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Paradigm shifts

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To celebrate Latin Lawyer's 20th anniversary, we asked leading members of the profession to chart the standout themes in the evolution of Latin America's legal market over the past two decades.



A lot can happen in 20 years. In the two decades since the launch of Latin Lawyer, we have observed Latin America's legal community transform in more ways than one. Some developments have changed the composition of law firms in the region, making them more egalitarian places than they once were. Key moments in politics and global economics have dictated important trends for specific markets. Competition has intensified. The entry of powerful international players has shaken up markets across the region. It would be impossible to list every which way Latin America's legal space has evolved, but we have invited leading members of the profession to recount their personal experiences of some of the key themes that have defined the legal practice in Latin America in Latin Lawyer's lifetime.

FAMILY BUSINESSES NO MORE

More so now than ever, firms in Latin America are investing time, money and thought into how to stay at the top in increasingly competitive markets.

Get a group of partners from firms across the region in one room and a common topic of conversation is how best to institutionalise. Many have followed the trail laid by Jorge [Carey](#), who led the modernisation of Chile's legal market through his transformation of [Carey](#) from a small family firm to an Anglo-Saxon style, market-leading institution.



It was obvious to me that we needed to make a dramatic change. If we didn't change from the family-run structure, [Carey](#) would have lost a lot of talented stars. Family-run firms are all very well, but they inevitably reach a point where heavy hitters leave to launch their own firms. I ended up replicating the model used by Jones Day, creating a system that, through a compensation's committee or the senior partner, profits are distributed taking into account not only objective elements such as invoicing and client-getting, but also subjective ones like being a team player, training junior lawyers and generally being good to work with. You have to incentivise high-achievers, but you also have to send a strong signal about what kind of culture you are trying to install.

It required the then owners of [Carey](#) to display a large degree of generosity. Back in those days, I owned 40% of the firm, and the idea of giving that up to become just another partner at the firm was quite hard to digest. Institutionalisation is not easy.

Latin America's legal markets are not what they once were. I remember having to convince my father that it was possible for [Carey](#) to grow beyond 20 lawyers. He didn't think it was. Few people did back then. Nowadays, Chilean firms have grown beyond what anyone could have imagined in the 1980s and he would have never believed we would be the largest firm in Chile today with more than 250 lawyers. They are different animals to what they were 30 or

even 20 years ago. We now know that if you want a potent law firm, you need deep specialisation and to cover all the areas that clients need. You therefore have to keep growing. Growth of firms requires very good corporate governance, otherwise you implode or explode.

MEXICO OPENS FOR BUSINESS

Under the North American Free Trade Agreement (NAFTA), Mexico went from being one of the most closed markets in the world to a country that exports more manufactured goods than the rest of Latin America combined. Its embrace of free trade was accompanied by the building of solid legal frameworks and regulations. As Mexico, the US and Canada rethink their trade relationship, we hear from Luis Rubio, who represented the Mexican government in negotiations preceding the 1992 signing of NAFTA.



Mexico changed completely after NAFTA. It created the potential for a completely new landscape. Mexico was practically a closed economy before NAFTA, so it meant legislation was brought in line with international standards. The business panorama changed, and many industries emerged to take advantage of it, such as the automotive industry.

Whatever happens with NAFTA, its legacy will remain as there is no step back on the legislative and regulatory progress. Legislative amendments passed in order to comply with NAFTA cannot be undone that easily. Many of the institutions created will remain as Mexico will still need to comply with other international agreements it has reached since NAFTA. Before NAFTA, Mexico did not have antitrust legislation, but now it does. Many industries such as telecoms were poorly regulated back then, but now we have the right institutions in place.

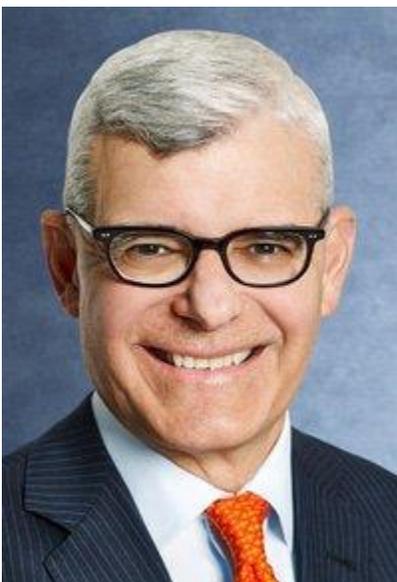
The possibility of a US withdrawal from NAFTA (now or in the future) created a huge wave of uncertainty among businesses and investors. NAFTA has proven to be positive for Mexico and keeping it would help reduce other uncertainties derived from the incoming new administration in Mexico. Without NAFTA, the relationship between the United States and Mexico on issues such as immigration, could become more complicated.

Businesses in Mexico, the United States and Canada have all benefited under NAFTA. But Mexico should always keep in mind the possibility of a scenario without NAFTA and continue to foster diversification of its exports and investors. I'm still concerned about entering an agreement where we concede to a lot of the United States' positions, many of which are not, in my opinion, very rational, and could cause more harm than benefit in the long run.

Latin Lawyer interviewed Rubio before the signing of the United States-Mexico- Canada Agreement (USMCA).

THE LATIN AMERICAN DIASPORA

Latin Lawyer has carried out research into postgraduate studies since 2013. It shows that the Latin American business law community's appetite for international masters of law, or LLMs, has remained intact throughout times of booms and busts. Meanwhile, Latin Americans' participation in foreign associate programmes underpins a steady stream of referrals between international and Latin American firms, and it has become more commonplace to find Latin American lawyers working in international firms. We speak to Colombian-born Sergio Galvis, who joined Sullivan & Cromwell in 1984.



The market for talent – not just in law – is global in nature. US law schools have done an extraordinary job of increasing the global diversity of their student bodies. We routinely hire very promising lawyers coming out of US law schools who originate not just from Latin America, but also from Asia and Europe. This global diversity is critical, because our Latin America group is not just a regional practice. It's a global practice that draws from the legal talent in each of our 13 offices around the world.

The overall representation of Latin American lawyers in international firms is greater than it was 20 years ago. Latin American work has become complex and sophisticated – on a level to North America, Europe and Asia – and the market demands very high-quality services. Latin American firms have responded across the board with what I call 'capacity enhancement', part of which is investing in lawyers' experience abroad, whether through LLMs or foreign associate programmes. An LLM followed by a year working at a foreign law firm is valuable to the lawyer in question, to the foreign firm they work at and to the firm's clients.

Lawyers take back to their home country best practices they have learned about training and managing deals. In the long term it's a very good thing for Latin American law firms because it's making their lawyers better trained and ultimately more capable. We see the flow in both directions: some lawyers who start their careers in their home country move to the United States or Europe to build professional lives there. Both of these phenomena lead to closer cooperation between our firm and the various law firms in the region. This in turn results in superior combined service to our clients.

PRO BONO MAKES AN IMPACT

Latin Lawyer has tracked pro bono work in the region since 2008, which is the same year the Cyrus R Vance Center for International Justice – along with several partners in Latin America – launched the Pro Bono Declaration for the Americas (PBDA). It commits signatories (there are now some 600 law firms signed up) to undertake a minimum of 20 hours of pro bono per lawyer each year. Simpson Thacher & Bartlett's Todd Crider, executive committee member of the Vance Center, reflects on the progress made in the decade since.



Ultimately, pro bono is about impact. It is about involving lawyers at leading firms in the issues of the most needy segments of society, and engaging top talent to solve problems for individuals and contribute to solutions for society. The PBDA has been a component in furthering the growth of a pro bono ecosystem across the region. It has helped take pro bono legal work from a fringe activity by a few to a widely accepted option for lawyers at leading firms across the region. The key elements to that growth have been, first, the institutionalisation of pro bono policies at law firms consistent with the PBDA; second, the creation of clearing houses across the region; and third, the creation of the Red Pro Bono de las Américas, which brings together all the clearing houses into a cooperative platform.

The pro bono movement in Latin America is still in its early adolescence, with tremendous potential for growth in comparison to more mature pro bono environments, like New York City, for example. Very few firms in Latin America perform the level of pro bono that law firms in New York perform each year – even adjusted for size and based on average hours per lawyer. In addition, the efforts in the region related to pro bono have largely focused on the elite law firms. It is important to grow that footprint to engage the broader profession to a greater extent. Another important component is legal education, which we see as a needed area of focus for the next several years: future lawyers should be instructed as to their ethical duties, including as to pro bono legal services.

THE RISE OF THE BRAZILIAN MEGA' FIRM

The São Paulo-centric corporate law firm market is markedly institutionalised, populated by robust firms that count hundreds upon

hundreds of lawyers. Unlike the rest of the region, Brazilian law firms are shielded from intrusions by foreign law firms owing to strict bar association restrictions on the kind of work international firms can do. [Pinheiro Neto Advogados](#)' managing partner Alexandre Bertoldi considers the rise of the Brazilian 'mega' firm and the market for international firms in Brazil.



The Brazilian legal market is a different world these days to how it was. I was telling my son – who is in law school – this the other day. Many Brazilian firms used to be family businesses, and the pace of work used to be more laid back. Today, if you visit a top firm in São Paulo, you'll see no difference in terms of working habits than you would at a firm in London or New York. The privatisations in the mid- 1990s really changed things. They opened Brazil up and put Brazilian firms into contact with firms across the world.

Most international firms came to Brazil because of the capital markets boom in the 2000s. But booms never last long. When capital markets work died down, many of those firms started to have a hard time justifying their presence in Brazil.

The bar restrictions are a good excuse for foreign firms not to think about being in Brazil. But the bar restrictions will not always be there. It's a matter of time before they end. Even if they disappeared tomorrow, Brazil would not be an easy market for international firms. Bar restrictions served to protect the local market, and gave the local firms time to grow muscle. They are better able to compete than local firms have been in other markets when foreign firms entered. International firms know it's a tough market. Brazil is a roller coaster and it is not for everyone. You have to be very resilient and have a long-term project to invest in to be able to reap the fruits of your labour.

FOREIGN FIRMS ARRIVE IN SÃO PAULO

An abundance of transactional work, especially in capital markets, saw international firms arrive in São Paulo in droves between 2008 and 2010. Since the glory years, Brazil's turbulent economy has led some to retreat or reduce their numbers in the city, but a São Paulo office remains a cornerstone in many international firms' Latin America strategy. Anthony Oldfield leads the São Paulo office of Clifford Chance, which was the first international law firm to register with the state's local bar.



Twenty years ago, in 1998, Clifford Chance opened an office in Brazil and became the first international law firm to register with the Brazilian Bar Association. We've not looked back! When I moved to São Paulo and took over as managing partner in 2007 the international legal community in Brazil was entering a period of significant growth, with many firms looking to open and some going one step further and trying to establish relationships with local firms. It wasn't long before the global financial crisis was engulfing the rest of the world, but Brazil, incredibly, escaped the worst of it – indeed in 2008 we acted for Vale when they launched their US\$90 billion bid for Xstrata, mere months before Lehman disappeared.

Following the financial crisis, Brazil's economic growth was impressive and the demand for complex cross-border legal work grew in tandem. Capital markets, cross-border M&A and financing work was abundant for international firms.

From 2014, political scandals and corruption impacted the market, creating uncertainty for international firms. Rather than focusing on capital markets, we focused more on compliance, investigations and litigation. From a strategic perspective, notwithstanding strict regulations that prevent international

firms from engaging in local work, we made the decision to diversify. This minimised the impact of the relatively quiet capital markets, and encouraged an increased focus on other types of work, including finance, big-ticket M&A and compliance. I remain optimistic that demand for international legal services will be robust as we enter the next phase of Brazil's evolution.

THE 2008 FINANCIAL CRISIS

When America sneezes, the world catches a cold. What began in the US mortgage sector and became a full-blown global crash saw access to credit and equity markets dry up, hurting the Latin American companies that had until then thrived on cheap and easy credit. Clients' spending habits changed permanently, and law firms needed to be flexible to survive. We speak to Cleary Gottlieb Steen & Hamilton's Jorge Juantorena about the impact of the crisis on the region.



When the financial crisis hit, some observers thought Latin America might be immune. But over time we saw the ripple effects. So many Latin American countries' economies are interlinked with the United States. If one of your biggest trading partners is going through a crisis, it's inevitable that you're going to see an impact. The contraction percolated through Latin America and resulted in the decline of economies throughout the region.

Mexico's homebuilding sector was the darling of Wall Street for a long time. In general, everyone thought Latin America would keep building homes as far as the eye can see. But the housing sector in the region ended up suffering. There were other impacts: the increase in standards for bank lending meant many US banks cut back on financings in the region. Many people sat on their money as US investment in the region paused.

Latin America is very used to dealing with crises. One thing we saw over time was the growth and evolution of financial and legal institutions in the region. Increasing independence of central banks helped strengthen economies. Latin American countries pursued expansive monetary policies to stimulate their GDPs.

Lawyers had to be versatile. Debt restructuring work was a big focus, and a lot of companies wanted counsel to help them understand the complexity of derivative instruments. The financial crisis made clients more focused on the value proposition: when you're squeezed you become more appreciative of high quality legal services. When everything is rosy it's easy to forget about the benefit of good legal counsel, but in times of crisis, that's when you really need a good lawyer.

NEW GLOBAL ENTRANTS IN COLOMBIA

Of all the countries in Latin America, none more so than Colombia has seen the composition of its legal market shift so seismically as a result of new entrants from abroad. More than half of the firms profiled in the Colombian chapter of Latin Lawyer 250 have formalised links with international firms. Sergio Michelsen, of Colombia's largest firm (and one of the few not to have any formal ties with international firms) [Brigard Urrutia](#), details the impact on the local market.



There used to be very few law firms in Colombia at all. Most lawyers were solo practitioners and there were only a handful of very small firms (the largest had around 20 lawyers). The incursion of international firms is pretty recent. Other than Baker McKenzie, no other important international law firms were present in Colombia up to seven years ago.

We expected the incursion of international firms since the late 1990s. Back then, the big threats were the large accounting firms, which had robust legal practices in various cities throughout the country. But the Enron crisis gave us some 10 or 15 years to prepare ourselves to compete not only with them, but with international law firms too.

The impact of the international firms has been clearly noticed in the battle for talent. New entrants are, without mercy, trying to recruit the best talent, so much so that in recent years we have seen partners leaving firms, something which was unheard of in Colombia a few years ago. We see tough competition for deal flow, something that in many instances is coupled with a reduction in fees (particularly for those firms that have no local experience and want to gain market share). Now that we are seeing a large inflow of international firms, we have to work even harder to ensure we serve our clients on a par with or even better than them. We continue to invest in attracting and retaining the best talent, investing in technology, strengthening our relationships with our allies worldwide and going the extra mile to perform better. Artificial intelligence, branding power, scale and mobility will substantially change the way in which we work. We need to be prepared to face such challenges and we have to be very nimble.

CHINA'S ASCENT

China's increasingly predominant position in Latin America rests on an unassailable combination of bilateral trade, direct investment, economic financing and state lending. Its ascent is showing no signs of slowing. Venezuelan national Miguel Zaldivar, a partner at Hogan Lovells, recently swapped a base in Miami for one in Hong Kong, to serve as his firm's chief executive to the Asia Pacific Middle East region.



I've worked on Asian transactions for many years, but the first deal I ever worked on involving China was the approximately US\$2 billion Coca Codo Sinclair hydroelectric project in Ecuador, which was financed by the Export-Import Bank of China. There's been a massive evolution in China's relationship with Latin America in the past 20 years. China started off as a supplier of goods to the region but it has become the number-one foreign investor there. After the 2008 financial crisis, many traditional European investors in the region, including Spain, ceased to play a major role in Latin America for a few years. Meanwhile, US attention was on Europe and the Middle East. China filled the vacuum. Nowadays, the largest infrastructure developments in many countries have been financed by Chinese state-owned development banks or commercial banks, and built by Chinese infrastructure and construction companies.

I've led billions of dollars' worth of negotiations involving Chinese investors – always on behalf of the Latin American party – and it's my experience that Chinese parties have a very positive engagement with Latin America. There's mutual respect. Each side sees the other as equals. There's a sense that Chinese parties put great emphasis on understanding the region. Investors have been willing to commit to interest rates that are favourable, and in every single matter in which I've been involved the Chinese entities have 100% honoured their side of the deal.

The leading international firms are capitalising on rising Chinese trade and investment in the region. These firms have always emphasised multilingual and multicultural service offering. Hogan Lovells sends Chinese associates on secondments to the Mexico City office, for example. By contrast, I think Latin

American firms could invest more in becoming more user friendly for Chinese entities doing business in the region.

ARGENTINA v THE HOLDOUTS

When Argentina finally struck a deal with holdout creditors in 2016 it concluded an epic 14-year battle that had its roots in the country's economic crisis at the turn of the century, and paved the way for the country and its private sector to finally access international capital markets once again. Marcelo Etchebarne – who was behind the 2005 and 2010 debt swap packages agreed with creditors following Argentina's 2002 sovereign default – shares his experiences.



UBS retained us for its pitch for Argentina's debt restructuring in 2002. UBS banker Derrill Allatt was a phenomenal teacher. Among the many lessons I received from him, he told me that certain investors and parties could be ruthless and I needed to be ready for pretty much anything – including death threats. Trust me, you are never sufficiently prepared when it comes to designing a legal strategy to significantly reduce the economic interest of certain parties. You can get hammered no matter how good your intentions are.

We already had experience doing sovereign debt work from our representation of the province of Buenos Aires on more than 30 international bond offerings in the 1990s and the restructuring that began in 2002. Julio Kelly had served as counsel to the Republic for the structuring of the debt-to-equity swap regime in the late 1990s. We also represented JP Morgan in connection with the province of Mendoza's debt exchange, which was a

landmark transaction and where we implemented exit consents to, among other things, avoid pari passu litigation (which the Republic later suffered).

There are lessons other sovereign borrowers in distress can take from Argentina's experience. Pick the best and most experienced counsel, not your friend. Think long term. Sometimes, a public officer is more concerned with the immediate consequences of his actions during his term in office. In the case of Argentina, in 2008 the Republic paid US\$5.7 billion to exchange claims worth US\$12.8 billion at face value, plus interest and damages. That was a great deal for the Republic. But in 2016, the Macri administration had to face the consequences of mistakes made earlier. We estimate that the Republic paid 600% more than it did in 2008, a disastrous result.

WOMEN IN LAW

At Latin American firms there is gender parity at associate level, and women in the partnership are a far more common sight than they were 20 years ago. But progress is slow. The proportion of women making up partnerships is still smaller than it should be, and even fewer women are involved in law firm management. As one of three managing partners at Trench Rossi e Watanabe, where women make up 51% of the partnership (a figure unrivalled by any other major Brazilian firm) Simone Musa is a notable exception.



When I started my career the term diversity was not even used. I joined Baker McKenzie's Chicago office in 1997. When I moved to Trench Rossi a few years later, I got encouragement from the fact there were a couple of women in senior partnership positions who served as role models to me. Given the

lack of institutional measures to promote diversity at the start of my career, it was so important that I was able to look up and see women succeeding.

There has been a lot of progress since then. All of the major law firms in Latin America now talk about diversity, and some have established policies such as flexitime or working remotely. These are important because women need to be able to be confident that when balancing personal and professional life and needs, they are doing the right thing. Without policies, women may be evaluated on their differences to their male counterparts and there may be a negative effect on their performance evaluations. This is something law firms need to do better at. There's been a huge amount of awareness of diversity issues in the past 10 years and we are currently seeing women in leadership positions. But it's going to take some years of maturity until we see more clearly the practical results of having a greater number of women leading the legal market.

I tell young women starting their legal careers to have confidence. No one makes the right decision all the time, but you have to be confident that you are doing, in good faith, what you believe is best for your firm's client depending on the situation.

SPANISH FIRMS UP THE ANTE

Spanish law firms have followed their clients into Latin America for decades, but the past five years saw them step things up a gear. Three of Iberia's elite firms have all established offices in the region, mainly targeting Chile, Colombia, Mexico and Peru. We hear from Javier Ybáñez, Latin America practice head at [Garrigues](#), which was the first of the three to embark on a network of its own local offices.



Latin America is the area of the world Spanish firms are most interested in. [Garrigues](#)' strategy in Latin America changed radically in 2013. Back in 2004, [Garrigues](#) founded and promoted the Affinitas alliance, which gradually expanded to Argentina, Chile, Colombia, Mexico and Peru. Nearly 10 years later, in 2013, [Garrigues](#) decided to leave the alliance in order to launch its own independent project in the region by opening a network of its own offices with local lawyers. The first office opened under this new strategy was in Bogotá. We followed with offices in Lima, Mexico City and Santiago. These joined the São Paulo office, which we opened in 2011.

The main challenge is recruiting talent. Establishing new offices not only entails attracting top-level professionals but also integrating them into the [Garrigues](#) culture and team. [Garrigues](#) is a highly institutionalised law firm: there is no distinction made among partners, and we have internal policies and management processes and procedures in place. We truly believe that this model has clear advantages, but we are also aware that it may initially cause some friction among professionals who are not used to operating within such an institutional structure. However, our experience tells us that it is precisely these procedures that enable us to overcome any teething problems, since they apply to all the firm's professionals.

We are keeping an eye on other markets, provided the economic, political and regulatory conditions are favourable. One country of interest to us is Argentina, provided certain conditions are met. We are also looking at Central America as a single region, but we will not rule out other opportunities.

THE RISE OF ANTICORRUPTION AND COMPLIANCE

Latin America's fight against corruption has seen current and former heads of state impeached, imprisoned and forced to resign. Some companies have shelled out billions in leniency agreements, others are building watertight compliance programmes to prevent a breach. [TozziniFreire Advogados](#) was one of the first Brazilian firms to invest heavily in compliance and investigations services. Shin Jae Kim, executive committee member and head of the compliance and investigations practice, shares her thoughts.



The first case I worked on that involved corruption issues was in the 1990s. I had a foreign client who was a newcomer in Brazil. The new business was set up by local management, who retained a third party with links to an ongoing corruption scandal. The client ended up having to close the business. We wanted to create a practice that could help clients anticipate these kinds of problems, and implement procedures to determine and negate risk.

Enforcement really began to heat up because of the Car Wash investigation and the Clean Company Act (BCCA). Both were turning points for anti-corruption and compliance in Brazil. The BCCA came into force in January 2014, at the peak of the Car Wash investigation. From then on, many companies across all sectors began looking at their core supply chains and realised they needed to make big changes. Both these events, combined with the influence of Brazilian commitment towards the OECD Anti-Bribery Convention, helped establish the concept of integrity programmes. Companies realised that in addition to detection and prevention of wrongdoings they could reduce potential fines if they could prove they had a robust compliance programme.

We still need clarity on what a robust compliance programme should look like. Leniency agreements are helping to build the picture, as well as guidelines from the relevant Brazilian authorities – such as the Office of the Comptroller General and the antitrust agency. But there are still many challenges to overcome to secure legal certainty and motivate voluntary disclosure by companies.

There's no return from here. In Brazil we'll continue to see a greater level of enforcement from the government. The rise of anti-corruption and compliance efforts is not limited to Brazil. The real drivers behind the spread

of this work across Latin America are the companies themselves, since many Brazilian companies – such as Odebrecht – do business in the region.

- Country :
- [Argentina](#), [Brazil](#), [Chile](#), [Colombia](#), [Mexico](#), [International](#)