

Doing well and doing good in an emerging economy: the social construction of pro bono among corporate lawyers and law firms in Sao Paulo (*)

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I. Introduction

Since the 1990s, as this and other volumes in this series have shown, corporate law practice in countries like Brazil, India, and China has gone through a great transformation. While these economies were increasingly opened up to global circulation of capital, corporate lawyers and law firms and in house legal departments in the business sector have grown in number, adopted new organizational structures and styles of practice, and acquired greater influence in the profession and the general social and economic structure.

Theories on law, lawyers, and globalization suggest that those changes should go beyond the strict provision of private services to the corporate clientele. Contribution to the public good, especially via pro bono work, i.e., free legal services to the poor and disadvantaged, should be a predictable feature of that changing corporate bar (Cummings and Trubek 2008; Dezalay and Garth 2002a; Dezalay and Garth 2002b; Garth and Dezalay 2012; Halliday and Osinsky 2006; Trubek and Santos 2006). Yet, accounts of pro bono in Brazil are less optimistic than these predictions. Reports from India and China are not so different (Dong Forthcoming; Gupta Forthcoming). In all these three countries, there is a feeling that engagement with pro bono falls behind other aspects in the development of corporate law practice, as well as other comparable, regional experiences.

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By examining the social construction of pro bono among corporate lawyers and law firms in Sao Paulo, likely the most relevant context for corporate law practice in Brazil, this chapter seeks to account for such puzzle, while also adding to larger theoretical debates relevant to the this series.

To this end, the chapter is divided into four sections, in addition to this introduction. Section two details the puzzle. Section three presents the research design and methods used to empirically address it. Section four reports the findings from this research by laying out five stories about the development of pro bono work among corporate lawyers and law firms in Sao Paulo: *(i)* promoting pro bono; *(ii)* resisting against pro bono; *(iii)* sustaining and radicalizing pro bono *(iv)* rationalizing pro bono; and *(v)* removing restrictions and facing new possibilities. Section five builds on the preceding stories and discusses their implications to larger theoretical debates on law, lawyers, and globalization.

II. The puzzling picture of pro bono in the emerging Brazil

The history of the US legal profession shows a slow but enduring process of private lawyers assimilating the provision of pro bono work as a matter of professional responsibility. Despite a longstanding rhetoric of progressivism among bar leaders and leading legal scholars, the profession was generally indifferent and even hostile to making any substantial commitment to serving those who could not afford legal representation. Lawyers were resistant to measures such as contingency fees and the use of federal resources to fund legal aid. The expression “pro bono” was used only in wide terms to refer to whatever lawyers could do “in the public interest” (Cummings 2004; Granfield and Mather 2009; Lochner Jr. 1975; Rhode 2005).

This state of affairs started to change in the 1980s when, after much debate, the ABA Code of Professional Responsibility was modified to establish a minimum amount of hours per year that every lawyer should provide free of charge to people of limited means, or charitable organizations set up in their support (Cummings 2004; Granfield and Mather 2009; Lochner Jr. 1975; Rhode 2005). Two or three decades after that, US lawyers doing pro bono work, largely within the big corporate law firm setting (Boutcher 2010; Cummings and Rhode 2010; Galanter and Palay 1995; Granfield and Mather 2009; Sandefur 2007), would become responsible for an impressive amount of legal services enjoyed by the poor nationwide (Cummings 2004; Granfield and Mather 2009; Rhode 2005; Sandefur 2007).

Along with this impressive change in the weight of pro bono in the US legal practice and access to justice, a growing body of literature on this issue has been produced. According to these studies, the growth of pro bono has not been due to chance, but because it ends up being *satisfactory* to individuals and groups, *functional* to organizations (law firms), and *beneficial* to the profession as a whole. Some authors, for example, have stressed the association between engagement with pro bono and socio–demographic variables such as race, gender, professional socialization, and political values (Cummings and Sandefur 2013; Granfield 2007a; Granfield 2007b; Wilkins 2004). Others have stressed the adequacy of pro bono to firm rationale, arguing that the increasing assimilation of pro bono by law firms was because this has helped them meet some of their main organizational demands, such as retaining talented young lawyers or providing training to first year associates (Boutcher 2010; Cummings 2004; Cummings and Sandefur 2013; Granfield and Mather 2009). Finally, others have suggested that investment in pro bono can be helpful to sustain the social and political legitimacy of legal professionals, especially at a time when federal funds for free legal assistance to the poor have faced severe cutbacks (Rhode 1998; Rhode 2005).

Existing theories on law, lawyers, and globalization present enough reasons for pro bono to spread beyond the US borders, especially among so–called emerging economies like Brazil, India, and China. At a more general level, the idea that private lawyers can work for the public good would help legitimize the globalizing economic order that these countries are willing to become part of, in which demands for increased corporate power come along with promises for increased corporate social responsibility (Garth and Dezalay 2012; Shamir 2010; Shamir 2011). Likewise, engagement with pro bono would express the commitment of legal professionals with the rule of law, which embraces values such as rights enforcement and political accountability, while also stressing demands of global capital for property rights, freedom of initiative, and predictability in business exchanges (Cummings & Trubek, 2008; Dezalay & Garth, 2002a, 2002b; Halliday & Osinsky, 2006; Trubek & Santos, 2006).

At a more practical level, as these economies have become more open to global flows of capital, their legal professions should be more exposed to practicing styles and organizational forms from the North, especially the US. For example, cooperation in pro bono development has

become the business of several organizations working internationally, like PILNET¹, the Pro Bono Institute², the International Bar Association³, the Vance Center⁴, and New Perimeter⁵. Exchanges with these and other actors should make vernacular references to pro bono become more and more common among professionals in the South.

Yet, accounts of pro bono in Brazil haven't confirmed these predictions. In 2011, a survey on pro bono in Latin America conducted by Latin Lawyer⁶ and Vance, with support from major banks operating in the region, found that Brazil had "the biggest deterrents" in their sample, and that:

Brazilian firms have not been able to do the same level of pro bono work as in those countries. Some 40 per cent of firms say 25 to 50 per cent of their lawyers did pro bono work in 2011, but no firms said more of their lawyers did that amount, and one third said less than 25 per cent of their lawyers did pro bono work. Furthermore, just 20 per cent of respondents said their lawyers

¹ "With seed funding from the Ford Foundation, PILnet was established in 1997 as the Public Interest Law Initiative in Transitional Societies at Columbia University (PILI) to promote the use of law as a tool to serve the interests of the whole of society rather than those of a powerful few... In 2007, PILnet became an independent non-profit organization (then the Public Interest Law Institute) and established a New York office" (PILNET 2015, last access Aug 1st).

² "Founded in 1996, the Pro Bono Institute (PBI) is a Washington, D.C.-based nonprofit organization. With an unparalleled depth of knowledge, resources and expertise, PBI is the respected resource for all things pro bono... By providing expert consultations and technical assistance, educational programming, and local, national and global pro bono convenings, our goal is to constantly improve and enrich pro bono service" (Pro Bono Institute 2015, last access Aug 1st).

³ "The International Bar Association (IBA), established in 1947, is the world's leading organization of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world... It has considerable experience in providing assistance to the global legal community" (International Bar Association 2015, last access Aug 1st).

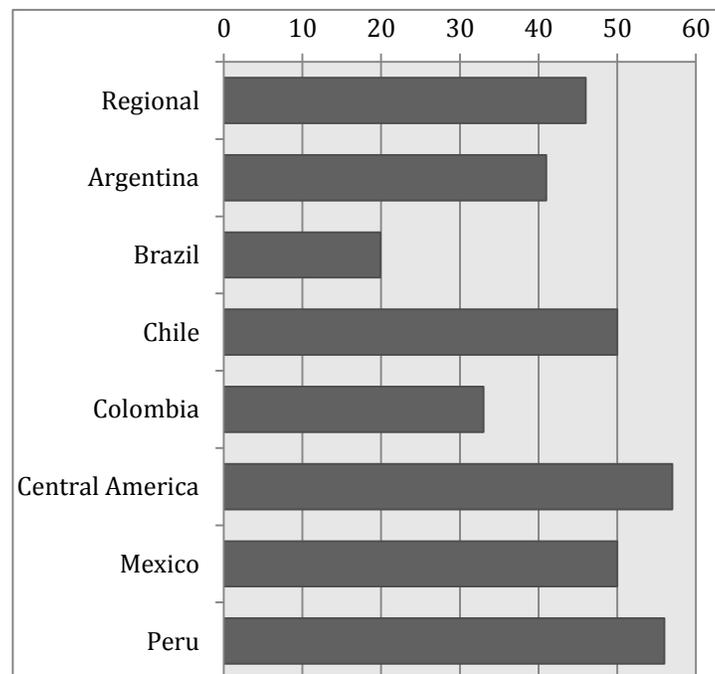
⁴ "The Vance Center (Vance) advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession. We have two principal approaches to fulfilling our mission. We provide legal representation to civil society organizations... We also build the capacity of the legal profession to pursue pro bono practice, ethics, and diversity through our Program on Strengthening the Legal Profession..." (Cyrus R. Vance Center for International Justice 2015, last access Aug 1st).

⁵ "New Perimeter is a nonprofit organization established by global law firm DLA Piper to provide pro bono legal assistance in under-served regions around the world to support access to justice, social and economic development and sound legal institutions. (It was) founded in 2005 as a result of our firm's commitment to support legal advancement worldwide..." (New Perimeter 2015, last access Aug 1st).

⁶ Latin Lawyer presents itself as "the definitive business law resource for Latin America". In addition to producing news articles about business opportunities and legal developments in the region, Latin Lawyer's work involves "research and benchmark", which results in the "Latin Lawyer 250: Latin America's leading guide to business law firms", "reference" in the form of "answers to key regulatory questions", and "events" (Latin Lawyer 2015, last access Aug 1st).

had reached the PBDA target of 20 hours a year per lawyer (Latin Lawyer and The Cyrus R. Vance Center for International Justice 2012, 21)

In the subsequent edition of this survey, in 2013, Latin Lawyer and Vance maintained their conclusion that “the majority of Brazilian firms ... report such low levels of engagement among their lawyers” (Graph 1, below). Moreover, they stressed that corporate law firms and in house legal departments in Brazil provided very modest contributions to the promotion of pro bono: “The *Instituto Pro Bono*⁷ reports that only four of its 45 law firm members and one of four corporate legal department members make financial contributions, which vary from US\$2,000 to tens of thousands of dollars per organization” (Latin Lawyer and The Cyrus R. Vance Center for International Justice 2014, 20).



Graph 1

Percentage of Latin American firms whose lawyers averaged 20 hours or 3 cases in 2012
Source: Latin Lawyer and The Cyrus R. Vance Center for International Justice 2014

⁷ *Instituto Pro Bono*, henceforth IPB, is a clearinghouse and advocacy center for pro bono in Brazil, as we will explain in more details later in this Chapter.

Original reports from India and China show different challenges, but similar outputs (Dong Forthcoming; Gupta Forthcoming). In all these three countries, there is a feeling that engagement with pro bono falls behind other aspects in the development of corporate law practice, as well as other comparable, regional experiences.

How was this disconnection developed and sustained over time? Where might have been the links between the corporate bar and pro bono missed? What possibilities can we realistically envision for pro bono in the Brazilian corporate bar in the years to come?

On the basis of empirical research on the social construction of pro bono in Sao Paulo, likely the most relevant context for corporate law practice in Brazil, this Chapter seeks to illuminate these and other questions, thus contributing to a better understanding of the issues examined in this book, as well as to theory development on law, lawyers, and globalization. The coming sections present the design, results, and implications of such inquiry.

III. Research design and methods

To address the questions raised in the previous section, this Chapter relies on empirical research on the development of pro bono in Sao Paulo. Drawing from the available literature on the sociology of the legal profession, such research examined pro bono as a social construct. In order to understand pro bono in both its structural characteristics (what lawyers do as pro bono and how they organize their pro bono work) and its meaning within the profession (what lawyers think of pro bono and how much they value it in their professional lives and careers), analyses took into account the social relationships and institutional contexts within which pro bono takes place and form (Boutcher 2009; Boutcher 2010; Cummings 2004; Cummings and Sandefur 2013; Granfield 2007b; Heinz and Laumann 1994; Nelson and Trubek 1992; Seron 1996).

Accordingly, the research was organized around two arenas relevant for the development of pro bono: firms and in house legal departments, i.e., organizational settings in which pro bono takes place (Levin 2008; Lochner Jr. 1975; Mather, McEwen, and Maiman 2001; Sarat and Felstiner 1995; Seron 1996) and the legal field more broadly considered, i.e., the variety of legal and social actors who struggle to set the boundaries of pro bono, normally in ways that favor their position in the field (Bourdieu 1986; Dezalay and Garth 2002b; Dezalay and Madsen 2012; Garth and Dezalay 2012).

The core of data collection for both these arenas took place between 2011 and 2013 and, in addition to (i) reviews of previous studies, included several ethnographic techniques, such as (ii) analyses of available documents accounting for the history and development of pro bono in Brazil, particularly in Sao Paulo, (iii) direct observation in public events related to pro bono in Brazil; and (iv) interviews with corporate lawyers and other participants in the legal field (e.g.: public defenders, prosecutors, bar leadership, pro bono activists within and beyond IPB, and independent specialists)⁸.

A particularly systematic effort was made as we dealt with the firm/in house arena. Having done preliminary investigation to learn about the corporate lawyers and law firms doing pro bono work in connection with IPB, we purposively selected a sample of lawyers from 10 firms (total N=33) and heads of 2 in house legal departments (total N=4) for semi-structured interviews (Table 1). This sample included partners, as well as pro bono managers, focal points for pro bono, and their functional equivalents at law firms; and general counsels at in house legal departments.

This selection sought to include variation in aspects such as size and tradition of the firms in the Sao Paulo corporate law market (Table 1). Hence, some of the included lawyers worked for law firms with decades of operations; others worked for firms that were just taking shape as spin-offs from larger firms or mergers of smaller ones. Moreover, six of these firms had more than 100 lawyers; the other 4 were smaller, ranging from 20 to 100 lawyers.

Table 1
Arenas of inquiry and research techniques

Arena	Subjects involved	Research techniques	Sampling strategy
Legal field	<ul style="list-style-type: none"> • Pro bono activists; • Independent specialists • Bar leadership; • Public defenders; • Prosecutors; 	<ul style="list-style-type: none"> • Reviews of previous studies; • Analyses of available documents; • Observation in public events related to pro bono in Brazil; • Interviews; 	<ul style="list-style-type: none"> • Several qualitative sampling techniques given the iterative process of field research (Marshall 1996);

⁸ In addition to that, and in order to both validate and keep the findings up to date to the extent that we could, preliminary results were presented and discussed with key subjects and peers in several events, while the developments of the compiled stories were closely followed through mid-2015.

Firms and in house legal departments	<ul style="list-style-type: none"> • Firm lawyers or partners (10, N=33); • General counsels (2, N=4) 	<ul style="list-style-type: none"> • All of the above plus semi-structured interviews; 	<ul style="list-style-type: none"> • Purposive, with maximum variation (Marshall 1996; Trost 1986);
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Source: Author's elaboration

Interview protocols included questions on the history of pro bono in Brazil and within the firm (or legal department), the current procedures undertaken within the organization to select and conduct pro bono cases, and the interviewee's assessment of the challenges to pro bono in the country. Interviews took an average of an hour length.

These and other interview records were coded, anonymized, and analyzed along with the rest of the data produced during fieldwork. The results were organized around five stories, which we report in greater details throughout the next Section⁹.

IV. The social construction of pro bono among corporate lawyers and law firms in Brazil: five stories from Sao Paulo

Findings from the empirical research were organized around five stories. Together, they illustrate the process that has allowed pro bono to become part of the corporate bar's repertoire in Sao Paulo, while also helping explain the issues and dilemmas that have emerged to various actors along this route.

The first story is about the way converging interests and perspectives initially enabled the promotion of pro bono among legal professionals and the corporate bar in Sao Paulo. Lawyers with US legal training and socialization concerned with the rule of law were among the first to present the corporate bar with the idea that private lawyers could contribute to public good by systematically delivering free legal services to the poor and disadvantaged. But many other factors impelled the development of pro bono, like the legitimacy provided by corporate clients, views of representatives of a traditional legal elite, initial support of bar leaders, as well as the

⁹ In order to provide context for the quotes, we identify respondents according to the following categories, on which we ended up relying to build the narrative: law firm lawyers (LWF); in house counsel (IHC); pro bono activists (PBA, which included 4 ethnographic interviews); and independent specialists (SPE, which included several ethnographic interviews during fieldwork).

adaptability of pro bono to the rationale and needs of corporate law firms and in house legal departments.

The second story is about resistance raised against pro bono. Although this resistance came from many sources, its strongest forms were related to disputes for market shares at both the high-end and the low-end of legal services. These disputes involved claims that pro bono was being used in the context of unfair competition. Bar officials sought to mediate among antagonistic positions by regulating pro bono, which ended up restricting it to transactional work in favor of non-profits only. But while this had obvious impact on the ability of legal professionals and the corporate bar in Sao Paulo to assimilate pro bono, their willingness to challenge the bar varied over time. Needing help from the bar to curtail foreign competition, some corporate law firms backed off.

The third story is about the way pro bono was able to survive such hostility. While the bar's restrictions enabled pro bono promoters to raise support from other sectors of the profession such as public defenders and NGO lawyers, this was cause for diversification in the pro bono movement. IPB became involved in other instances of legal activism, including more radical initiatives such as strategic litigation before the Supreme Court in controversial issues like affirmative action.

The fourth story is about current pressures for rationalization of pro bono at the corporate bar, which involves the adoption of more objective protocols to select, conduct, and evaluate the provision of pro bono work.

Finally, the fifth story is about the campaign that weakened and ultimately eliminated bar restrictions to pro bono, thus opening up new possibilities for its development in Sao Paulo.

This section reports and illustrates each of these five stories, as it follows.

A. Promoting pro bono

The inauguration of IPB, in 2001, embodies the modern efforts to disseminate ideas and practical models for pro bono in Brazil. But beyond that, it embodies the circumstantial convergence of different interests and perspectives, which enabled an initial engagement of the legal profession and the corporate bar in Sao Paulo with a more systematic provision of free legal services to

those in need. In this section we examine the different facets of this process, beginning with the very first events in which pro bono was ever talked about.

1. Emerging legal elites with global socialization build on pro bono to campaign for the rule of law

Among these interests and perspectives were those of an emerging legal elite in the country, characterized by US legal training and socialization, which has served as a conduit to people, resources, and ideas committed with the global dissemination of pro bono and the rule of law more generally. Oscar V. Vieira, the current Dean of FGV law school in Sao Paulo is the best example¹⁰. While Vieira reports he had an old belief that legal professionals should do something in order to help the poor and disadvantaged, it was after he went to the US to do his LL.M. at Columbia Law School that he was able to think of this in more systematic terms, under the instrumental notion of pro bono and in light of his experience working with representatives of the US public interest law community.

Back to Brazil, Vieira quickly saw an opportunity to translate his ideas into concrete action. In 1997, as both the executive director of ILANUD, a UN-based organization that focuses on reforming the criminal justice system in Latin America, and a Human Rights law professor, Vieira began to receive reports from his students about the lack of legal defense to youngsters at juvenile courts. This made him organize a small project gathering law students and traditional elite lawyers from Sao Paulo¹¹. Together, these students and lawyers would conduct a research-action initiative, which should produce both a diagnosis of access to justice at juvenile

¹⁰ Vieira's father was close to Alberto Franco Montoro, a relatively progressive politician and Sao Paulo state governor (1983–1987). In the building of his career, Vieira combined an excellent legal training at the Pontifical Catholic University of Sao Paulo School of Law (which also gathered a cadre of progressive jurists at the time) with advanced studies in political issues, holding a Masters' (1991) and a PhD (1998) in political science from the University of Sao Paulo. "That is where I learned that the end of the military regime would not necessarily be the beginning of democracy and the rule of law in Brazil," he said once to a journalist. "I read the classics in political science, got involved with critical thinking, and dug deep into the Brazilian political thought". Vieira also completed an LL.M. degree (1995) at Columbia University School of Law, where he established a strong relationship with public interest lawyers and organizations, including the Ford Foundation and the Open Society Institute. "At that time I became sure I was never going to leave the University; but I only would be able to stay at the University if I were able to match together teaching and researching with a professional and political activity geared towards reforming institutions and furthering the rule of law", he also explained to a journalist. For more information on Vieira's biography, see *Estado Educacao* (2011).

¹¹ We will address this category more thoroughly soon in this chapter.

courts and meet the legal needs of youngsters sitting before these courts. “Although that was a modest project, it was very inspirational for my subsequent work on pro bono”, said Vieira¹².

Indeed, years later, when Vieira was leading *Conectas Direitos Humanos*, a Human Rights NGO supported by US-based organizations such as the Ford Foundation and the Open Society Institute, he organized a series of meetings with what he calls “top lawyers” in Sao Paulo in order to promote pro bono. These meetings featured Daniel Grunfeld, then-executive director of the Public Counsel Law Center in Los Angeles, and had technical support from Ellen Chapnik, a law professor from Columbia. IPB was established as a follow up of these meetings (IPB’s website; interviews in this research; Fuchs, 2004; Vieira, 2008).

2. Concerns with serving a globalizing market and clients grappling with demands for corporate social responsibility drag corporate lawyers to pro bono

Whereas foreign models and support enabling local entrepreneurship by actors like Vieira mark the birth of IPB, other factors explain why representatives of the corporate bar joined him in this endeavor. Vieira himself was aware of these factors when, years later, he wrote about the time when IPB was being first thought of. He then stressed that:

The internationalization of the Brazilian legal profession brought with it the notion that promoting pro bono legal services was part of the package. Many international companies and large Brazilian enterprises began to state their commitment to social responsibility, creating a demand that all participants in their chains of production also act with social responsibility. As law firms were increasingly viewed as important actors in the economic scene, they also had to show commitment to social responsibility, which meant, primarily, undertaking pro bono work. The idea of promoting pro bono is also a consequence of the exchange of clients and personnel with international law firms in the North (2008, p. 256–7).

In fact, representatives of the corporate bar who backed up IPB did not appear randomly. The time was fertile for legal businesses involving foreign investors and multinationals. While elite corporate lawyers and law firms were well protected against foreign law firm competition due to restrictions by the bar, they knew they had to have a strategy to attract the global clientele and appear as trustworthy partners to mediate transactions in the South. This included increasing

¹² Oscar V. Vieira, e-mail message to author, Jan 12th, 2015.

their knowledge about the issues and expectations that they might come across in case they were to deal with counterparts and potential clients in the North.

One of their measures towards that end was to set up a think tank, which they called *Centro de Estudos de Sociedades de Advogados* (CESA) or Center for Studies on Law Firms. The other was to embrace pro bono and support IPB. “CESA is these lawyers’ intellectual branch, so to speak. With IPB they saw the chance of having a philanthropic branch as well” (ESP-1). Indeed, after the meetings organized by Vieira, leading CESA associates agreed to subscribe to and sponsor IPB.

If business concerns were important in the corporate bar’s decision to back pro bono, the same was true for the corporate clientele receiving services from these lawyers and law firms. Grappling with the need to develop corporate social responsibility (CSR) projects and initiatives, the business community was mobilizing its counterparts in the corporate bar in search for help. For example, when (LWF-5) was asked about her experience with pro bono, she said:

It generally begins with clients who have, provide support to, or want to start CSR projects. Sometimes we take these as ordinary services, although we tend to charge lower fees because of the purpose involved; we don’t think it is fair to charge regular fees for a socially oriented project... Other times we do it pro bono... We are also receiving cases from IPB... But the fact is that there are many CSR initiatives that grow out of small projects undertaken with support from our corporate clients... Things that begin and no one knows if they are going to work, until there comes a time when the CSR sector in the company looks at it and says: this is already too big, it must walk on its own legs... And the market demands from our clients an image linked to CSR... Many of them such as (cites) and (cites) are actually very well known in the market because of their CSR projects...¹³

Pro bono could meet this demand and figures like Milu Villela¹⁴, an elite social entrepreneur linked to the Itau Bank, a leading financial institution in Brazil, quickly realized that.

¹³ Some of these CSR projects that we came across involve, for example, supporting musical education to children living in Favelas, or training programs to juveniles from poor areas in Sao Paulo. Lawyers helped these projects in aspects like tax planning, constitution of non-profits, etc.

¹⁴ Villela combined family and social capital and a leading position in a globalizing business sector (finance), all of which may have made her a leader in the corporate move toward CSR in Brazil. In 2002, a magazine in Brazil characterized her as “the controlling shareholder, along with two nibbling, of 33% of the shares of the Itau Bank, which was founded by her grandfather”, while also reporting that she “embraced social causes like a religion...”



Figure 1: IPB's inauguration ceremony

**In the picture: “grand jurist” Miguel Reale Jr., elite social entrepreneur Milu Villela, and then-president of the Sao Paulo state bar Carlos Haidar
Source: IPB's website**

While Villela does not appear in the list of the founding members of IPB (she is not even a lawyer), she can be seen in the photograph that IPB itself has chosen to illustrate its beginning moment¹⁵.

This choice makes much sense. LWF-1 recalls it was Villela, even before Vieira, who first introduced the idea of pro bono to some lawyers in Sao Paulo. Building on the fact that the UN had made 2001 the International Year of the Volunteers, Villela organized meetings with representatives of the private sector in order to discuss their CSR practices and envision initiatives they could undertake collectively. Although the business community was her primary focus, she also included a small group of lawyers and other professionals.

impresses governments and businesspeople with her success in this area... (And) represents the elite that makes a difference” (Vitoria 2002),

¹⁵ In one of the public events observed in this research, Vieira considered Villela to be IPB's godmother.

When participant businesspeople described the policies and programs their companies undertook or were envisioning, said LWF-1, “Villela turned to (them, the lawyers) and asked: so how could **you** contribute to all that is going on here? What could you do to exercise some kind of social responsibility, as these people and their enterprises do?”, he reported. In the lack of precise responses from the lawyers, Villela took a step further and raised the idea of lawyers doing free (pro bono) legal work to companies that were looking for help in their CSR projects. “That was the first time when we actually heard of pro bono,” he stated¹⁶.

3. Traditional legal elites lend their prestige to pro bono, which they see as a symbol of professional *noblesse*

While the corporate bar and the business community played an important role in the establishment of IPB, equally, if not more important were “grand jurists” from the traditional legal elite in Sao Paulo. These were lawyers with prominent careers in government and academia, a great deal of social, family, political, and cultural capital, and a commitment to liberal values in politics and the profession.

Examples include Dalmo de A. Dallari, José Carlos Dias, and Belisario dos Santos Jr., some of the leading lawyers who provided political prisoners in Brazil in the 1960s–70s with free legal services, working in close connection with progressive sectors of the Catholic Church. Dallari, now a retired professor from the University of Sao Paulo Law School, helped social movements lawyers in the 1980s in cases involving indigenous peoples and served as Sao Paulo’s Chief Legal Officer under mayor Luiza Erundina (1990–1992); Dias became Justice Minister during the Cardoso era (1999–2000); and Santos Jr. was the State Secretary for Justice Affairs in Sao Paulo during the Covas administration (1999–2000).

Additional examples include Miguel Reale Jr., who appears in the above picture, and Marcio Thomaz Bastos. Reale Jr., a tenured professor at the University of Sao Paulo Law School, was also State Secretary under Montoro (1983) and Covas (1995) and served as Cardoso’s Justice Minister (2002). Bastos, president of the Sao Paulo state bar in the mid–1980s, worked closely with former President Lula da Silva in the 1990s, drafted the legal *memorandum*

¹⁶ As a result of this and other meetings, Villela created NGO *Faça Parte*, which seeks to provide companies and professionals with opportunities for voluntary work.

that provided the basis for the impeachment of former President Collor de Mello in 1992, and served as Justice Minister during Lula's first term (2003–2006).

While most of these lawyers practiced solo or in boutique law firms and others like Dallari had no established practice, their support to IPB had significant impact on the pro bono movement. As they invested in IPB, they also infused pro bono with the symbols of an old tradition of private lawyers getting involved in public affairs on the basis of professional status and expertise, of which their individual histories were part. In public speeches they gave to promote pro bono, these lawyers always referred to other, more notable examples of that tradition. Some of these like Ruy Barbosa¹⁷, Sobral Pinto¹⁸, and Luiz Gama¹⁹ were eventually incorporated by IPB as illustrations of what pro bono is all about. The bottom line: instead of being seen as an import by young lawyers who were brainwashed by US law schools and corporate clients, pro bono became an expression of a local tradition, reflecting essential attributes of the Brazilian legal profession²⁰.

Amid so numerous and qualified endorsements, bar leaders also showed their sympathy. Carlos–Miguel Aidar, then–president of the Sao Paulo state bar, became but one of the founding members of IPB.

4. Modern corporate law firms also see advantages in pro bono engagement

¹⁷ Ruy Barbosa was a writer, lawyer, and politician, who had a leading role in the first republic (1881–1930) and after that used “the courts, newspapers and his position as a Senator to promote the rights of dissidents, including those of his opponents”. He also “represented rural workers and women in their struggle for equal salary and labor conditions” and “contributed to the expansion of the use of habeas corpus as a remedy against any kind of discrimination and the arbitrary use of power...” (Vieira, 2008, 226)

¹⁸ Sobral Pinto was a lawyer who protected political dissidents and union leaders against Vargas' authoritarian regime, between 1930 and 1945. Although being a fierce Catholic, he defended communist leader Luiz Carlos Prestes (Vieira 2008, 227).

¹⁹ Luiz Gama (1830–1882) was a former slave, who received informal legal training and, after being fired from his job for his political activism, “started to place advertisements in several newspapers announcing his activities as a pro bono solicitor in cases linked with the liberation of slaves”. (Vieira 2008, 224–5) His death “brought thousands of former slaves to the streets, and generated several laudatory editorials and obituaries in major newspapers. Slavery was finally abolished six years later” (2008, 224–5). He considers Gama as the “founder of the idea of public interest law in Brazil” (2008, 219).

²⁰ While this finds parallel in classical accounts of professions (Freidson 1994; Gorman and Sandefur 2011; Parsons 1958) and of the US legal profession (Luban 1988; Spillenger 1996) “from an institutional perspective, the interesting question is how the impulse to ‘give back’ becomes expressed as a norm – or, more formally, a duty” (Cumings and Sandefur 2013, 87). But notice that this “traditional legal elite” does not maintain that pro bono should be a “duty”; it maintains that pro bono is an expression of (their own) professional *noblesse*.

In the meantime, law firms observed very concrete and strategic advantages in engaging with pro bono. One of such advantages was that they could create value out of something that their staff had always done, although not systematically. LWF-2, for example, indicates “it was common to do free legal work for friends and relatives of (his) lawyers and employees, in cases involving family law, consumer law, and small claims”. LWF-3 recalls being “still an intern when (she) took her first cases on a pro bono basis”. It was something she and her colleagues did in their spare time “during lunch time”, normally on behalf of “firm janitors” dealing with “family law issues”, like “child custody” and “child support”.

With pro bono, all of this could be converted into firm capital or reputation at a time when, as all interviewees in this research recall, prospective clients – especially multinationals and foreign investors – have begun to question whether and how much pro bono they did:

LWF-6: – It is a matter of firm reputation, especially when it comes to foreign clients. They have increased expectations that law firms will do it (pro bono).

Interviewer: – Has this ever appeared in your conversations with them?

LWF-6: – Yes, they ask: “Do you do pro bono?” Clients have this expectation. “What is your work in terms of social responsibility?” It is like with any other service provider they recruit: “our service providers must meet the following criteria, not only of service quality, but also of governance policies, etc.,” and that is where investment in the community is taken into account. So there is this positive aspect (of doing pro bono).

Moreover, clients have begun to use this information in order to distinguish between the law firms they would consider to hire. IHC-1 stated that:

(Cites law firm), for example, started doing pro bono because we suggested so, but we are moving towards making it a real requirement, as you said, so that only law firms that actually do pro bono will be considered by us²¹.

²¹ This is not to say that pro bono has become the only factor that the corporate clientele has taken into account, as we will discuss in more details later. LWF-3 states that “it became a sort of tiebreaker, if they wanted to work with five firms and to decide among many with similar conditions, this is something that they began to take into account. For example, I think (cites a multinational) no longer works with law firms that don’t have pro bono. So it became something valued by clients. And law firms mimic others; if one is doing something the other will want to do it too”. This is consistency with the tenets of the modern CSR model, as described, for example, in (Kramer 2011; Porter and Kramer 2006)

Law firms also perceived advantage in staff satisfaction. When asked about what they found good about pro bono, all interviewees made statements like:

Those who do pro bono have an incredible satisfaction; we hear the most incredible things from them. There is a feeling that they are using their skills and knowledge to effectively help a non-profit that helps other people. In a business law firm like this we do grand projects but we can't see they helping actual people as we see in pro bono (LWF-4)

Or:

There is a personal aspect of it, which is I like doing it. I think it is a way to contribute to something good with what we know. Because I can't get to a non-profit and give money, I'd love to, but I can't. So what can I give? I can give what I know how to do, I can give my work capabilities. So it's a personal satisfaction to feel that I can use what I have to help somebody (LWF-5).

Indeed, pro bono managers or focal points in the corporate bar report having no difficulty in recruiting lawyers interested in pro bono, at least when it comes to meet the existing demand. For instance:

There is willingness to help, especially among this new generation of professionals. So, for example, IPB promotes Mutirao Pro Bono, I'm not sure you have heard of it. It is a day when a group of professionals goes to a public place and provides free legal counsel. So you sit in, there is a line, you hear a problem, and you give free legal advice. As the focal point for pro bono in the firm I sent an email to lawyers asking whether anyone would like to participate. A bunch of people replied. So I called this person at IPB and said I had a list of lawyers and he said: "We can't get everyone. I only have two slots now, one for welfare benefits and one for labor law. Sorry, too many people showed up". So folks have much willingness to help (LWF-3).

In addition to providing help to those in need, satisfaction comes from other factors, such as the chance to do different kinds of work and get exposed to different experiences and realities. LWF-5 says with pro bono:

You have to be creative, as the solutions you use for regular corporations do not fit to non-profits... There is no way you can come to a non-profit and say it must do its balance sheet in accord with all the accounting norms because they don't have expertise and won't hire an accountant for that. What they will pay for the accountant is what they use to help a kid. They won't leave the kid behind for an accountant. You will have to find a way to work with what they have; there is no other way around.

Yet, pro bono could generate even more. LWF-1 recalls that pro bono once became a crucial resource to retain a clientele that was assimilating social responsibility in its agenda:

It worked like this. The client approached you to negotiate a package of legal services. Then he explained he helps maintain this charity Foundation or project, which also needs legal services related to taxes or other corporate affairs. You said that is something you could do as well. And he replied: – ‘Great, but obviously this is something you are not going to charge me for, right? This is something you can take on as part of your pro bono portfolio’. You agreed with that, for after all there were many other firms he could go, which would agree with these terms and, thus, which he could hire instead of us²².

5. An original alliance takes shape

While pro bono was relatively foreign to the Brazilian legal profession and its growing corporate bar, different interests and perspectives ended up converging to create a welcoming context in which it could be initially promoted. A new legal elite made of lawyers with US legal training and socialization was seeking to disseminate pro bono as part of a broader struggle for the rule of law. The business sector saw pro bono as a good opportunity to meet its needs for legal services in CSR projects. New elite law firms in the corporate sector saw both organizational and institutional reasons to commit themselves to pro bono, like retaining clientele, enhancing their image in a globalizing market, and promoting satisfaction among their staff. Representatives of a traditional legal elite saw pro bono as an expression of what they understood to be essential attributes of legal professionals and promptly gave IPB their endorsement. So did bar leaders.

Accordingly, pro bono was able to grow as a pastiche of CSR, entrepreneurship of new professional elites, and the public spirit of traditional liberal lawyers. IPB’s inauguration both helped create this convergence and built on it to take the first steps in what ought to be an inevitable history of prosperity... until it started facing resistance from other participants in the legal field.

²² While there were many changes in these relationships once the IPB was set up, this is something that may still be happening, especially with firms that have no pro bono policy in place. For instance, when I was discussing this example with (LWF-4), she said: “I have to tell you, there are law firms that still do this. If a bank wants to set up a CSR project, it immediately raises the question: “we already pay so much to your capital markets and M&A areas; now we are talking about a non-profit, something that relates to voluntary work, you could do it for free, couldn’t you?” Pro bono policies, which we will discuss later, are the resources some firms have relied on to deal with these kinds of requests.

B. Resisting against pro bono

Convergence among the interests of legal elites (new and old), the business community, modern corporate law firms, and bar leaders was insufficient to free pro bono from conflict and resistance.

Resistance emerged from several sources, including those pushing for publicly funded legal aid; corporate law firms that wanted to stop competitors from using pro bono to enhance their competitive image; and individual lawyers fearing competition for low-end clients. Bar leaders sought to mediate some of these tensions through regulation, which placed considerable restrictions to pro bono. Whereas IPB officials and corporate law firms sympathetic to pro bono took advantage of the limited room left available in order to advance their objectives, they never fully accepted the constraints they had been imposed with. But their willingness to challenge the bar would vary over time, with some corporate law firms backing off.

1. Resistance to pro bono causes bar leaders to restrict it

Activists for a publicly supported access to justice system were among the first to show skepticism towards pro bono. At the time, the Sao Paulo state government was actively resisting to implement a public defender's office (PDO), which the 1988 Federal Constitution ruled should be the core of a state-based system providing free legal services to the poor in both civil and criminal cases. Hence, hundreds of groups and social movements allied to demand measures from government officials. To these folks, the pro bono trend sounded like a threat, which might discourage further government investments in PDOs and ultimately lead to a privatistic (market-based) approach to these services (de Sa e Silva 2013; Moura et al. 2013).

The strongest resistance, however, came from a sector that initially appeared sympathetic to pro bono: the organized bar (Fuchs 2004; Vieira 2008; fieldwork notes). The reason was disputes for market jurisdiction at both the high-end and the low-end of the bar, in which pro bono was associated with practices of unfair competition in the market for legal services. At the high-end, a formal complaint was filed against one of the first corporate law firms to show

engagement with pro bono²³. At the low-end, solo and small firm lawyers saw pro bono as a threat and urged the bar leadership to curb it²⁴.

Accordingly, a few months after IPB's inauguration, the context for pro bono amid the Sao Paulo bar changed considerably. Bar officials began to acknowledge that pro bono created room for "client cooptation" and thus needed to be restricted²⁵. Robison Baroni, then-President of the Sao Paulo Bar Ethics Court stated to the press: "We are not against free-of-charge work but *this initiative can generate undue advertisement*. It can be also a way for lawyers to *insinuate themselves to clients with similar needs*" (Souza 2002a). Jorge Eluf Neto, then-President of the Bar Ethics Commission, defined the issue in similar terms: "The ethics code rules that lawyers must sustain a commitment with the larger society, (yet regulation is necessary) in order to avoid that such solidary services *end up fueling client cooptation, immoderate advertising, and unfair competition*" (Souza 2002b).

Facing this conflict, Aidar tried to be conciliatory and appointed an ad hoc working group to draft regulation to pro bono practices in that state jurisdiction. This regulation (the *Pro Bono Resolution*, Aug 19, 2001) ended up placing considerable limits for pro bono. To begin with, it ruled that pro bono should include *solely legal advice*, not litigation. In addition, it ruled that the only legitimate pro bono clients were *not-for-profits lacking resources to pay for legal services*.

²³ This complaint remains secret to this date and people do not talk about it very explicitly in Sao Paulo. We learned about it and the firm it involved from two interviews. We assume it frames the issue in terms of client cooptation and undue advertisement, as we will discuss soon. We also assume that it came from one or more corporate law firms unable or unwilling to do pro bono, which felt harmed by the engagement of that particular competitor and sought to increase the opportunity cost for this kind of initiative in the sector.

²⁴ For characteristics of the Brazilian legal market that are beyond the scope of this chapter, numerous lawyers exist who are unable to provide more complex services and have to compete against one another for the demands of middle-to-low income citizens. Accordingly, they frequently seek market protection against free legal services by state and civil society organizations and even against forms of alternative dispute resolution, which could make their services unnecessary. Because these lawyers are numerous, bar leaders tend to be responsive to their needs. For example, recent legal reforms in family law allowed divorce claims in which there are no property or child custody related issues involved to be processed administratively and by direct requested of the interested parties. The bar lobbied for the inclusion of a provision requiring attorneys to "supervise" this procedure, which Congress ultimately welcomed (Brasil 2007). Hence, Almeida observes that, while until the mid-1980s the bar (especially in Sao Paulo) was closely associated with liberal values and transformative politics, after that it became increasingly oriented towards protecting the "market" for private practitioners.

²⁵ This argument finds some resonance in the US experience. Lochner Jr. (1975) and Seron (1996) show that solo and small-firm lawyers had a preference for providing pro bono work to people who were similar to their paying clients. But besides the differences between the two markets, this doesn't seem to be the case of mid and large firms that IPB wanted to reach out to.

Moreover, it ruled that lawyers should observe a *two-year quarantine before they can provide paid services to the same clients they had served pro bono*. Finally, it ruled that lawyers should submit to the bar an *initial request of authorization to perform pro bono, as well as reports every six months, detailing the pro bono services they had provided*.

2. Critical to restrictions, the pro bono constituency challenges the bar

While some firm lawyers interviewed in this research were favorable to the bar's regulation, which they saw as a good basis to organize their pro bono work in the absence of more specific policies within firms, they all rejected the idea that there could be any potential in pro bono to create unfair competition and client cooptation at the top of the professional hierarchy. Even if retaining corporate clients was something that law firms lawyers saw as an advantage in pro bono, they argued that the market has its own means to regulate this aspect of firms' conduct:

When a law firm agrees to work pro bono, whether to a non-profit or to an individual, it is foregoing revenue. Honestly, there are so many folks in need of legal assistance that I don't see this impacting the market, so I don't see it as client cooptation at all. Moreover, those who provide pro bono to non-profits are not focusing on the corporations maintaining such non-profits. And even if they are, they should know that corporations would not hire them because they helped the non-profits they maintain. If they are doing pro bono thinking on prospective paid work they will get frustrated, for these days corporations look at it in very separated terms (LWF-5).

Likewise, this head of an in house legal department stressed that:

Well-established law firms will not use this as a means to get contracts, they will not work free of charge for (non-profit a bank maintains) to get paid work from (the bank). They are not going to work free of charge for (non-profit his company maintains) to get paid work from (his company). They are not going to work free of charge for Mr. (businessman)'s family to get paid work from (the company he leads)... This doesn't happen in countries such as the US, where law firms are totally free to do pro bono... It won't happen here either (IHC-2)

Similar assessments make them reject the argument, central to the bar's regulation, that pro bono threatens the low-end market for legal services. According to interviewees, if firm lawyers were completely free to do pro bono work this would have little to no impact on the opportunities for other lawyers. The plain reason is that unmet demand for legal services in Brazil far exceeds the capacity of law firms to supply services pro bono.

On the basis of this critique, some of the forces behind pro bono began to publicly challenge the terms of the *Pro Bono Resolution*. Restrictions to pro bono work for individual clients became the main issue around which antagonistic positions would be organized. The bar kept itself faithful to its original regulatory doctrine. In 2012, when an NGO lawyer was facing ethical charges for providing free of charge services to low income members of his organization, the Ethics Court upheld the Pro Bono Resolution by ruling that:

The Resolution allows pro bono work to be provided solely to non-profits lacking resources to pay for legal services. **Work for members of NGOs may be seen as charity that masks client cooptation and unfair competition, which the Lawyers' Statute and the Ethics Code prohibit.** Low-income people in need of legal services must be sent to free of charge services, such as those provided under the agreement between the bar and the PDO, law schools' legal aid offices ... and the PDO itself (Precedents E-3.765/09, E 3.542/07, E-3.330/06, E-2.278/00, E-2.392/01 e E-2.954/04). Case # E- 4.0852011 – unanimously decided in Dec. 15, 2011; attorney Marcia Matrone writing for the Court. Emphasis added²⁶.

This ruling was cause for much outrage among IPB's constituencies. Marcos Fuchs, IPB's executive director, commented that: "The bar should be concerned with making access to justice available among the poorer, rather than with maintaining its monopoly of poverty" (Ultima Instancia 2012). Alberto Z. Toron (2012), an elite criminal lawyer in São Paulo and IPB founder wrote to a lawyers-oriented website in terms that build on the "old tradition" of pro bono in Brazil to expose and criticize the intent of "market protection" behind the bar's approach to this issue. According to his letter:

(The prohibition of pro bono to individuals) not only lacks legal basis but also ignores the history of lawyering, a professional occupation that was meant to care about people. In the early days (of the profession), nobles practiced law in exchange not for monetary compensation, but for recognition of honor. In my 30 years of legal practice I provided numerous individuals with legal defense on a pro bono basis ... I feel happy when I undertake defenses free of charge and have always believed I was honoring our best (professional) traditions. I hope I can keep doing that

²⁶ Interestingly, in 2009 the National Council of Justice issued a resolution regulating a particular kind of pro bono services in the whole country (Conselho Nacional de Justiça 2009). This took place after the Council's President Justice Gilmar Mendes launched a project for massive legal assistance in prisons and realized that there was both a complete lack of legal services to the indigent prisoners and a low level of commitment by the bar to tackle this issue. There were some questions about the legality (and even constitutionality) of this resolution, which demanded that *courts* organized lists of pro bono lawyers "directly or through agreements with public defender's offices". Cases of unrepresented defendants could be assigned to lawyers in these lists. But as busy judges on the ground did not take any measure to implement this resolution, the bar took no further measures against it.

without being prosecuted; actually whoever works for a better and more solidary country expects to be left in peace. Borrowing from (Supreme Court) Justice Gilmar Mendes, “there are poor people for everyone”. There is no need to protect the market when there is so much anguish among the families of incarcerated people (the clientele he serves pro bono)²⁷.

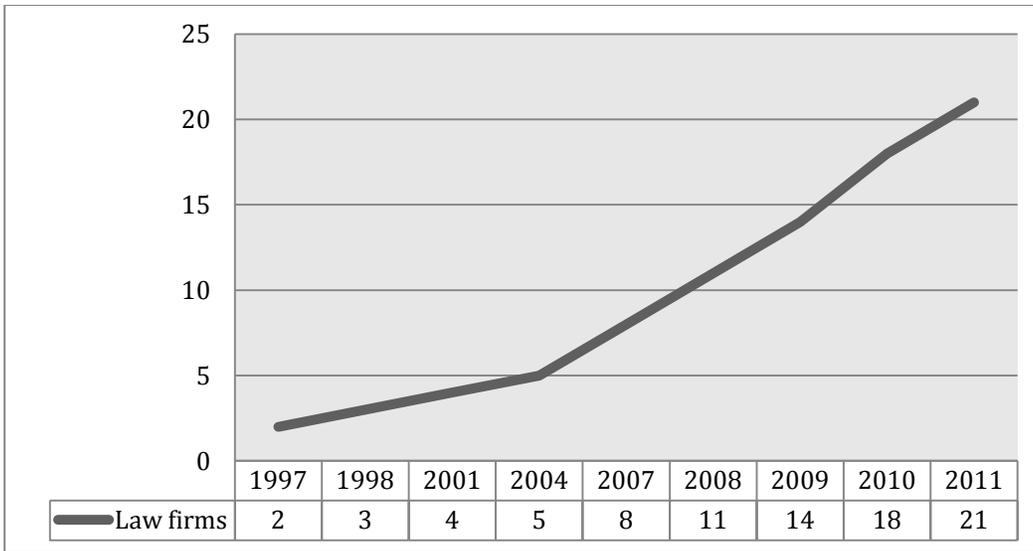
The conflict would obviously escalate. But this would take place amid interesting changes in the coalition supporting pro bono, as we describe next.

3. Needing help from the bar to curtail foreign competition, some corporate law firms back off challenging restrictive pro bono rulings

More recently, the conflict between the bar and the pro bono movement in Brazil was affected by another fact: the internationalization of the Brazilian legal market. The economic liberalization that took place in the 1990s made Brazil an attractive place for foreign investors. Foreign law firms quickly saw this context as an opportunity to profit. The bar soon identified this threat and enacted *Provimento # 91/2000*, a regulation that places severe limits to work of foreign law firms in Brazil. According to this *Provimento*, foreign law firms can only provide legal advice in foreign law. And even if it is to work in such restricted terms, law firms need a special license, issued by the bar, in order to operate.

The economic growth and increased international importance that Brazil ended up reaching in the late-2000s, right amidst an international economic crisis of enormous proportions, seem to have reinforced the good feelings about the Brazilian market among foreign lawyers. As shown in Graph 2, the number of foreign law firms in Brazil grew significantly from 2001 to 2011 (Almeida & Nassar, in this volume).

²⁷ More ordinary lawyers backed up Toron, which confirms some tradition of pro bono practice among Brazilian lawyers, although not systematically. For instance, lawyer Emerson J. Do Couto simply asked: “And since when can the bar or its ethical court prohibit lawyers from doing charity?”



Graph 2: Foreign Law Firms in Brazil
 Source: Almeida & Nassar, in this volume

Some of these firms started to get around the bar's *Provimento* by developing associations with Brazilian law firms to provide services under both Brazilian law and transnational legal regimes. Most of these joint ventures, so to speak, were established in Sao Paulo (Graph 3).



Graph 3: Foreign Law Firms in Brazil, Branch Office's Location
 Source: Almeida & Nassar, in this volume

In 2005 one such joint ventures (Lefosse Linklaters) was subject to disciplinary action, but came to a confidential agreement with the bar involving changes in its operations so as to meet the terms of *Provimento* # 91/2000.

As the trend continued, elite corporate law firms from Sao Paulo took a more proactive stance against foreign firms. CESA filed a consultation with the Sao Paulo Bar's Ethics Court as to whether this joint venture model would be consistent at all with *Provimento # 91/2000*.

In 2011, this consultation was addressed. The Court asserted that, like pure-breed foreign law firms, these joint ventures would be directed or at least highly influenced by individuals who have not proved to be familiar with Brazilian laws and the regulations of the Brazilian legal profession, given they are not certified bar members. This would harm the "independence" of Brazilian lawyers working in these joint ventures and expose clients to risks.

Accordingly, the Court placed a number of conditions for joint ventures to be consistent with *Provimento # 91/2000*. These included complete separation between local and foreign law firms and severe restrictions to advertisement, such as prohibition to cross-references in firms' letterheads and business cards (Estadao 2011). Some firms disagreed from this ruling and took the issue all the way to the Federal bar, only to see its Ethical Commission extend the basics of the Sao Paulo ruling to the whole country. In the wake of these decisions, the Lefosse-Linklaters joint venture was terminated (Vasconcellos 2013, Almeida & Nassar, in this volume). The bar has explicitly threatened others (Cristo 2014).

The entry of foreign law firms in developing countries and the conflicts for professional jurisdiction it raises are issues that deserve research in their own right. Of more interest to this Chapter is the impact these conflicts have had over the development of organized pro bono. Elite corporate law firms gathered around CESA had been both a central focus and the primary source of support (as donors) for IPB's work. As these firms faced an external threat and turned to the bar in search of protection, a fracture in their historical stance towards the bar's policies (and politics) on organized pro bono took place²⁸. Although some maintained their endorsement to

²⁸ As a matter of fact, support to pro bono may always have been restricted to a few of the corporate law firms in the Sao Paulo market. For example, among a total of 533 pro bono providers working with IPB, 497 were enlisted as "individuals", which means they are solo or small firm practitioners; 3 were enlisted as "in house corporate legal departments"; and 33 were enlisted as "law firms". This means a total of 36 providers from the corporate bar vis-à-vis 497 from outside of it. In contrast, CESA counts on 386 affiliates in Sao Paulo and 728 nationwide. IPB did not become CESA's philanthropic branch, as ESP-1 predicted.

IPB against the bar, others took a step back²⁹. IPB's leadership had to search for external support in order to regain big firms, as we will discuss later.

Hence, disputes for market jurisdiction at both the high-end and at the low-end of the Sao Paulo bar, which were translated into claims of “unfair competition”, mark the resistance and inform the restrictions of the bar to pro bono. These restrictions had great impact on the way lawyers and the corporate bar in Sao Paulo were able to assimilate pro bono in comparison with the US and even the larger Latin America. Moreover, although part of the corporate bar initially embraced pro bono, subsequent market conveniences made it back off in its supportive stance. Yet, pro bono would find ways to resist...

C. Sustaining and radicalizing pro bono

Whereas pro bono appeared in Sao Paulo in the early 2000s as a promising venue to commit elite lawyers to building of the rule of law and enhancing the legitimacy of the profession as a whole, it ended up struggling to survive as a lawful activity and was increasingly unable to attract meaningful support from the Sao Paulo corporate bar. The bar placed and enforced considerable restrictions to pro bono practice; and as this conflict escalated, some of the few corporate law firms that actually embraced pro bono hesitated in challenging what now they were considering a resourceful ally in their struggles against foreign law firms.

Not only this has had an impact on the extent to which pro bono was disseminated (recall the general frustration of critics and analysts with the progress Brazilian pro bono has achieved), but it also affected the strategies and choices the pro bono movement adopted. In addition to being a nationwide source of information on pro bono, IPB had to become an actual advocacy center for the “cause” of voluntary work in order to defend its legitimacy against the prevailing wills at the bar. In addition to serving as a clearinghouse and a reference point to law firms that were expected to increasingly adhere to pro bono, IPB had to spend a great deal of energy mobilizing stakeholders who could help sustain it in the agenda of the corporate bar.

1. Old ties made stronger

²⁹ It is difficult to find and provide material evidence for this withdrawal of support to pro bono among corporate law firms, but at some point of our fieldwork this was a consistent claim among pro bono activists and specialists. These individuals mentioned, for example, increasing participation of CESA's representatives in the bar leadership over time. “This creates a bias at CESA towards positions held by the bar”, said PBA-1.

To this latter end, corporate clients (by and large representatives of global capital) were the most immediate partners to IPB. While many of these clients were already putting in place pro bono requirements in their dealings with law firms, generally as an emulation of the CSR culture in which they are embedded, IPB has sought to have these decisions made more explicit, systematic, and coordinated. The goal has been to send a clear signal to law firms, using terms they are sensitive to (i.e., money), regarding the importance of their commitment with pro bono. Hence, when this pro bono activist was reporting his current actions to secure the involvement of the corporate bar with pro bono, he said:

What I did recently was to invite for a lunch my old law school friend (names), who just became the General Counsel of (cites multinational) in Brazil and tell her about these issues. She left the conversation saying she was going to issue a letter to the corporate law firms she hires showing her commitment to the pro bono agenda and stating that, in line with what happens to be the corporate policy worldwide, by the way, she was no longer going to hire lawyers from law firms that do not provide a minimum amount of pro bono work (PBA-1).

While pro bono requirements can affect individualized relationships between corporate clients (existing or prospective) and law firms, these firms also have a concern with enhancing their public reputation, domestically and internationally. The surveys conducted by Latin Lawyer and Vance, for example, were said to produce some impact³⁰. The symbolic power of these international resource centers provides new tools for the pro bono movement. Participation in conferences, gatherings, and reference documents such as Vance's Pro Bono Declaration for the Americas (PBDA) may not produce immediate impact on the corporate bar's commitment to increase its share of pro bono in Brazil, but they keep open a window for further mobilization by local actors such as IPB. Hence:

The interest of Latin Lawyer in this issue did shake things here. It all started in this brunch when I met with Clare (Bolton, Latin Lawyer's publisher) and shared some ideas (about pro bono) with her; she was really thrilled about it. So we held a conference together, a brunch last year, now another one and we keep talking about it and she keeps publishing about it. Law firms want to be on their pages (PBA-2)

³⁰ "We have the commitment to do 3,000 hours pro bono. We report our progress to Latin Lawyer every year. We have reported for the past three years" (LWF-4).

Yet, the challenges facing pro bono in Brazil led to other strategic moves involving IPB. Old opponents like the PDO turned into allies and some established relationships were strengthened, building a platform for new ventures. Projects and initiatives were diversified and the idea of pro bono became the basis for stronger, more innovative, and more radical kinds of legal activism.

2. New alliances to the pro bono movement and new meanings to pro bono

With no possibility to stimulate pro bono work for individuals, IPB launched a rights education initiative (Mutiroes). In Mutiroes, volunteer lawyers make legal assessments of facts and claims brought by individuals and, depending on their conclusion, refer these individuals to legal services or other agencies where their problem can be addressed. In addition, IPB partnered with *Casa Saude da Mulher* (Women's health house), a project by the Federal University of Sao Paulo (Unifesp), which provides assistance to women victims of domestic violence. Like in US-existent medical-lawyer partnerships, lawyers gathered by IPB address the legal aspects of the victims' story and, if they consider it is the case, they refer these victims to the police or to Courts (Vieira 2008, 258; Nascimento 2015). IPB also plays an animating role in Brazil, making public claims about the importance of voluntary legal work for the profession and society or trying to stimulate pro bono work at law schools.

Even more intriguing was the political or activist turn that IPB undertook when it started making claims on issues of public interest, whether directly or in conjunction with other participants in the legal field (Fuchs, 2004; Vieira, 2008). This allowed IPB officials to develop ties with other actors and organizations within and beyond the legal field, thus attracting further support to the cause of pro bono, while also affecting its meaning in the profession and the larger society.

Good examples are in high level disputes related to access to justice policies and involving the establishment and equipment of PDOs in Brazil. In ADI lawsuits n. 3892 and 4270, a public defenders' association asked the Supreme Court to deem unconstitutional the access to justice policy adopted by the Santa Catarina state government, which was based on ad hoc

appointments of lawyers to defend the indigent clientele in civil and criminal cases³¹. The Court favored plaintiffs, ruling that states must base their access to justice policies on PDOs. Along with other NGOs like Conectas, IPB acted as *amicus curiae* (Conectas Direitos Humanos 2015a).

Another example took place in ADI lawsuit n. 4163, filed by the Federal *Ministerio Publico*, a body of independent public prosecutors operating at both the federal and state levels in Brazil, which, in addition to conventional criminal prosecution, has legal standing to bring about class action lawsuits against private parties and government organizations in defense of minorities, the environment, consumers, and the “public interest” (Vieira 2008; Arantes 2002). In this particular lawsuit, the Federal *Ministerio Publico* challenged legislation issued by the Sao Paulo state government making it mandatory for the local PDO to recruit its supporting lawyers through the bar.

This claim relates to an aggressive, corporatist strategy by the bar in order to put private lawyers at the heart of access to justice policies (Almeida 2006). In the absence of a state PDO and as an alternative to having judges compulsorily assigning lawyers to the defense of the indigent, the bar and the state executive signed an agreement, in which: (i) the bar recruited lawyers who wanted to serve as appointed counsel to the indigent in the various state counties; (ii) when an individual claimed she did not have resources to pay for lawyer’s fees, state officers assigned this individual’s case to a lawyer in the list; and (iii) the state government paid for the fees of this lawyer (monthly), according to the job she had performed and on the basis of a price list previously set.

When the PDO was established, it took control of the budget available for these agreements and sought to dictate the terms of contract under which the recruited lawyers were going to work. This was cause for much noise between the bar and the PDO. Interpreting local legislation, the bar understood it should be a mandatory intermediary in this kind of recruiting process³². The *Ministerio Publico* intervened in favor of the PDO and took the issue to the

³¹ ADI stands for *Acao Direta de Inconstitucionalidade* and is a kind of lawsuit used to challenge legal norms on constitutional grounds directly before the Supreme Court. Only some legal actors have standing to bring up ADI lawsuits.

³² The figures in these agreements are impressive. In the first semester of 2011 they involved about R\$ 160 million (or US\$ 80 million), a monthly average of about R\$ 22 million (or US\$ 11 million) at the time. The agreement signed for the July, 2011–July, 2012 period estimated expenditures of R\$ 284 million (or US\$ 142 million). And the

Supreme Court. While examining the case, the Court favored the FMP, breaking monopolies of the bar over the supply side of legal services in these agreements wherever they might exist (Conectas Direitos Humanos 2015b)³³. Along with other NGOs like *Conectas*, IPB acted again as *amicus curiae*.

IPB's participation in instances of legal mobilization went beyond issues related to access to justice. One example is in the ADI lawsuit n. 3.239, filed by conservative political party *Democratas* against the criteria set by the federal government to certify traditional occupation of lands by former slaves' descendants (*Quilombolas*), which, according to the 1988 Brazilian Constitution, gives these folks the right to maintain the possession over those lands. The plaintiff asserted that these criteria are too permissive and wanted the Court to make them more restricted. IPB took the opposite side (Fuchs, 2004), against the interest of big landowners. The case is pending decision at the Court.

Together, these cases show a pattern of high-level collaborative legal activism including IPB, its previous antagonists PDOs, litigation-oriented NGOs, Human Rights advocacy groups, and the *Ministerio Publico*.

Of course, all this activism in issues of high political sensitivity is cause for much excitement to IPB and the partners it made, since little room was available for the strict promotion of pro bono. It also increased its basis of support within and beyond the bar. Yet, it has put pro bono and IPB itself at the heart of more radical perspectives towards legal mobilization, which are more typical of the NGO and the "public interest" sectors of the profession. Although this is not any bad, it may exceed what some forces behind the pro bono movement originally expected to see in place.

list of lawyers providing services under this agreement for the year of 2012 included no less than 44,609 individuals. Hence, the clear goal of the bar in this conflict is to protect (and to some extent to control) the market for legal services to the poor, similarly to when it resisted against pro bono and against PDOs themselves.

³³ The bar leadership was obviously infuriated. Acting through state representative Campos Machado (PTB-SP), president of the "coalition of state representatives in favor of lawyers", the bar sent a bill to the Sao Paulo state house of representatives seeking to transfer the control of the funds with which these lawyers are hired from the PDO to another state agency. With this move, the bar leadership intended to recover its influence over the decision on how these resources will be spent, hoping it will have more room for negotiation with state officers than it has had with the PDO's leadership. The issue was ultimately addressed by the Supreme Court, which ruled in favor of the PDO.

D. Rationalizing pro bono

Whereas law firms may have found initial advantages in committing themselves with pro bono, serious engagement requires further measures so that advantages can really outweigh the necessary investments for systematic provision of these services within the constraints of firm settings. Firms are business structures and, at some point, must seek the best means/ends relationship (Rhode 2008). As one of the firm lawyers interviewed in this research stated: “It is very difficult to bring the culture of pro bono work to corporate law firms for the plain reason that they are bound to profit. So you have to show that it is possible to provide these services within the available structure, that pro bono will not be a burden to the firm” (LWF-2). As another said, “If you are dealing with the gray-haired, with older partners, it is hard to convince them that it is important for the firm to do pro bono. For them, it is clear-crystal that the goal of a law firm is to make money” (LWF-3).

Hence, the tendency is to let pro bono happen as an informal practice, with work being provided on a case-by-case basis. However, precisely because of the driving rationale in firms, even case-by-case analyses start to indicate the need to rationalize their relationship with pro bono. For example, LWF-5 explains:

We have no policy in place for pro bono, we provide it on a case-by-case basis. So it depends on the case itself and on who the partner bringing the case is. We need to check if it is something that is adequate to our culture and capabilities, because sometimes there are cases we don't want to take or cases we can't take because we lack expertise to deal with. For example, we don't have a criminal law area in the firm, so if the case has anything to do with criminal law we won't take it... If it is taxes law or commercial law it's part of our everyday work and we can donate these hours, but criminal law not only we lack expertise but also we are not willing to take any responsibility for something we don't usually do... It involves a risk we are not willing to take.

However, she believes this is an initial stage that must be overcome, with the design and enactment of a formal firm policy:

I do believe it should be institutionalized, because when you are able to do it in a more organized way, you know how many work hours you have to provide and you can check how these hours are being allocated. Because sometimes you have the feeling that you are putting too many hours in a year on pro bono cases and you are actually not, you were doing much less that you thought you should be doing. And there is the other way around too, sometimes you participate in a project that takes much more time than you were envisioning originally (LWF-5).

A pro bono activist completes this account as she reports what took place when they were helping Vance and Latin Lawyer implement the latest edition of their regional survey in Brazil:

It's a matter of money as well... You will probably hear this but when the firms had to send information about their pro bono hours to this survey... many had to actually find that out, because they didn't have any control... They ended up discovering many things, such as lawyers doing pro bono work to their own domestic workers or to their family and putting those hours as pro bono... And that's because there's no policy... I don't say they are in bad faith: it's because there is no policy... Everyone is in a limbo, in a grey zone... (PBA-2)..

In addition to organizing and measuring pro bono, policies produce other benefits for within the firm:

Not every partner likes to do pro bono and the demands for the different areas of the firm are different as well. Some areas will likely never take a pro bono case; others always have demand for pro bono work. You may end up sending cases always to the same person... So you need to search for balance in the distribution, otherwise some areas and professionals will be disproportionately burdened... I think in most firms they measure productivity across the areas... How much the taxes area is making, how much litigation is making, how much commercial law is making. If only one area does pro bono there will be a misbalance and therefore internal conflict (LWF-3).

While this is a challenge that can be met on a case-by-case basis, wide-range policy solutions work better. For example, pro bono coordinators generally find it imperative that the firm as a whole considers pro bono work provided by lawyers as billable hours:

If you get paid according to the billable hours you make, there's no other incentive to do pro bono aside from your individual satisfaction in helping someone. You will not get anything and you need money to survive. So there's an old debate that law firms must start to count pro bono work as billable hours, so that lawyers will get paid and have the stimulus to work on pro bono cases (LWF-3)³⁴.

In fact, most firms in this research took or are taking this additional step and designing their internal policies for pro bono. Policies usually involve protocols and governance structures. Protocols relate to variables and procedures that determine how cases will be taken, handled, paid for, and reported; they are guidelines to help decision-making processes in the life cycle of

³⁴ For a similar discussion in the US context, *see* Dinovitzer & Garth (2009), and Sandefur (2009).

pro bono cases. Governance structures relate to institutional forms and means for the management and coordination of pro bono work within the firm.

Of course, there is variation as to how mature this discussion is among firms. Those that have about a decade of pro bono have relatively strong procedures and structures of governance. LWF-2 tells what has become the most common experience in this fashion:

We have a pro bono committee in the firm. So we receive information about prospective cases, generally they come through IPB or through our lawyer or through (cites another source). So the committee has lawyers from all areas of the firm and it works as a filter, that's where we discuss whether we will take it or not... And we look at many aspects: Is the non-profit really unable to pay for legal services? Is this really worth taking? Is there any conflict of interest for the law firm to work in this case? And we also make an estimate of how many hours we will need to allocate in the case... If it is litigation, although we normally don't do litigation pro bono, it's more difficult, you never know how many years it will take... Then after looking at these aspects we make our decision.

Others are beginning to incorporate such procedures and structures, but already have a very sophisticated idea of what they should involve. Thus, when I asked a lawyer from one of such firms debuting in pro bono whether they had any policy, we had the following exchange:

LWF-6: We have designed but not officially enacted it yet. We want to make it simple so that lawyers can easily understand. There's even a flowchart. We accept the case – I mean, provided we have checked who the client is, if there is no conflict of interest, and made a proposal –, we open the case, record the time we spend with the case, follow it up...

Interviewer: And how do you receive these prospective cases?

LWF-6: Via IPB and other sources such as our lawyers and their own networks in the non-profit sector... IPB is not the only channel... But most important to us are the criteria that we will use to accept or not a pro bono client... And things like how to account for the billable hours we donate, because we want to prove we fulfill the 20 hours per year per lawyer; it is a moral commitment we made by signing the PBDA...

Interviewer: Well, these are things that law firms with more established pro bono practices normally are concerned with as well...

LWF-6: Yes, we knew some about it... And we had in mind that once we started doing pro bono it should be like this, instead of an informal thing...

The challenge to rationalize pro bono reestablishes the global-local dialectics that has constituted pro bono in Brazil. Northern organizations and international resource centers appear

again as sources of “best practices” that can help Southern actors meet their demands. For example, when this lawyer leading the debut of pro bono in her law firm was telling the history behind their current efforts, she said:

There was a tie with Vance, which (cites a lawyer) strengthened, because she went to study in New York and ended up working at law firm with lawyers from Vance... So they came visit us here and we signed the PBDA... And Vance has a lot of informational materials; it gave us guidance on the implementation of a pro bono program in the firm, the advantages, how to disseminate information within the firm, how to handle cases, how to manage pro bono... And we are building a lot on their advice. For example, today, after this interview, we are going to discuss our next project with our Pro Bono partner, which is something we now have (LWF-6).

PBA-1 completes this account and reveals an even broader variety of global partners, both at the North-South and at the South-South levels:

We have had very productive interactions with foreign organizations, which help us develop new ideas and practices. IPB hosts a very inspirational event, which we have attended. That is where Oscar (Vieira) was first introduced to Daniel Grunfeld, in 2001, and where I also had my first contact with pro bono, in 2002. PILNET has an approach that is more similar to ours; they are very sensitive to particular needs of the countries and reject the idea that one size fits all. More recently we have organized courses with PILNET, New Perimeter, and FGV, after which we want to set up a Latin American Forum on pro bono.

Beyond direct exchanges, there is room for increased local entrepreneurship that draws from both foreign and local capabilities to build a new momentum for pro bono in the corporate bar. One example was a roundtable including IPB and local firms in various stages of rationalizing pro bono, but also international actors such as Latin Lawyer and Latham & Watkins. As a participant of this event, (LWF-5), the lawyer whose firm still works on a case-by-case basis reports being:

... Impressed because I didn't think local law firms would be so interested in sharing experiences and searching for alternatives. You know, coming to (cites firm), which has a strong policy in place, saying: “I'm new in all of this, how do you suggest I begin?”, then hearing “Well, let's talk”... “This is how it works, this is what hasn't worked so well”, this was very cool. And I left the roundtable with many ideas of things I could do. For example, checking the hours we put on a pro bono case on the same basis as we check the hours we put in regular cases, this is something we don't do, but we should be doing. You have to see how these hours are being given, you have to manage these hours, you have to check if the lawyer is not inflating these hours and, if she is,

you have to take measures in the same way you do with regular work hours, otherwise there can be a disbalance, with more hours being devoted to that case than you were envisioning originally.

Whether and how this new momentum will take place and will affect the growth and the meaning of pro bono in Sao Paulo, it is something difficult to predict. As in other aspects of pro bono examined in this chapter, a crossroads seems to be in place. Different firms (and stakeholders) can take different routes depending on different factors. In the final section, we try at least to make this scene clearer.

E. Removing restrictions and facing new possibilities

As with any other living object, pro bono in Sao Paulo keeps presenting interesting developments, which we must examine and account for. On February 23rd, 2013 the Federal *Ministerio Publico* in Sao Paulo organized a public hearing in order to discuss pro bono and the existing bar regulation in that jurisdiction, i.e., the Pro Bono Resolution. In addition to manifestations of the bar leadership and Fuchs, the event had 40 testimonies (the maximum allowed), all of which were critical to the restrictions established by the bar. Given how specific this topic is, that was a massive event, which showed broad support to IPB among lawyers of many kinds, legal scholars, civil society organizations, etc. At the end, the FMP member responsible for the event, recommended that the bar's prohibition to pro bono be revised, indicating he had been convinced it was illegal.

This was a signal to the bar that the FMP was going to litigate against the resolution. As the Supreme Court had recently struck down local legal provisions that made mandatory for the PDO to select its supporting lawyers through the bar (see in Section 4 references to ADI # 4163), there were feelings that lawsuits against the Resolution could equally lead to negative results to the bar. This drew the attention of Federal bar leaders, who designated Luiz Flavio Borges D'Urso, Sao Paulo's elected state delegate, to prepare a report on the issue.

D'Urso understood that the Federal bar should regulate pro bono nationwide. Accordingly, he recommended that "any regulation on pro bono that might exist in state bars" be voided (in addition to Sao Paulo, Alagoas had established such measures as well, using terms similar to Sao Paulo's). On June 17th, 2013, Marcos V. Furtado Coelho, the Federal bar's President, upheld this recommendation. The restrictions of the Sao Paulo state bar's Pro Bono

Resolution were finally struck down, while an ad hoc working group was appointed to draft new regulation.

Our fieldwork research was concluded a little after these events took place. Interestingly, we did not see the suspension causing much impact. Most firms kept doing pro bono to the same extent and under the same protocols they did before (others actually argued there was more uncertainty, which they felt discouraging). Firms suggested they could take this moment to invest in *rationalizing* pro bono: in the lack of clear-cut guidelines from the bar, it became even more important that they had their own internal policies. The pro bono movement, in turn, was trying to take advantage of the suspension and push the legal profession, especially the corporate bar, to enhance its commitment with pro bono. Global players and IPB partners such as Latin Lawyer and Latham & Watkins were among the resources the movement was mobilizing to that end.

The possibility to provide pro bono work to individuals appeared as a new factor in this conversation. Yet firms were not sure whether³⁵ and how³⁶ this was something they could or would like to do. Service to individuals could be a way to really make pro bono massive³⁷; it could also allow firms to contribute more intensely in cases of higher impact³⁸. But the firms we

³⁵ “I think this is the biggest challenge for law firms. Here we don’t take any individual client, with a few exceptions. We don’t have expertise to serve individual clients in the areas they demand the most, such as family law, criminal law, and labor law. We don’t have expertise and we would have to establish new areas to serve individual clients, which I think the firm will not consider. And I think this is the reality of most big law firms. Some may want to take individual cases, I know that some do and some want to do, but here I believe it will be unlikely. I told you about the responsibility issue, about doing something in which you are not an expert. This is something that I see with concern. And if it is something we are not going to do it well, there no reason why we should do it at all” (LWF-4).

³⁶ “I think it will be very difficult for big law firms to take individual cases. Because these firms, their characteristics don’t let them work for individuals. For example, labor law cases, we don’t do it for individuals. Because we work for the big companies, so there will be conflicts of interest. I can’t undertake legal work against a company that is my client. In other areas we will have to see case-by-case. But it is a corporate law firm, how could we do any work for individuals?” (LWF-3)

³⁷ “I think most law firms cannot envision how it is going to be, maybe they believe people will show up randomly and knock on their door or sit in at the waiting room side by side with a businessman... You can set up a strategy to serve individual clients. For example, (cites law firm) has this CSR project, through which they provide this community with many resources. Maybe they can use this channel to take selected cases on behalf of individuals. You can go to law school clinics and alike. There are many possibilities” (LWF-2).

³⁸ “We do transactional work and sometimes we take paradigmatic litigation cases. For example, we took this case of (cites NGO), which deals with destruction of firearms. A judge gave a preliminary injunction prohibiting government from destructing seized firearms because some might have historical value. We thought there was an

researched were pondering about several organizational and institutional issues before taking this step.

On June 14th, 2015, the Federal Bar finally issued that new regulation. The news article at the bar's website in which this position was announced is revealing about the discussions we have had in this chapter. Coelho built on the "traditional" roots of pro bono, stating that: "The bar drew from the good and just example of our colleague Luiz Gama, who worked pro bono to liberate slaves in the country. We look forward to keep contributing to build a more just, solidary, and fraternal society. Pro bono is a tradition in Brazil since the XIX century, which the bar wants to keep up" (Ordem dos Advogados do Brasil 2015).

A full regulation to this issue is yet to come, but the bar passed a basic provision defining and authorizing pro bono. The definition now included services rendered to both organizations *and individuals* who lack the means to pay for legal services. It only places restrictions to pro bono work done for political parties or electoral candidates or "in benefit of institutions that envision these objectives". It maintains prohibition to pro bono that serves "as a means of advertisement to attract clientele". At the same time, it refers to "counsel appointed" in the context of "agreements", which is a signal that the bar does not want to see pro bono replacing these arrangements³⁹.

With the removal of restrictions from the Pro Bono Resolution, pro bono in Sao Paulo faces a crossroads. More than ever, possibilities are now multiple, but developments will keep depending on how promoting agents, firms' leadership, and field constituencies will conflict and cooperate. In the next section, we explain and discuss this circumstance and its consequences in both its theoretical and practical dimensions.

V. Conclusions and further implications

Building on the preceding stories, this section raises the main aspects and themes that should be under consideration in future efforts to observe and analyze pro bono in Brazil and other

important policy issue in this case and we said we'd take it. And there's a new case we are working, related to right of prisoners to have a private space to talk with their lawyers" (LWF-4).

³⁹ This is done subtly, when it asserts that: "In the context of pro bono work, as well as of lawyers working as appointed counsel, by judges or under agreements, lawyers will act with habitual zeal and dedication, so that the party she is assisting will feel supported and confident with his services" (Ordem dos Advogados do Brasil 2015)

emerging economies. The section begins detailing the conclusion that pro bono in Brazil is currently at a crossroads, which means it faces dilemmas, but also envisions possibilities for development. Then it moves on to discuss the implications of these findings to larger theoretical discussions relevant to law, lawyers, and globalization.

A. The crossroads of pro bono

For all we have seen in the prior sections, the pro bono movement in Brazil (and its principal basis, IPB) faces a crossroads, which we summarize in Table 2. Bar politics and international competition of law firms have functioned as hindering factors to broad pro bono dissemination. Bar politics created “big deterrents” to pro bono work in law firms, as materialized for some time in the Pro Bono Resolution. International competition discouraged some law firms from confronting the bar and forced them to review their positive orientation towards pro bono. Yet, precisely for the strong opposition raised by the bar, not only IPB has stressed the “traditional” roots of pro bono, but it has also developed strong alliances with the PDO in Sao Paulo, litigation-oriented NGOs like *Conectas*, and Human Rights advocacy groups beyond the bar, which pro bono lawyers have helped.

Table 2
The crossroads of pro bono

Level	Alternatives
Organization	<ul style="list-style-type: none"> • Systematic; • Unsystematic;
Approach	<ul style="list-style-type: none"> • Conventional; • Radical;
Ideology	<ul style="list-style-type: none"> • Business; • Noblesse; • Responsibility;

Source: Author’s elaboration

The alliances with these organizations, all of which have a relatively radical approach to legal mobilization, has been helpful to sustain the legitimacy of pro bono practices against the wills of the bar and the discouragement of big law firms. But the more IPB becomes part of a radical strand – or the more it makes pro bono an expression of professional *noblesse* –, the less it may be able to mobilize big law firms and the corporate clientele it has relied on, so that pro

bono can become a widespread practice among corporate lawyers and law firms. “I can see IPB becoming an NGO like *Conectas*”, said ESP-1, “taking a few impact cases, on the basis of a small staff and network of lawyers. This will be already a good contribution for a more diversified legal profession and more democratic policies for access to justice, but it was certainly not the main objective of some IPB founders back to the early-2000s”⁴⁰. Indeed, as a pro bono activist remarked during a more open moment of our conversation, when we were speculating about the future of pro bono movement:

One of my ideas for IPB was to open up a low-income law firm, with hired lawyers, a non-profit working like an actual business, but reinvesting part or most of its money in the organization. This law firm could then partner with bigger, for-profit law firms to have pro bono lawyers sitting in to provide some help. This would be one of the factors lowering the costs. So there would be interns, secretaries, a permanent staff and these pro bono lawyers. The firm as a whole would do a low bono model. There would be resistance from the bar, but we would deal with it. And I know people from (cites big law firm) who have presented a similar project to (cites funding sources) and got (funds). Now they are in the process of detailing the plan and they are keeping this secret, because if all works out they are willing to leave the firm to take on this project (PBA-2).

A crossroads also exists for the corporate bar and its engagement with pro bono. Corporate law firms and in house legal departments will have to strategically situate their will to engage with pro bono among many possible approaches as the meaning of pro bono itself has become more diversified to include transactional work for non-profits, Mutiroes, strategic litigation, legislative advocacy, etc. Furthermore, they will have to decide between more systematic and more ad hoc ways of undertaking pro bono work (i.e., using more sophisticated managerial structures, designing and implementing policies, and deploying standards of measurement and evaluation, vis-à-vis acting in mere response to pressures from the corporate clientele and other stakeholders). Then again, this means dilemmas but it also possibilities for firms and the pro bono movement. That same pro bono activist, for example, shared with me another idea she had, which was:

⁴⁰ Although “CONNECTAS has grown a lot, it has now 34 staffers and a budget of R\$ 6 million (or US\$ 3 million). IPB is a much smaller organization, which is consistent with the slower growth of pro bono in Brazil as compared to Human Rights advocacy” (PBA-1).

To develop a portfolio of services to firms so that IPB would keep its same mission, vision, and values but it would also provide services, such as consultancy to firms and training programs to lawyers. This is something I've talking about for years, because they call us and they ask for help and we try to help the way we can, but I think there is demand for packaged solutions that we could develop and sell out. And this is another way to do advocacy because you are promoting pro bono and helping folks to structure it in their firms. And then pro bono can grow in a way that is more systematic, that has a closer connection to the firm culture, that belongs to the firm strategy, that is not floating around (PBA-2).

While IPB's leadership has not embraced any of these more heterodox moves⁴¹, they are revealing of the different ways pro bono can be and has been appropriated by social actors. In the next section, we stress structural factors and social mechanisms that account for the production of these alternative pathways and, therefore, that need to be taken into account in future studies and attempts to theorize about law, lawyers, and globalization.

B. Implications for theory development on law, lawyers, and globalization

Although it is difficult (perhaps even impossible) to predict how the stories of pro bono in Sao Paulo will unfold from this point on, it is possible to identify larger structures and mechanisms that they reveal to be relevant to investigations on law, lawyers, and globalization. Additional efforts to theorize about such issues should consider and detail those structures and mechanisms, as we describe below.

1. Globalizations

The stories about pro bono observed in this research are unequivocal products of globalization. From global capital and businesses and their demands for CSR policies; to cultures of professional practice in the corporate world; to circulating people, resources, and ideas on the role of private lawyers in promoting the public good and building the "rule of law" internationally, there are many examples of local-global intersects.

But whereas our findings suggest that researchers must take globalization seriously, they also suggest that globalization entails multiple experiences, driven by different actors, holding

⁴¹ IPB leadership considers that these ideas "do not represent the core of pro bono", and compare them with "using pro bono lawyers to do mediation in cases like family law, housing, and consumer," as they have also been suggested do to (informal interviews during fieldwork).

different interests and resources, and operating in coalitions that change over time. And while this makes it more appropriate to refer to *globalizations*, rather than to *globalization*, it invites researchers to identify and account for such multiplicity and the way it impacts on lawyers' professionalism. Some of these experiences have been explored in relative depth in this Chapter; others are still mostly implicit in our narrative.

For example, one intriguing question emerging from our research relates to the variety of international organizations and their experts, promoting pro bono in Brazil and elsewhere in the global South. Each of these organizations has its model and its approach for diffusion; each of them also presents a different appeal to different actors willing to institutionalize pro bono. In some occasions, they seem to even compete for influence and prestige, which arguably bolsters their position in their own backyards. But this and other stories are still to be followed and told.

2. Institutional contexts

While the multiplicity of global–local intersections appear in our findings as crucially important to explain developments of pro bono amid the Brazilian corporate bar, researchers should bear in mind that these intersects take place within institutional contexts, whether they are law firms or other practice settings like NGOs and Courts. And while all contexts are likely to be affected by external inputs, they all have their own schemas, which can lead them to selectively incorporate those inputs (Powell and DiMaggio 1991).

In practice, this can lead to many contradictions and puzzling situations. In our research, for example, firms embraced pro bono when they felt it would meet the needs of their clientele; then some withdrew support from pro bono when they felt this would be strategic to protect their market share. The alternative for pro bono activists was to mobilize corporate clients yet again, as they were the only voices that could speak to firms using terms to which they are sensitive (money).

Of course, firms may differ from one another, with some being part of distinct subfields than others (Bourdieu 1986; Dezalay and Garth 2011; Dezalay and Madsen 2012; Garth and Dezalay 2012) or all of them forming an ecologic system (Liu 2013). Not all firms in a legal market may be driven by profit, for instance (Cummings and Southworth 2009). This is why even law firms' recent push to *rationalize pro bono* can unfold into unpredicted ways. For some firms, this can be a chance to expand the provision of pro bono; others may find they already

reached a good balance in helping clients structure CSR projects and use *rationalization* to reinforce their existing forms and levels of commitment to pro bono – especially when pro bono gets more associated with *professional noblesse* than with *professional responsibility*.

Bottom line: it is a task for researchers to figure out what the possible schemas among firms are and how these firms manage deal with external inputs in light of these schemas.

3. Field

Specific institutional contexts are yet insufficient to support comprehensive theory development on law, lawyers, and globalization. This research made it much clear that institutions exist within an even broader context, which on the basis of Bourdieu and others we call “legal field” (Bourdieu 1986; Dezalay and Garth 2011; Dezalay and Madsen 2012; Garth and Dezalay 2012). In the stories in the prior section, the new legal elite with cosmopolitan socialization and inspiration ended up relying on “grand liberal lawyers” to promote pro bono – which has made pro bono become an expression of the same “old tradition” of which these “grand liberal lawyers” are part. IPB ended up allying itself with the POD in order to confront the corporative wills of the Sao Paulo bar.

Extrapolating from these examples, one can argue that legal practices grow out of conflict, cooperation, and struggles for legitimacy taking place among field constituencies. Foreign support and international alliances are important, but only to the extent that actors can convert them into “capital” to use further in their own “palace wars” (Dezalay and Garth 2002b; Dezalay and Garth 2011)

4. Political economy and development models

Much of the existing thoughts related to law, lawyers, and globalization imply economic relations bound to corporate power and hegemonic capitalist development. Both the power and the need for legitimacy of corporate lawyers would emanate from this particular vision of how the boundaries between state and market should be organized. Yet, as countries like Brazil, India, and China are challenging the established consensus in political economy, rigorous research must consider how these new economic arrangements feed back into the social construction of legal practices and affect practices and ideologies being diffused.

This research offers good examples: rejected as a privatistic approach to legal services for the poor⁴², pro bono in Sao Paulo had to look for other sources of legitimacy, like the “old traditions” of “grand jurists” And this was also what enabled pro bono to unfold in ways other than plain legal assistance, like strategic litigation in issues of public interest. Alternative models of political economy and development can create and destroy opportunities for legal engagement and affect established hierarchies in the field. A challenge for future research is to identify and account for these mutually constitutive relationships, both within and across different domains of lawyers’ professional agency, both at a given point in time and over time.

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⁴² Unlike the US, as described and debated in Abel (2009), Kilwein (1999), Elefant (1991), and Minow (2002).

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