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African corporate lawyering and globalization

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ABSTRACT *Influenced by processes of globalization and localization, many fields of social and commercial practice – including legal services – across Africa are undergoing rapid transformation. It should come as no surprise that these processes of globalization and transformation include the ongoing transformation of corporate lawyering. Lawyers from Johannesburg to Algiers – not to mention Khartoum and Ouagadougou – are experiencing and participating in rapid global change in their profession and everyday work. This article identifies some of the questions and issues that emerge from this process, as well as providing a vignette of the South African corporate legal sector and tentatively outlining the emergence of an African corporate lawyering field. It does so in order to propose a research agenda into the trends and potential pathways of growth in this field. It does so in four steps, moving from a theoretical frame to one of the Global South to a portrait of the South African jurisdiction and ending with an agenda for African corporate lawyering.*

1. Introduction

Influenced by processes of globalization and localization, many fields of social and commercial practice – including legal services – across Africa are undergoing rapid transformation. It should come as no surprise that these processes of globalization and transformation include the ongoing transformation of corporate lawyering. Lawyers from Johannesburg to Algiers – not to mention Khartoum and Ouagadougou – are experiencing and participating in rapid global change in their profession and everyday work.

This article identifies some of the questions and issues that emerge from this process, as well as providing a vignette of the South African corporate legal sector and tentatively outlining the emergence of an African corporate lawyering field. It does so in order to propose a research agenda into the trends and potential pathways

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of growth in this field. It does so in four steps, moving from a theoretical frame to one of the Global South to a portrait of the South African jurisdiction and ending with an agenda for African corporate lawyering.

2. Globalization and corporate lawyering

While it is a good first step to recognize the interaction of economic growth and the elaboration of a commercially rich and professional sophisticated field of professional practice, an informed analysis ought not to stop with a simple cause and effect relationship. The practices and processes of globalization are more complicated than one way vectors. Indeed, globalization may be understood in at least two senses. In one sense, it consists of a series of intensified processes of spatial interconnection associated with capitalist restructuring. In another sense, globalization may also be seen within the discourses through which knowledge is produced. These senses of globalization may occur simultaneously and, moreover, may well constitute exercises of power (Hart, 2002, p. 12). Without having the opportunity here to fully explore the theories of globalization, we may nonetheless ask questions such as whether these senses of globalization have worked together to enable lawyers within the elite law firms of South Africa and elsewhere to begin to form a new working space, the field of the African corporate legal elite.

A number of scholars have begun to link globalization theory and the transformations of corporate lawyering. In doing so, these scholars do not narrowly focus on the economic and the political but attend also to the social aspects of the processes (Papa & Wilkins, 2011). For instance, Sida Liu sees globalization in the legal profession and particularly the expansion of international law firms as generative of “regulatory battles and workplace conflicts in advanced market economies as well as developing countries” (Liu, 2008, p. 772). Liu analyses the globalization of the Chinese corporate legal market as “boundary-blurring[,] ... a process of hybridization in which local actors become structurally global-looking while global actors get localized” (Liu, 2008, p. 774). For Liu, “[b]oundary-blurring occurs in law firms’ workplaces, in lawyers’ career trajectories, and in state regulatory policies” (Liu, 2008, p. 771).

Liu’s analysis and its focus on two key sites of contest – state regulation and the corporate lawyering workplace – are consistent with the broader field theory approach employed by Dezalay and Garth (Dezalay & Garth, 2011; Liu, 2015). In their work exploring the activities of legal elites and their relationship to national and transnational politics and to the holders of economic power, Dezalay and Garth have examined relationships between three poles – knowledge, state politics and power, whether economic or social – that contribute to shaping the legal profession (Dezalay & Garth, 2011). They have used this analysis to examine the recent reconstruction of the state in Asia (Dezalay & Garth, 2010a).

A prominent theme of Dezalay and Garth’s analysis relates to globalization. They argue that globalization

has provided opportunities to revalorize legal professionals and strengthen their positions in fields of state power. The hegemonic position of the

United States, with its very strong legal profession, has helped lawyers outside the United States to rebuild their national credibility through human rights, corporate governance, and many other fields where US legal approaches have become so-called global ‘best practices’. (Dezalay & Garth, 2011, p. 62)

Applied in the African context, this analysis can be the touchstone to generate some interesting propositions – ones susceptible to research that casts its net beyond the narrow confines of the legal profession itself. To what extent is the role played by South Africa (with its strong legal tradition) in Africa, similar to or different from that played by the United States globally? Does globalization provide opportunities for lawyers in other jurisdictions – such as Kenya or Nigeria – to amass symbolic power and influence economic structures? To what extent is the latter process hindered or accelerated by the degree to which the national jurisdiction is itself one that is either despotic or a dominant democracy (Halliday *et al.*, 2012; Gobe, 2013)?

What is the impact and influence in this field of patterns of globalization on the African continent in general, within sub-continental territories (sometimes termed regional economic communities) and within South Africa in particular? To what extent is the African continent a place in which, through which and from which these patterns and processes are themselves influenced? Indeed, one question concerns the place of the African legal services market within patterns of change within the globalizing legal profession. Perhaps the core underlying question here is whether a specifically African legal professional elite is being demarcated?

3. Globalization and corporate lawyering in the Global South

The argument supporting the emergence of a field of African corporate lawyering may also be supported by the contention that its emergence is occurring in close proximity if not simultaneously with what has been termed the rise of the corporate legal elite in the Global South. The term ‘corporate legal elite’ has been developed and elaborated in the work of Wilkins and Papa looking at the corporate legal elite in the emerging economies of the BRICS (with a focus on Brazil, India and China) (Wilkins & Papa, 2013). In their use, a corporate legal elite means “lawyers who work in law firms based in these jurisdictions that serve a clientele composed primarily of foreign and domestic corporations, and lawyers who work in the internal legal departments of the growing number of corporations based in the BRICS” (Wilkins & Papa, 2013, p. 1151). As noted above, the theory of globalization used here extends beyond the economic and the political. For Papa and Wilkins, “three social processes commonly identified by globalization scholars in other areas help to explain the changes currently taking place in the Indian legal profession: economic globalization, globalization of knowledge and globalization of governance” (Papa & Wilkins, 2011, p. 177). The significance of these developments is heightened by the continuing growth of the Indian and especially the Chinese economy as they begin to rival the American in size and global influence.

It is worth briefly noting the several elements packed into this pithy definition of the corporate legal elite. First, in terms of the law firms, the definition of the elite here is in terms of their clients – which are first and foremost corporations. The move of defining a legal sector by its clients can be traced back at least as far as Heinz and Laumann (1982). Second, it is axiomatic in this definition that this clientele will be composed of corporations which are both foreign and domestic. In a third mirroring element, this definition includes both domestic-based law firms and foreign law firms with offices in the jurisdiction. This brings together into a single analytic frame the very different sized offices that do in fact compete and work within the same legal sector. Fourth, the definition crucially includes the role of in-house counsel at the corporations themselves.

The picture that emerges from the research into the Chinese and Indian corporate legal sectors is revealing. In China, over 200 foreign law firms have rushed to establish offices in China since the country first allowed this step in 1992. In offices mostly in Beijing and Shanghai, the vast majority of these firms are American, Australian or European. However, it has remained the case that “foreign law firms have been forbidden to practice Chinese law or to employ licensed Chinese lawyers” (Liu, 2008, p. 772). Indeed, there is severe conflict between foreign and local firms in the internal market for Chinese corporate legal services. Furthermore, as pointed out below, it is only since 2012 that one or two very large Chinese firms have begun to participate in the global market for legal services outside of the internal Chinese market. In India, scholars have also identified the growth of a corporate legal sector consisting of about 150 law firms, sharply distinct from the over one million lawyers who provide legal services to India’s population at large (Papa & Wilkins, 2011). Nonetheless, the scale of this sector is considerably less than that of the Chinese.

In both sectors, further growth of the in-house counsel sector in India and China would also accelerate the development of these corporate legal spheres. To date there is little evidence of such an acceleration as legal professionals working for state-owned entities in these jurisdictions have been seen either as lower-class legal professionals or as state bureaucrats rather than as power organizational/corporate lawyers (Liu, 2012). Nonetheless, some trends such as economic, knowledge and governance globalization may indeed trigger the growth of the in-house sector in emerging economies and cause the legal departments of large corporations in India and China to grow in both size and influence over the next decade (Wilkins, 2012).

Most of the existing literature on the rise of the corporate legal elite in the Global South has focused either on single national jurisdictions or the BRICS as a whole (Wilkins & Papa, 2013). The rise of the corporate legal elite in countries such as China and India in particular has raised significant questions about the interaction of those elites with several processes of globalization such as market liberalization, internationalization of the legal profession, the privatization of global governance and the corporatization/deprofessionalization of the legal profession (Wilkins & Papa, 2013). In a parallel fashion, those questions may of course also be raised elsewhere in the Global South, including Africa. To pursue such a research route, it may well be worthwhile to conduct an exercise in parallel with the identification of the

corporate legal elite in India and China. As part of this exercise, one could perhaps identify at the organizational core of the African corporate legal elite around 20 large law firms with significant operations in Africa as well as a few large legal departments of influential global corporations and parastatals. The law firms would mostly be based in Johannesburg, London and New York with perhaps a few in Nairobi and Lagos and similar African cities.

Indeed, it may be an especially propitious economic time to argue for the parallel between globalization in Africa and elsewhere in the Global South. This is because relatively speaking there is a buzz to African economic prospects that has not been seen for a while. Currently, there is renewed external attention to African economic opportunities (“Africa”, 2014). African economies are projected to experience rates of growth that are relatively high by current global standards, especially after the global financial crisis of 2008 (International Monetary Fund, 2012). Indeed, this occurs at the same time as a growing concern regarding whether the fast growth rates of especially the Chinese economy can continue. The juxtaposition of these two trends may make the inclusion of Africa within a contemporary-but-slightly-older Global South analysis appear persuasive.

While the above is indeed a worthwhile route to pursue, there are nonetheless certain words of caution and nuance to bring into the picture. While the Chinese, Indian and BRICS questions are also relevant to the rise of the African corporate legal elite, the African picture does not neatly fit into the one sketched by Papa and Wilkins of a BRICS-led Global South engaging with a Global North for influence, status and wealth. There are more complicated dynamics at work; it remains to be fully explained why Africa is more resistant to or complicated for the import side of legal globalization (Comaroff & Comaroff, 2011). While there are multiple sources for this complexity, two may be mentioned at this stage from a corporate lawyering perspective: Africa’s fragmented territory and its ongoing debate over Africanness. To capture faithfully the African picture and its rightful place within the larger global one, it is necessary to draw on contextualized studies which at the same time are set within a transnational field (Dezalay & Garth, 2010a, 2010b; Comaroff & Comaroff, 2011).

From a corporate lawyering perspective, Africa can be considered a fragmented or complex territory. There is no single national jurisdiction driving the development of this field in Africa. Take for instance a recent academic study of the regulation of public procurement in Africa. The researchers reported “pragmatic problems such as access to materials, language barriers, and finding research partners in different partners” and ended with studies covering nine African jurisdictions, all within the formalized African legal networks identified above (Arrowsmith & Quinot, 2013, pp. xiii–xiv). In another dimension of this fractured nature (and arguably an ongoing and deepening one), we should note that while South Africa is the locus of significant processes of globalization and of outreach towards the rest of the continent, it cannot be considered a dominant jurisdiction in Africa. Other jurisdictions are also influential, such as Nigeria and Kenya. Likewise, as explored more fully below, there are distinct law firm networks on the continent that appear to closely derive from divergent colonial traditions.

Further, it is, I would argue, difficult if not impossible to speak of an African legal elite without investigating the cultural meanings of Africa and of race (Clarke & Thomas, 2006; Clarke, 2009). Indeed, recent studies into the corporate legal elite in Brazil remind us not to leave out the influence of race in the historical process of corporate lawyering development (Krishnan *et al.*, 2014). Indeed, what this point and the one just made regarding the fragmentary nature of the African territory might jointly indicate is the potential for competition between legal elites from various jurisdictions for pre-eminence in the legal sector – competition at least in part activated along racial identities such as black legal elites from Kenya and Nigeria pushing back at the expansion of largely white South African legal elites. What is evident thus far is that it is signally possible at the level of a professional field to integrate a sense of Africanness with a corporate legal identity.

4. The South African corporate legal sector – a sketch

South Africa has a contested yet arguably special place within this story. Indeed, it is appropriate to cast one's eye first at the internationalization of the legal services market in South Africa before considering the actions and influence of the big firms there on the structure of the corporate legal market elsewhere in Africa. One might argue that in South Africa the intertwined processes of internationalization and localization that constitute globalization are most apparent.

Since around 2000, the South African corporate legal sector taken in its own terms has seen rapid growth – both organic and as the result of mergers. Without a doubt much of this growth is the result of mergers. The most prominent example may well be the merger of Edward Nathan and Sonnenberg Hofman Gallombick to create Edward Nathan Sonnenbergs (ENS), the self-proclaimed largest law firm in Africa. Edward Nathan had become reduced in size through an earlier takeover by one of South Africa's four large commercial banks, Nedbank, in a deal that was eventually effectively undone. Still much of the growth in the corporate legal sector has been organic. The South African legal services market has exploited its relatively sheltered position and fed upon the rapidly expanding corporate opportunities of the 1980s and 1990s into the first decade of the twenty-first century. This development remains to be documented and analysed, in order for instance to examine the relative proportion of organic and merger firm growth, as well as the size of the market for legal services.

Like their counterparts in Nairobi and Lagos, South African lawyers now often speak of the Big 5 law firms and understand them to range between 250 and more than 600 lawyers (“Big Five law firms”, 2014). However, this designation is extremely fluid and capacious. Indeed, there are at least six historically domestic law firms which can lay claim to a place in the top segment of this market in South Africa: ENSAfrica, Webber Wentzel, Bowman Gilfilan, Cliffe Dekker, Werksmans and the South African offices of Norton Rose Fulbright (historically the largely Johannesburg firm Deneys Reitz, which joined Norton Rose from June 2011). Some renderings simply put six firms in (“Big Five law firms”, 2014). Some of this fluidity undoubtedly currently stems from the recent integration of Deneys Reitz into Norton Rose Fulbright.

Global law firms most often mentioned as having significant operation stakes in Africa are those based in London (Linklaters, Allen & Overy and Hogan Lovells) but also the global business law firms (Baker & McKenzie, DLA Piper, Eversheds, Norton Rose Fulbright and Dentons). Each of these has some presence in South Africa and many have offices elsewhere on the continent. Elite and global-oriented firms – whether they embrace the global business firm model or more organic firm to firm growth – now are said to see an African presence as a required element for global credibility (Harris, 2014a; Pickworth, 2014). Still, there are of course a multitude of global firms who work on the African legal services market without a continental presence.

On the whole, it appears as if there is greater interest and presence by large US and European law firms in Africa than by firms based in the Global South: Chinese, Indian or Brazilian. This is certainly the case looking at Johannesburg and at the existing African formalized legal networks. One reason for this lack of Chinese and Indian legal presence in Africa is that American and European firms dominate the top ranks of global law firms. This fact itself is partly reflective of the size of the law firms. The top Indian firms are approximately the same size as the top South African firms (“Top 40 India Law Firms | RSG India Law Centre”, 2014). However, the Chinese legal services market is different as two Chinese firms have, in 2012 and early 2015, merged with global law firms, providing a potentially fast-growing Chinese global presence in legal services (Jones, 2015).

The in-house sector does not as yet contribute to the development and growth of the corporate legal sector in the same way as in the legal services markets of America or Europe. For instance, one of the largest South African parastatals, Eskom – which supplies nearly the totality of electricity to South Africa – has only 24 in-house counsel. By comparison, it has a panel of outside law firms with 72 organizations represented (“Silverbird Group legal chief: Media wave | Profiles | The Lawyer”, 2014).

Above and beyond its colonial and South African contexts, the transnational influences upon the South African legal sector have effectively been present from its inception. Martin Chanock has identified and traced such links and influences in his depiction of the corporate law firms linked to the Johannesburg mining sector in the early decades of the twentieth century (Chanock, 2001). One interesting aspect of Chanock’s historical study remains relevant today and is particularly worth mentioning. In many presentations of the South African legal system, its common law is frequently given as deriving from Roman–Dutch law. Such a presentation has the effect of contesting with the English tradition of the common law and, perhaps more importantly, drawing “attention away from the local situations in which the law was developed in response to contemporary needs and conflicts” (Chanock, 2001, p. 155). Indeed, it is increasingly realized that the South African legal system can be best characterized as dominantly British in its historical influences and, given its local settings, distinctively South African in content (Chanock, 1989, p. 269). This revisionist historical understanding of the South African as a common law jurisdiction makes it easier to understand the lack of a doctrinal barrier to the extension of the big global firm into South Africa. Nonetheless, a distinct

development of internationalization appears to have taken place at least since the turn of the twenty-first century which this section sketches.

While it may be less restricted than Brazil, India or China, the legal services market in South Africa shares a key element of restriction with those jurisdictions in that foreign law firms may establish offices but do not easily have their professionals permitted to practise local South African law (Wilkins & Papa, 2013, p. 1171). Pending the coming into force of the relevant provisions of the 2014 Legal Practice Act, the 1979 legislation – the Attorneys Act – continues to govern rights of practice and continues to restrict practice rights for the most part to South African law graduates with admission to the profession. In this sense, the large South African law firms owe a certain debt to the (in)action of the South African government, although there is little evidence from which to conclude that this was an explicit or even merely intended policy outcome.

Initially, internationalization seemed to occur in the form of steady and intense activity over this period. In 2008, one could have only claimed three internationalized law firms in South Africa. At that point, the attempted tie-up of the global firm Eversheds with the South African firm Routledge Modise (itself a merger of a white and a black firm) was underway but already beginning to show strain. Routledge Modise regained its autonomy in a formal agreement in 2011, with contributing factors including conflicts of interest over clients and lack of regulatory support for advertising legal services. In 2014, internationalization of the South African corporate legal sector leapt forward with four international law firms establishing offices bringing the total number of what can be termed international law firms in South Africa up to 13 (Harris, 2014a).

There has been a high degree of attention paid in South Africa to black economic empowerment, coupled with an extremely slow pace of actual change in either policy or practice in this respect (Department of Justice and Constitutional Development, 2012; Manyathi-Jele, 2014). There is government notice and pressure on the legal services market in South Africa to become more black. In the budget speech of 2014, the Deputy Minister of JCD noted:

... [A]mongst the largest legal firms in the country, there is not one that is predominately African owned. If one looks at the titles, the names, of the so-called big five law firms, one will not spot a single African surname in those titles. Can this still be the situation 20 years after the end of apartheid? (National Assembly, 2014)

Indeed, the rate of demographic change in the corporate legal sector in South Africa has remained slow (Klaaren, 2014). Twenty years after the end of formal apartheid, it is only now with the formal passage of the Legal Practice Act that there is a serious prospect of discussion of structural changes in the South African legal profession (“Legal Practice Bill signed”, 2014). Compare this situation with that of Nairobi and Lagos where black Africans control most major corporate firms.

As for the professional culture in South Africa, it is relatively well-established that the South African legal culture is itself formal (Klare, 1998; Chanock, 2001). This culture appears to be changing in directions of diversity and cosmopolitanism.

Explicit attention is often given to the topic of race as the metric of black economic empowerment (BEE) has stepped smartly to the fore. One large corporate firm proudly notes it is “level2 BBEE”, meaning a certain degree of compliance with the relevant South Africa empowerment legislation and regulations. Progress towards employment equity goals and the percentage black ownership are regularly reported in the industry media (“Africa is focus for international law firms”, 2013). Large clients also pay attention to issues of developing legal skills (“Silverbird Group legal chief: Media wave | Profiles | The Lawyer”, 2014).

While less attention has been given to the growing place of cosmopolitanism within the culture of South Africa’s corporate legal sector, this factor plays a significant role and one which interacts with the drive to diversify. For instance, in recent research into Johannesburg professional culture, cosmopolitanism was found to be an escape from a local African identity yet also a mode through which new inequalities were reinscribed (Bourgouin, 2011).

Once launched, these law firms now clearly see their growth coming not so much domestically as on the continent. Beyond the rosy prospects for African economic growth, there is evidence to support this view. For instance, a firm just out of the Big 5, Routledge Modise (now merged with Hogan Lovells), nonetheless reports that over half of its top 200 clients have operations in Africa (Pickworth, 2014). It is argued that the growth in corporate law firms in Africa has significantly reduced the percentage of legal spending leaving the continent. Ten years ago, this spending was estimated to be going 80–90% to non-African firms (Pickworth, 2014). The question at issue here is again the demarcation of the African corporate lawyering field. The generation and dissemination of the statistic just quoted implies the existence of a distinct African corporate lawyering field – a phenomenon particularly in the interest of those corporate law firms aggressively establishing themselves within this legal services market.

In some ways the South African corporate legal sector wishes to have the best of both worlds – both colonial master and subject. Here for instance is the first paragraph of a Johannesburg law firm’s statement announcing its recent ‘spectacular’ performance:

Cliffe Dekker Hofmeyr’s Mergers and Acquisition (M&A) team claimed 1st place by deal count and 4th place by deal value in the Africa and Middle East region of Mergermarket’s M&A 2014 Global League Tables, released in mid-January 2015. Its 1st place by deal count placed it ahead of the London Magic Circle firms, lead by Clifford Chance (2nd place). Its credible 4th place by deal value, places it right behind three London Magic Circle firms but, importantly, ahead of all other African (including South African) law firms. (“Cliffe Dekker Hofmeyr’s spectacular performance in the Mergermarket league tables”, 2015)

Despite the market puffery, one can detect an underlying concern about place in an imagined empire of globalized law firms.

Indeed, it is appropriate to conclude this short pen picture of the South African corporate legal sector by noting that South African corporate lawyers are eager –

indeed desperately keen – to be part of African corporate lawyering. This is so whether they are black or white. One firm – ENSAfrica (the firm resulting from the merger discussed above) – has now gone so far as to incorporate the term Africa into its very name.

But are the South African lawyers and their law firms a genuine part of African corporate lawyering? To answer that question or even to suggest the terms under which that question may best be posed and responded to requires that we pull back from the tight focus on the South African corporate legal sector and instead generate and test some propositions regarding globalization and corporate lawyering in Africa. Drawing on the discussion in each of this and the previous two sections, the next section begins that effort.

5. Globalization and corporate lawyering in Africa

A comprehensive survey of law firms throughout Africa remains to be undertaken as well as of the cohort of African corporate lawyers. A study of African law firms could provide important information on aspects of these firms including their staff, network contacts, clients, government links and revenue streams. However, one aspect is clear: the size of law firms on the African continent remains small by global standards. In Kenya, the two largest firms have just less than 50 lawyers each [“Kaplan & Stratton Advocates | Global expertise, with regional knowledge”, n.d.; “Our Firm: Hamilton Harrison & Mathews (incorporating Oraro & Co)”, n.d.]. While the overall sector is larger in Lagos than in Nairobi, the size of the largest law firms is similar in Nigeria. Of the 24 Nigerian law firms listed in the Legal 500, the Big 5 in Lagos have respectively 55, 55, 49, 45 and 38 lawyers employed (“The Legal 500: Europe, Middle East & Africa > Nigeria > Law firm Directory”, n.d.).

Likewise, it would appear that in-house in Africa is behind the global trend in terms of size and organizational influence (Chayes & Chayes, 1985; Wilkins, 2012). However, a turning point may have been reached. It seems likely that the numbers of in-house counsel will grow and that work will shift from law firms towards in-house counsel. “Legal services are expensive”, says the general counsel of a Nigerian entertainment company. “Companies wanting to make a profit in Africa find it better to have a lawyer at the table than having to pay experts at an hourly rate outside. Even smaller companies are starting to have in-house lawyers” (“Silverbird Group legal chief: Media wave | Profiles | The Lawyer”, 2014).

As noted above, the purpose of this section is not definitive but rather to suggest avenues for research through a tentative outline of the field of corporate lawyering in Africa. The African corporate legal elite field appears to be in a period of rapid change and formation. At least two features readily appear organizationally distinctive in this process of formation – the importance of formal networks across Africa and the relatively high significance given to education and training within this field. This section will use these two features as axes to generate some propositions for further research and examination.

5.1. *The importance of formal legal networks in Africa*

In contemporary African corporate lawyering, the space occupied by formal legal networks appears considerable. “[T]hroughout the continent, remarkably few African independents are tied in with UK, US or Portuguese firms. For the moment, the favoured cross-border model is the cluster, in the shape of Lex Africa or Lex Mundi” (Griffiths, 2014). This may thus be hypothesized as the background norm – becoming part of one of the big membership organizations.

Along this line of analysis, one can use their relationships to global law firms and to formal African legal networks to make a comprehensive picture of the South African corporate legal sector. Three of the Big 5 South African law firms (ENSAfrica, Bowman Gilfilan and Werksmans) are pursuing a largely similar African growth strategy: “of remaining independent from international players and instead developing pan-African networks” (Harris, 2014a). As detailed below, the networks centred around ENSAfrica and Bowman Gilfilan appear to be stronger instances of networks dominated by a single firm than that associated with Werksmans. Three other firms – Webber Wentzel, Norton Rose Fulbright and Cliffe Dekker – opted instead to formally link to or join with global law firms (though Cliffe Dekker announced in August 2015 that the firm and DLA Piper would end their 10-year formal alliance).

Of the South African independents, the significant difference with respect to the African legal networks is that Werksmans has depended on the non-exclusive network strategy. It thus has not owned or opened up some African offices, as ENS and Bowmans do (Thomas, 2014). Werksmans was a prime mover in the Lex Africa network over 20 years ago in 1993, the first network of its kind and currently with membership in 20 African jurisdictions (Thomas, 2014; “Member Countries | Lex Africa: Network of Law Firms in Africa”, n.d.).

While ENS and BG have informal contacts and formal working relationships throughout Africa, fully owned offices are preferred over the network form of organization. Indeed, it is part of the self-definition of ENS, with 12 offices in six African countries, that it is not a network.¹ Only where jurisdictional rules in the legal services market prevent integration with a foreign (South African) firm is the network form adopted (Harris, 2014b). While it does have nine integrated offices in seven African countries, Bowman Gilfilan appears significantly more amenable to participating in formal networks, being part of the global Lex Mundi network, which has firms represented in 18 African jurisdictions (“Lex Mundi – The Law Firms That Know Your Markets: The Law Firms That Know Your Markets”, n.d.).

Of the large South African firms linked with the global firms, one – Webber Wentzel allied with Linklaters – also has invested heavily in a network, the African Legal Network (ALN) which has representation in 12 African jurisdictions. A fifth large South African firm – Cliffe Dekker – opted for 10 years (2005–2015) to become part of a global business firm, DLA Piper, with a network of firms in 15 African jurisdictions (“DLA Piper Africa | DLA Piper Global Law Firm”, n.d.). Norton Rose Fulbright is distinctive for maintaining three large full-service South African offices employing over 200 lawyers, having merged with the large Johannesburg corporate firm, Deneys Reitz.

Further research here is clearly warranted, examining for instance the differences between the firms' experiences and understandings within the membership networks and those within the single dominant partner networks. As one of the anonymous reviewers of this piece insightfully suggested, "one might plausibly suspect that as local law firms get stronger they are likely to have less interest in being a part of the kind of single-firm controlled networks that the big South African firms are trying to put together". Research in these various networks could elucidate not only South Africa's role in developing the corporate legal market in the rest of the continent but also trace broader relationships of localization and globalization.

These attributes of independence and linkage to formal law firms also assist us to survey law firms on the African continent beyond South Africa. Each of the five largest Kenyan law firms are members of formalized legal networks of this type (Jiwaji, 2013). Indeed, it is interesting to note which African jurisdictions are not part of any of the networks of the Big 5 South African firms nor have office representation. Twenty-nine countries have at least one representation in the four corporate law networks of Lex Africa, Lex Mundi, African Legal Network or the DLA Piper Africa Network: Algeria (2), Angola (2), Botswana (4), Burundi (2), DRC, Egypt (2), Ethiopia (2), Ghana (3), Ivory Coast, Kenya (4), Lesotho, Malawi (2), Mali, Mauritius (4), Morocco, Mozambique (3), Namibia (3), Nigeria (3), Rwanda (2), Senegal, Seychelles, South Africa (4), Sudan, Swaziland, Tanzania (4), Tunisia (2), Uganda (4), Zambia (3) and Zimbabwe. The jurisdictions represented in all four are: Botswana, Kenya, Mauritius, South Africa, Tanzania and Uganda.

A fifth corporate law network exists in Africa with greater membership in the lusophone and francophone jurisdictions. Reflecting perhaps more imperial echoes than BRICS thunder, it is not a Brazilian firm but rather one based in Portugal that is noted for its close relationships with African law firms (Griffiths, 2014). The Miranda Alliance, associated with a Portuguese firm based in Lisbon, covers seven non-African jurisdictions [Portugal, Brazil, France, the United States, Macau (China), Timor-Leste and the United Kingdom] and 10 African jurisdictions (Angola, Cameroon, Cape Verde, DRC, Equatorial Guinea, Gabon, Guinea-Bissau, Mozambique, Republic of the Congo, Sao Tome and Principe) ("Miranda Alliance", n.d.). Of these 10 African jurisdictions, none are in the network nodes of the above four Anglophone networks, only Angola and Mozambique are represented in the Anglophone networks more than once, and seven are not represented even once.

Aggregating the five networks discussed above together, one can assert that 36 of the 54 African jurisdictions are part of these law firm networks. Conversely, that finding means that 18 African jurisdictions are not part of such networks. It may be that there is one set of African jurisdictions with overlapping formalized networks and another without such coverage at all, likely coinciding with colonial legacies.

5.2. The significance given to professional education and knowledge in African corporate lawyering

Any sustainable growth and development of African corporate lawyering is likely to be linked to processes of knowledge generation and diffusion. Most classically of course,

these processes occur in formal law schools and in professional apprentice or candidate attorney programmes. It is possible that the significance of education in African corporate lawyering draws a certain degree of institutional strength from the investments made by donors in legal education in Africa (Krishnan, 2012). Despite some work, a comprehensive study of these institutions and programmes across the African continent remains to be done (Ndulo, 2001). The development of African corporate lawyering at a time of globalization poses a number of interesting questions. What has been the impact of this elite corporate field on legal education? There are dynamics here to explore in jurisdictional capitals such as Lusaka and Nairobi as well as in more firm-to-firm (e.g. law firm to university law school) environments such as the Western Cape. At least within the South African jurisdiction, corporate firms do not appear to have had the same degree of influence as they have enjoyed in India (Gingerich & Robinson, 2014).

In any case, the enquiry must be both broad and deep. For instance, the mobility of African law graduates is likely to be influenced significantly by further liberalization in jurisdictional requirements relating to the activities of foreign lawyers (including those from elsewhere on the continent) and by the growth of the law firms with presence on the continent. Along these lines, there is some pressure in jurisdictions like Botswana to cut back on the current liberal practice of allowing South African advocates to appear in court (Harris, 2014a). There is ample evidence of increased mobility and intra-firm global movement. For instance, Norton Rose Fulbright reported for 2013 the secondment of 12 lawyers and four permanent transfers out of its SA office (Pickworth, 2014). Candidate attorneys can now spend six months out of their national jurisdiction. Many African lawyers have US or UK qualifications and have had significant international experience (Harris, 2014b).

The significance of processes of diffusion of knowledge is highlighted since, for some of the looser global business firms, one strategy for maintaining relationships with African lawyers and gaining business is to provide field-building activities such as seminars and training institutes. “The projects are generally touted as helping the African firms develop and building international firms’ exposure to the continent” (Harris, 2014b). These activities are at the same time part of and distinct from the development of formal networks detailed above. “[W]e’re not selling a network, we’re selling a platform” (Harris, 2014b). Eversheds started a network providing monthly updates, training seminars and client conferences across law firms in 14 African jurisdictions in 2013 (“Eversheds Launches African Law Institute and Boosts Development of African Operations”, n.d.). Baker & McKenzie plan, for instance, to conduct a seminar for their clients in Africa as part of a global series of seminars in how to respond to globally coordinated regulatory investigations (“Baker & McKenzie launches client-focused ‘investigations academy’ | News | The Lawyer”, n.d.). While undoubtedly some of this is pure marketing, there are other processes happening as well.

The underlying question here is the linkage of the organizational form and the career of professionals in the field to the jurisdiction(s) in which they operate. A productive research strategy will be to attend carefully to the trajectories of the African corporate lawyers themselves (“After the JD – American Bar Foundation”, n.d.). While some of the processes within the legal profession and the corporate lawyering

skills market are those of the market for the production of legal services (Godfrey, 2009), others are those of identity generation (Matthews, 2014).

Thus attention should be directed to studying the identities generated as law students become law graduates and some become lawyers. With respect to the dimension of professional culture, it may even be a sort of pan-Africanism rather than more narrow nationalism that is significant in the career choices of African lawyers. This is evident in for instance the comments of lawyers who opt for African rather than European work. For a Zambian lawyer: “We’re all like-minded in that we believe that what we do is changing our nations, . . . we can go to England and get a job, but we all want to be in Africa” (Harris, 2014b).

6. Conclusion

The above evidence and research propositions have largely focused on law firms and lawyers. While the law firms and their employees (along with the potential growth of in-house counsel) may well lie at the core of the African corporate legal field, the firms and their activities do not exclusively span or generate that space. Further research could profitably explore the roles played by continental organizations and organizational entrepreneurs in sectors such as civil society, arbitration and finance. A relatively robust continental lawyers’ organization exists, with a decidedly corporate flavour. The Pan African Lawyers Union was founded in 2002 and offers an umbrella organization for five regional lawyers’ associations and the 54 national lawyers’ associations (“Pan African Lawyers Union | Uniting Africa through law”, n.d.). At the moment, there is no dominant arbitration centre based on the African continent and the ones that do exist “do not feature noticeably in the global arbitral market” (Onyema, 2008, p. 10). South African law firms have, however, long been pushing for legislative changes in their jurisdiction to establish such a centre and believe that they are close to achieving that goal (Harris, 2014a). The African corporate legal sector also has received significant support from regional finance institutions. In 2010, the African Development Bank instituted the African Legal Support Facility which has assisted with funds to allow African States “to negotiate better agreements especially in the natural resource sector and major infrastructure projects” (African Development Bank, 2014). In order to broaden our focus beyond the narrowly economic and the political in the study of African corporate lawyering, it will be best to embrace a wide range of enquiries. Certainly, this article has delineated only a part thereof.

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Note

[1] “ENSafrica - law | tax | forensics | intellectual property in Africa” (n.d.). “ENSafrica’s key differentiator in the market is that it operates as one firm across Africa. The firm does not collaborate by

means of a network, an alliance, nor as a ‘Swiss Verein’ across various countries; rather, all of its offices are fully integrated and work as one team.”

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