Brazil, India, and China in the first decades of the twenty-first century than it was in Russia in the last decade of the twentieth. Specifically, as Hendley makes clear almost none of the companies that she studied had any significant contact with companies, markets, or law firms outside of Russia, except as potential competitors.⁹⁰ Although this competition had driven many traditional Russian companies out of business—and had made those who survived become leaner by cutting unnecessary costs, including tellingly the size of their internal legal departments to the extent that they had one at all⁹¹—it had not changed the way that most Russian firms did business, even in Moscow and other commercial centers. In other words, although the Russian business market had opened to foreign competition, the Russian *legal* market remained relatively insulated and closed.

Ironically, this is not because Russia attempted to keep out foreign lawyers. To the contrary, in this respect Russia’s rules of foreign legal practice are far more liberal than its fellow BIC compatriots, resulting,

88. Confidential Interviews with Indian CLOs (Oct. 2011).

89. See, e.g., Vivian Chen, *The Great Leap In-House*, CORP. COUNS., June 2006, at 92, 92 (“China is cranking out more laws and regulation to govern all that business activity, especially in the media and internet sector.”).

90. Hendley, *In-House Counsel*, *supra* note 21, at 28 (“[M]ost Russian enterprises, including my case study enterprises, have few (if any) contacts with Western law firms or with Western investors.”).

91. Hendley, *Unchanging Agents*, *supra* note 21, at 693 (noting that a large number of Russian companies decreased the size of their in-house legal staff after liberalization).

as Hendley points out, in there being several international law firms with large offices in Moscow.⁹² But paradoxically, the very presence of these firms has arguably served to isolate the Russian legal market even further. As they do in most jurisdictions, foreign firms serve almost exclusively the interests of their foreign clients. But because there were few restrictions on the entry of these global players, there was little to stop them from acquiring the kind of domestic expertise that allowed these sophisticated firms to market themselves as offering a full range of services to foreign firms interested in the Russian market, leaving little room for local competitors to develop their own expertise by tapping into the lucrative cross-border market. As a result, at the time Hendley did her work, very few Russian large corporate law firms had developed to feed the domestic market.⁹³

The situation is very different in the BIC countries. Both because these countries started the process of globalization a decade later than Russia, and, more controversially, because Brazil, India, and China placed significant restrictions on the entry of foreign law firms, the corporate legal services sectors in all three of these jurisdictions has been significantly affected by globalization. Given these important differences in the overall corporate legal market, we might expect to see differences in the role of in-house counsel as well.

III. THE PROCESSES OF GLOBALIZATION

Although legal scholars tend to talk about globalization as a single and largely economic process, those who study this phenomenon have demonstrated that there are actually several interrelated processes at work.⁹⁴ As my co-author Mihaela Papa and I have argued elsewhere, three of these processes—economic globalization, globalization of knowledge, and globalization of governance—are likely to play a particularly significant role with respect to the globalization of the

92. *Id.* at 697. For a description of the unusual openness of the Russian legal market as compared to other emerging economies, see Andrey Goltsblat, *Regulation of Russia's Legal Market Is Again on the Agenda*, *LAWYER*, May 23, 2011, available at <http://gblplaw.com/news/articles/57742/> (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)).

93. Hendley, *In-House Counsel*, *supra* note 21, at 28 (“[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.” (citations omitted)).

94. *See, e.g.*, JAN AART SCHOLTE, *GLOBALIZATION: A CRITICAL INTRODUCTION* (2000); MANFRED B. STEGER, *GLOBALIZATION, A VERY SHORT INTRODUCTION* (2003).

market for legal services.⁹⁵ Each has been accelerating in the last decade, and each is likely to spur the dissemination of the in-house counsel movement to the BIC countries and other emerging economies, including Russia.

Consider, for example, the process of economic globalization, by which scholars simply mean the increasing interdependence of national economies across the world and their progressive integration into the global economy through trade, investment, and capital flows.⁹⁶ As indicated above, the reason why India, China, Brazil, and other countries have “emerged” in recent years is that they have each adopted a series of regulatory reforms that have more or less opened their respective economies to the global market.⁹⁷ As a result, multinational companies based in the United States, United Kingdom, and Western Europe are concentrating a rapidly expanding share of their manufacturing, sales, service, and acquisition energies in emerging markets in general, and the BIC countries in particular.⁹⁸ Although Russia has also received its share of foreign investment over the years, the amount of foreign direct investment in the BIC countries is already far greater than what has happened in Russia and is likely to continue to be so for the foreseeable future.⁹⁹

Given the greater penetration of foreign investment in Brazil, India, and China it would not be surprising to see greater penetration of the in-house counsel movement in these jurisdictions as well. As foreign companies locate more of their resources in the BIC countries, it is likely that these sophisticated players will increasingly want in-house lawyers who will support these operations in the same way that

95. Mihaela Papa & David B. Wilkins, *Globalization, Lawyers, and India: Toward a Theoretical Synthesis of Globalization Studies and the Sociology of the Legal Profession*, INT’L J. LEGAL PROF. (forthcoming 2012).

96. *Id.*

97. See JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION 64–65, 97 (2004).

98. PRICEWATERHOUSECOOPERS, GROWTH REIMAGINED: PROSPECTS IN EMERGING MARKETS DRIVE CEO CONFIDENCE 4 fig.2 (2011) (reporting that 92% of Western CEOs expect to grow their operations significantly in Asia and emerging markets, and 86% expect significant growth in Latin America, as compared to only 55% who expect significant growth in the North America and 48% who expect it in Western Europe).

99. See PRICEWATERHOUSECOOPERS, *supra* note 98, at 4 fig.2 (reporting that only sixty-seven percent of CEOs of North American companies were optimistic about growth prospects in Eastern Europe); Ira Iosebashvili, *Russia’s \$88 Billion of Foreign Investment Not Such Great News*, WALL ST. J. (Aug. 25, 2011, 6:00 PM), <http://blogs.wsj.com/emergingeuropa/2011/08/25/russia%E2%80%99s-88-billion-of-foreign-investment-not-such-great-news/> (“[F]oreign investment was never Russia’s strong point—investors were always wary of government interference, high inflation and competition from government controlled monopolies, among other things.”).

the companies' existing operations are supported in more established markets. As a commentator recently observed about the change in the role of general counsel for multinational companies in emerging markets in recent years: "With so many U.S.-based Fortune 500 corporations targeting non-U.S. markets for sustainable growth, and courting non-U.S. consumers for products, the global general counsel must recognize limitations imposed by both U.S. and non-U.S. laws in devising and executing go-to-market strategies."¹⁰⁰ To accomplish this goal, these global GCs are looking to their in-country GCs to play an increasingly important role in overseeing the company's business in emerging markets. As another observer reports, in-house lawyers for many multinationals are no longer "the redheaded stepchild" of their company but instead "find themselves at the core of the business and valued in a way that was not the case a few years ago."¹⁰¹

Moreover, as the national—and increasingly multinational—companies based in India, China, Brazil, and elsewhere seek to capture the shift in economic globalization toward emerging markets, it is plausible that these companies will look to the model of in-house counsel currently employed by the established Western companies with whom they are competing for guidance about how to set up their own internal counsel. As the Indian general counsel of a private equity firm described the process of diffusion:

I think the major shift happened post-1995 when the liberalization actually took off with telecom, power and information technology sectors opening up. With a lot of American joint ventures and business houses being established in India, the concept of an 'in-house' counsel gained credence. Today, it is an integral and inevitable part of any organization- big or small- with some large business houses boasting of large in-house teams. At Future, for example, I have a team of about fifteen lawyers. Typically, practice groups like compliance, legal structuring and planning and transaction advisory form the expectations and part of the deliverables for these teams. Today with myriad legal and

100. June Eichbaum, *Globalization and General Counsel*, DIVERSITY & B., July/Aug. 2008, at 48, 49, available at <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1757>.

101. Mahalakshmi Kurunathan, *Resisting Change?*, 8 ASIAN-COUNSEL SPECIAL REPORT: INDIA 30, 32 (2010), available at <http://www.inhousecommunity.com/article.php?id=N98888N-NNBBBB8-88JBBBZ-ZZGGGGL>.

complex compliance requirements the need for dedicated in-house counsels cannot be undermined.¹⁰²

Needless to say, given Rosen's initial observation that self-promotion has always been a key part of the in-house counsel movement,¹⁰³ one should be cautious about taking these pronouncements by general counsels in emerging markets at face value. Nevertheless, the fact that internal counsels in India and elsewhere are even claiming to play a key strategic role in their company is already a move away from the unquestioned and easily admitted powerlessness that Hendley reports articulated by the Russian in-house lawyers she interviewed in the late 1990s. The fact that economic globalization is shifting from an emphasis on "inbound" investment into emerging economies to "outbound" investment by companies and investors based in Brazil, India, and China is only likely to bolster these claims—and the reality of the need for a new form of sophisticated legal advice by companies that seek to profit from this trend.

Unlike the period Hendley studied in Russia, many companies in emerging markets are beginning to look beyond their own borders. As Frank Aquila and Sergio Galvis recently reported with respect to Brazil, this shift is already quite dramatic:

If anyone continued to doubt Latin American M&A prowess, there was no need to look further than the recently-announced acquisition of the US fast food chain Burger King. Burger King's suitor? None other than 3G Capital, the private equity firm controlled by three of Brazil's savviest investors. Coming only weeks after Lan Airlines and Brazil's TAM announced their intention to combine, it is clear that Latin American dealmaking is now truly world class. As the global economy improves, the pace and size of its M&A deals will surely grow.¹⁰⁴

As the authors go on to explain, this shift in economic activity has important implications for the role of the general counsel in Latin American companies:

102. Vinaya Natarajan, *P.M. Devaiah: General Counsel, Future Capital*, BAR & BENCH (Aug. 15, 2009), <http://barandbench.com/brief/4/12/pm-devaiah-br-general-counsel-future-capital>.

103. Rosen, *supra* note 1, at 490–91 (cautioning that claims about the inevitability of in-house counsel's self-reported "age of enlightenment" should be treated skeptically).

104. Frank Aquila & Sergio Galvis, *New Rules of Engagement for LatAm's Corporate Champions*, LEGALWEEK.COM (Sept. 22, 2010), <http://www.legalweek.com/legal-week/opinion/1734722/new-rules-engagement-latams-corporate-champions>.

Latin American dealmakers are quickly realising that international acquisitions present a range of issues that are more complex than those in domestic transactions. Legal advisers are counseling their clients that early identification of key issues is the hallmark of successful deals. A few topics are of critical importance in most cross-border acquisitions: Public disclosure. . . . [l]itigation potential. . . . [r]egulatory approvals. . . . [t]rading considerations. . . . [m]ultinational coordination. . . . [and] [c]orporate governance.¹⁰⁵

Although outside law firms are providing some of this early identification in the BIC countries, the 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 replace—outside counsel with more sophisticated internal counsel are now persuading companies operating in emerging economies to turn to U.S.-style in-house lawyers to fulfill this crucial early advising role. Indeed, some companies based in emerging markets have even gone so far as to hire U.S.-trained lawyers as general counsel to prepare the way for doing business in the United States and other highly regulated markets.¹⁰⁶

The processes associated with the globalization of knowledge are likely to accentuate this trend. Every country has its own set of formal and informal understandings about what it means to be a lawyer and how law should be practiced. But in an increasingly interdependent world, these norms inevitably come into contact with norms and practices from other jurisdictions, which interact with—and often transform—indigenous understandings.¹⁰⁷ A key source of transmission is the formal education system itself, especially when combined with the movement of people. A growing number of the lawyers working in companies based in India, Brazil, and China have been educated in the United States, United Kingdom, or Western Europe.¹⁰⁸ Along with

105. *Id.*

106. *See* Chen, *supra* note 89, at 95 (reporting a Chinese company hiring a U.S. GC to teach the company how to comply with Sarbanes Oxley “with an eye to an overseas stock market listing”). Significantly, the GC reports that he “had a tough time teaching employees about the merits of SOX” since there was “nothing like it in China” and “[c]ode of conduct rules, antifraud provisions and whistle-blower programs are all new stuff for Chinese companies.” *Id.*

107. *See* David Held & Anthony McGrew, *Introduction: Globalization at Risk?* to *GLOBALIZATION THEORY: APPROACHES AND CONTROVERSIES 1* (David Held & Anthony McGrew ed., 2007).

108. Carole Silver has been the most important legal scholar documenting growing importance of LLM programs in the United States and elsewhere. *See* Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 *IND. J. GLOBAL LEGAL STUD.* 67, 82–84 (2007); Carole Silver, *Educating Lawyers for the Global Economy: National Challenges*, *KYUNG HEE U. L. REV.* (forthcoming)

learning about U.S. securities law and other substantive issues, these students are also likely to have absorbed at least something about the ideology of the in-house counsel movement during their time in the West as well.¹⁰⁹ As the foreign trained GC of a Brazilian company summed up proudly:

[I]n-house counsel are more qualified and more sophisticated than they have been in the past. . . . General counsel are taking the reins and saying: “we are going to decide how and when we are going to use firms. . . .” It is that new mindset that I’m seeing a great deal because in-house counsel have stepped into the role of trusted adviser to the business that outside counsel used to occupy.¹¹⁰

The fact that this ideology is also consistent with the quest for recognition and status that many in-house lawyers bring to their new roles is only likely to make the lessons taught in the United States and United Kingdom about the in-house counsel movement that much more appealing.

Formal education, however, is only one mode for the dissemination of knowledge—and arguably not the most important when it comes to lawyers. As many commentators have noted, while law school may teach students how to “think like a lawyer,” lawyers actually learn the norms and practices of their profession well after they leave school.¹¹¹ Though much of this process of professional socialization takes place “on the job,” professional associations, the legal press, and day-to-day interactions with professionals from other organizations also play a crucial role. In each of these various arenas,

(Georgetown Public Law Research Paper No. 1519387, 2009), *available at* <http://ssrn.com/abstract=1519387>.

109. It is important not to exaggerate the amount of specific information about the general counsel’s role that the typical LLM student in the United States or United Kingdom is likely to absorb. As others in this symposium have observed, notwithstanding the triumph of the in-house counsel movement there is very little actual discussion of the role of internal counsel in American law schools. *See* Wald, *supra* note 7. Nevertheless, even if students do not learn much about what in-house lawyers actually do, even my first-year law students now understand that these are important—and for many students—desirable positions in the U.S. legal services industry.

110. *In the Driving Seat*, *LATIN LAW.*, Nov. 2010, at 10, 14 (quoting Pamela Woldow, Partner & General Counsel, Edge International).

111. For a general review of the literature about the relationship between law school and other forms of professional socialization, see, for example, WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007). For my own take on this connection, see David B. Wilkins, *Professional Ethics for Lawyers and Law Schools: Interdisciplinary Education and the Law School’s Ethical Obligation to Study and Teach about the Profession*, 12 *LEGAL EDUC. REV.* 47 (2001).

in-house counsel in emerging economies are likely to encounter proponents of the in-house counsel movement.

As Rosen documents, these forms of informal knowledge dissemination and socialization played a key role in promoting the in-house counsel movement in the United States.¹¹² Consider, for example, the ACC. Founded in 1982, as the in-house counsel movement was just getting underway, this new bar organization was expressly designed to create a new identity for the lawyers formerly known as “house counsel.”¹¹³ As one of the organization’s founding members recalls in a statement that can still be found on ACC’s web site: “[We needed] a national organization, especially one that would help raise the sights of in-house counsel and provide a unified voice for our profession.”¹¹⁴ In the three decades since the organization’s founding, ACC has tirelessly fought to build the status and visibility of corporate counsel both among its members and with other relevant constituencies, including in traditional bar organizations—to demonstrate, in the words of the first principle of its operating philosophy, that in-house attorneys are “full and equal members of the legal profession.”¹¹⁵ In order to accomplish this goal, ACC and other in-house counsel organizations have trumpeted their involvement in issues such as pro-bono—and more recently diversity—that are often considered at the heart of traditional professional ideals that define law as a public profession in the United States.¹¹⁶

Given how important globalization is for many of the companies in which ACC lawyers work, it should not be surprising that the organization itself has also gone global. As it proudly proclaims on its website, ACC now has members from at least seventy-five countries, with many boasting their own chapters, including India, China, and Brazil.¹¹⁷ Predictably these branches are attempting to engage in the same kind of status and visibility-enhancement projects for internal counsel in these jurisdictions as the ones that have proven so successful in the United States. Although ACC’s efforts initially concentrated on targeting the overseas general counsels of U.S. companies, in recent

112. Rosen, *supra* note 1, at 497–98.

113. *History of ACC*, ASS’N CORP. COUNS., <http://www.acc.com/aboutacc/history/index.cfm> (last visited Mar. 1, 2012).

114. *Id.*

115. *Mission and Vision*, ASS’N CORP. COUNS., <http://www.acc.com/aboutacc/missionandvision.cfm> (last visited Mar. 1, 2012).

116. *Id.* (listing “[p]romote diversity and inclusiveness within ACC and the in-house community as a whole” and “[e]ncourage public and pro bono service” as core operating values). For a recent example of the emphasis that is currently being placed on pro bono services for in house counsel, see PRACTISING LAW INST., *supra* note 46.

117. *History of ACC*, *supra* note 113.

years the organization has stepped up its efforts to recruit the growing number of in-house lawyers working in Indian, Chinese, and Brazilian companies. As more internal counsel from companies based in these jurisdictions join ACC, the organization's ideas about the proper role of a general counsel are likely to diffuse even further.

Moreover, ACC has already spawned fledgling competitors in each of the three BIC countries. Thus, in both India and Brazil there are new organizations specifically designed to provide the kind of education, networking, and status-building services to in-house lawyers that ACC and other similar international organizations also seek to provide.¹¹⁸ Even in China, where there does not appear to be a formal local in-house counsel association, an energetic young Chinese general counsel for a multinational company has begun to organize informal meetings in Shanghai for GCs from both foreign and domestic companies operating in China.¹¹⁹

A new legal press is also springing up in these of jurisdictions—including both targeted “Asian” and “Latin American” offerings of Western publications such as *The American Lawyer*, and the United Kingdom's *The Lawyer*, and new magazines and websites based in these new economies.¹²⁰ Although all of these publications concentrate primarily on law firms, each has begun to devote significant attention to in-house lawyers.¹²¹ Once again, these organizations are likely to spread the gospel of the in-house counsel movement.¹²² As Katheryn Hendley wisely observed with respect to the Russian *iuriskonsul'ty* in her sample, “[t]he reality is that people are unlikely to aspire to what they have never witnessed.”¹²³ By trumpeting examples of in-house legal departments who have absorbed the tenets of the in-house counsel movement, these new professional associations and publications are likely to counteract this lack of vision.

The last process of globalization I will address—the globalization of governance—is likely to help drive home the value of this new vision, both to in-house lawyers and to the managers and shareholders

118. See, e.g., *The Latin American Corporate Counsel Association*, LATIN LAW., <http://www.latinlawyer.com/lacca/> (last visited Mar. 1, 2012).

119. Confidential Interview with Chinese general counsel (July 2010).

120. See, e.g., LEGALLY INDIA, <http://www.legallyindia.com/> (last visited Mar. 1, 2012); LATIN LAW., <http://www.latinlawyer.com/> (last visited Mar. 1, 2012).

121. *Latin Lawyer*, for example, has a separate listing on its home page for stories about in-house counsel. See *In-House*, LATIN LAW., <http://www.latinlawyer.com/inhouse/> (last visited Mar. 1, 2012).

122. See Sebastian Perry, *A Slice of the Action: Sebastian Perry Talks to the In-House Team of Mexico's Grupo Bimbo about How It Feels to Be Calling the Shots*, LATIN LAW., March 2010.

123. Hendley, *In-House Counsel*, *supra* note 21, at 28.

these lawyers serve. As many scholars have observed, international and transnational regulation increasingly plays a key role in governing the affairs of companies that compete in the global economy.¹²⁴ At the same time, just as in the case of the European Union, these supra-national regulations interact and compete with a growing proliferation of national laws that regulate similar conduct. All of this is likely to increase the demand for the kind of knowledge about law, regulation, and the institutions of national, regional, and global governance that in-house lawyers credibly claim to possess and deploy.

One can already see this development in the United States with respect to the qualities that companies are beginning to look for in the chief legal officers who they want to head their increasingly global operations. As a leading head-hunter who helps companies find their dream GC explains, “In the mid to late 1990s, a period characterized by the dot-com boom and high-flying markets involving mergers and acquisitions (M&As) and initial public offerings (IPOs), general counsel were the prototypical Wall Street or Silicon Valley M&A lawyers who had prior experience at the table with investment bankers.”¹²⁵ But as that era came crashing to a close with scandals like Enron and WorldCom ushering in a new wave of regulation:

CEOs who couldn’t sleep for worrying about the Securities and Exchange Commission (SEC), anti-money-laundering laws, Foreign Corrupt Practices Act (FCPA) inquiries, and back-dating stock options required a general counsel who could proactively identify and defuse risk, and who knew how U.S. regulators thought and what they cared about. These reshuffled CEO priorities meant that the most sought-after lawyers were trained in Washington at the SEC, Justice, Treasury, or a similar high-profile federal agency, in addition to a world-class law firm.¹²⁶

Today, this knowledgeable insider suggests, CEO priorities are being reshuffled again. In the new age of economic globalization—and the concomitant interplay between global, regional, and national law and governance—“experience in London, Hong Kong, or Dubai may soon replace experience in Washington as the sine qua non for the next generation of general counsel.”¹²⁷

As much as this kind of global fluency is important for the global general counsel of a U.S. multinational, it is arguably even more

124. See, e.g., DANIEL W. DREZNER, *ALL POLITICS IS GLOBAL: EXPLAINING INTERNATIONAL REGULATORY REGIMES* (2007).

125. Eichbaum, *supra* note 100, at 50.

126. *Id.*

127. *Id.*

important for the in-house lawyers for these companies who are operating on the ground in the new emerging economies.¹²⁸ Given the interplay among the explosion of new national laws in these jurisdictions on subjects ranging from foreign investment, competition, and corruption, the wave of new financial regulation in the United States and Europe following the global financial crisis, and the proliferation of transnational dispute-processing institutions such as the WTO and bilateral investment treaties, companies operating in these jurisdictions face enormous legal complexity and risk. As Neeta Sanghavi, former India country counsel for UBS explained:

It is enormously complex to sift through the complex web of several laws and regulations in India and overseas, while assisting a company to take it to the public. Adherence to law is enormously complex. It's enormously complicated to assess your risks, what kinds of risk abatement processes you're going to have and all the points where the law intersects with those processes.¹²⁹

As a result, companies are likely to look for internal lawyers capable of engaging in the kind of sophisticated analysis about the interplay of legal and non-legal solutions and the opportunities for regulatory arbitrage or damage control that typify the style of internal lawyering trumpeted by the in-house counsel movement.

The situation is likely to be just as complex for companies based in these new emerging economies—particularly when these enterprises venture out beyond their borders. Consider the complex array of interconnected laws, regulations, and standards that fall under the general heading of corporate governance. Companies in emerging markets are well aware that they need to understand the full range of laws in this area even if some of these restrictions do not immediately apply to their operations in their home jurisdiction. As the scholars Roman Tomasic and Jian Fu have noted, Chinese companies, for example:

are well aware of the importance of the corporate governance debates going on around them, although these debates do not always play themselves out as one might expect from the

128. See Catherine Dunn, *Corporate Executive Board Report Highlights "Five Forces that Will Change Legal"*, CORP. COUNS., Aug. 2011 ("[A]s companies expand into emerging markets to capitalize on growth opportunities, risks will follow. . . . It's going to be more important for those risks to be managed locally." (internal quotation marks omitted)).

129. Neeta Sanghavi, *Country Counsel, UBS*, B. & BENCH (June 14, 2010), <http://www.barandbench.com/brief/4/784/neeta-sanghavi-country-counsel-ubs>.

rhetoric of corporate governance that is to be found in China and more widely.

In part this is due to the size of the problem of change and the social and political obligations that have been accumulated by these companies. The desire to protect these large companies and position them for the next stage of global expansion by Chinese companies has meant that the state has had much greater influence over them than might otherwise be considered appropriate.

Laws and legal institutions have had difficulty keeping up with the changes that have been taking place in China's corporate sector and China's regulatory institutions are still at an early stage of development.¹³⁰

Once again, this regulatory complexity between the global and the local levels arguably places a premium on a certain kind of internal legal expertise. As another observer asserts in a similar context: "As the scale and severity of regulatory oversight in the US increases across the board, Latin American GCs are facing the next significant compliance challenge—conducting rigorous internal investigations which don't cost the earth."¹³¹ This emphasis on both the complexity and cost of regulatory compliance plays to the strength of the in-house counsel movement.

Indeed, the fact that emerging-market multinationals are just as likely to expand into other emerging economies as into the more developed markets of the West and North is only likely to make the growing globalization of governance even more salient. The rapid expansion of Chinese companies into Africa is a case in point. These investments have drawn a barrage of criticism from a variety of sources, often claiming that Chinese companies are violating local laws and regulations.¹³² But even when local laws have not been violated (since in many jurisdictions there are few local laws in place), Chinese companies are increasingly accused of violating international norms of corporate social responsibility. These norms are increasingly being

130. Roman Tomasic & Jian 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), available at <http://www.reds.msh-paris.fr/communication/docs/tomasic-fu.pdf>.

131. Clare Bolton, *Internal Investigations: "The Next Big Challenge for In-House Resourcing"*, *LATIN LAW.*, Aug. 16, 2010.

132. See, e.g., *Trying to Pull Together*, *ECONOMIST*, Apr. 23–29, 2011, at 73, 73 ("Chinese expatriates in Africa come from a rough-and-tumble, anything-goes business culture that cares little about rules and regulations. Local sensitivities are routinely ignored at home, and so abroad.").

backed up by a variety of global reporting and compliance mechanisms.¹³³

Although initially disdainful of such “voluntary” reporting mechanisms, Chinese companies have come under increasing pressure to join these regulatory schemes.¹³⁴ Thus Chinese officials recently issued regulations requiring state-owned enterprises to release corporate social responsibility reports.¹³⁵ Highlighting the multilevel complexity that all of this presents for Chinese companies, President Hu Jintao in a 2008 speech to the Asian-Pacific Economic Cooperation summit directed the Chinese to “establish the concept of global responsibility, include social responsibility in their business strategy on their own, abide by the laws in the country where the enterprises operate and international common business practices, improve their management models, and pursue unity of economic returns and social results.”¹³⁶

Once again, in-house lawyers are likely to claim that they are the ones who can best help corporate leaders to navigate through the complexity of putting together a “business strategy” that includes “social responsibility,” while complying with both “the laws in the country where the business operates” and “international common business practices.” As an Indian general counsel who has been schooled in the ways of the in-house counsel movement both through receiving an LLM in the United States and in working for both Indian and multinational companies—and who for the last two years has been hosting a monthly discussion group for other Indian in-house lawyers from both Indian and multinational companies—summed up his understanding of his role:

[A]s an in-house you are working closely with your business colleagues, understanding their challenges and

133. See Galit A. Sarfaty, *Regulating through Numbers: A Case Study of Corporate Sustainability Reporting* (Aug. 23, 2011) (unpublished manuscript) (on file with the author).

134. See Simon Zadek et al., *Responsible Business in Africa: Chinese Business Leaders’ Perspectives on Performance and Enhancement Opportunities* 32–36 (Corporate Soc. Responsibility Initiative, Working Paper No. 54, 2009), available at http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_54_zadeketal.pdf (reporting that Chinese companies are increasingly participating in these regulatory initiatives and that as of 2003, 5064 Chinese companies had been certified under the ISO environmental management system standards, more than five times the number of Brazilian and Indian companies to participate in this program). Of course, whether these companies are actually complying with these and other standards remains very much an open question. See Sarfaty, *supra* note 133, at 23–25 (discussing the difficulty of determining whether companies that sign sustainability pledges are actually complying with their requirements).

135. Zadek, *supra* note 134, at 33.

136. *Id.* (internal quotation marks omitted).

finding creative ways of achieving business objectives in a legal and ethical way. The in-house lawyer must take on a leadership role, take calculated risks and stick his or her neck out by giving clear and insightful guidance to the business. . . . You many times end up crisscrossing between thinking like a business person and a lawyer in dealing with this challenge.¹³⁷

Needless to say, there is certainly no guarantee that economic globalization, the globalization of knowledge, and the globalization of governance will *necessarily* produce sophisticated in-house counsel, let alone that the general counsel that do emerge from these new environments will look exactly like their U.S. counterparts. To the contrary, there are likely to be significant differences between the model of internal counsel that develops in these new economies and the one that the United States produced—as well as differences among these countries as a result of particular market conditions and history. Nevertheless the processes of globalization already appear to be changing the role and function of in-house lawyers in all of these new countries. It is therefore worth asking what we should look for in assessing the extent of this change and what its implications might be for the market for legal services in countries such as Brazil, India, and China, and for lawyers, clients, and the social purposes of the legal system generally.

IV. DIMENSIONS OF CHANGE

To determine whether the three forces of globalization identified in the previous Part are indeed helping to foster an in-house counsel movement in the BIC countries, we intend to examine six related aspects of the structure and work of internal lawyers in these jurisdictions: the size of in-house departments; the credentials and demographics of the lawyers working inside these departments; the relationship to, and degree of control over, outside counsel; the internal standing, jurisdiction, and authority of in-house lawyers within their organizations; the professional standing of internal counsel in the profession as a whole; and the participation and influence of general counsel in larger public policy debates, both nationally and internationally. Each of these issues was a major objective of the in-house counsel movement in the United States, and each is a symbol of that movement's success. But as I will indicate, assessing the movement's success on each of these dimensions is also more

137. See Kurunathan, *supra* note 101, 32–33 (quoting Suresh Kumar, principal legal counsel (Asia), Thomson Reuters Markets Division).

complicated than might at first appear even with respect to internal legal departments in the United States. These complexities are likely to be even more salient in the context of emerging economies. The following Sections provide some preliminary thoughts on each of these topics.

A. Size Matters—But in Complex Ways

One obvious way to measure the importance attached to internal counsel is to look at the size of the average in-house legal department. Not surprisingly, many commentators point to the fact that many U.S. legal departments grew rapidly during the 1970s and 1980s as proof of general counsel's increasing power and prestige.¹³⁸ The fact that some of the larger companies in the BIC countries now have internal law departments that rival the size of their Western counterparts suggests that something similar may be happening here as well. For example, the Tata Group in India has over 400 in-house lawyers working to serve its many business interests around the world, led by a dynamic and highly influential general counsel.¹³⁹ Similarly, China's Huawei has over 400 in-house professionals.¹⁴⁰ In addition to these giants, private companies with more modest legal departments in China appear to be growing rapidly.¹⁴¹ The fact that at least some in-house legal departments are expanding rapidly is an important indication of the growing importance of internal counsel in these new economies.

Nevertheless, even in the United States size remains an imperfect measure of prestige and power. Thus, even though the overall size of the in-house bar has grown rapidly since the 1980s, the size of even the legal departments of the largest U.S. companies remains surprisingly varied. Thus, in a recent study of general counsel offices of S&P 500 companies, we found that the median legal department employed thirty-five lawyers, but that the range in size was quite significant, with some companies having almost completely outsourced their legal function and others maintaining legal departments of over 1000 lawyers.¹⁴² A recent study of large U.S. and U.K. companies by Marie Sako and Richard

138. Daly, *supra* note 2, at 1059–61.

139. Interview with Bharat Vasani, General Counsel of the Tata Group (Oct. 2011).

140. Interview with General Counsel of Huawei (Apr. 2011).

141. See Chen, *supra* note 89, at 92 (“While a dozen-plus lawyers for a company with \$200 million in revenue is hardly startling, consider this: Just over a decade ago, in-house lawyers in China were almost nonexistent . . . [C]ompanies in China—both domestic and multinational—are no longer rushing to costly international law firms for help every time a question comes up.”).

142. Coates, DeStefano, Nanda & Wilkins, *supra* note 4, at 1006.

Susskind reaches a similar conclusion, finding that “the absolute size of the legal department varies enormously, ranging from a small department with only a couple of lawyers to a globally distributed legal function with over 1000 lawyers at some banks.”¹⁴³

This difference in size affects the legal department’s functioning, although once again less than one might expect. Even with respect to the displacement of outside law firms, the size of a company’s general counsel office is an important—but not determinative—indication of the split between the amount of money spent on outside lawyers versus the percentage of the legal budget that is spent on in-house counsel. To be sure, in our survey of U.S. companies, those with a very small legal budget sent almost all of their work to outside firms.¹⁴⁴ But above a certain size there is much less correlation between size and outside spend. Indeed, the five largest legal departments in our sample spent a higher percentage of their legal budget on outside law firms than average.¹⁴⁵ Similarly, Sako and Susskind found that the size of the legal department and the inside-outside split in spending was an imperfect measure of the degree of control that a given legal department exercised over outside firms. Although Sako and Susskind found a wide variation in the percentage of the total legal department budget spent on outside firms, they also report that there is substantial variation among departments of various sizes.¹⁴⁶ Some small legal departments, who outsource most of the company’s legal work, exercise a high degree of control over outside law firms while others do not. Similarly, larger departments were also arrayed along a continuum with respect to their commitment to the importance of having a strong in-house legal function.¹⁴⁷

Nor is size a perfect proxy for the importance of the work that is done by internal counsel, or their importance within the corporate hierarchy. Financial services firms tend to have some of the largest in-house departments, yet much of the work done by these lawyers relates to the routine processing of transactions and other compliance related

143. See SAKO, *supra* note 48, at 4.

144. Coates, DeStefano, Nanda & Wilkins, *supra* note 4, at 1008.

145. *Id.*

146. See SAKO, *supra* note 48, at 6 (reporting a range of twelve percent to ninety-three percent).

147. *Id.* at 6–7. Sako and Susskind distinguish two types of “externalizers.” The first are companies with small internal departments who nevertheless exercise a high degree of control over outside firms, and the second are those who exercise relatively little control and are often “bypassed” by the CEO in favor of outside counsel. *Id.* They also compare “mid-rangers,” including some with quite large departments, who take a “balanced” approach to managing the legal function with “internalizers,” who aggressively promote the value of in-house lawyers. *Id.* at 7.

matters.¹⁴⁸ Tellingly, the general counsels of these organizations were less likely to report directly to the CEO than those of other companies, implying a less important position in the corporate hierarchy.¹⁴⁹ Indeed as Sako and Susskind report, some general counsels in this area do not view having work done by internal counsel as key to the legal department's functioning at all.¹⁵⁰

The relationship between size, function, and authority is likely to be even more complex with respect to legal departments in emerging economies. For example, in China, India, and Brazil many state-owned enterprises have traditionally had very large in-house legal departments. Until recently, however, these lawyers were very much like the Russian *iuriskonsul'ty* Hendley describes—low-level bureaucrats with very little status either within the company or in the legal profession as a whole.¹⁵¹

The situation with respect to private companies in emerging markets is similarly complex. Although as indicated above, there are some very large in-house departments in the BIC countries, and others are growing rapidly, available evidence suggests that the typical in-house legal office in these jurisdictions is still relatively small. A recent report of Brazilian in-house departments, for example, found that the overwhelming majority (63%) had between one and five lawyers, and only 8% had more than thirty lawyers.¹⁵²

Notwithstanding their size, however, the overwhelming majority of these relatively small departments claim to follow the primary dictates of the in-house counsel movement. Thus 75% of the Brazilian general counsels surveyed claimed to have authority for hiring outside counsel, while 96% asserted that they at least shared responsibility with outside counsel for handling “complex and recurrent” matters for their company—with 30% asserting that they took primary responsibility for

148. See *id.* at 4 (reporting that the legal departments in financial services companies grew enormously until 2007); *id.* at 7 (reporting that much of the work done by lawyers in these departments consists of documenting sales and trading transactions).

149. Coates, DeStefano, Nanda & Wilkins, *supra* note 4, at 1008 (reporting that sixty percent of financial services GCs report to the CEO compared to ninety-four percent for the sample as a whole).

150. See SAKO, *supra* note 48, at 7 (quoting the general counsel of a large legal department in a financial services firm as saying that “nothing” necessarily has to be done in-house, and that “we can hire another 200 lawyers and bring more of the work in-house, or we can fire all in-house lawyers and . . . manage all the outside counsel”).

151. Confidential Interviews in Brazil, India, and China about the traditional role of lawyers in SOEs.

152. GONÇALVES & GONÇALVES MKTG. JURÍDICO & LEXISNEXIS MARTINDALE-HUBBELL, BRAZILIAN STUDY ON THE RELATIONSHIP BETWEEN LEGAL DEPARTMENTS AND LAW FIRMS 10 (2010) [hereinafter GONÇALVES & GONÇALVES], available at http://community.martindale.com/legalgroups/Geography/brasilia_lawyers/m/brasilia_lawyers-mediagallery/17050.aspx.

such issues.¹⁵³ And a significant percentage of these companies expect the size of their legal department to grow in the next few years.¹⁵⁴

Although such statements echo the claims of the in-house counsel movement, there are also indications that the reality on the ground may not yet live up to these bold pronouncements. Thus, 11% of the Brazilian GCs in the survey cited above—the second-highest percentage for any topic—admitted to being worried about the long-term careers and salaries of in-house lawyers, with another 11% and 9% (the number three- and four-ranked issues) concerned about budget and limited resources and participation in board and management decision making, respectively.¹⁵⁵ Investigating the interplay between the confident assertions and the underlying concerns of these in-house lawyers will be central to gaining an understanding of whether these internal counsels will be able to achieve the status and influence of their counterparts in the West.

B. But So Do the Credentials and Identities of the Lawyers

As Hendley documents with respect to Russia, in-house lawyers have often suffered from two distinct and mutually reinforcing disadvantages. First, the lawyers who have traditionally worked inside corporate counsel offices have typically had inferior professional credentials to those working in law firms and other private practice settings. Second, these lawyers are often members of groups with relatively less status in society—in the case of Russia, women and those who were not members of the communist party—than their counterparts in outside firms. This low demographic status has played a key role in reinforcing the relative powerlessness of internal counsel, both within their own organizations and within broader professional, legal, and policy circles.

Our preliminary research in Brazil, India, and China provides some evidence that something similar may be going on in these jurisdictions as well. As discussed in Part II, in-house counsel in China have traditionally been considered “corporate legal consultants” and have not had to qualify as lawyers. From our preliminary discussions, it appears that internal counsel in Chinese SOEs are particularly likely only to have this inferior credential. Similarly our initial interviews underscore that lawyers for state-owned companies in India and Brazil have frequently not been full members of the bar, or if they have had

153. *Id.* at 15, 17.

154. *Id.* at 10 (reporting that 38% expect the size of their legal department to increase).

155. *Id.* at 26.

professional credentials, have typically been the graduates of lower-ranked law schools. Even in many private Indian companies, the legal function has traditionally been under the jurisdiction of the company secretary, who was not required to have formal legal training.

Our research also suggests, however, that this situation is changing rapidly in each of the BIC countries. Even with respect to SOEs, there has been an effort in each jurisdiction to raise the credentials of internal counsel. For example, in 2002 the Chinese Ministry of Justice issued an interim advice on “Carrying out the Pilot Work on In-House Lawyers” which for the first time specifically required those providing legal services to SOEs to be qualified as lawyers.¹⁵⁶ Although it is not clear how widely this directive has been followed in practice, in 2008 the State Owned Asset Administration announced six GC candidates for large SOEs under its supervision. All six were licensed as “corporate legal consultants”—but five of the six were also qualified as lawyers.¹⁵⁷ Similarly, while the rank and file lawyers employed by Petrobras, Brazil’s largest SOE, continue to enjoy relatively low status within the Brazilian bar, the top lawyers in this company have assumed a level of prominence that rivals the status and influence of their counterparts in the United States. In a roundtable discussion with general counsels from ABESPETRO, an association of general counsels of companies that provide support for Petrobras, it was perfectly clear that this company’s general counsel wielded significant power and authority in the marketplace—and that the general counsels of these supporting institutions, many of which were subsidiaries or divisions of international companies such as Halliburton and Schlumberger, were seeking to play a similar role both internally in their own companies and externally with respect to the management of outside counsel. The fact that Petrobras may soon become the one of the world’s largest companies is only likely to accelerate this trend.¹⁵⁸ The status of in-house lawyers in state-owned, or controlled, enterprises in India also appears to be improving rapidly, with these companies now able to

156. *See Interim Regulation, supra* note 82.

157. *Open Announcement of SASAC on the Candidacy of Central Government SOEs General Counsels*, STATE-OWNED ASSETS SUPERVISION & ADMIN. COMMISSION STATE COUNCIL (Dec. 29, 2008), <http://www.sasac.gov.cn/n1180/n20240/n7290826/11864502.html>.

158. Ricardo Geromel, *Will Petrobras Become the World’s Largest Company? Brazilian Giant’s Q2 Profits Jump 32%*, FORBES (Aug. 18, 2011, 9:16 AM), <http://www.forbes.com/sites/ricardogeromel/2011/08/18/will-petrobras-become-the-worlds-largest-company-brazils-giant-reports-q2-profits-rises-of-32/>.

recruit highly credentialed and experienced lawyers away from private companies and even law firms.¹⁵⁹

The credentials of the lawyers working inside private companies in these jurisdictions have arguably improved even more dramatically. This is most evident with respect to the lawyers working inside the local divisions of multinational companies. These lawyers, like their counterparts in the local offices of international law firms, increasingly hold dual qualifications from prestigious local law schools and international LLM programs, and have frequently had practice experience in top domestic or foreign law firms—or both—before assuming their in-house position. But even companies based in these emerging markets are also beginning to recruit lawyers with high status credentials. For example in 2010, more than twenty percent of all of the graduates from India's three top National Law Schools accepted jobs in corporate legal departments.¹⁶⁰

Whether this increase in status in the lawyers joining in-house legal departments constitutes the kind of elevation in the role of internal legal counsel trumpeted by the in-house counsel movement, however, remains to be seen. Given the small number of top private law firms in India, for example, it is not clear whether those going into in-house positions are choosing these jobs because they find them more attractive than law firms, or simply because working in-house is their best option in a world in which their realistic alternative is joining a low paying traditional litigation practice.¹⁶¹ Entry-level salaries in corporate law offices remain significantly lower than they are in top law firms, and it is not clear whether the tradition of paying senior in-house lawyers at the level of law firm partners—let alone their counterparts in top

159. Confidential Interviews with general counsel of Indian SOE (Oct. 2011). Indeed, the general counsel of one prominent Indian SOE is currently working with a top Indian law school and a prominent international law professor to develop a training program for lawyers interested in working in the area of his company's business so that he can obtain top recruits.

160. *37.7% Choose Law Firms, 20.9% Choose In-house and 9.8% Choose Lit: Career Paths of NLSIU, NALSAR and NUJS Graduates*, B. & BENCH (June 28, 2010), <http://barandbench.com/brief/9/809/377-choose-law-firms-209-choose-in-house-and-98-choose-lit-career-paths-of-nlsiu-nalsar-and-nujs-graduates>. Although this percentage was about half of those who initially joined law firms, it was more than twice as high as the percentage of graduates who went into traditional litigation practice. *Id.*

161. See Papa & Wilkins, *supra* note 95, at 14 (reporting that the traditional pay packages at Indian litigation firms is only \$3300 per year as compared to \$20,000 in top law firms). As indicated below, in-house legal jobs fall between these two ranges.

management—has taken hold in any of these emerging economies.¹⁶² Indeed, even in the United States it is not clear whether the movement of lawyers in-house is due to the inherent attractiveness of these positions—or to the growing unattractiveness of being an associate in a large corporate law firm. As the corporate law firm market matures in the BIC countries—both internally through the growth of indigenous law firms, and more controversially, externally by the entry of foreign firms recruiting top talent—it will be interesting to see whether in-house jobs continue to grow in status and prestige in these jurisdictions.

One indication of this maturation process may be the demographic characteristics of the lawyers employed in internal legal departments. In the United States, for example, a disproportionate number of women lawyers have moved from law firms to in-house legal departments in recent years.¹⁶³ This overrepresentation is due in part to the well-documented fact that law firms have not fostered a particularly hospitable environment for female lawyers. But it is undoubtedly also due to the fact that in-house legal jobs have been considered less prestigious than law firm jobs, and therefore less attractive to highly qualified male applicants. Traditionally, this “feminization” of internal counsel would be expected to depress the status of these jobs even further.¹⁶⁴ As Hendley’s research documents, this has certainly been the case in Russia, where the high percentage of women *iuriskonsul’ty* further depressed the status and influence of this position with corporate managers.

In the United States, however, the situation has been more complex. Because female lawyers entered into corporate legal departments at the beginning of the in-house counsel movement, these positions have actually risen in power and prestige as they have become more feminized. Indeed, female general counsels have used their growing influence over legal purchasing decisions to press for gender equity (and to a lesser extent other forms of diversity) in the profession as a whole.¹⁶⁵ Thus, the feminization of the in-house legal sector has

162. For a description of the move to pay at least senior in-house lawyers compensation packages (including stock options) that equal or exceed what these lawyers might make in private practice, see Lat, *supra* note 15.

163. See, e.g., Wald, *supra* note 7, at 420 (noting that women accounted for almost seventy-nine percent of the increase in size of in-house legal departments between 1980 and 2000); DINOVTZER ET AL., *supra* note 9, at 65 (noting that women were more likely than men to leave large law firms to join in-house legal departments). As Wald goes on to note, however, it is far from clear that women are actually more likely to succeed in-house than they are in large law firms. See *id.* at 420–23.

164. See EVE SPANGLER, LAWYERS FOR HIRE: SALARIED PROFESSIONALS AT WORK (1986) (making this argument).

165. See Wilkins, *supra* note 46, at 1556–57.

arguably resulted in an increase in the status of women lawyers throughout the profession. The fact that the percentage of women entering the profession— particularly from top law schools—was also increasing significantly during this period undoubtedly has contributed to this effort. Nevertheless, it is important to recognize that men continue to occupy the overwhelming majority of top positions inside corporate legal departments.¹⁶⁶

The situation is likely to be similarly complex in the BIC countries and other emerging economies. In each of these jurisdictions, the percentage of women entering the legal profession is even higher than it is in the United States.¹⁶⁷ Moreover, the women who have moved into corporate counsel positions in recent years not only have the benefit of tapping into the in-house counsel movement, but are also the beneficiaries of efforts by in-house lawyers from the United States and other Western countries to improve the status of women working in both internal legal positions and in law firms. For example, during a recent trip to Brazil, I was told about a new organization entitled “General Counsels with Skirts” comprised of female GCs dedicated to pushing companies and law firms to hire and promote more female lawyers. Not surprisingly, the woman who created this organization is the female general counsel for Brazil of a major U.S. corporation. Although it remains to be seen whether similar efforts spring up in other jurisdictions, it indicates that GCs in emerging markets are beginning to take seriously their power over outside firms.

C. Who’s the Boss?

Arguably the key feature of the in-house counsel movement in the United States is the effort by general counsel to wrest control over the core legal functions of the corporation away from outside counsel. Even in the United States, however, the evidence is mixed as to whether internal counsel has succeeded in doing so. Notwithstanding a significant investment in building up in-house capacities, many companies discovered that outside spending on law firms continued to escalate throughout the 1990s and into the first decade of the twenty-

166. See *MCCA 2009 Survey of Fortune 500 Women General Counsel*, DIVERSITY & B., July/Aug. 2009, at 14, 16, available at <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=1931> (reporting that 85 of the general counsels in the Fortune 500 were female); see also Wald, *supra* note 7, at 420.

167. Although it is difficult to get accurate information on the gender composition of law students in these jurisdictions—or even the overall number of students—when I have asked faculty at particular schools in these emerging markets about the percentage of female students at their institution, they have offered percentages that range from sixty percent to as high as seventy-five percent, even in top schools.

first century.¹⁶⁸ Nor were all of the resources being devoted to monitoring and controlling law firms resulting in increased levels of client satisfaction.¹⁶⁹ Finally, in the wake of the Enron-related scandals in 2001, companies found themselves facing a new and more challenging regulatory environment in which enforcement officials were increasingly skeptical about the ability of all corporate officers—including general counsel—to detect and deter misconduct by their peers.

The result has been that even U.S. general counsel steeped in the in-house counsel movement had less control over outside counsel than the movement's rhetoric would lead one to believe. Thus, in our study of corporate legal purchasing decisions, we found that even large U.S. companies were unlikely to terminate important law firm relationships. Only about 20% of GCs from S&P 500 companies reported terminating such relationships "frequently" within the last three years, while over 30% had never done so, with another almost 50% having done so only once or twice.¹⁷⁰ In the words of one GC, terminating an important law firm relationship is a bit "like turning the Titanic"—something that takes an enormous amount of time and energy to accomplish and runs the risk of creating an even bigger disaster in the process.¹⁷¹ Ironically, companies in our sample with very large legal departments were no more likely to attempt this tricky maneuver than companies with relatively small departments—with medium size departments of twenty-six to one hundred lawyers showing the greatest willingness to exercise this ultimate method of control.¹⁷²

Although the popular depiction of GCs riding roughshod over outside counsel and employing the kind of "spot contracting" model for the purchase of legal services that companies employ for other kinds of commodity vendors is therefore exaggerated even with respect to lawyers who have fully absorbed the teachings of the in-house counsel movement, there nevertheless has been a dramatic shift in the degree of control that internal counsel exercises over both the amount of work

168. See Gina Passarella, *Survey Shows Corporate Law Depts. Hired More and Spent More in 2005*, LEGAL INTELLIGENCER, Sept. 26, 2006 (reporting a survey by the consulting firm Altman Weil finding an average growth in outside legal expenses of 5.5% among responding companies notwithstanding a 19% increase in hiring in-house lawyers).

169. Janet L. Conley, *GCs 'Can't Get No Satisfaction' from Outside Counsel*, CORP. COUNS., Mar. 16, 2006 (reporting a senior consultant from BTI Consulting Group as stating that "[s]atisfaction with outside law firms is 'particularly low' right now").

170. Coates, DeStefano, Nanda & Wilkins, *supra* note 4, at 1017.

171. See Wilkins, *supra* note 22, at 2104.

172. See Coates, DeStefano, Nanda & Wilkins, *supra* note 4, at 1024 fig.3.

that is given to particular firms, as well as the manner in which that work is assigned, evaluated, and compensated. The relevant question, therefore, is whether GCs in emerging jurisdictions are also using their power over corporate purchasing decisions to restructure the relationship between companies and their outside law firms and to drive changes in the internal structure and operation of firms.

At the most basic level, it is clear that something like this is already going on. Indeed, the very growth of the large law firm sector in countries such as India, China, and Brazil is a testament to the influence that domestic and foreign corporate clients have exerted on the corporate legal professions in these jurisdictions. Moreover, in conversations with both international and domestic firms competing for this business, there is significant anecdotal evidence that many of the techniques employed by GCs in the United States and elsewhere to drive down costs and increase control—beauty contests, panels of “preferred providers,” discounts and alternative billing arrangements (including flat fees, value billing, and risk sharing), and direct oversight on issues ranging from team composition to documents filed in court—are also being employed by GCs operating in emerging markets.¹⁷³ Indeed, several informants from international firms have reported that one of the largest impediments to expanding their business in emerging markets—especially China—is the ruthless cost pressure that Chinese clients have placed on fees. And virtually all respondents believe that these pressures are likely to increase as GCs in private and state-owned companies in these markets become more sophisticated about international transactions and have more exposure to international companies where GCs are already steeped in the ideology and techniques of the in-house counsel movement.

Indeed, given the risky business environment in these new emerging markets, the relative lack of sophistication of some of the domestic law firms, and restrictions on the practice of foreign law firms, it is plausible that international companies will decide to take an even greater percentage of work in-house than these same entities are already doing in more developed markets. Thus, in published reports several general counsels of multinational corporations consider it a “point of pride” to do everything in house.¹⁷⁴ As a recent report on China observed: “Most in-house department heads seem to agree

173. See, e.g., GONÇALVES & GONÇALVES, *supra* note 152, at 16 (reporting that 46% of Brazilian general counsels reported requiring law firms to employ “fixed or previously agreed price[s],” and another 19% reported using “success fee[s],” while only 3% reported using “unlimited price-per-hour” fees).

174. Dan Walfish, *In-House Counsel in China: Understand How They Think*, 14 CHINA L. & PRAC., Sept. 2000, at 58, 59.

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.’”¹⁷⁵ This is particularly true in matters that companies view as “business critical.” As a general counsel in India asserted: “[T]here has been a shift in India ‘moving drastically from external to in-house.’ The majority of larger legal departments try to handle as much of the business-critical legal work themselves as possible.”¹⁷⁶ And even if the work isn’t taken entirely in-house, many companies report that they intend to decrease the number of law firms that they employ in the coming year.¹⁷⁷

Although cost is clearly a significant factor in motivating general counsel to take work inside,¹⁷⁸ as the quote from the general counsel above underscores, there appears to be an element of “pride” as well. This pride has both a positive and a negative dimension. Positively, in-house lawyers in emerging markets are taking pride in the fact that they “understand[] . . . the business dynamics and the effective necessities of the company” far better than outside firms.¹⁷⁹ But there is also a deep resentment of what these in-house lawyers perceive to be the condescending attitude of many of the outside lawyers with whom they have traditionally had to interact. As a general counsel in Brazil explained:

We do not believe in [hiring] law firms. We believe in lawyers and people who exceed themselves day after day. . . . There is also a lot to do with personal relationships in this scenario. It is worthless to be brilliant but to think too highly of oneself to dispatch a petition or to be present at meetings here in the company. It is not worth feeling offended about revisions or suggestions. Exceptional yes, stellar no.¹⁸⁰

In our preliminary interviews with the general counsels of Indian companies, we have been surprised by how often we have encountered

175. *Id.*

176. Kurunathan, *supra* note 101, at 33.

177. GONÇALVES & GONÇALVES, *supra* note 152, at 13 (reporting that twenty-eight percent of companies intend to reduce the number of law firms that they employ).

178. Although there is very little empirical evidence about the fees charged by law firms in emerging markets—one of the key issues that GLEE project intends to study—what studies there are suggest that these costs are escalating, and that these pressures are fueling the desire of many general counsel to bring work in house. *See* Sida Liu & Xuyao Li, Chinese Law Firms after the Financial Crisis: The Case of Shanghai (Mar. 5, 2010) (unpublished manuscript), *available at* http://www.law.georgetown.edu/LegalProfession/documents/LiuLi_Georgetown2010_draft1.pdf.

179. GONÇALVES & GONÇALVES, *supra* note 152, at 21.

180. *Id.* at 23 (internal quotation marks omitted).

this sentiment—and how vehemently it has been expressed. While our interviews with in-house counsel in the United States also uncovered evidence that these lawyers sometimes feel “offended” by what they perceive as arrogance by outside lawyers, the level of resentment seems far higher in India. Although we are still at the preliminary stage of understanding this phenomenon, the fact that a few corporate lawyers in India have had a virtual monopoly on sophisticated corporate work and the hierarchical nature of business relationships in India—a hierarchy reinforced by caste, religion, region, and social class—appear to play a significant role. The fact that an increasingly sophisticated group of general counsels in India and other emerging economies are now finding themselves in a position to turn the tables on outside counsel, who used to make them wait submissively in the lobby for hours before deigning to answer their questions, may end up being an important catalyst that fuels the in-house counsel movement in these new jurisdictions.

The fact that at least some of these internal counsels are also becoming more influential internally within the corporate hierarchy within the organizations in which they work is only likely to accelerate this trend.

D. The Relationship with the Boss

Although the most visible manifestation of the in-house counsel movement in the United States is the increasing control that GCs exercise over outside counsel, in many respects the most important outcome of the movement has been the growing power and visibility of internal lawyers within the hierarchies of corporate decision making. As indicated above, U.S. GCs have accomplished this goal by persuading corporate managers that in addition to controlling legal costs by internalizing work and exercising greater control over outside firms, they can also provide legal services that are *better* than those that can be rendered by even the best outside firm. The key to this successful reversal of perception in the value of internal legal services has been the claim by general counsels that precisely because they are located close to the organization’s business operations, they can provide the kind of integrated business and legal advice that companies increasingly need to succeed in the global marketplace. As a result, GCs assert that they should be involved in a wide range of strategic decisions that go far beyond the actual provision or oversight of legal services.

In developed markets, this argument has largely succeeded. Thus in many companies, general counsels—or CLOs as many now like to be called in order to signify that they have the status of other “C” suite officers—now routinely sit on a variety of strategic and policymaking

committees within the organization. The overwhelming majority of the GCs in our study of the legal purchasing decisions of S&P 500 companies, for example, report directly to the CEO.¹⁸¹ Many also oversee other related corporate functions, such as public relations, government affairs, human resources, and compliance.¹⁸² And virtually all are engaged in an active attempt, as one prominent GC of a U.K. company told me, to convince corporate leaders that they and their departments must play a central role in helping their company move beyond a culture of “legal compliance” to one in which the goal is to create a “legally astute organization” where legal and business considerations are integrated at every level of the organization. As indicated above, the fact that a number of CLOs have made the transition to CEO in recent years is a testament to the importance that even corporate boards now place on the skills and dispositions that internal counsel bring to corporate management.

Whether or not there will be a similar increase in the status and visibility of internal counsel within corporate hierarchies in emerging economies remains an open question. On the one hand, one can easily find examples of GCs who occupy an even more central role in corporate decision making than even the most powerful U.S. CLO. These internal lawyers tend to work for family-owned companies or groups and have a very strong relationship, often cemented by social or familial bonds, with the controlling shareholder. As a result, these lawyers function more as trusted business advisors or consiglieri than as traditional lawyers, often leaving the latter function to more junior lawyers situated within the various businesses—or in many cases, to outside counsel.

At the same time, even general counsel for multinational businesses operating in emerging economies often spend as much time mediating between these businesses and state officials as they do providing or overseeing legal services. The fact that the Chinese general counsel of a large U.S. company recently left his position to become the head of government relations for an even larger company—a position to which the general counsel of the latter company reports—is an indication of the relative importance of political sophistication and contacts versus legal competence for companies seeking to do business in China and other jurisdictions where the state continues to play a significant role in the economy. Indeed, as the general counsel of a

181. Coates, DeStefano, Nanda & Wilkins, *supra* note 4, at 1008 (reporting that eighty-nine percent report directly to the CEO).

182. See Michele DeStefano Beardslee, *Advocacy in the Court of Public Opinion, Installment One: Broadening the Role of Corporate Attorneys*, 22 GEO. J. LEGAL ETHICS 1259 (2009).

large SOE recently confided to me, his biggest challenge is to convince his managers, all of whom are senior government officials, that legal restrictions have to be taken as seriously as political ones in operating the company.

Although the exact mix of legal, business, and political capital required to be a significant member of the senior management team in companies operating in emerging economies therefore remains unclear, those companies that seek to do business outside of these markets are likely to find that their need for straightforward legal advice will increase significantly. As the recent scandal involving the Chinese SOE Sino-Forest underscores, when the new emerging-market multinationals list on U.S. or European stock exchanges, or buy U.S. or European assets, they are also bringing themselves under the jurisdiction of U.S. or European regulatory schemes—schemes that are likely to be far less amenable to the kind of legal, business, and political practices that may continue to be perfectly acceptable in their home jurisdiction.¹⁸³ This greater scrutiny seems likely to increase the demand for the kind of sophisticated legal advice that lawyers steeped in the in-house counsel movement claim that they are the best at providing—a fact that GCs engaged in the kind of status building, and risk-awareness raising, projects that have played a central role in the in-house counsel movement in the United States are undoubtedly likely to point out.

E. The Professionalism Project

In her path-breaking book *The Rise of Professionalism: A Sociological Analysis*, the sociologist Magali Sarfatti Larson argued that professionalism is less about the inherent functionality of particular occupations or roles, and more a function of the ability of certain groups to wage a successful professionalism project designed to improve their status and income.¹⁸⁴ Whether or not one believes that such projects explain all of professionalism, there can be little doubt, as Rosen documented that such a project has been at the heart of the in-

183. See *Sino-Forest Unit Plunges on Resuming Trade in HK Despite Reassurances*, DOW JONES FACTIVA (Sept. 27, 2011, 4:09 AM), available at <http://www.dollar-rate.org/2011/09/sino-forest-unit-plunges-on-resuming.html> (“Sino-Forest is one of the best-known of many overseas-listed Chinese businesses that have faced intense media and investor scrutiny amid allegations of fraud and other improprieties, with trading in several stocks listed in the U.S., Canada and Hong Kong still suspended.”).

184. MAGALI SARFATTI LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977); see also RICHARD L. ABEL, *AMERICAN LAWYERS* (1989) (applying Larson’s analysis to the U.S. legal profession).

house counsel movement in the United States.¹⁸⁵ At the core of this project is the claim that notwithstanding the fact that internal counsel are employed by their non-lawyer corporate clients they are nevertheless just as capable—in fact as I indicated in Part II, even *more* capable—of exercising independent professional judgment than lawyers working in outside law firms.¹⁸⁶ As with other aspiring professional groups, including the bar itself whose professionalism project included the founding of the ABA in 1871, one of the first things that general counsel in the United States did to raise their status and visibility was to found ACC. As I have already indicated, this organization has been very successful in raising the status of in-house counsel.

Even in the United States, however, the claim that in-house counsel are capable of exercising the kind of independent professional judgment required to detect and deter corporate misconduct is not without detractors. In the wake of Enron and other related corporate scandals, some academic commentators have begun to challenge whether internal counsel are too dependent on their corporate employers to act as independent gatekeepers responsible for ensuring compliance with the securities laws and other public-regarding legal rules when compliance would conflict with corporate profits.¹⁸⁷ Indeed, some have gone so far as to argue that to become truly independent, general counsels should be removed from the control of corporate managers and report only to an independent committee of the company's board.¹⁸⁸

Moreover, as general counsel have attempted to spread the movement's gospel to jurisdictions where the status of in-house lawyers has traditionally been even more tenuous than in the United States, resistance to the professionalism claims of internal counsel has been even more pointed—and successful. Despite years of lobbying, in-house lawyers have still not been able to convince the European Court of Justice and other regulatory authorities that they are entitled to the attorney-client privilege with respect to discussions with their corporate

185. Rosen, *supra* note 1, at 481–90.

186. *See id.*

187. *See* JOHN C. COFFEE JR., GATEKEEPERS: THE PROFESSIONS AND CORPORATE GOVERNANCE (2006) (arguing that inside lawyers are not sufficiently independent to act as effective gatekeepers to prevent corporate misconduct). As I discuss in the Conclusion, this is part of a broader critique that the manner in which in-house lawyers are currently used in companies makes them less likely even to see themselves as independent gatekeepers.

188. *See* Sung Hui Kim, *The Banality of Fraud: Re-Situating the Inside Counsel as Gatekeeper*, 74 *FORDHAM L. REV.* 983, 1053–55 (2005).

employers.¹⁸⁹ At the core of this decision is a fundamental doubt about whether “employed” lawyers can ever truly be “independent.”¹⁹⁰

Such doubts may be even more pointed in the BIC countries and other emerging economies. As indicated above, in many of these jurisdictions in-house lawyers have traditionally had a distinct—and distinctly inferior—professional qualification to the one held by “independent” lawyers. It is not surprising, therefore, that those who are members of the bar in these jurisdictions—who in many cases are still struggling to assert their own status and power (to clients, policymakers, and the public)—have resisted giving professional status to internal counsel who do not even have full professional credentials.¹⁹¹ Nor is it surprising that regulatory officials in emerging economies have often credited these claims.¹⁹²

Nor is it clear that professional organizations dedicated to promoting the in-house counsel movement’s professional goals will be as successful in these new markets as they have been in the United States. As indicated above, ACC and other international organizations are trying to replicate their professionalism project in the emerging economies. Yet, notwithstanding their stated goal of promoting the development of in-house counsel abroad, it is not clear whether ACC will even accept members who are not qualified as “lawyers” in these jurisdictions—a group that as we have already seen constitutes an important part of the internal counsel community.¹⁹³ Even if domestic corporate counsel organizations are not similarly limited to licensed members of the bar, these fledgling groups are still likely to find it difficult to put together all of various kinds of professionals who work as internal counsel—across all of the various kinds of domestic and international organizations in which these counsel work—to create an association that can effectively promote the professional interests of all

189. See Coyle, *supra* note 52.

190. *Id.*

191. See Liu, *supra* note 81, at 558 (quoting the founding partner of one of China’s largest law firms as saying that he “personally do[es] not agree with the corporation lawyer reform” designed to encourage the use of in-house counsel in state-owned enterprises, and that “there is no need for corporation lawyers, and all corporate legal work should be done by law firms”).

192. *Id.* at 557 (“[E]nterprise legal advisors have some natural weaknesses, because they do not have the independence of lawyers and have to do whatever the enterprises ask them to do.” (quoting a senior Ministry of Justice official)).

193. The organization’s website says that membership is restricted to “attorneys who practice law as employees of private sector organizations and who do not hold themselves out to the public for the practice of law,” but does not explicitly state that these “attorneys” must also be licensed members of the bar. See *Membership*, ASS’N CORP. COUNS., <http://www.acc.com/aboutacc/membership/eligibility.cfm> (last visited Feb. 12, 2012).

of these diverse constituents. Whether or not either international or domestic general counsel organizations are able to bridge these traditional divides will go a long way toward determining whether internal counsel within these countries achieve the kind of professional status enjoyed by their counterparts in the United States. Given the role that these organizations in the United States have played in amplifying general counsels' political clout, whether this project succeeds is also likely to play an important role in determining whether in-house counsel in these jurisdictions will play an important role in broader policy and legal debates.

F. Lawyers, Lawyer-Lobbyists, and Lawyer-Statesmen

Finally in addition to projecting influence in the profession, the in-house counsel movement in the United States has also been very much about projecting the influence of general counsels in the wider world of public policy and law. Once again, one can plainly see this ambition on ACC's website. Under the heading "advocacy" the site proudly proclaims that "ACC is the voice of the in-house bar, fighting for both our members' professional rights and their clients' representational needs before courts, media, government agencies, legislatures and bar groups."¹⁹⁴ In recent years, ACC has exercised its voice with increasing vigor, weighing in on a range of policy issues ranging from the permissibility of multidisciplinary and multijurisdictional practice by lawyers in the United States to the whistleblowing provisions of the new Dodd-Frank financial regulatory reform.

Moreover, in addition to intervening in specific controversies, general counsels—particularly those in large multinational companies—are often in the position of deciding key public policy issues themselves. On many important public policy questions facing global companies—for example, establishing a company's policy on child labor standards to be followed by third party suppliers in countries such as India and China—relevant legal standards are likely to be ill-defined, under- or over-inclusive, or contradictory. In such cases, it is often up to the general counsel to craft a policy within these broad constraints that is consistent with both the company's economic interests and its values.¹⁹⁵ As a practical matter, how the general counsel crafts this kind

194. *Advocacy*, ASS'N CORP. COUNS., <http://www.acc.com/advocacy/index.cfm> (last visited Feb. 12, 2012).

195. Heineman, the former general counsel of General Electric, has been the most articulate defender of the role of the company's senior in-house lawyer in this kind of decision making. See BEN W. HEINEMAN, JR., *THE GENERAL COUNSEL AS LAWYER-STATESMAN* (2010), available at http://www.law.harvard.edu/programs/plp/pdf/General_Counsel_as_Lawyer-Statesman.pdf.

of private ordering—and what kinds of enforcement mechanisms he or she puts in place to see that the company's policies are being complied with on the ground—is likely to have as much or more effect on whether and under what conditions children work than many other kinds of formal legislation. The fact that the United Nations and other global regulatory bodies are increasingly attempting to enlist general counsels in creating larger corporate commitments to observe and protect human rights norms underscores just how important in-house counsel have become in the overall public regulatory system.¹⁹⁶

It is not clear, however, that general counsels in emerging countries view either lobbying or socially conscious private ordering as a core part of their mission—at least not formally. But beneath the surface, the situation may be more complex. As indicated above, the government sector is arguably even more important to the corporate legal market in countries such as China, India, and Brazil than it is in the United States. Although general counsels as a group have yet to display much interest in pushing for legislative change in these jurisdictions, we have already heard anecdotal reports of individual GCs exercising their influence over public policy debates in a more private manner.¹⁹⁷ Similarly, as companies based in emerging economies themselves become multinationals operating in countries in Asia, Latin America, and Africa that have yet to emerge, it is likely that the in-house lawyers working within these organizations will also find themselves creating private ordering schemes that may affect issues of public concern.

Of course, even if general counsels in emerging markets decide to play this kind of role, it is far from clear whether they will be able to do so effectively. It is quite possible, for example, that the influence of ACC and other similar organizations in the United States is as much a function of America's highly legalistic culture as it is of the power of in-house lawyers. The fact that U.K. GCs have been far less successful at pushing their regulatory agenda than their U.S. counterparts is at least an indication that context may play a key role in the success of this last platform of the in-house counsel movement.¹⁹⁸ If this is the case, than one might expect in-house lawyers to be even less influential in

196. See John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 AM. J. INT'L L. 819, 819–20 (2007).

197. In one particularly striking example, the general counsel of a prominent company based in one of our primary research sites reported that he had been intimately involved behind the scenes in drafting an important piece of business legislation and that he had begun spending about half of his time in the country's capital city where he regularly meets with lawmakers and regulators.

198. See Madsen, *supra* note 48 (reporting that GCs in the United Kingdom have not been particularly successful in pushing their agenda).

shaping policy debates in countries such as China which have very little history of lawyers of any kind being influential in this arena.¹⁹⁹ All of this makes it especially crucial that any project to understand whether the in-house counsel movement is going global remain attuned to the overall political, social, and economic context in which these lawyers operate.

CONCLUSION

By conducting systematic, qualitative, and quantitative empirical research on each of these six topics, the GLEE project hopes to shed light on the extent to which the in-house counsel movement has emerged as an important force in the BIC countries and other emerging economies—and to the extent that it has, how the role played by internal counsel may differ in (and among) these jurisdictions to the one the movement claims for general counsel in the United States. In conclusion, however, it is important to note a certain irony about the manner in which I have framed this inquiry. The question whether the “in-house counsel movement is going global” appears to assume that the movement’s claims about the importance and status of inside lawyers are unquestioned here in the United States. Yet even within the context of this symposium, which is dedicated to celebrating the importance of lawyers being “in the house,” there are important dissenting voices that would challenge this basic premise.²⁰⁰

Indeed, to pile irony on top of irony, one of the most articulate and forceful of these dissenting voices is none other than Robert Rosen himself. In an article published in 2002, Rosen revisited many of the legal departments he had studied for his initial article chronicling the in-house counsel movement and found that several of “those that had been transformed in the 1980s and whose inside counsel were management’s trusted advisors, have been re-engineered” in a manner that significantly altered their work—and more importantly, their self-image.²⁰¹ In response to the demand that they demonstrate their value to

199. Whereas lawyers have always played a significant role in government in the United States since the founding of the Republic, most of China’s leaders have been economists and engineers.

200. This conclusion is dedicated to the memory of Larry Ribstein, whose tragic death shortly after the symposium, where these papers were first presented, sadly prevented him from completing a manuscript forcefully making this point. See Larry Ribstein, *Delayering the Corporation*, 2012 WIS. L. REV. 305. His strong and articulate voice on these issues—and so many others—will be deeply missed.

201. Robert Eli Rosen, “We’re All Consultants Now”: *How Change in Client Organizational Strategies Influences Change in the Organization of Corporate Legal Services*, 44 ARIZ. L. REV. 637, 661 (2002).

the company, Rosen argues that many legal departments have been redesigned to integrate in-house lawyers into functional project teams within the organization in order to work more closely with business units. Although this development may make it easier for business leaders to see the value of legal advice, Rosen submits, it may also affect how inside lawyers understand the kind of legal advice they are supposed to be giving. Thus, lawyers who come to identify too closely with business teams may begin to “approach managing legal risks with non-compliance as a viable option.”²⁰² As a result, they may come to value the “appearance of ‘independence’” as opposed to any real commitment to public purposes or detachment from client aims.²⁰³ Rather than being the independent counselors trumpeted by the in-house counsel movement, Rosen concludes, internal lawyers in the twenty-first century are in danger of becoming just another “consultant” with no more independence or distinctiveness than any other corporate employee.

Some observers have gone even further in forecasting the demise of the core premises of the in-house counsel movement. Building on the growth of “smart” technology that is increasingly allowing companies to develop process-based solutions to many standard legal problems, Professor Larry Ribstein argues “in-house lawyers ultimately may find their own power eroded by products and services that replace customized legal advice with standardized technology.”²⁰⁴ As a result, Ribstein claims, “in-house legal departments” may be replaced “by law-trained people dispersed throughout the organization.”²⁰⁵ Although perhaps not signaling “the end of lawyers,” as another prominent commentator highlighting the growing importance of information technology to legal practice has posited,²⁰⁶ this replacement of “lawyers who have been inculcated with traditional professional norms to business people with legal expertise” nevertheless poses a significant challenge to the fundamental tenets of the in-house counsel movement.²⁰⁷

Needless to say, these are large and difficult questions, and I do not intend to address them fully here. Suffice it to say that any investigation of the evolving role of in-house counsel in emerging

202. *Id.* at 660.

203. *Id.* at 649. Donald Langevoort makes a similar point in his contribution to this issue. See Donald C. Langevoort, *Getting (Too) Comfortable: In-house Lawyers, Enterprise Risk, and the Financial Crisis*, 2012 WIS. L. REV. 493.

204. *E.g.*, Ribstein, *supra* note 200, at 311.

205. *Id.*

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

207. Ribstein, *supra* note 200, at 330.

economies will have to take these critiques seriously. Indeed, given that we might expect companies in emerging economies such as India and China to be even more open to incorporating new technologies—technologies that have, after all, contributed significantly to the rise of these countries as important economic powers—it is certainly possible that corporations in these jurisdictions may be even more willing to look for “smart” solutions that allow them to turn to relatively inexpensive “law-trained” employees rather than to develop the kind of powerful and independent in-house lawyers contemplated by the in-house counsel movement. When coupled with the fact that norms of professional independence are much less well developed in some of these jurisdictions than they are in the United States, it could easily be that the move to integrate in-house lawyers into self-managing functional teams in Chinese companies, for example, could lead these internal counsel to adopt an understanding of their role that strays far from the kind of “counselor” who acts as an independent gatekeeper pushing the company toward legal compliance.

Nevertheless, one should also not automatically assume that these larger forces will prevent general counsel in the BIC countries from emerging as influential and independent advisors. As I have argued elsewhere, reports of the demise of lawyers as independent professionals are significantly exaggerated for both in-house and outside counsel in the United States.²⁰⁸ Although the pressures Rosen and Ribstein identify are certainly real and important, both lawyers and clients have reason to push against them in order to realize the benefits that they can both only receive if the legal profession credibly maintains its status as an “independent” profession.²⁰⁹ Moreover, the growing complexity of the global legal, political, and social environment in which companies increasingly operate is likely to put a premium on gaining access to the kind of integrated business and legal advice that sophisticated in-house lawyers claim to offer. How the increasingly sophisticated lawyers who fill these positions in companies around the world respond to this demand and attempt to balance the complex and often conflicting demands between their role as partners to their business clients and members of senior management teams, with their identity as lawyers connected to traditions of professionalism and independence is exactly what we hope to learn in this research.

208. See Wilkins, *supra* note 22, at 2132.

209. *Id.* at 2117 n.207 (discussing the “paradox of professional distinctiveness”).