

El Torneo de Abogados: Law Firms in Chile

In 1931 Karl Llewellyn helped coin the pejorative phrase “law factory” to describe the emerging corporate law firms of the United States. Other critics agreed, deploring the commercialization and de-professionalization of the big-firm lawyer.¹ Yet the largest law firms in 1933 only had about seventy lawyers.² Since that time, these “factories” have grown increasingly larger and have influenced the structure of the legal profession in other parts of the world. In Latin America, however, law firms have traditionally been of a much smaller size. While still not as large as their giant U.S. counterparts, Latin American countries have also begun to develop a few large law firms within the last decade. Perhaps this is why Chilean legal scholar Carlos Peña noted some sixty years after Llewellyn similar changes in the legal profession in Chile:

The relationship of a client with a lawyer—personal and including sometimes secretive—is being substituted for the relationship between the client and the ‘law firm.’ The lawyer, as an individual and independent subject, can be substituted for a member of an organization of legal services. The profession of lawyers, thus, will come to coexist with the ‘function’ of a lawyer that one buys in an organization.³

This paper examines law firms in Chile as a case study in comparison to law firms in the United States. In Part One, the paper first evaluates possible explanations for the relatively smaller size of Chilean law firms, and then in Part Two it examines recent firm growth and proffers several hypotheses for its causation as well as projections for the future.

¹ MARK GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 16-18 (1991).

² *Id.* at 17, n.62.

³ Carlos Peña G., *Hacia una Caracterización del Ethos Legal: De Nuevo Sobre la Cultura Jurídical*, in *EVOLUCION DE LA CULTURA JURIDICA CHILENA* 41 (Agustín Squella N. ed., 1994) (translation by author).

Table 1: Size of largest law firms in Latin American countries⁴

Country	Size of largest law firm
Argentina	240
Bolivia	25
Brazil	255
Chile	81
Colombia	43
Costa Rica	33
Ecuador	30
El Salvador	20
Guatemala	17
Honduras	20
Mexico	118
Nicaragua	16
Panama	38
Paraguay	32
Peru	84
Uruguay	35
Venezuela	71

Table 2: Number of large law firms in Latin America⁵

Country	Number of firms with 100 or more lawyers	Number of firms with 50-99 lawyers
Argentina	1	10
Brazil	8	12
Chile	0	2
Mexico	1	6
Peru	0	1
Venezuela	0	3

⁴ Information gathered from <http://www.latinlawyer.com> and <http://www.martindale.com>.

⁵ *Id.*

Part One: Explanations for the Smaller Size of Law Firms in Chile

Law firms in Latin America tend to be much smaller than in the United States and some other parts of the world. Table 1 shows the size of the largest law firms in various Latin American countries. Table 2 shows the number of large law firms in Latin America—44 with 50 or more lawyers. By contrast, the United States has 746 law firms with 50 or more lawyers, 47 of which have 500 or more lawyers.⁶ The difference is staggering. Common law nations do tend to have more lawyers in private practice than civil law nations in general,⁷ but even taking this difference into account reveals the fundamental structural difference between law firms in Latin America and the United States.

Chile is a fairly median example for Latin America in terms of the size of its law firms. It does not have firms as large as the much bigger nation of Brazil, but it does have several firms with over 30 lawyers unlike some of the smaller nations in Latin America. Table 3 contains information on the law firms in Chile with 11 or more lawyers.⁸ The table sorts the law firms by size and lists where available the number of partners, the associate to partner ratio, and the year the firm was founded.⁹

⁶ Lexis Publishing, *1000 Largest Law Firms* (2000), at http://www.lawcommerce.com/inhouse/survey_0006.asp (last visited Mar. 19, 2002).

⁷ David S. Clark, *Comparing the Work and Organization of Lawyers Worldwide: The Persistence of Legal Traditions*, in *LAWYERS' PRACTICE AND IDEALS: A COMPARATIVE VIEW* 88-91 (John J. Barceló III & Roger C. Cramton eds., 1999). (For example in the 1990s, the U.S. had 233 attorneys per 100,000 population whereas Ecuador had 93, Germany 92, and Venezuela 65.)

⁸ This data was gathered initially from LatinLawyer, <http://www.latinlawyer.com>, and Martindale-Hubbell, <http://www.martindale.com>; the data was then supplemented and updated, where possible, from the firms' own websites or from email contact with the firms. Because the first two sources are focused on gaining firm exposure internationally, it is possible that there are a few other law firms, the size of which would fit in the lower range of the table, who focus on domestic clients and would not be listed on these websites.

⁹ Most of the firm listings only contained the total number of lawyers and the number of partners—not the number of associates. So for purposes of the associate to partner ratio, any of-counsel or permanent associate positions would be included in the associate category.

Table 3: Large Law Firms in Chile

Firm	Lawyers	Partners	Associate/Partner Ratio	Founded
Carey y Cía	81	14	4.8	1905
Cariola, Diez, Pérez-Cotapos & Cía Ltda	58	13	3.5	1889
Claro y Cía	47	12	2.9	1880
Morales, Noguera, Valdivieso & Besa	37	7	4.3	1990
Philippi, Yrarrázaval, Pulido & Brunner	34	20	0.7	1904
Andersen Legal Chile	30	5	5	1998
Deloitte & Touche	25	3	7.3	1994
Prieto y Cía	24	7	2.4	1977
Estudio Arturo Alessandri	23	8	1.9	1893
Barros & Errázuriz Abogados	22	4	4.5	1988
Grasty Quintana Majlis & Cía	21	7	2	1987
Guerrero, Olivos, Novoa y Errázuriz Abogados	21	10	1.1	1980
Carey, Allende & Arellano Donoso	20			1996
Barros, Court & Correa	19	8	1.4	1957
Cruzat, Ortúzar & Mackenna Ltda. - Baker & McKenzie Santiago	19	7	1.7	1949
Montt y Cía. S.A.	19	10	0.9	1974
Alcaíno, Rodríguez & Sahli	18	5	2.6	1958
Edmundo Eluchans y Cía	18			1914
Larraín y Asociados	18	6	2	1994
Perez de Arce, de la Fuente y Salazar Ltda.	18			
Puga, Ortiz & Cía. Abogados	18	7	1.6	1925
Ernst & Young IBS Servicios Legales	17	8	1.1	1990
Urenda, Rencoret, Orrego y Dörr	16			
Urrutia & Cía	16	6	1.7	
Vial y Palma, Abogados	16	6	1.7	1938
García, Montes, Olivos Eyzaguirre & Cía Ltda.	15			
Ossandon, Uribe & Hubner	15	4	2.8	1981
Estudio Etcheberry	13			1957
Cruz & Leighton	12			1993
Estudio Carvallo Ltda.	12			1885
Estudio Federico Villaseca	12	5	1.4	1916
Estudio Jurídico Otero	12	4	2	1923
Figueroa y Coddou, Abogados	11	11	0	1923
Ortuzar, Feliu & Sagües	11			1957
Peralta & Toro	11			
Vicuña, Robles, Arthur, Varela, Montane, Del Real & Cia	11			1952
Total average			2.5	1951

The information reveals that the larger firms generally have a higher associate to partner ratio and that many of the law firms were founded fairly recently. But what stands out most starkly is the size of the law firms. The largest firm, Carey y Cía, has 81 lawyers which would make it a medium-size firm by U.S. standards, and only 6 firms have 30 or more lawyers. We will now examine several explanations for the relatively smaller size of law firms in Chile: firm organization, the role of in-house counsel, the civil law tradition, and Chilean legal culture.

Firm Organization

An important factor in the size of a law firm is its organization. The principal organizational explanation for the modern emergence of large law firms in the United States has been given by Marc Galanter and Thomas Palay in their book *Tournament of Lawyers*.¹⁰ Galanter and Palay chronicle the history of large firms beginning with the “Cravath system” in the early 20th century of hiring highly qualified but inexperienced law graduates, giving them training, and then later promoting only some of the junior lawyers to partnership in the firm. The authors then posit their central thesis that this “promotion to partnership tournament” is the core of the big law firm and ultimately leads to exponential growth.¹¹

For Galanter and Palay, firm structure is a story of organizing the sharing of human capital—senior lawyers have excess human capital that they share with younger lawyers who lend their labor for needed training. The promotion to partnership tournament is imposed as a monitoring mechanism in order to give associates the

¹⁰ GALANTER & PALAY, *supra* note 1.

¹¹ *Id.* at 10, 77-120.

incentive to work diligently for a sufficient period of time in order to reap the possible prize of partnership. Further, because clients belong to the firm rather than to individual lawyers, associates not only lose partnership prospects through an early exit but are also generally prevented from taking clients' business with them. The resultant structure from the partnership tournament is the modern large law firm. Galanter and Palay then explain why the promotion to partnership tournament leads to exponential growth:

If the promotion percentage is constant and the associate-to-partner ratio is not decreasing, a firm will grow exponentially. As the firm promotes the designated percentage of associates, it must replace them [as well as the tournament losers] and *must also hire enough new associates to keep the associate-to-partner ratio from falling*. [Otherwise per-partner profits would decrease.] The firm needs these additions to the associate pool to support the new partners by using the new partners' shareable human capital. So long as the number of promotions exceeds the number of departures from the partnership, each promotion to partner will lead to net increases in both the number of partners and the number of associates at the firm.¹²

Large increases in firm size then are the “inevitable product of a long-term, historic process begun on the day the firm institutionalized its promotion tournament.”¹³

One of the best explanations for the historic smaller size of law firms in Chile is that the prevailing firm structure departs from the U.S. big firm model in several significant ways. First, a common form of organization among smaller firms is one in which the lawyers only share expenses, not profits. Each lawyer has his own pool of business. As one Chilean attorney describes, “There are 11 lawyers in our office and we are all partners. . . . [T]he contribution to the expenses does not come from the funds of the [firm], but rather from the partners' pockets in a monthly manner, the more junior

¹² *Id.* at 107 (emphasis in the original).

¹³ *Id.* For further comment on Galanter and Palay's thesis, see David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998); Marc Galanter & Thomas Palay, *A Little Jousting About the Big Law Firm Tournament*, 84 VA. L. REV. 1683 (1998).

partners being privileged to pay a lesser amount, which evens out during the passing of the years.”¹⁴ Such an arrangement in which lawyers share expenses but not profits is sometimes referred to as a “comunidad de techo,” suggesting that the lawyers become an association by being under one roof.¹⁵ With this type of organization, there is little advantage in becoming bigger—it would result in only a larger collection of individual lawyers with higher monitoring costs. The orchestrated sharing of human capital with its attendant associate-to-partner leverage is absent, and thus there is no promotion-to-partnership tournament to stimulate exponential growth.

In addition, even among firms that employ an associate/partner structure similar to large firms in the U.S., the likelihood of lawyers leaving the firm to start a competing firm appears higher in Chile. For instance, Chile’s fourth largest firm, Morales, Noguera, Valdivieso & Besa, was founded in 1990 by young lawyers who had previously worked at other firms.¹⁶ Likewise, Prieto y Cía, the eighth largest firm in the country was founded in 1977 by lawyers leaving Claro y Cía, and similar stories are repeated in many other firms. The best explanation for this difference may be that clients do not belong to the firm so much as to individual lawyers—a departure from one of Galanter and Palay’s noted characteristics of big law firms in the United States. As one Chilean lawyer notes, “In the large law firms, the clients belong to the firm, even though, in truth, it is normally only one partner and his team of associates that deal with the client. In some cases, it is possible to affirm that if the partner leaves the firm, the clients that he serves probably

¹⁴ Email from Ignacio Figueroa, Partner, Figueroa y Coddou Abogados, to author (Mar. 13, 2002).

¹⁵ Interview with Marcelo Montero, former associate at Carey y Cía and professor and director, Civil Law Department, Diego Portales University, in Stanford, Cal. (Mar. 4, 2002). This form of organization, or “de facto” law firm, is also common in Brazil and is much more prevalent than the “de jure” law firm. Joaquim Falcão, *Lawyers in Brazil*, in *LAWYERS IN SOCIETY: THE CIVIL LAW WORLD* 428 (R. Abel & P. Lewis eds., 1988).

¹⁶ Interview with Carola Vasquez, Associate, Morales, Noguera, Valdivieso & Besa, in Stanford, Cal. (Mar. 6, 2002). The firm merged into its present form in 1996.

will follow him to his new firm.”¹⁷ In smaller firms, the client’s tie to individual lawyers would be expected to be even stronger. While lawyers leave firms in the U.S. and sometimes take clients with them, it is less likely to happen because of the size of the corporations and law firms involved and the breadth of practice areas in which a client is likely to have contact with the firm. Defecting lawyers in the U.S. tend to go to other large law firms instead of starting their own, except in the case of certain boutique firms such as litigation. As will be discussed, however, in Chile the larger law firms are not heavily engaged in the field of litigation. Clients’ ties to the firm rather than only individual lawyers appears to be strengthening in Chile as the law firms become larger and service more multinational clients. And recently the tendency has been to merge with other firms because of the public perception in Chile that a larger size enhances the firm’s prestige.¹⁸ Organizational structure helps explain some of these changes in the portion of the paper dealing with recent firm growth.

Role of In-House Counsel

One of the principal explanations that has previously been given for the relatively smaller size of law firms in Latin America has been the importance of corporate in-house counsel.¹⁹ In Venezuela for example, the Venezuelan petroleum company PDVSA has more lawyers than any law firm in the country. Because of the size and importance of such a legal department, the in-house lawyers perform most of the company’s legal work

¹⁷ Interview with Marcelo Montero, *supra* note 15.

¹⁸ Indeed the firms recommended by the embassies of Canada, Great Britain, and the United States as well as international sites such as LatinLawyer and The International Projects 500 always include the largest firms; however, they also include some prestigious smaller firms such as Silva & Cía, a respected intellectual property firm of 7 lawyers.

¹⁹ Rogelio Pérez-Perdomo, *Las Profesiones Jurídicas en América Latina en Tiempo de Globalización* 17 (Aug. 23, 2001) (unpublished manuscript, on file with author).

and tend to only consult individual lawyers and law firms that are very specialized, thus decreasing the need for large law firms.²⁰ But compared to other Latin American countries and the United States, in-house counsel does not play as prominent a role in Chile. “In-house lawyers only exist in large companies. Normally, the companies don’t have more than one or two lawyers. . . . There are not many in-house lawyers in Chile, except in the banks, the only place where there exists departments of in-house lawyers. But in this case, they perform legal work for the bank, in the drafting of mortgages or revision of property titles and things of that nature,” explained one lawyer.²¹ By comparison, in 2000, there were 173 companies in the U.S. that employed 50 or more full-time attorneys in their legal departments.²² In a specific comparison, LanChile, the number one airline in Latin America based on cargo²³, employs only 4 in-house attorneys.²⁴ Delta Airlines, on the other hand, has a legal department consisting of 42 attorneys.²⁵ Or to compare it another way, LanChile had \$1.43 billion in revenue in 2001, employing 2.8 lawyers per billion dollars of revenue.²⁶ Whereas, in the U.S., the transportation industry employs on average 5.7 lawyers per billion dollars of revenue.²⁷ Thus, the role of in-house counsel appears to play less of a role in Chile’s legal market and does not seem to be a major factor in reducing the size of law firms.

²⁰ *Id.*

²¹ Interview with Marcelo Montero, *supra* note 15.

²² Kirkpatrick & Lockhart Survey (2000), at http://www.lawcommerce.com/inhouse/survey_0008.asp (last visited Mar. 19, 2002). Thirty-one of the companies employed over 200 attorneys.

²³ www.lanchile.com

²⁴ Information obtained through personal correspondence with the airline.

²⁵ www.martindale.com

²⁶ www.lanchile.com

²⁷ REES W. MORRISON, LAW DEPARTMENT BENCHMARKS 63 (1998).

The Civil Law Tradition

The civil law tradition is another factor that contributes to the smaller size of law firms in Chile. As has been noted, civil law countries tend to have less lawyers than common law countries.²⁸ In the year 2000, Chile had roughly 75 lawyers per 100,000 inhabitants for approximately 11,400 lawyers in total.²⁹ This figure is low even in comparison to some other Latin American countries—for example Venezuela had 290 lawyers per 100,000 inhabitants with 70,000 total lawyers and Costa Rica had 309 lawyers per 100,000 inhabitants for a total of 10,800 lawyers.³⁰ These figures depend upon the manner used to define lawyers, but they do help give an estimate of the size of the legal population. In addition to having less lawyers overall, civil law nations also have a lesser percentage of their lawyers engaged in private practice.³¹ So from the start, there is a smaller pool of available lawyers in civil law nations from which to form law firms.

Further, divisions within the legal profession are much more rigid in civil law nations. In the United States, a lawyer may clerk for a judge, then work for a law firm, then go in-house to a business legal department or work for the government among many other things. The situation tends to be much less fluid in civil law countries. Once a young lawyer has chosen a career as a judge, a government lawyer in a particular agency,

²⁸ Clark, *supra* note 7; see also JOHN HENRY MERRYMAN, DAVID S. CLARK & JOHN O. HALEY, *THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA, AND EAST ASIA* 899 (1994).

²⁹ Iñigo De la Maza, *Lawyers: From the State to the Market*, Graduate Thesis, Stanford Program for International Legal Studies, 117 (2001).

³⁰ Pérez-Perdomo, *supra* note 19.

³¹ For example, in 1970, 73% of lawyers in the U.S. were in private practice compared to only 33% of lawyers in Chile. (MERRYMAN, CLARK & HALEY, *supra* note 28, at 898). With the privatization of many state-run enterprises and other economic changes since that time, one would imagine that the percentage of lawyers in private practice in Chile has increased since that time but that the percentage would still be lower than in the United States.

etc., she will likely remain in that specific career throughout her professional life.³² One exception to this generalization in Chile is that most law school professors also practice law.³³ Further, only the top students at the best law schools get jobs in the large law firms in Chile, and usually they come from the upper class. One associate recounted that out of her classmates at the Universidad Católica, only those from the upper class got law firm jobs; her friends from less privileged backgrounds ended up in governmental positions.³⁴ This characteristic further adds to the divisions between different legal careers. The compartmentalization of legal careers may also help explain why lawyers in Chile are more apt to start their own law firms. If one does not make partner or is unhappy at the firm, it is not as easy or desirable to change fields within the law.

Chilean Legal Culture

A further impact of the civil law tradition on Chilean culture is the notion among many people in Chile that one does not have to be a lawyer to know or practice law. For instance, in Santiago one can find street vendors hawking inexpensive versions of the Chilean codes. Never mind delving through centuries of case law and arcane law review articles—one can simply curl up for the night with a paperback to become an expert on Chilean labor law, or so some laymen may falsely believe. Under Pinochet, the government abolished mandatory membership in the Chilean Bar Association for practicing attorneys, so even people who do not finish law school can give legal advice.

³² JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 101-102 (2nd ed.) (1985).

³³ As in most Latin American countries, remuneration from teaching law is not typically sufficient in and of itself, and academic positions held by lawyers also help bring prestige to their respective law firms or practice. Carlos Peña has noted the need for a full-time legal academic community in Chile, *supra* note 3.

³⁴ Interview with Carola Vasquez, *supra* note 16; Elaborating further, she explained, “Education and money do not equal aristocracy. Aristocracy is defined by your last name.”

The legal profession only has a monopoly on a few areas such as courts, public deeds, and wills.³⁵ Indeed the function of non-lawyers in the provision of legal services has become somewhat institutionalized in the law firms, in some ways similar to paralegals in the United States. Explained one Chilean attorney:

In Chile law offices are rather small with specialization in subject matter, normally an office functions with no more than eight lawyers and the partners are a maximum of three lawyers. When I speak of eight lawyers, you should consider as well at least two *procuradores* and two or three secretaries. The *procuradores* are persons who study law but that as yet do not have their title or perhaps never will have it.³⁶

So the low number of lawyers per inhabitants in Chile may be somewhat understated and misleading. The ability to provide legal counsel by non-lawyers and a false impression that all one needs to do is read a book to know the law has led to a general public perception that lawyers are rather unnecessary. Indeed another lawyer commented, “When people find out that you are a lawyer, they say, ‘That’s great. Do you do something else?’”³⁷

Other aspects of Chilean legal culture also have an impact on the size of its law firms. One interesting facet of Chilean legal culture that departs from the current practice in the United States is that large law firms do not engage in very much litigation but rather focus on business planning. The best litigators are usually sole practitioners or have a small firm composed of the litigator and a few younger lawyers as associates.³⁸

³⁵ Interview with Marcelo Montero, *supra* note 15.

³⁶ Email from Carlos Ossandon, Edmundo Eluchans y Cía, to author (Mar. 14, 2002).

³⁷ Interview with Marcelo Montero, *supra* note 15. De la Maza recounts, “According to a survey undertaken in 1997 by FLASCO that asked for an assessment of lawyers’ performance in solving people’s problems, 8.1% of those surveyed said that lawyers do a lot (*hacen mucho*); 36.3% they do something (*hacen algo*); 32.2 percent, they do little (*hacen poco*); and 22.9%, they do nothing (*hacen nada*).” *Supra* note 29, at 118.

³⁸ In the U.S., plaintiffs’ firms do tend to be smaller than large corporate firms and often share these characteristics. Galanter and Palay attribute the small size of plaintiff firms to the difficulty in sharing the

These litigators also specialize in certain aspect of the law, such as criminal or constitutional law, becoming masters in that area. Successful litigators also have good relationships with the Supreme Court and other judicial officers. Part of the reason that big firms do not engage in litigation is that to be a successful litigator one must have a completely different set of contacts than in the business world.³⁹ Noting the division between the transactional attorneys working in firms and the court lawyers working as sole practitioners, one Chilean attorney observed, “The system feeds itself because good litigators produce good litigators. Most of my friends that want to be litigators are working for really good litigators.”⁴⁰ Therefore, another separation in career paths further reduces the pool of lawyers that comprise law firms.

Another reason that large law firms in Chile do not engage in very much litigation is that they want to avoid any possible scandals. The reputation of the firm is paramount, and lawyers will say that to win a case in Chile, the attorney must at times be involved in corrupt practices.⁴¹ For example in criminal court, only the judge is supposed to know what evidence has been gathered against a defendant. Nevertheless, if the prosecution has paid the court clerk to see the evidence, a defendant’s lawyer may also feel compelled to pay the clerk to discover what evidence has been amassed in order to better defend his client. Since the end of mandatory membership, the Bar Association has little influence,

plaintiff lawyer’s human capital which may be tied up in the courtroom presence and skills of the individual attorney.

³⁹ Interview with Carola Vasquez, *supra* note 16; For an explanation of the need for a lawyer to use personal social networks for professional success in Mexico, see Larissa Adler Lomnitz & Rodrigo Salazar, Cultural Elements in the Practice of Law in Mexico: Informal Networks in a Formal System, Paper Presented in the Conference *New Challenges for the Rule of Law: Lawyers’ Internationalization, and the Social Construction of Rules*, Am. B. Found. and U. Cal., Santa Barbara (1997) (manuscript on file with author).

⁴⁰ Interview with Carola Vasquez, *supra* note 16.

⁴¹ Interview with Marcelo Montero, *supra* note 15.

and there is not as much consequence for corruption.⁴² This characteristic of litigation is also influenced by the *tráfico de influencias*—a system of reciprocity or interchange of favors. It involves “a continuing exchange of complimentary services (‘favores’) motivated within an ideology of kinship and friendship.”⁴³ For instance a judge may help or give preference to a litigator in a legal matter and in turn the litigator may help procure a job for the son of the judge. This may also occur in many other situations within the bureaucracy and does not involve direct compensation but rather voluntary, informal favors. This relates back to why litigators must have a special set of contacts in order to be successful professionally. Thus, to avoid even the possibility of impropriety and as a matter of efficiency, law firms will usually refer their litigation matters to specialized firms, even though litigation is one of the most profitable fields.⁴⁴ On the other hand, arbitration is well-respected and firms will engage in this form of dispute resolution.⁴⁵ If law firms in the United States had to spin off their litigation practices into separate firms, the average size of the large law firm would decrease significantly. This aspect of Chilean legal culture helps explain why law firms tend to be smaller than in the United States and some other parts of the world. It appears that there is no single reason for the size of law firms in Chile, but the combination of firm organization, the civil law tradition, and Chilean legal culture has resulted in a relatively moderate size.

⁴² *Id.*; see also Francisco Cumplido, *La Función del Abogado*, in LA CULTURA JURIDICA CHILENA 102-103 (Agustín Squella ed., 1988).

⁴³ Larissa Adler Lomnitz, *Informal Exchange Networks in Formal Systems: A Theoretical Model*, 90 AM. ANTHROPOLOGIST 43 (1988). Lomnitz found that the system is considered “egalitarian in that it presupposes that all members of the urban middle class may have access to social connections within the civil service hierarchy—‘anybody has friends and relatives.’”

⁴⁴ Interview with Marcelo Montero, *supra* note 15; The practice of business law firms referring litigation to a prominent court lawyer is also very similar in Venezuela, see Rogelio Pérez-Perdomo, *The Venezuelan Legal Profession: Lawyers in an Inegalitarian Society*, in LAWYERS IN SOCIETY: THE CIVIL LAW WORLD 389 (R. Abel & P. Lewis eds., 1988). This practice was also previously common in the United States. For example, before 1935, Sullivan & Cromwell considered itself a firm of “solicitors” and would often hire a well-known “barrister” to appear in court for the firm. GALANTER & PALAY, *supra* note 1, at 17 n.60.

⁴⁵ Interview with Marcelo Montero, *supra* note 15.

Part Two: Hypotheses for recent law firm growth and future projections

Though firms have historically been of a much smaller size in Latin America, in the past decade, Latin American law firms have grown significantly. This trend is particularly noticeable in Chile. Table 4 chronicles the growth of seven of Chile's largest firms over the past three decades.⁴⁶ The data was compiled by searching each firm's listing in the Martindale-Hubbell Law Directory every five years between 1970-2000 and adding the pertinent data for 2002 from Table 3.⁴⁷ The first set of numbers contains the number of lawyers in each firm for the given year; the second set shows the average annual growth of the firm during the period ending in that year; and the third set of numbers shows the associate to partner ratios of the firms for the given year. The table also reports the overall number of Chilean law firms listed in the Martindale-Hubbell Law Directory, increasing from 6 in 1970 to 75 in 2002.

One of the most interesting observations drawn from Table 4 is the change in firm growth that occurred around 1995. In 1990, the largest firm had 22 lawyers (not a significant increase from the high of 18 in 1975) but by 2000, the *smallest* of the seven firms had 19 lawyers and the largest had 63. The average annual growth rate of these

⁴⁶ The seven firms are currently the largest law firms in Chile excluding Andersen Legal Chile and Deloitte & Touche. The latter two firms were not included in the table because of their recent formation and distinct association with global accounting firms (or at least in the case of Andersen, its prior association).

⁴⁷ The first Chilean lawyers did not appear in the Martindale-Hubbell Law Directory until 1958 under a listing for Jorge Barceló P. & Jose Luis Hurtado E. (By contrast, Venezuela had two listings as early as 1949). The first Chilean firms listed who have survived in some present form were Alessandri, Guijón & Hurtado (5 lawyers) and Estudio Jurídico Otero (2 lawyers) in 1965. In some cases, names of the firms had slight differences during the period studied, but for simplicity, the present name of each firm is listed in the table. (For example, Alessandri, Guijón & Reyes in 1970 before all subsequent listings as Estudio Arturo Alessandri; Estudio Carey in 1970 and Guillermo Carey T. in 1975 before subsequent listings as Carey y Cía; Díez, Pérez-Cotapos, Silva & Lira in 1970-1980, Cariola y Cía in 1990-1995 before merging into Cariola, Díez, Pérez-Cotapos & Cía in April 1999; and Philippi, Yrarrázaval, Pulido, Langlois & Brunner in 1980 and 1985 before dropping Langlois). Prieto y Cía was not formed until 1977 and so its tabular information begins in 1980. Morales, Noguera, Valdivieso & Besa, though founded in 1990, did not come into its present form until 1996, and its first listing was not until 1998.

Table 4: Growth of Largest Chilean Law Firms

Firm Size	1970	1975	1980	1985	1990	1995	2000	2002
Estudio Arturo Alessandri	4	7	8	10	13	17	23	23
Carey y Cía	7	1	7	10	15	27	63	81
Cariola, Diez, Pérez-Cotapos & Cía Ltda	11	11	11	n/a	12	18	45	58
Claro y Cía	14	18	12	11	19	18	38	47
Morales, Noguera, Valdivieso & Besa							32	37
Philippi, Yrarrázaval, Pulido & Brunner	n/a	n/a	18	18	22	25	35	34
Prieto y Cía			5	7	8	12	19	24
Average firm size	9	9.3	10.2	11.2	14.8	19.5	36.4	43.4
Average Annual Growth (%) During Period	1970	1975	1980	1985	1990	1995	2000	2002
Estudio Arturo Alessandri		8.6	2.5	4	4.6	4.7	5.2	0
Carey y Cía		-120	17.1	6	6.7	8.9	11.4	11.1
Cariola, Diez, Pérez-Cotapos & Cía Ltda		0	0		1.7	6.7	12	11.2
Claro y Cía		4.4	-10	-1.8	8.4	-1.1	10.5	9.6
Morales, Noguera, Valdivieso & Besa							9.4	6.8
Philippi, Yrarrázaval, Pulido & Brunner				0	3.6	2.4	5.7	-1.5
Prieto y Cía				5.7	2.5	6.7	7.4	10.4
Average annual growth (%)			2.4	2.78	4.58	4.72	8.8	6.8
Associate to Partner Ratio	1970	1975	1980	1985	1990	1995	2000	2002
Estudio Arturo Alessandri					0.5	1.1	1.6	1.9
Carey y Cía							5.3	4.8
Cariola, Diez, Pérez-Cotapos & Cía Ltda					0.2	1.6	n/a	3.5
Claro y Cía					1.1	0.8	2.8	2.9
Morales, Noguera, Valdivieso & Besa								4.3
Philippi, Yrarrázaval, Pulido & Brunner					7.3			0.7
Prieto y Cía								2.4
Average associate/partner ratio					2.28	1.17	3.22	2.93
Martindale-Hubbell Listings	1970	1975	1980	1985	1990	1995	2000	2002
Total number of Chilean law firm listings	6	5	10	12	20	42	59	75

firms steadily increased during the period, but with a dramatic increase between 1995 and 2000 before a small decrease in 2002. The average annual growth rate from 1980 to 1995 was 4%, but the average annual growth since 1995 has been 7.7%. Studies of U.S. law firm growth have noticed a similar watershed around the year 1970. For example between 1955-1965, Galanter and Palay found that the firms in their studies grew an average of 5.4%; whereas, between 1975-1985, the firms grew an average of 8%.⁴⁸ Such observation led some commentators to describe firm growth in the United States with a “shock theory,” comparing firm growth to a kinked linear function with the kink attributable to external shock. Galanter and Palay argue instead that the story is more complicated since rates of growth are increasing, and consistent with their thesis, they propose a kinked exponential function as a more accurate model for U.S. firm growth.⁴⁹ It appears that a similar explanation may suit Chile for its increasing firm growth and rapid change in growth around 1995. Chart 1 graphs the growth of the seven studied law firms and the composite average between 1970 and 2000. The composite average as well as the individual firm graphs show the general change in firm growth around 1995. What caused the kink in the Chilean law firm growth curve? The next sections of the paper examine possible external factors that have influenced firm growth and may help explain the increase in the size Chilean law firms.

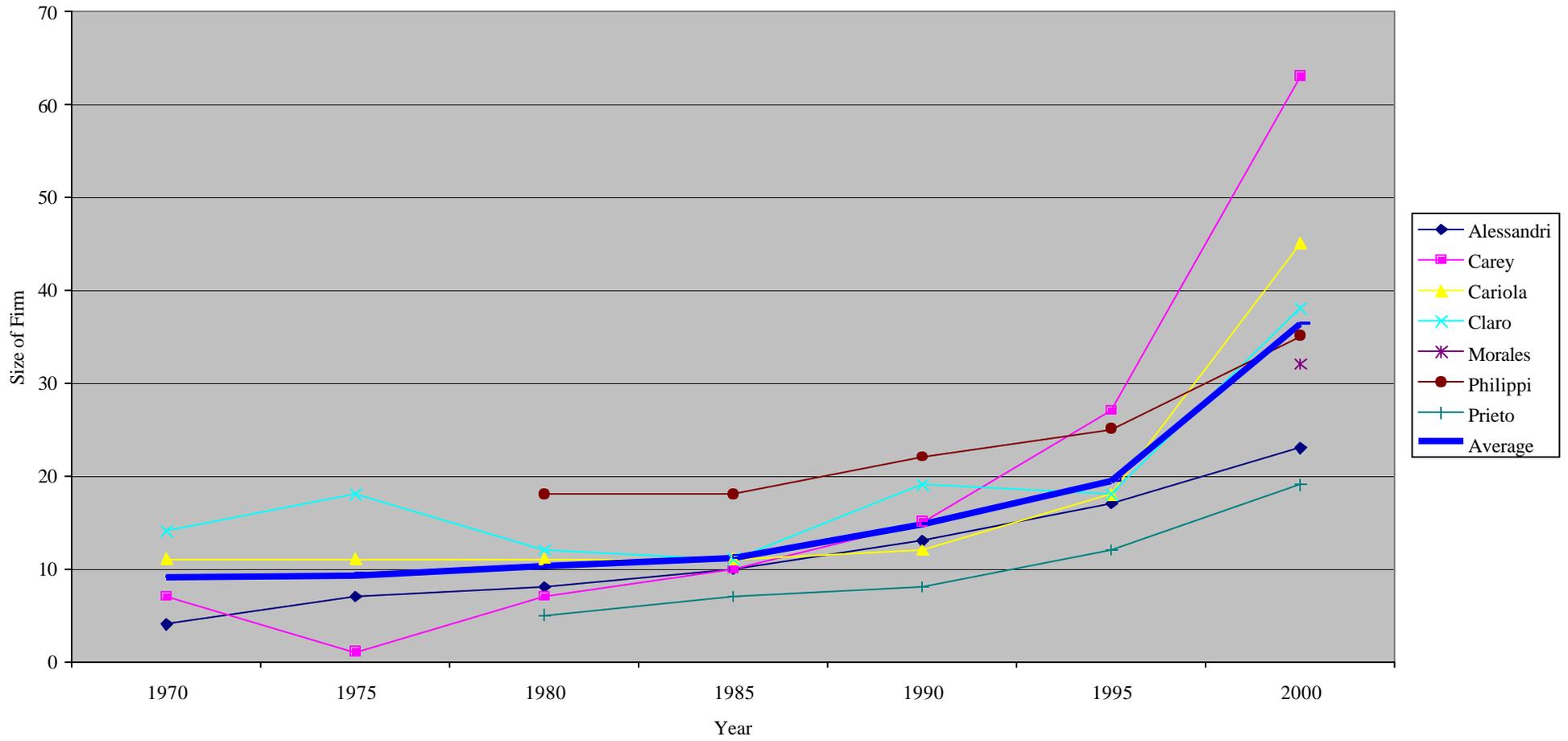
Supply of lawyers

One of the factors influencing the size of law firms is the available pool of young lawyers. The number of universities and law schools has rapidly grown in Chile during

⁴⁸ GALANTER & PALAY, *supra* note 1, at 46.

⁴⁹ *Id.* at 78-87.

Chart 1: Law Firm Growth in Chile



the last twenty years. In 1981, Chile allowed the establishment of private universities. The founding of these universities, such as Diego Portales and Andres Bello, has given increased opportunities to students and increased competition to the traditional universities such as the Universidad Católica and the Universidad de Chile.⁵⁰ Thus, the number of law graduates has increased from 302 in 1980, to 861 in 1996, and to 1,040 in 1997.⁵¹ The number of graduates has likely continued to increase even more because since 1992, 17 new universities have been established in Chile (providing a little less than half of the current total of legal studies). Because it takes five years to receive a law degree from a university in Chile, most of these law schools did not begin issuing degrees until 1998.⁵² After graduation from a law school, a student must serve in a legal assistance program for the poor for six months and take an oath in the Supreme Court to become a titled lawyer. Because these are the only requirements after graduation since the end of mandatory bar membership, the vast majority of students who get a law degree become titled lawyers.⁵³ Thus, the number of titled law graduates has greatly increased in the past twenty years, with significant increases since 1995. This has given law firms a much broader field of graduates from which to choose and must have exerted pressure on the existing legal structure to make room for the increased volume of lawyers, helping cause growth in large firms at the same time as growth in the number of firms in general.

⁵⁰ Indeed, in a recent ranking of law schools published in the magazine *Que Pasa* and based on surveys within the Chilean legal community, Diego Portales Law School was ranked the third most prestigious, ahead of all the traditional schools except the Universidad Católica and the Universidad de Chile.

⁵¹ De la Maza, *supra* note 29, at 117.

⁵² *Id.*

⁵³ *Id.* at 117 n.189.

Influence of Foreign Investment

Of course one of the important factors for the health of corporate law firms is the state of the economy. Chile's economic growth has certainly provided an environment in which businesses and law firms could grow. However, economic growth alone does not fully explain the jump in law firm growth during the 1990s, because Chile's economy also grew rapidly during the late 1980s without significant changes in firm size. Further between 1995-2000, Chile's economy grew but at a slowing pace—GDP growth gradually fell from 8.4% in 1995 and 7.0% in 1996 to a slight recession in 1999 with a negative 1.1% change in GDP.⁵⁴ Meanwhile, growth of the largest law firms was significantly increasing during this same period. When shown the data gathered in this study and asked what changes occurred in the mid 1990s that might explain law firm growth, Marcelo Montero, a former associate at Chile's largest law firm, Carey y Cía, conjectured that it could be due in part to the large amount of foreign investment that entered Chile during that time period.⁵⁵ Through other research, it appears that this hypothesis provides part of the answer for major law firm growth in the last decade.

The changes in amount and type of foreign investment during the decade of the nineties seem to have provided part of the “shock” to law firm growth curves. After the 1994 Mexico peso devaluation, foreign investment in Latin America underwent a significant shift from predominantly investment in equity and debt securities (portfolio investment) to increased direct, long-term investment.⁵⁶ One commentator noted:

⁵⁴ James Livingstone & Ellena Ochoa, *A Brighter Future: Economic and Trade Outlook for Latin America*, LATINFINANCE, Sept. 1, 1996, at T12, available at 1996 WL 9952072; Jonathan Kandell, *Restoring the Luster*, LATINFINANCE, July 1, 2000, at 19, available at 2000 WL 19732404.

⁵⁵ Interview with Marcelo Montero, *supra* note 15.

⁵⁶ Paul B. Ford, Jr., David L. Williams, & S. Todd Crider, *Overview (Mergers and Acquisitions in Latin America)*, LATINFINANCE, Jan. 11, 1996, at M9, available at 1996 WL 9951874.

The increase in foreign direct investment (FDI) in Latin America and the Caribbean since 1994 is striking. A decade ago, accumulated FDI in the region stood at \$114 billion. By 1998, it had increased to \$415.6 billion. . . . Chile [attracted the fourth highest level of investment after Brazil, Mexico, and Argentina] with \$30.4 billion.

Net new FDI flows, which exclude reinvestment of profits by international companies, show an even more dramatic increase during this same period. Between 1994 and 1999, net new FDI averaged \$50 billion annually. In contrast, in 1990 it only totaled \$6.7 billion. In 1998, net FDI flows were just short of \$60 billion. In 1999, they reached \$65 billion. . . . [F]igures for 2000 indicate a slight decrease in total regional FDI to \$62 billion.⁵⁷

This foreign direct investment in Latin America was due in part to privatizations of state-owned enterprises and mergers and acquisitions—the M&A activity was a fairly new phenomenon occurring largely in just three countries: Argentina, Brazil and Chile.⁵⁸ The foreign companies involved in the project finance, M&A, and other direct investment needed local counsel to represent them in the transactions, leading to an upsurge in demand for corporate legal services from international clients.

Chilean firms responded to the increased demand from international clients by tailoring their services to meet these needs. For example, Claro y Cía states, “Our international practice concentrates mainly in representing multinational clients doing business in Chile. The planning and structuring of foreign investments in Chile is an integral part of our practice, which goes hand-in-hand with matters of corporate restructuring, mergers and acquisitions, joint ventures and finance, including project finance.”⁵⁹ All of the large firms have websites available in English and boast an impressive list of multi-national clients. But Chilean law firms could have responded to the increased demand with a greater quantity of small firms rather than beginning to

⁵⁷ Susan Kaufman Purcell, *A Capital Dilemma*, LATINFINANCE, Feb. 1, 2001, at S20, available at 2001 WL 17186560.

⁵⁸ *Id.*

⁵⁹ *Claro y Cía. Abogados*, LATINFINANCE, Nov. 1, 2000, at 63, available at 2000 WL 19732351.

develop large firms. What led to the large firm response? It appears that the large firm model was followed in order to attract international clients and because of Chilean lawyers' international experience.

Many of the top Chilean law firms have patterned themselves after U.S. law firms at least in part to attract international clients. One lawyer reported that an influential partner at a firm with many international clients said in reference to some of those clients, "They think we are Indians. So we have to make them feel like they are at home, like there is no difference between their lawyers in the United States and here." The injunction to be like an American lawyer carries over in many cases to physical appearance with firm requirements to wear dark suits and at least at one firm to have no mustache or beard. It was also during the mid 1990s that the Big Five accounting firms established law firms in Chile. This worried other Chilean law firms, because they feared that international clients would first hire an accounting firm and then ask for a recommendation for legal counsel to which the accounting firm could recommend their own affiliated firm.

Perhaps such efforts to appear like an American law firm and thus attract U.S. clients led some firms to adopt a U.S. firm-like structure. Such a larger structure also provides for a one-stop shop of specialization as well as the image of being able to meet short deadlines. For example, Carey y Cía's website commits to deliver quality legal services to its clients, stating "We can deliver on such commitment given the number of lawyers available to respond to demanding time schedules and the firm's extensive technological resources and trained support staff."⁶⁰ The larger firms have also created specialized departments within the firm much like American law firms. Further, the

⁶⁰ <http://www.carey.cl/ingles/main01.htm>.

influence of the United States can be seen not only in Chilean firms' client lists but also among their partners' and associates' résumés. For example, of the 37 lawyers at Morales, Noguera, Valdivieso & Besa, 11 have worked for U.S. based law or accounting firms, 16 have advanced degrees from American law schools, and all the lawyers have listed a facility with the English language.⁶¹ Most other large law firms are similar. For example, Philippi, Yrarrázaval, Pulido & Brunner states, "The majority of the Firm's lawyers have carried out post graduate studies in prestigious Law Schools abroad, mainly in the United States and Europe."⁶² It seems this experience in addition to the influence of U.S. clients led some firms in Chile to adopt a U.S. firm style and partnership tournament with its attendant pressure for growth. For example, it was during the mid 1990s that Carey y Cía truly implemented the tournament model. Now at age 35, each associate gets a yes or no on becoming a partner. Some associates who do not make partner may be offered permanent associate status, but others must leave the firm. Estimates are that for every three lawyers that begin at the firm only one will make partner.⁶³ These odds are still favorable when compared to some U.S. firms, but Carey y Cía is at least one firm in Chile that has committed itself to the tournament model. Carey's growth beyond the other firms further attests to the influence of firm structure. At Morales, since it was fairly recently founded, the issue is going to be what to do in another four years when many bright associates come up for partner. It is likely that

⁶¹ <http://www.mnvn.cl/ingles/home/index.htm>. The U.S. law firms include Cleary, Gottlieb, Steen & Hamilton; Cravath, Swaine, & Moore; Simpson, Thatcher & Bartlett; and White & Case, only to name a few, and the postgraduate degrees come from prestigious American law schools such as Chicago, Columbia, Duke, Harvard, and Stanford. The number of lawyers with this experience is highest among the partners and senior associates, and it seems likely that many of the younger lawyers may also eventually seek similar training.

⁶² <http://www.philippi.cl/ingles/presentacion/home.htm>.

⁶³ Interview with Marcelo Montero, *supra* note 15.

Morales and other firms will follow the American pattern of creating equity and non-equity partners and permanent associate positions.⁶⁴

The influence of direct foreign investment may also help explain the slight decrease in firm growth since 2000. FDI in Latin America fell in 2000, particularly in Chile—Chile’s capital outflows exceeded incoming capital for a net negative \$1.3 billion as opposed to \$4.7 billion in FDI in 1999.⁶⁵ This decline was attributable at least in part to Chile’s strict controls on foreign investment which among other restrictions required investments to remain in the country for at least one year and required foreign investors to keep up to 35% of their investment in a non-interest-bearing cash account with the central bank.⁶⁶ These two restrictions have been repealed, and FDI appears to be back up in Chile in 2001, with the second highest amount of FDI as a percentage of GDP in Latin America—4.9%.⁶⁷ The size of the ripple effects from Argentina’s peso devaluation and economic woes still remains to be seen. Overall, it appears that the level of foreign direct investment provides a telling corollary to the growth of large law firms in Chile. The increase in foreign investment and the number of law graduates provide two of the best explanations for the spike in Chilean law firm growth since 1995.

⁶⁴ Interview with Carola Vasquez, *supra* note 16.

⁶⁵ *The LatinFinance Investment Management Review*, LATINFINANCE, Apr. 1, 2001, at 37, available at 2001 WL 17186616.

⁶⁶ Kandell, *supra* note 54; The restrictions were intended to prevent capricious short-term capital flows and to provide stability. For more on foreign investment in Chile, see ROBERTO MAYORGA & LUIS MONTT, FOREIGN INVESTMENT IN CHILE (1995); and PRICEWATERHOUSECOOPERS, DOING BUSINESS AND INVESTING IN CHILE (1999).

⁶⁷ *MarketWatch (Standard & Poor’s Data on Latin American Budget Deficits)*, LATINFINANCE, Feb. 1, 2002, at 54, available at 2002 WL 15266372.

Projections for the Future

Because some law firms in Chile have implemented the big-firm tournament model of the United States, continued firm growth is inevitable unless the underlying firm structure is modified. The amount of that growth will be influenced by the structure and growth of the Chilean economy. For example one present constraint on firm growth is that Chile has a small number of economic groups that wield enormous economic influence. Groups such as the Grupos Said, Angelini, and Luksic have investments in almost every sector of the Chilean economy—fisheries, mining, banks, etc. In order to be successful, each big firm must have an association with one of these groups. It is very uncommon, however, for firms to have associations with two or three groups because of conflicts of interest.⁶⁸ So the presence of a limited number of influential economic players acts as a constraint on firm growth. However, as the economy grows, the demand for legal services from existing groups will increase and other groups could emerge, and representation of foreign clients will provide another client base.

Further, as the influence of foreign investment has helped alter firm structure and fuel firm growth, Chile is poised to provide its own internal impetus of growth. By all accounts, Chile has Latin America's strongest economy and the region's highest savings rate at roughly 25% of GDP.⁶⁹ Part of the reason for Chile's high savings rate has come from its successful privatization of pension plans during the 1980s. The large amount of money in the pension plans has given Chile its own investment capital to fuel economic

⁶⁸ Interview with Marcelo Montero, *supra* note 15.

⁶⁹ Jim Freer, *The Private Pension Path*, LATINFINANCE, July 17, 1995, at 36, available at 1995 WL 10028286.

growth. Indeed, Chile, itself, has been investing in foreign markets.⁷⁰ As this activity accelerates and as Chilean companies grow, the need for corporate legal services will increase internally apart from the level of foreign investment within Chile. Because of such economic development, the law firms in Chile will continue to experience significant growth, and among those firms that have committed structurally to a promotion-to-partnership tournament, that growth will be exponential. As Carlos Peña predicted in 1994, “The increase of differentiation and complexity of social life will increase, surely, forms until now minor of professional practice: preventative lawyering will develop; specialization of the lawyer—required by the extreme differences of matters—will lead him to the association and from there to the structure of *empresas legales* [legal companies],”⁷¹ or in the words of Karl Llewellyn—law factories.

⁷⁰ For example, in late 2000, when Uruguay needed a loan, instead of going to the U.S. or Europe, the sovereign issued a Chilean-peso bond. Marisa O’Brien, *Looking Locally for Investors*, LATINFINANCE, Feb. 1, 2001, at 54, available at 2001 WL 17186537. The article states that as of 2001, Chilean pension funds had \$36 billion in assets.

⁷¹ Peña, *supra* note 3, at 40 (translation by author).