

PART FOUR

From Law and Development
to the Neoliberal Revolution

US LAW AND DEVELOPMENT PROGRAMS and initiatives have played an important role in legal reform in South and East Asia. There were significant efforts to export US legal approaches in legal education to India, South Korea, and Japan in the post-Second World War period and in China beginning in the late 1970s. Hong Kong is the only exception among the Asian case studies in this book, and it provides a nice contrast because of its unique openness to the market of lawyers and law firms. Importation of ascendant practices and technologies takes place there relatively easily. In each of the case studies, the processes of import/export, consistent with Berman's formula, involve surges of scholarly investment feeding into processes of potential regime change. The United States, of course, is not the only source of influence, but in legal education reform and the development of corporate law firms, the US influence has become the most significant such influence.

From the beginning of US law and development programs in the 1950s, the US approach has been to challenge the existing "guardians of the temple" outside the United States in the name of universals consistent with US hegemony. US philanthropic foundations and government programs sought to "modernize" legal elites to become moderate leaders in development and governance instead of conservative backers of a propertied class seen as resistant to reform. The projects were led by legal missionaries from the North. As David Trubek (2009) noted about his work leading a famous project in Brazil,

there was a social dimension because after all there was a liberal democrat Kennedy administration. . . . We were offering an alternative to communist whatever, and this included the capability to have more rapid economic growth and in order to have

more economic growth you needed to have effective laws governing the economy and in order to have effective laws governing the economy you have to have lawyers who knew how to draft the laws, interpret the laws, implement the laws, so you can trace . . . the American interest in . . . back to this idea that we have to help Latin America to find an alternative to communism that would lead to satisfaction of basic needs and show that, that they didn't have to go in that direction. (33–34)

Reform projects sought to promote more meritocratic access to positions in the legal profession, more scholarly investment in law, and somewhat less reliance on family capital embedded in the law (in part through colonial processes). All of these potential reforms looked toward challenging familial “legal formalism” in favor of more strategic US-like lawyering that involved test cases, lobbying, and legal-political advocacy requiring more investment in technical legal arguments. Justice William O Douglas accurately captured the idea when he observed that lawyers in developing countries needed to learn the mix of skills identified with corporate law firms—that is, with “a first-rate metropolitan lawyer” (quoted in Gardner 1980: 37).

Some background on different colonial pathways is necessary to understand the processes associated with recent developments. Colonial legacies and histories, as noted in Part II, help explain and define processes of “modernization,” including Americanization today. The different colonial paths have contributed to nuances in what we see today as denunciations of particular “guardians of the temple” as obsolete and reactionary. As stated earlier, the legal/colonial histories proceeded cyclically. Legal elites accumulated symbolic capital through credentials and links to colonial governance and then to independence. That legal capital could be inherited and transformed in countless ways, appreciating or depreciating depending on the circumstances. The variety of these different modalities is key to the current situations. Thus, for example, we see the legal elites behind India's Congress Party becoming the embattled and conservative senior bench and bar today. In Hong Kong, the expatriate and local brokers of the trading entrepôt converted themselves into a mix of democracy advocates and relatively complacent solicitors. Samurai in Japan converted their connections and status into the first generation of foreign-modeled lawyers in the Meiji period (Flaherty 2013). The legacies of these colonial histories, as we shall see, help explain the half-failure/half-success of the first phase of exported modernization that took place through law and development, as well as the later reinvention arising from importation by US-style modernists. We explore these differences in the chapters in this part.

The first era of law and development in the late 1960s and 70s can be seen as the final episode of a US-led program of moral imperialism. Modernizing elites were supposed to take up the cause of development and the creation of more open politics and societies, reducing the appeal of socialism or communism. The new

era has drawn on the earlier agenda of legal education reform, but the driving force is no longer the Cold War and state-led development. The current situation is dominated by the global regime of law and global finance that emerged in the 1980s. That regime is fostering a new generation of publicly and privately funded elite law schools on the periphery that now play key roles in selection into elite corporate law firms. Legal education reform in the current context has contributed to the rationalization and legitimation of a grid of complementary “Magic Circles” of corporate law firms, which serve as bridges between global cities in the North, emerging economies, and countries that have developed through a variety of different models.

Throughout all these reforms, furthermore, the agents of the new legal/financial regime have taken advantage of a relative devalorization/obsolescence of legal education shaped by the former colonial powers and have sought to revive law schools through processes that combine import of foreign knowledge and academics, broader recruitment of students within more diversified social and business circles, and more competitive and selective scholarly training. These new schools appear to be in opposition and competition with the traditional centers for the reproduction of elite families, but they also contribute to the reinforcement of well-established legal hierarchies.

To quote from *The Economist*’s article on “Elevator malfunction,” education today represents a “‘marriage of meritocracy and plutocracy,’ where the knowledge economy operates as a ‘winner takes—almost—all’ for ‘superstars firms’ in ‘superstars cities.’ . . . The meritocratic elite has proven remarkably good at hoarding opportunities. Successful people tend to marry each other. Couples devote themselves to giving the best education possible, starting in nursery. Private schools have also proved successful at adapting to the meritocratic spirit. Institutions that once turned out flannelled fools and muddled oafs are now obsessed with the exams results” (*The Economist* 2017).

India

Colonial Path Dependencies Revisited: An Embattled Senior Bar, the Marginalization of Legal Knowledge, and Internationalized Challenges

In the eighteenth century, at a time when the British Empire was being questioned at home and elsewhere for corruption and exploitation in India under the administration of the British East India Company, the rationale for empire moved away from trade toward the idea of “civilizing” India (Pitts 2005). With the termination of governance by the British East India Company in favor of the Indian Raj (1857), law and lawyers assumed further importance and became prominent embodiments of a co-optation strategy that went both ways. Part of the process involved forming, in Thomas Babington Macaulay’s famous words, “a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect” (Ferguson 2004: 189).

The high courts were gradually opened to Indian advocates in the nineteenth century. Some were local advocates (*vakils*), but the vast majority had been trained in the English Inns of Court through an expensive process that lasted four or five years. Local Indian elites, including Brahmins from Madras especially and Parsis from Bombay (Sharafi 2014), became Indian versions of English gentlemen advocates. They prospered greatly through litigation and business representation, hence their characterization as “nabobs of the law.” By the late nineteenth century they were a recognizable elite and the backbone of the Indian National Congress, founded in 1885.

This legal and social elite thrived. It maintained close relations with the Indian landowning class and used litigation to protect large landholdings in the nineteenth and twentieth centuries. Indian advocates also replicated the British system,

which required apprenticeship with a senior advocate before gaining admission to the bar. In practice this meant that family ties were essential for entry into the upper reaches of the profession. Many of the leading practitioners tapped their legal expertise and social status, took their profits, and became the core of the Congress Party as it began to push for independence. The famous advocates who later became leaders in the independence drive included Motilal Nehru, his son Jawaharlal Nehru, and Mahatma Gandhi.

Because of the part it had played in the independence struggle, the legal profession enjoyed relatively high status at the time of separation from Britain. The legal elite was embedded in politics, in business, among the landowning class, and among India's leading families. At the same time, however, since the Indian legal aristocracy had been built through colonialism, the legal profession combined aristocratic status with a peripheral, dominated relationship with Britain. It also tended to be quite conservative except in relation to the independence movement, which had bolstered its position. It was not surprising, therefore, that the prestige of law and lawyers began to plummet as elite Indian lawyers used their power to fight the moderate socialist agenda of Jawaharlal Nehru (Williams 2020), who accused lawyers of "purloining the constitution."

The sway of family capital, the lucrative legal market, and the bunker mentality adopted by the traditional legal elite together helped weaken the prestige of law and legal careers. By the 1960s, law had lost still more prestige, compared especially to engineering, in part because the Indian Institutes of Technology were open to all who could excel on the entrance examinations. From the perspective of the Ford Foundation, which sought to build an idealistic law and development program in India to strengthen legal education and the profession (Krishnan 2004), law was "a second rate profession" (Dezalay and Garth 2010: 150) reluctant to embrace any change.

The legitimacy of law as a largely conservative, family-dominated profession was questioned; so was the law that the elite of the bench and bar produced. This came to a head in 1975, when Prime Minister Indira Gandhi, with the backing of her allied Supreme Court, declared a state of emergency to get around legal resistance to change. The state of emergency, because it went against entrenched legal norms, helped members of the elite of the bar win back their prestige by opposing Gandhi's position. For its part, the Supreme Court, which had supported the emergency, invested in public interest litigation to rebuild its credibility.

The development of public interest litigation in turn helped inspire in 1987 the creation of the first National Law School of India, which also was meant to help rebuild law's credibility by opening itself to more meritocratic students (in much the same way as the Indian Institutes of Technology had done). The fortuitous opening of the economy in the early 1990s then dramatically increased the number of solicitor positions in corporate law. This changed the orientation of the National Law Schools (NLSs); it also fueled their growth, for more lawyers were

now needed to stock the corporate law sector. As shown below, that combination, mixed with international capital, helped renew and strengthen the challenge to the embattled elite of the bench and bar—the grand advocates—in the name of meritocratic standards and globally credible quality.

FAILURES OF LAW AND DEVELOPMENT AND LEGAL EDUCATION REFORM

The difficulties of reforming legal education in India are well-documented (Krishnan 2005; Sood 2017). The Ford Foundation, consistent with the first era of law and development, was heavily involved in facilitating debates about legal education in India in the 1950s and 60s: “Policymakers at Ford Headquarters in New York as well as at Ford’s New Delhi office believed that for Indian democracy to succeed, the country needed to have well-established, rule-based institutions administered by those educated in the legal principles of equity, due process, and individual rights” (Krishnan 2004: 448). Ford sent a host of leading US legal academics to study and advise Indian faculties of law: “Ford thus began spending millions of dollars and decades of energy working with Indians to create strong schools of law” (448). The advisers consistently lamented the level of legal instruction, the qualifications of law students, the part-time and poor quality of law faculties, and the weak libraries, among other problems.

One obstacle to reform domestically in India was the attitude toward the bar within the ruling Congress Party. According to advisers to the Ford Foundation, the lack of resources for law schools was a key problem for legal education, but it was unrealistic to expect a financial commitment from the central government: “Lawyers and Indian judges at that time were not favorably viewed by politicians. Politicians accused these two groups of impeding the state’s ability to grow and carry out its economic and social policies” (452). The reactionary image of the bar made investment in legal education highly unlikely.

That skepticism about the role of the legal elite related to the colonial legacy. Krishnan reports observations by Harvard’s Arthur von Mehren, a US adviser to Ford, suggesting the ambiguous implications of the colonial legacy imposed on them and echoed in the 1950 Constitution. The elite bench and bar tended to celebrate the colonial legal legacy, but at the same time, “lawyers and judges who worked within the legal system were viewed by the general populace as perpetrators of this non-applicable foreign species” (460).

The Bar Council of India (BCI), which had controlled legal education since the early 1960s, did not expect law schools to be more than places for teaching vocational skills (473). The BCI leadership at that time was focused on increasing the number of lawyers. Interestingly, those leaders were “not from the elite sections of Indian society nor were most of them upper castes. They believed that for too long ordinary Indians lacked access to the legal process, and to remedy this problem,

the BCI approved the opening of hundreds of new assembly-line law colleges during the 1960s and 1970s” (473). This program did not challenge the elite bar.

There was, to be sure, intermittent discussion and activity in India with respect to the reform of legal education. Various Indian legal groups from the 1950s on, in particular, called for the reform of legal education (Sood 2017; Mustafa et al., 2018). As early as 1964, the Gajendragadkar Committee, chaired by the Chief Justice and charged with suggesting reforms for the University of Delhi, discussed the possibility of creating a “National Law School,” “where the best students from all over the country would come together to study” (481). But the discussions had little impact. The Ford Foundation sought to play a role, but US professor-consultants were consistently disappointed, and the Ford Foundation had given up this effort by the early 1970s after a negative review of results.

Still, some domestic activity continued, centered especially on the University of Delhi. In particular, the idea of a new National Law School picked up support through the Bar Council’s Legal Education Committee, chaired in the 1970s by well-known Supreme Court Justice Mohammed Hidayatullah (481). Upendra Baxi was central to that effort, circulating an influential paper on legal education (Baxi 1976; Mathur 2017). Baxi, India’s best-known legal academic, had obtained an SJD from the University of California, Berkeley, taught in Australia, and then come back to the University of Delhi. He taught there from the 1970s to the mid-1990s, served as dean and in many other capacities, and then moved to the University of Warwick in the United Kingdom in the mid-1990s. His career was closely connected both to the rise of public interest law and to the development of the NLSs. He was involved at various times in the efforts to create a National Law School.

These committees and commissions did not bring much actual reform. There was criticism of the legal education system but little political interest in reforming it. The existing system basically served the elite of the bar—and the reproduction of that elite—even though its prestige had fallen dramatically. According to a recent study, until the mid-1980s “the instability of the political environment coupled with the legal fraternity’s early resistance to the five-year, NLU type model . . . together seemed to have sounded the death knell for progress in this regard” (Sood 2017: 9).

The activities around the Emergency and the development of public interest litigation (PIL) strengthened the voices of critics who wanted to renovate the legal profession and upgrade the level of practice. But it took an unlikely combination of circumstances to bring the idea of a National Law School to fruition.

PUBLIC INTEREST LITIGATION AND THE EFFORT TO IMPROVE THE IMAGE OF THE BENCH AND BAR

The key top-down initiative after the Emergency was the Supreme Court’s embrace of PIL. This was largely a defensive measure for a beleaguered bench and bar. As

S.P. Sathe noted, “the post-emergency judicial activism was probably inspired by the Court’s realization that its elitist social image would not make it strong enough to withstand the future onslaught of a powerful political establishment” (2002: 107). PIL facilitated some alliances with the new urban groups and professionals who, after becoming mobilized for the protection of civil rights during the Emergency, turned toward social activism through NGOs. PIL also connected to the rise of public interest law and human rights advocacy abroad through the support of the Ford Foundation.

The Ford Foundation sought to embrace this moment and use it to open up the profession and improve its outreach to disadvantaged groups. The local office in New Delhi sought to support “groups who gave legal representation to people excluded or outside the system” (Int. India–21). The foundation hoped to emulate California Rural Legal Assistance, an activist organization serving California’s rural poor. The foundation eventually awarded a grant to the Public Interest Legal Support and Research Center (PILSARC), set up in 1987 and led by Rajeev Djavaan, a prominent Indian legal academic in Britain who had returned to India to become a Supreme Court advocate. This program’s challenges related to the bar’s reluctance to open up opportunities for advocates.

The Ford Foundation criticized PILSARC for being unable to help build “institutions on the ground” or “take risks” (Int. India–22). It did not build a grassroots legal advocacy group. It also did not provide a place to build a new generation of public interest lawyers outside of the elite group of Supreme Court advocates and other senior advocates.

It did, however, carry out some refurbishment of the elite of the bar, who now could—in addition to their lucrative private practices—identify with PIL, thus reinforcing the hierarchies of the bar (for a discussion of the highly stratified public interest bar and its relationship to prestige, see also Krishnan 2004). It also developed closer ties to the US legal and philanthropic world. PIL generally was consistent with a moderate and defensive response to continuing challenges to an elite bench and bar dedicated to maintaining its position.

The timing of PIL did, however, feed into nascent and intermittent discussions about the reform of legal education.

RELUCTANT LEGAL EDUCATION REFORM: THE FIRST NATIONAL LAW SCHOOL IN BANGALORE

N.R. Madhava Menon, a protégé of Justice Krishna Iyer, a leader of PIL on the Indian Supreme Court, ultimately became the leader of the first National Law School, founded in Bangalore in 1987. Unlike Baxi, Menon was not well-known at the time as a scholar (Krishnan 2004: 473). He had been inspired by his visits to US law schools and his teaching at Delhi University. He had worked on legal education reform in the 1970s, and that experience led the Bar Council of India to turn to him to work on a proposal for new law schools. He completed a proposal in

1982 and “began to showcase this idea to various constituents, including lawyers, law professors, students, and politicians” (473). Despite his best efforts, however, Menon met resistance from people in each of these groups (473). His former colleague, the relatively innovative dean at Delhi University, P.K. Tripathi, wrote an editorial terming the plans “unrealistic, simplistic, and unnecessarily radical.” According to Krishnan, Menon “was unable to persuade even one institution in the country to experiment with his proposal” (479).

In 1983 he left the Bar Council and went back to the United States for a year, “where he reunited with inspirational allies at Columbia University who sympathized with his reform efforts” (479). Re-energized, Menon “lobbied various constituencies (including many of his critics) for moral, political, and financial support” (485). In 1985, he finally managed to get the Bar Council of India to support the founding of an independent law school. The council then negotiated with the southern state of Karnataka, which agreed to combine funds with the BCI to set up the National Law School in Bangalore (485).

This story is not exactly one of the elite of the bar fully embracing the reform of legal education. Menon had to fight every step of the way, and indeed Krishnan notes that it is hard to explain why the very conservative BCI ultimately supported him. Krishnan suggests that “the Council too had become disillusioned with the quality of law graduates over the past several years.” Critical, however, was that “the Council had a relationship with Menon . . . [who had] worked with the Council from 1978–83. The Council respected and trusted Menon’s judgment.” Finally, the BCI saw that PIL was helping the image of the legal profession, and the National Law School was geared to build on that image by producing public interest lawyers (485).

The state and BCI support was very limited, however. Menon suggested that without more support, the institution would have closed very quickly. He emphasized the role of the Ford Foundation, which stepped in with an \$800,000 grant “at a crucial time when the law school was finding it difficult to continue operations (i.e. 1989–1994)” (Menon 2009: 52). The Ford Foundation finally had a champion in India to improve legal education.

The five-year curriculum of the National Law School that opened its doors in 1987 was inspired largely by US law schools (Menon 2009) and was much more rigorous than the three-year BA of the existing law faculties. An international team that included Marc Galanter, William Twining, and Savitri Gunasekhere from Colombo reviewed the first few years of the school and concluded that it had “fully met the objectives of being a Centre of excellence that serves as a pace setter for Indian legal education” (54). The success of the National Law School inspired the creation of the National Law School in Hyderabad (officially named: the National Academy of Legal Studies and Research [NALSAR]), which opened in 1998. After that, the model really took off. There are now some twenty-one NLSs throughout India, with varying claims to affinity with the original model.

The National Law Schools have also influenced legal education, both public and private, outside of the NLS sector. There are now fewer three-year LL.B. programs, the most prominent holdouts being Delhi University and the Government Law College in Mumbai. Recently, the Pravin Gandhi School of Law affiliated with the University of Mumbai switched its emphasis to a five-year LL.B. program away from a three-year evening program.

The key to the NLSs' great success was a timely shift away from public interest law. In the early 1990s, just as the first class of NLS Bangalore was graduating, Finance Minister Manmohan Singh brought an end to the Indian "Licensing Raj" and opened up the economy to much more foreign trade and investment. These liberalizing economic reforms opened space for new and expanded Indian solicitor firms and for global corporate law firms serving India from outside the country. Law firms retooled quite dramatically as the economy was transformed (Nanda, Wilkins, and Fong 2017). They had to shift from land conveyancing and some banking relationships to transnational transactions and mergers and acquisitions.

Many NLS graduates joined these firms, and students in those schools reportedly now compete for slots at national and global corporate law firms (Gingerich and Robinson 2017). As Krishnan noted in 2013, the growth of law firms is relatively recent, reflecting the impact of dramatic economic changes (Krishnan 2013). Of the forty top firms named in a survey, eight started between 1991 and 2000 and fifteen after 2000. Interestingly, the bar now complains about the lack of interest among NLS graduates in careers in the bar (Int. 15–India).

The rise of NLSs and corporate law firms has been presented generally as a remarkable story of reform (although there is now an emerging literature on those schools' limitations; e.g., Sood 2017; Mustafa et al. 2018). Part of their weakness stems from the serendipitous circumstances that finally brought legal education reform to some fruition within a still complacent legal establishment. It is notable also that NLSs occupy a relatively tiny niche within Indian legal education. There are some 1.3 million lawyers in India, more than 1,200 law schools and faculties of law, and perhaps 45,000 law students. There were more than 40,000 applications in 2017 for the 1,500 to 2,000 positions in the NLSs (Mustafa et al. 2018: 17). The Common Law Admission Test, established in 2008, has facilitated this large number because, as with respect to the Indian Institutes of Technology, the results of one examination can be used for applications to most NLSs throughout the country.

Access is not wide open, however. The standardized tests used by the NLSs require English proficiency, and the tuition fees of about US\$2,500 per year deter a great number of applications as well. A recent study of students at the NLS in Bangalore confirms that they come disproportionately from high incomes and high castes (Jain et al. 2016). That 2016 study also found that Brahmins were 26.5 percent and other upper classes 32.5 percent; the numbers likely would have been higher had they included those who did not report (28). Some 30 percent of

Bangalore students were from major cities, but that was a decline from 50 percent, suggesting a more provincial trend, although not away from urban settings. Most students had parents who are fluent in English (35). There were also a small number of students in the “reserved” group for “scheduled castes” and similar groups. The report on Bangalore, however, suggests that those with more advantage do better in school, participate more heavily in the moot court competitions, and land prestigious jobs upon graduation (35; see also Mustafa et al. 2018). As others have suggested, it is very difficult to come from outside the elites and excel in law school in India (see Basheer et al. 2017).

As is the case at the Indian Institutes of Technology, the caste elites in law are distinguished not so much by wealth or property but rather by their embodiment of the meritocratic values that result in their being selected for top positions. As a scholar of the Indian Institutes of Technology suggests, the caste elites “are able to inhabit a universal world view precisely because of a history of accumulated privilege, a history that allows them a unique claim to certain forms of self-fashioning. Whereas at an earlier moment, status might have been more explicitly tied to caste, the social bases of merit continue to be constituted in ways that allow the same social groups to inhabit merit as an embodied ideal” (Subramanian 2015: 206).

The legal press in India has reported on the high-prestige positions that graduates obtain on graduating from the NLSs. Recently the NALSAR in Hyderabad reported that out of seventy-four graduating students, fifty-eight who had participated in the campus recruiting program all got positions, largely with corporate law firms, followed by in-house positions. Some 10 percent were planning on attending elite graduate programs abroad (Reddy 2017). Some planned on taking civil service exams, and one was taking a judicial exam. Only two reportedly were planning on becoming advocates or clerking for a court. Similar results apply to the other NLSs (Gingerich and Robinson 2017). The dean of a more traditional law school noted that law firms preferred to hire from the NLSs (Int. 2–India) rather than from the traditional schools.

These data are somewhat misleading, however. First, many leave the law firms that have recruited them after a relatively short time. One observer stated that half of the graduates of NLSs leave the practice of law within ten years for other careers such as business, design, or journalism (Int. 3–India). A close look at the LinkedIn members identified with the NLSs in Hyderabad and Bangalore suggests that many are still with law firms but quite a few are now in business, in-house counsel, legal education, or alternative careers. The original National Law School of Bangalore has 5,848 alumni listed, which no doubt includes those who have participated in a range of programs. The leading employers of these people are law firms (led by Cyril Amarchand Mangaldas, at fifty-three), business consultancies, and the Supreme Court (National Law School of India 2020), but clearly these graduates have followed a wide range of careers, and more than 300 of them are in the United States. The list shows a number of them at the top law firms, but their numbers in

relation to the number of graduates are not high. Krishnan's research on the overall frequency of individuals leaving corporate law firms—"peeling off"—also suggests that graduates are not in general making their careers in the large corporate law firms—even if they are still in the field of corporate law (2013).

Lawyers leave in part because the leading corporate law firms generally are of two types, family-dominated or dominated by a few individuals. Interviews confirmed that this situation persists, suggesting there are very few "true partnerships" (Int. 4–India). The value of family capital has not diminished. One young lawyer in a law firm with his father in Mumbai notes that family-operated businesses often feel comfortable giving their legal work to the children of a long-standing lawyer with whom they already have a relationship (Int. 5–India). The new firms started by many of those who leave tend then to replicate the structures they left behind (Krishnan 2013). Also, starting salaries are relatively low. A small firm might pay 40,000 rupees per month, a large one 50,000, and a few firms such as the two Amarchand firms pay some 150,000 rupees a month. In US dollars, that is between \$7,500 to \$30,000 (often augmented with bonuses).

Many who leave the law firms seek to gain a foothold at the bar by teaming up with an established advocate. Krishnan shows how difficult it is to make it that way and break into the hierarchical advocacy world (2013: 38). A frequent observation about the graduates of the NLSs is that, after almost thirty years of producing lawyers, no graduate has become a grand advocate or a judge (Int. 6–India).

The meritocratic criteria of the NLSs have yet to overcome the strong familial capital required for a career at the bar, which can then lead to a judicial appointment. Indeed, as discussed below, advocates promoting their NLS-inspired expertise can be seen as "too modern for the court," or as "incapable of playing by rules" because lacking inside knowledge of them (Int. 7–India).¹ The relatively successful reform and enhancement of the legal profession in India has been the product of a confluence of events and a desire to rebuild the credibility of the bench and bar. But results of those reforms and enhancements remain consistent with the entrenched conservatism of the family-dominated elite bench and bar, a conservatism that pervades both legal education and the corporate practice setting.

THE ENTRENCHED POSITION OF THE ELITE BENCH AND BAR: THE RELATIONSHIP TO CORPORATE LAW

The world of the elite bench and bar has had a very strong impact on both the law firms and the NLSs, which are deeply embedded in the world of elite advocacy and the higher echelons of the judiciary. The law firms can be divided into three general categories. The first is what *Legally India* terms the "Big Seven" (Ganz 2016). The big seven law firms gained prominence or were established after economic liberalization. As reported in 2016, they include Cyril Amarchand Mangaldas, with 601 lawyers; Khaitan and Co., with 485; Shardul Amarchand Mangaldas &

Co., with 430; AZB & Partners, with 375; Luthra & Luthra, with 336; J. Sagar Associates, with 302; and Trilegal, with 221. They are the most important corporate law firms.

Another group is the older firms built generations ago by expatriates, such as Crawford Bayley, established in 1830. Other firms in this category are Little and Co. and Mulla and Mulla (Nanda, Wilkins, and Fong 2017: 72–75). These were the most prominent firms prior to liberalization, but they did not move quickly to adapt to the new situation, and a very few partners dominate these firms and their profits. They have been eclipsed by the newer and more entrepreneurial firms, which have also attracted more new associates because of the promise—albeit not often realized—they would be more egalitarian in sharing the profits and partnership places. The rest of the corporate legal sector is comprised of many small firms serving some aspect of the corporate business, but for large transactions, what is now a big seven has a “quasi monopoly” (Wilkins and Khanna 2017:144).

All law firms must have access to the leading advocates in order to win litigation for their clients. One of the larger firms reported the importance of access to the “face value” of the fifteen or so advocates they utilized (Int. 8–India). Nanda, Wilkins, and Fong note that the firms from the colonial era have survived in part because they are strongly connected historically to the elite bar, which also explains their resistance to change. Their niche generally is the places where “old-line connections and prestige remain salient . . . for big Indian companies” (Nanda, Wilkins and Fong 2017: 74)—in particular, the real estate and regulatory sectors. Furthermore, “These firms also have long-standing relationships with many of India’s top Grand Advocates and high court judges”—“when the matter is really sensitive and the CEO needs someone he can really trust to navigate the bureaucracy of the courts.” (75).

There are other ways that law firms connect to the networks around the bench and bar. Two of the most prominent of the big seven law firms, each of which has very prominent women in key positions, illustrate familial embeddedness. Pallavi Shroff, a key partner in the Delhi firm of Shardul Amarchand Mangaldas & Co., is the wife of Shardul Shroff, who chairs that firm, having inherited it (with his brother). She is also the daughter of well-known retired Supreme Court Justice P.N. Bhagwati, one of the justices most identified with PIL. The Shroffs also link closely to the Gujarati community and Reliance, one of the major corporate groups (78). Khaitan and Co. similarly is closely connected to the Marwari community from Kolkata and the Aditya Birla Group (78). Furthermore, Zia Mody, the founder of AZB and partners, is the daughter of Soli Sorabjee, a famous Indian jurist, Parsi, and former Attorney General of India. She started the firm after ten years as an advocate. Reportedly she became tired of the male-dominated bar and took advantage of her Cambridge law degree, Harvard LL.M., and family capital to start what has become one of the most successful law firms.

The law firm sector has grown substantially since economic liberalization, but it does not appear to be expanding very much today. After an initial growth of the corporate legal services market under liberalization, the market appears to have stagnated—perhaps in part because of the limited local opportunities and products offered in litigation (Int. 9–India; Nanda, Wilkins and Fong 2017). The corporate law firms in varying degrees are linked up with the familial world of the very conservative elite bench and bar. As discussed below, a number of those in the corporate bar are pressing for change.

THE ENTRENCHED POSITION OF THE ELITE BENCH AND BAR: THE NATIONAL LAW SCHOOLS

The connection between the elite bench and bar and the NLSs is even closer. The governing boards of the NLSs are dominated by leading members of the bar and judiciary. More generally, legal education is regulated by the Bar Council, which is the organ of the advocates. The Bar Council prescribes twenty-six mandatory courses, limits teaching by practitioners, and limits class sizes to sixty (Gingerich and Robinson 2017). It also imposed an all-India bar examination in 2010. Leaders of the relatively marginal All India Law Teachers' Organization, which represents members of law faculties, argue that the Bar Council should have "no role" in the teaching program of the law schools, but there is no likelihood of change in that direction (Int. 10–India).

The hierarchical connection between the judiciary and the NLSs is even stronger. Key judges generally decide whom to hire as the dean or vice-chancellor of an NLS. One vice-chancellor spoke of meeting a key judge for dinner and then getting offered the position (Int. 11–India). According to one knowledgeable observer, potential deans "cow-tow to the local judiciary," forming a "small cabal" (Int. 15–India). The chancellor of each school is a judge, with the Chief Justice of the Indian Supreme Court the Chancellor of NLS Bangalore. One critic of the NLS vice-chancellors stated that once they are appointed, they spend all their time and energy trying to gain stature within the world of the elite bench and bar (Int. 12–India). The dependence of each NLS on the vice-chancellor's clout magnifies the importance of those ties. Faculties have very weak voices, which means that the schools are "personality driven" by the vice-chancellor (Int. 15–India; see also Balakrishnan 2013). Interviewees noted that when a capable vice-chancellor left NLS Kolkata, for example, the school went back to the "dark ages" (Int. 24–India).

A critic of the NLSs speaks of their "judicialization," but it appears that they were highly judicialized from the beginning (Int 15–India). According to the interviewees, the ability to get local government funding depends on the work of members of the judiciary, who lobby their local governments—which must pay some attention, since their representatives appear frequently before those judges. It is

quite clear also that the funding levels for most of the NLSs are not very high, which puts pressure on them to increase tuition. Finally, the more recently established NLSs tend to have substantial local restrictions placed on them (e.g., the number of students who must be local).

Very high teaching loads are the norm in the NLSs, with the major exception currently of NLS Delhi, which is very well funded and, under the current vice-chancellor, focused on significantly increasing research output. More generally, the spread of the NLSs has not substantially raised the prestige and profile of legal academics in India. Many interviewees noted that there is still no real career in legal academia. One law graduate in a social science PhD program noted that there is no real job as “law professor”—it is a “dead end” (Int. 12–India). The NLS phenomenon, others note, has not changed the faculty model (Int. 13–India). At NLSs, the “main focus is teaching,” and the teaching is not that high in quality.² There is “not much time for research,” and there are no “structures to build up” to promote a better position for faculty members (Int. 14–India). There is little focus on the “quality of faculty” or “research agendas” (Int. 16–India). The faculty of the NLSs tend to be relatively young, and many faculty members do not stay in teaching. The group includes many who did not succeed in litigation and a number who are not on the “tenure track” (Ballakrishnen 2009).

The long-standing effort to upgrade law teaching and legal scholarly research, supported by a number of Ford Foundation initiatives beginning in the 1950s, has so far had limited success (Dasgupta 2010). The best and brightest law graduates do not seek careers as law professors. Many we interviewed suggested that more legal academics are producing scholarly research, and the number of academic scholars today is much greater than in the past. But interviewees also report that the journals are “dead” and that the advances in scholarship and prestige are quite limited (Int. 17–India). While many people in India can name judges or senior advocates, legal scholars, with the exception of Upendra Baxi, who is also an activist, are unknown even in the legal profession (Int. 19–India). The NLSs, moreover, are the relatively elite tip of the iceberg. There are more than a thousand other public and private schools that pay their faculty even less—including private schools, many of which pay half of what the public schools pay (Int. 10–India). Only a few of the more elite private law schools, exemplified by the Jindal Global Law School (discussed below) and the well-funded National Law School in Delhi, appear committed to encouraging scholarly productivity.

The pressure for change is coming mainly from those who go abroad. Many become part of a brain drain, but the existence of a group of relatively young lawyers with elite credentials suggests that more are returning. One interviewee noted that “increasingly people are coming back,” the legal academy is more “exciting” than in the past, and many see “teaching as a vehicle” for research. They hope for a “recapturing and reinvesting of the brain drain” (Int. 19–India). What they learned abroad and is valued abroad, however, is still unevenly recognized

in India and at times actually devalued (Ballakrishnen 2012). We examine these groups below after the discussion of the bar.

The problem of the reform of legal education is directly related to the structure of the elite bench and bar.

THE ENDURING STRUCTURE OF THE BAR

The tightly connected elite of the bench and bar remains at the top of the legal hierarchy.³ It is dominated especially by well-connected elites, including Brahmins and upper castes and the Parsi elite in Mumbai (Sharafi 2014; Int. 5–India, discussing the links between Parsi family businesses and Parsi family law firms). The “grand advocates” are at the top of the hierarchy. Galanter and Robinson point out that seniority is one aspect of that hierarchy (2017). Since judges face compulsory retirement at sixty-two (and Supreme Court justices at sixty-five), they are often younger than the senior advocates who appear before them. They may have looked up to or even learned their practices from the senior advocates. The elite of the bar and bench has a very strong impact on legal education, on the governance of the NLSs, on the hiring of the vice-chancellors who govern the schools, and on the funding of the schools; they also provide social capital that helps sustain the elite of the corporate law firms.

The bar has participated under very particular circumstances in initiatives such as the NLSs and public interest litigation, both of which have enhanced the legitimacy of the profession and opened it up to more meritocratic, higher-quality entrants. But it is a legal elite that is essentially inbred and highly restrictive in entry. NLS graduates have to date had little success in this sector of the legal profession.

The conservative nature of the bar is quite evident. Its attitude toward law professors is apparently much like it was traditionally in the United Kingdom. An interviewee professor noted that the faculty at one NLS sought to eliminate Saturday classes in part to encourage research; the governing board rejected the request because, in their opinion, “law professors don’t work anyway” (Int. 15–India). One interviewee noted a “large disconnect between academics and practice,” and indeed that each side thinks it is superior (Int.19–India). The narrowness of the prevailing view of law practice is captured by a lawyer in a social science PhD program who had trouble renewing the lawyer’s bar license. The authority from the bar thought that interdisciplinary academic study about law was inconsistent with the activities expected of bar members (Int. 12–India).

The issue of the quality of the advocacy among the senior elite arose in a number of interviews (also Galanter and Robinson 2017; Wilkins and Khanna 2017). The litigation lawyers at law firms, as noted above, stated that for important cases, they needed the “face value” of the advocates they tended to use, but the lawyers at the firm also stated that the abilities of the elite bar are “lower and lower.”

The problem in part is that the elite advocates handle too many cases. They also do not use technology in their arguments. They rely on “court craft,” they have “no depth” (Int. 3–India), and they hold to a “blinkered vision of law” (Int. 18–India). There are, one noted, very few quality lawyers in the bar: the bar in general is “mediocre,” and “80 percent were unprepared” (Int. 18–India). A number of the in-house counsel studied by Wilkins and Khanna supported these contentions, suggesting that there was “great frustration with the quality of these top advocates” (Wilkins and Khanna 2017: 146).

Well-trained lawyers armed with an Oxbridge or US law school degree, coupled with experience in international law firms, have found that they are “overtrained” for litigation in India (Int. 18–India; for a similar phenomenon experienced by Indians with LL.M.s from the United States, see Ballakrishnen 2012). One young lawyer reported that the senior advocates “don’t have time” for complex points, and it is by no means clear that even if they did, the judges would embrace them. He left the practice of law because of this disconnect between what he had been trained for and what he could use in litigation in India (Int. 3–India).

Interviewees stated that there were some prominent exceptions among the bench and the bar. Most frequently named were two justices of the Supreme Court from prominent legal families. One is Justice Dhananjaya Yashwant Chandrachud, whose father Shri Y.V. Chandrachud was the longest-serving Chief Justice of India. Chandrachud graduated in economics and mathematics from St. Stephen’s College in New Delhi in 1979 and went on to obtain an LL.B. from Delhi University in 1982 and an LL.M. from Harvard University in 1983. The other is Justice Rohinton Fali Nariman, a leading senior advocate who is a Parsi from Mumbai as well as the son of Fali Sam Nariman. The younger Nariman received his early education in Mumbai. He completed his LL.B. at the Faculty of Law at the University of Delhi and then obtained an LL.M. from Harvard Law School. He practiced law in New York for a year as well. In India he rose quickly, mixing family capital and meritocratic credentials. The bar had to amend the rules to allow him to become a senior advocate at the age of thirty-seven. He reportedly is the first Harvard alumnus to serve as a Justice on the Supreme Court of India.

Family capital remains vital for careers in the bar and on the bench. The system for promotion into the judiciary is secret. It has been criticized but has not yet been changed. Selections to the high courts and the Supreme Court are made during closed colloquiums, and as one observer noted, the result is that long-established legal names are chosen that tend to be upper caste or from Mumbai’s Parsi elite (as in the case of Nariman) (Int. 12–India). Moreover, the impact of selection to a high court or the Supreme Court endures beyond retirement, since retired judges gain many influential positions related to politics and the law after their service on the judiciary.⁴

The elite are somewhat aware of the bar’s closed and insular nature. Interestingly, in a recent speech to the Bar Association in Mumbai, Justice Chandrachud

raised some careful criticisms of the closed nature of the bar (Chandrachud 2016). After praising the learned nature of the bar—an “assembly line of brilliance”—he talked of “our outmoded way of working” and the “perception that the bar is closed.” He lamented that talented individuals “never went to the Supreme Court” and argued that it was “an issue of grave concern” that there is “talent” with “no access to centers of power.” He stated that it was important to “open up our bar to a true meritocracy.” The muted nature of his criticisms suggests that he did not expect his audience to embrace the message enthusiastically.

The NLSs, as noted, have not provided an effective meritocratic path to the elite bar. One leading lawyer with a family firm in Mumbai noted that for the leading lawyers in his city, whether practicing in firms or as advocates, the likely choice of law schools would be the Government Law College (GLC), and the same would be true for Delhi with the Delhi Law Faculty (Int. 2–India; Gingerich and Robinson 2017). The reasons are twofold: the exam threshold is difficult to pass for admission to an NLS; and the networks around the GLC, for example, are essential to success at the bar in Mumbai.

Admission to the GLC is not easy. Many are turned down. But several locals noted that children of judges and elite advocates get in despite lacking the top credentials (Int. 12–India). One graduate noted that if one has “no connections,” it is very difficult to find mentors at the bar one needs to succeed; however, a faculty member says that the GLC students without connections have the time and capacity to find them (Int. 21–India). In any event, no one disputes the value of family capital in careers starting at the GLC.

Similarly, neither graduates nor faculty argue that there is any real teaching at the GLC. Classes meet from 7:30 a.m. to 10:30 a.m., and busy practitioners may not show up to teach if something else comes up (Int. 12–India). There is in any event “no need to attend classes” (Int. 12–India). The students essentially spend all their time apprenticing with the advocates who congregate at the Bombay High Court one block from the GLC. There are conscientious professors who help, for example, with a law review, but scholarly capital pales in importance to family capital. However, one faculty member reported that despite the lack of any systematic educational program, there were currently three GLC students at Harvard. One administrator noted that leading US schools recruit at the GLC and that as many as 25 percent study abroad—again, despite the lack of academic rigor at the GLC (Int. 22–India).

This portrait of the bar reveals a legal elite that is highly inbred and closed to outsiders. There is no way, in addition, to mix the legal milieus. The graduates of the NLSs have to find paths for making the most of their meritocratic achievements. And they will be different paths from the one taken by the small subset reproducing the national elite around the courts and advocacy.

The growth of trade, increased corporate activity, and growing investment within and outside India, however, are providing opportunities for a professional

class that can offer the state and big corporations more “modern” expertise. The law firms, which rebuilt their approach after the era of conveyancing and banking relationships, are one place where some of this upgrading is taking place, but they are limited in this by a very conservative elite bench and bar. They may try to go around grand advocates, but the top advocates are still necessary for access to the higher courts.

CHALLENGES TO THE ELITE BENCH AND BAR: BATTLES OVER EXPERTISE AND EDUCATION

Pressure for change tends to come from the outside. As noted, at least one of the top Supreme Court justices, who holds multiple degrees from abroad, is seeking to modernize the system from within. But the highly internationalized and more meritocratic group of top recent law graduates is the more general source of the change. It includes many who have studied abroad, including a number with Rhodes Scholarships (*Legally India* 2019) or who have returned from the United States or from positions in the Magic Circle law firms (or variants in Australia). A good proportion of these returnees have advanced degrees from the United Kingdom, though in recent years the United States has become more attractive for study abroad (Ballakrishnen 2012). The voices of this relatively young group were audible in the litany of criticisms in the preceding section. A number of graduates of the NLSs hold teaching and research positions abroad. They too participate in these debates. It is indicative that a recent review article on law and social science research emphasized the work of those from India but working abroad (Sharafi 2015). Within India, there are now clear alliances between this internationalized group and businesses, philanthropies, and various government sectors promoting modernized “good governance” within India.

The leading internationalized law firms in India are part of the modernizing offensive (which includes enhancing opportunities for women [Ballakrishnen 2019]). One top litigation partner with experience abroad noted the impact of the bar’s narrowness on law firm markets. The partner argued that in transactional work the leading law firms could grow and take advantage of foreign clients and their own local and transnational expertise (Int. 3–India). But in litigation they are still being blocked. They cannot deploy their expertise or their ability to draw on technological innovations. This mismatch also restricts the growth of the Indian legal market. Some firms are trying to build their own in-house litigation expertise to work with or go around the advocates, but the possibilities for this sort of bypassing are still quite limited.

Thus there is a new group of challengers to the traditional bar elite, with its own hierarchies and trappings linked to the NLSs, but for this group to jump anywhere past the limited positions that their relatively high status can offer (i.e., law firms, global organizations, think tanks, some in-house positions) or to jump into the mainstream legal elite will require different forms of capital—especially legal

family capital. NLS graduates have profiles similar in this respect to the graduates of the Indian Institutes of Technology (Subramanian 2015), but they do not have the same opportunities in India to mix engineering, social science, technology, and law in the way that it is done in Silicon Valley, for example.

One potential remedy for the economic liberals would be to open up the legal services markets, but the bar has strongly opposed competition from abroad within India (Coe 2016). There is more momentum now than in the past for a limited opening, but there are still “snags.” The opening would undoubtedly have an impact, albeit one that is hard to predict. On the one hand, it might weaken the power of the Indian corporate law firms, since the global law firms have advantages for large-scale transactions. As suggested by Wilkins and Khanna (2017: 147), “foreign firms were more likely to handle important matters involving M & A, and civil liability, and arbitration.” The global firms might also facilitate challenges to the traditional bar generally—in part through their ability to attract more Indian nationals back to India because of the relative openness of those firms in terms of advancement (Nanda, Wilkins, and Fong 2017: 106). At the same time, the traditional firms founded in the colonial era by British lawyers “might actually be seen as more valuable” if the market were opened up because of their unique ties with the regulatory authorities, the grand advocates, and the courts—that is, the enduring value of their social and familial capital (109).

Many of those who go abroad become interested in research and teaching, and they are adding to the pressure for change within India. Many of these people stay abroad (Sharafi 2015). Krishnan names at least six who are teaching in the United States, the United Kingdom, and Singapore (email). But as noted earlier, quite a few of them have returned to India to “recapture and reinvest the brain drain” (Int. 19–India). They have overinvested in technical scholarly sophistication in part because of the challenges they face in India to break into a world dominated by the bar. Not surprisingly, they often aim their research precisely at the quality of the courts and the judiciary, seeking transparency as a way also to challenge the conservatism they encounter. As already noted, they have not yet succeeded in tearing down the walls. Scholarly research at the NLSs is very limited, including at the top ones, and the position of law professor is still not widely respected and does not offer an attractive career path.⁵ The upgrading of faculty credentials so as to require a PhD in order to teach at the NLSs (thus emulating the British model) has not changed this situation.

Nevertheless, there have been some very prominent research successes, such as the research at NLS Delhi on the death penalty, which draws on empirical legal research approaches imported from the United States. Anup Surendranath, the law professor in charge of the project, is a graduate of NALSAR in Hyderabad with an Oxford PhD gained through scholarship assistance (Mandhani 2014).

Other examples are think tanks created by individuals returning from abroad and well aware of the limited opportunities to deploy their knowledge and expertise. The Vidhi Centre for Legal Policy represents a particularly notable example.

According to its website, it “is an independent think tank doing legal research and assisting government in making better laws. Vidhi is committed to producing legal research of the highest standard with the aim of informing public debate and contributing to improved governance. Vidhi works with Ministries of the Government of India and State Governments, as well as other public institutions, providing research and drafting support at various stages of law-making” (2020). Vidhi also conducts independent research, including what it describes as taking “a data-driven approach to suggesting reforms that address the problem of judicial delays.”

More than thirty professionals working with Vidhi are listed on the center’s website. The research director and one of the founders is Arghya Sengupta, a graduate of NLS Bangalore and Oxford, where he was a Rhodes scholar. His D.Phil. at Oxford was on the “Independence and Accountability of the Indian Higher Judiciary.” The credentials of the Vidhi group are stellar: it includes members with degrees from the NLSs and US, British, and other graduate programs, who have experience that includes work with corporate law firms.

The group had its beginnings among graduate students at Oxford, who noted the “inadequate legal research” that formed the basis of the government’s work on an Indian–US nuclear deal (Int. 19–India). The group that came together included two from Oxford, one from Harvard, and one from Delhi, who believed there was a “gap in the system.” The government had high-quality input on economics and policy but not with respect to law. This group acted voluntarily to remedy the problem for the nuclear agreement, and they succeeded in gaining credibility and attention despite their youth (they were only in their early twenties). They decided to build on this work and create a think tank to conduct high-quality legal research. They perceived no problem in government litigation, which in any event was under the control of the bar, but noted that the quality of legal expertise generally needed upgrading.

They used their capital from their study abroad and the prestige of Rhodes Scholarships to seek independent funding. They succeeded in raising money not from the legal profession but from philanthropies, including substantial support from Rohini Nilekani, part of the Infosys community. On this basis, Vidhi was founded in 2013 as the “first legal think tank.” It was able to tap into some appetite within India for an upgrade in legal expertise as part of good governance. Vidhi is very careful to avoid “advocacy” or other activities that might taint its members’ “expertise” (Int. 19–India). The center has made it clear from the start that it is fully invested in upgrading scholarship. Vidhi also works with other disciplines and other think tanks, with some circulation among such think tanks as the Centre for Policy Research in New Delhi. It also has links to the NLSs and to the Jindal Global Law School. This group belongs self-consciously to a group that is challenging the traditional, conservative world of the bench and bar.

The Jindal Global Law School is the first high-profile private law school in India and also the first to focus specifically on academic scholarship (Kumar 2017). It is

the brainchild of Raj Kumar, a representative of the diaspora reinvesting in India. He has degrees from, among other places, Delhi, Oxford (where he went as a Rhodes scholar), Harvard, and the University of Hong Kong. In 2009 he became the founding Vice-Chancellor of the Jindal Global Law School. Kumar was teaching at the University of Hong Kong and was convinced that the NLSs had not succeeded in bringing Indian legal education as far as necessary. In particular, he wanted there to be more emphasis on scholarly research. Drawing on US capital and US institutions for initial support, building also on the success of the private Indian School of Business, he went searching for philanthropy to build a \$100 million private law school. He succeeded ultimately with support from the wealth generated through the Jindal steel empire. Still, tuition has had to be set quite high by Indian standards to handle the expenses of this new model for Indian legal education. Tuition is now around US \$10,000 per year. The school offers a five-year LL.B/BA, a three-year LL.B., and a one-year LL.M.

Having begun with a law school, Jindal Global University now has a business school, a liberal arts and humanities school, a communications and journalism school, and a school of international affairs. Jindal in this way is seeking to build interdisciplinary connections around law that are missing from the traditional faculties of law and the NLSs. Jindal has numerous relationships with schools abroad, and the faculty includes a number of expatriates. Notably, some one-third of the faculty are graduates of one of the NLSs (Shrivastava 2017). Faculty salaries are relatively high for India, and there are centers focused on research. The teaching loads are not light, and the scholarly output is uneven, but the professors are well-integrated into the global and especially US scholarly worlds.

A third area challenging traditional legal knowledge is found not within the various law schools but rather in the social science departments, especially at the prestigious Jawaharlal Nehru University in New Delhi. There is a Law and Social Sciences Research Network (LASSnet), organized by the Centre for the Study of Law and Governance at JNU, and it has held a number of conferences. It draws on and challenges legal scholarly capital in several ways that complement the challenges from within the law. The key individual organizing this network is Pratiksha Baxi, a sociologist and, not insignificantly, the daughter of Upendra Baxi. This interdisciplinary work offers an option that law graduates may pursue to avoid the narrowness of legal scholarship and the precarity of the law professor position.

This terrain of expertise challenging the conservatism of the elite of the bench and bar is mainly a detour around prevailing hierarchies. It builds on foreign capital—especially from the United Kingdom and the United States—to push beyond the conservatism. This terrain provides some outlet for the hundreds or even thousands of individuals who have received good educations but have been locked out of the deeply conservative and embattled bar elite. These efforts have not touched the elite of the bar in a substantial way to date, but the aging elite of

the bar faces a threat that may render their enduring conservatism and bunker mentality obsolete.

The challenge to the traditional bar is not simply about meritocracy versus inherited legal positions. The challengers leading this legal revolution have substantial resources from within current Indian society as well as from abroad. Jindal is funded by a large business, and many students rely on business-generated wealth to attend. It takes resources as well to succeed on the tests for admission to the NLSs and to be able to study abroad after acquiring an NLS degree. Most Indians do not have sufficient knowledge of English to study effectively in that language, but mastery in English is necessary to succeed in an NLS. The think tanks, in particular Vidhi, also connect to major businesses seeking to upgrade the quality of governance in India, including the quality of law. It took connections to that wealth and cosmopolitan capital—Oxford and Harvard degrees—to gain entry to those groups and build Vidhi. These approaches allow law graduates to branch out and to challenge the traditional elite, but they represent a palace war mainly among the relatively advantaged.

The senior advocates in India find themselves embattled. The grand advocates and high court and Supreme Court judges are facing challenges from those who are more attuned to globally ascendant expertise and technologies. But the elite remain able to assert their influence over many of the ostensible challengers within legal education and within the solicitors' firms.⁶ The challengers are more meritocratic and less dependent on family capital, and they therefore provide a counter-movement to the traditional closed legal profession of India. But the challengers, as noted, do not represent the graduates of the more than one thousand law schools that now exist in India.

The stratification, which is now based more on resources that translate into meritocratic achievement, is consistent with the US-inspired legal (and educational) revolution. There is a huge gulf between the few who attend the NLSs, Jindal, and the other important private law schools and those who attend the great mass of schools. The training at private schools of law that focus on corporate law careers is quite consistent with US-style globalization. We see the kinds of alliances that we expect for the making of a legal revolution. The challengers are seeking to upgrade and revitalize legal research and scholarship as well as legal argument, so as to modernize the bench and bar as well as discourse about the law. They have found allies in business and philanthropy and among their international contacts. The experience of Vidhi, at least, suggests some openness in governmental circles. But to date the traditional elite, strong on family capital but relatively weak on meritocratic and scholarly capital, still controls the show.