

**BEYOND THE GUILD:  
LAWYER ORGANIZATIONS  
AND LAW MAKING**

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#### INTRODUCTION

Lawyers throughout the world seek to influence law, not only through their individual actions, but also through lawyer organizations. As interest groups, these organizations often work to affect not only law, but also the justice system and the workings of government. It is no secret that these organizations sometimes try to block legal change or create new legal rules to promote lawyers' own interests.<sup>1</sup> Lawyer organizations also work to influence law in ways that will benefit their clients. Yet sometimes lawyers' collective actions reflect broader political concerns rather than their clients' or their own self-interest, such as when thousands of Pakistani lawyers took to the streets in 2007 to protest General Pervez Musharraf's attempt to remove the Supreme Court Chief Justice for political reasons.<sup>2</sup> In contrast, the German Bar Association did little to

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<sup>1</sup> See, e.g., MICHAEL J. POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION 5 (1988).

<sup>2</sup> The first protests occurred in March 2007. Declan Walsh, *Pakistan Lawyers Clash with Police over Judge's Sacking*, THE GUARDIAN (Mar. 12, 2007), <https://www.theguardian.com/world/2007/mar/12/pakistan.declanwalsh>. Later that year, thousands of lawyers participated in protests organized by bar organizations around the country. Pamela Constable, *Pakistan's Lawyers on the Front Lines*, WASH. POST (Nov. 19, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/18/AR2007111801338.html>; Simon Gardner, *Pakistan Lawyers Strike to Protest Musharraf Purge*, REUTERS (Dec. 5, 2007), <https://www.reuters.com/article/us-pakistan-lawyers-idUSISL28295920071205>; Jane Perlez & David Rohde, *Pakistan Attempts to Crush Protest by Lawyers*, N.Y. TIMES (Nov. 6, 2007), <https://www.nytimes.com/2007/11/06/world/asia/06pakistan.html>.

oppose Nazi efforts in 1933 to take over the bar association and to remove Jewish judges from the judiciary.<sup>3</sup> What explains attempts by lawyer organizations to affect law? In what situations and for what reasons do they do so?

Lawyer guilds began to appear around 1100, and like other guilds, engaged in activities to promote their members' status and to secure a monopoly on the work they performed.<sup>4</sup> In Florence, a guild of judge-lawyers and notaries (*Arte dei Giudici e Notai*) was a "vigorous organization" by 1212.<sup>5</sup> In England, lawyer societies formed in the Inns of Court and the Inns of Chancery in the fourteenth century.<sup>6</sup> The French Order of Advocates was first constituted in the mid-fourteenth century.<sup>7</sup> In the early seventeenth century, French barristers acted collectively to oppose the Crown's and high courts' efforts to tax honoraria paid to barristers by their clients.<sup>8</sup> By the early eighteenth century, the Order was actively engaged in political action in opposition to both the Church and the state.<sup>9</sup>

Today, lawyer organizations exist in nearly every country.<sup>10</sup>

3 INGO MULLER, *HITLER'S JUSTICE: THE COURTS OF THE THIRD REICH* 61-62 (1992); Kenneth F. Ledford, *Lawyers and the Limits of Liberalism: The German Bar in the Weimer Republic*, in *LAWYERS AND THE RISE OF WESTERN POLITICAL LIBERALISM: EUROPE AND NORTH AMERICA FROM THE EIGHTEENTH TO TWENTIETH CENTURIES* 229, 230-31 (Terence C. Halliday & Lucien Karpik eds., 1997).

4 JAMES A. BRUNDAGE, *THE MEDIEVAL ORIGINS OF THE LEGAL PROFESSION* 365 (2008). There were arguably guilds of law in Baghdad and elsewhere in the Muslim world even earlier. See George Makdisi, *The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court*, 34 *CLEV. ST. L. REV.* 3, 4, 6 (1985).

5 LAURO MARTINES, *LAWYERS AND STATECRAFT IN RENAISSANCE FLORENCE* 11, 14 (2015); Jonathan Rose, *The Legal Profession in Medieval England: A History of Regulation*, 48 *SYRACUSE L. REV.* 1, 90 (1998).

6 BRUNDAGE, *supra* note 4, at 368; Rose, *supra* note 5, at 90; *Introduction*, INNER TEMPLE LIBR., <https://www.innertemplelibrary.org.uk/inner-temple/history/introduction/> (last visited Mar. 12, 2019).

7 See BRUNDAGE, *supra* note 4, at 368; Pierre Georges LePauille, *Law Practice in France*, 50 *COLUM. L. REV.* 945, 945 (1950).

8 David A. Bell, *Barristers, Politics, and the Failure of Civil Society in Old Regime France*, in *LAWYERS AND THE RISE OF WESTERN POLITICAL LIBERALISM*, *supra* note 3, at 65, 71.

9 *Id.* at 74-80; Terence C. Halliday & Lucien Karpik, *Politics Matter: A Comparative Theory of Lawyers in the Making of Political Liberalism*, in *LAWYERS AND THE RISE OF WESTERN POLITICAL LIBERALISM*, *supra* note 3, at 15, 24.

10 Lawyer organizations can be found in war-torn countries such as Syria, and in countries operating under authoritarian rule such as China. See DAMASCAS B. ASS'N, [www.damascusbar.org](http://www.damascusbar.org) (last visited Mar. 12, 2019); ZHONGGUO LÜSHIWANG (中國律師網)[ALL CHINA LAW. ASS'N], <http://www.acla.org.cn/home/toPage> (last visited Mar. 12, 2019). Lawyer organizations can also be found in countries with relatively few lawyers. See, e.g., Francesca Bartlett, *A Professional Project in the South Pacific: Regionalism and Reforming Solomon Islands' Legal Profession*, 42 *FORDHAM INT'L L.J.* 14, 18 (2018). The terms "lawyer organization" and "bar association" are used interchangeably in this article.

Comparative analysis of “lawyer” organizations is challenging, however, because countries organize legal work quite differently.<sup>11</sup> The term “lawyer” is used in this Article to mean legally trained individuals who are licensed to represent clients in the country’s criminal courts and in most civil court matters.<sup>12</sup> So, for example, in the United States this would refer to lawyers, in Japan to *bengoshi*, and in France to *avocats* (and not *notaires*).<sup>13</sup> Most nations have mandatory organizations to which all lawyers must belong. Governments typically enact legislation establishing these mandatory organizations, but then afford them some autonomy.<sup>14</sup> This includes the right to elect leaders and to exercise some responsibility for the regulation of lawyer conduct.<sup>15</sup> In some countries, however, the organization’s leadership is essentially chosen by the state and lawyers are constrained in their efforts to pursue collective goals through the organization.

Many countries also have voluntary lawyer organizations to which lawyers may choose to belong. Voluntary lawyer organizations are typically composed of lawyers who work in the same geographic area (e.g., the Los Angeles County Bar Association), practice setting (e.g., the Association of Corporate Counsel), or specialty (e.g., the National

11 As Richard Abel noted, the concept of “lawyer” is a unitary one, based in the common law world, with private practice at its core. However, there is no “legal profession” as such in the civil law world, which includes other legal occupational categories such as civil servants, judges, prosecutors, and law professors in addition to private practitioners. See Richard L. Abel, *Lawyers in the Civil Law World*, in *LAWYERS IN SOCIETY: THE CIVIL LAW WORLD* 1, 4 (Richard L. Abel & Philip C. Lewis eds., 1988). Japan has five other types of legal services providers besides attorneys (*bengoshi*), including some whose work is similar to the work of U.S. lawyers (e.g., patent attorneys, tax accountants, and judicial scribes). See Kyoto Ishida, *Ethical Standards of Japanese Lawyers: Translation of the Ethics Codes for Six Categories of Legal Service Providers*, 14 *PAC. RIM L. & POL’Y* 383, 383 (2005).

12 In countries like Russia and Kyrgyzstan, only criminal defense lawyers are licensed. Unlicensed individuals can appear in a representational capacity in civil matters. See *infra* notes 183-85 and accompanying text; Chris Johnson, *Is Reform Coming to the Russian Legal Market?*, *AM. LAW.* (July 28, 2017), <https://www.law.com/americanlawyer/almID/1202793478216/>.

13 We acknowledge that the definition of lawyer used here generally reflects that of common law jurisdictions. Our analysis in this article focuses on organizations of “lawyers” as previously defined. We exclude organizations composed exclusively of judges, prosecutors, or other government lawyers who, after obtaining their law degrees, are trained separately in many civil law jurisdictions and often belong to different professional associations.

14 This approach is promoted by the United Nations Basic Principles on the Role of Lawyers, which state that lawyers “shall be entitled to form and join self-governing professional associations to represent their interests.” Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers*, art. 24, U.N. Doc. A/Conf.144/28/Rev.1 (Aug. 27, 1990) [hereinafter *U.N. Basic Principles on the Role of Lawyers*].

15 This is also promoted in the U.N. Basic Principles. See *id.* (stating that that the executive body of lawyers’ associations “shall be elected by its members and shall exercise its functions without external interference”).

Association of Criminal Defense Lawyers). There are also voluntary lawyer organizations composed of lawyers who share an affinity based, inter alia, on gender, sexual preference, ethnicity, or religion.<sup>16</sup> Voluntary lawyer organizations are also formed so that like-minded lawyers can pursue common political goals or human rights issues.<sup>17</sup>

International and transnational lawyer organizations, such as the International Bar Association, the Council of Bars and Law Societies of Europe, and the International Commission of Jurists also play a significant role in influencing the law.<sup>18</sup> These organizations work to preserve lawyer independence, to advance their economic interests, and to support national and local lawyer organizations. Some of these international organizations affect law by facilitating the creation of consistent commercial practices.<sup>19</sup> They often also work to devise standards concerning lawyer conduct and consistent cross-border rules of practice.<sup>20</sup> These organizations further seek to influence the law in post-conflict countries and emerging democracies by providing technical assistance to lawyer organizations and governments that produces new constitutions and new laws, including the laws governing lawyers.<sup>21</sup>

This Article examines when and why lawyer organizations seek to influence law, either by promoting change or opposing it. The Article compares the activities of lawyer organizations in specific countries, noting at times how they work in conjunction with international or

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16 In the United States, examples include the Women's Bar Association, the National LGBT Bar Association, the Hispanic National Bar Association, and the Catholic Bar Association.

17 Examples include the Republican National Lawyers Association and the National Lawyers Guild. See *About the RNLA*, REPUBLICAN NAT'L LAW. ASS'N, <https://www.rnla.org/about-rnla/> (last visited Mar. 12, 2019) (stating that association "builds the Republican Party goals and ideals through a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates"); *About*, NAT'L LAW. GUILD, <https://www.nlg.org/about/> (last visited Mar. 12, 2019) (stating that its mission is to use law "as an effective force in the service of the people by valuing human rights over property interests").

18 The International Bar Association, founded in 1947, has a membership of more than 100,000 individual lawyers and about 200 bar associations and law societies. Leslie Levin, Lynn Mather & Leny de Groot-van Leeuwen, *The Impact of International Lawyer Organizations on Lawyer Regulation*, 42 *FORDHAM INT'L L.J.* 407, 413 (2018). The Council of Bars and Law Societies of Europe, formed in 1960, represents forty-five European bars and law societies. *Who We Are*, CCBE, <http://www.ccbe.eu/about/who-we-are/> (last visited Mar. 12, 2019). The International Commission of Jurists, formed in 1952, includes judges and lawyers from around the world. *About*, ICJ, <https://www.icj.org/about/> (last visited Mar. 12, 2019).

19 See, e.g., Susan Block-Lieb & Terence C. Halliday, *Settling and Concordance: Two Cases in Global Commercial Law*, in *TRANSNATIONAL LEGAL ORDERS* 75, 79-80 (Terence C. Halliday & Gregory Shaffer eds. 2015).

20 See Levin, Mather & de Groot-van Leeuwen, *supra* note 18, at 409, 416-17, 423-24, 436-437.

21 *Id.* at 409, 429, 432-33.

regional lawyer organizations. It seeks to identify the factors that enable the organizations to act and the conditions that may prevent them from acting, focusing not on outcomes, but on *attempts* to affect law. These efforts include, for example, proposing, drafting or responding to rules or legislation, lobbying, filing lawsuits or amicus briefs, and engaging in strikes or other public protest. Examining the full range of lawyers' efforts, we also include "pre-law making" activities such as problem definition, agenda setting, and mobilization for change, as well as implementation activities focused on enforcement or resistance. Because of governmental impediments to action by lawyer organizations in some jurisdictions, we also consider informal efforts by lawyers to engage in collective actions.

Part I of this Article describes organizational theories and theories of the legal profession that might explain why lawyer organizations attempt to influence law. In Part II, the Article provides an overview of lawyers and their organizations in seven countries with very different political and legal systems. As an initial study of this issue, the small number of countries provides an opportunity to explore the question in some depth.<sup>22</sup> Part II briefly describes the history of lawyers and their associations in these countries, their relationship to the courts and the state, and their view of their role in society. Part III then examines some situations in which lawyer organizations acted to influence law and other situations in which they stayed silent. Using examples from the seven countries, this Part identifies four somewhat overlapping categories in which lawyer organizations attempted to affect the law. Part IV revisits the theoretical perspectives to suggest when lawyer organizations will act, and when they will not. The Article concludes by identifying questions for further research.

#### I. THEORIES OF ORGANIZATIONS, THE LEGAL PROFESSION, AND LAWMAKING

Why might lawyer associations seek to influence law? At least two general bodies of theory suggest some possible answers.<sup>23</sup> First, lawyer

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<sup>22</sup> The countries were selected because of their key political and legal differences, but the small number limits our ability to generalize about lawyer organizations in all countries. This study makes descriptive inferences about recent attempts by lawyer organizations in those countries to influence law based on interviews and published observations of activities in those countries. For discussion of descriptive inferences versus causal inferences, see Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 29-31 (2002).

<sup>23</sup> Other possibly relevant theories include those on interest group advocacy, occupational groups, and voluntary associations.

associations are *organizations*, social groups designed to achieve a common goal, and thus organizational analysis offers useful concepts and hypotheses for explaining advocacy by organized groups. Second, theories of the legal profession should also be considered, since *lawyer* organizations—unlike other organizations such as unions or producers—have their own special connection to law and the state. The general theories of organizations are echoed in the legal profession theories.

### *A. Organization Theories*

Some of the older theories of organizations provide frameworks for understanding them at the micro level, focusing on internal characteristics such as formal structure, management, or culture. These theories, designed for industrial organizations, help explain why organizations making widgets succeed or fail, but they are far less useful for explaining the relation between organizations and the state. Moreover, their focus on internal concerns tends to ignore how organizations operate in society as they compete for “limited resources such as membership, capital, and legitimacy.”<sup>24</sup> By contrast, macro-level theories shed more light on organization-state relations since they focus on environmental forces influencing and constituting organizations, including their relations with political elites and other groups.<sup>25</sup> These theories call attention to the role of organizations in society, the impact of the state and transnational orders on organizations, and the benefits that organizations can obtain through advocacy.

#### *1. Internal Aspects of Organizations*

Despite the limits of micro-level organization theories for understanding lawyer organizations and lawmaking, two internal aspects of organizations deserve brief mention. First, the degree to which organizations are hierarchical or participatory in their decision making may influence their actions. Hierarchical decision-making structures allow more freedom for leaders to follow their own instincts, personal ambitions, or political ideologies. Participatory structures, on the other hand, may limit leaders’ decisions and actions. Even though members in participatory

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24 MICHAEL T. HANNAN & JOHN FREEMAN, ORGANIZATIONAL ECOLOGY 13 (1989).

25 See, e.g., W. RICHARD SCOTT, INSTITUTIONS AND ORGANIZATIONS 114-15 (1995). On the distinction between micro and macro-level theories of organizations, see David Lowery, *Why Do Organized Interests Lobby? A Multi-Goal, Multi-Context Theory of Lobbying*, 39 POLITY 29, 30-31 (2007).

organizations typically pay little attention to leadership decisions (unless on matters of direct import to them), there is always the possibility of challenge if leaders go too far. According to Robert Michels's classic "iron law of oligarchy," this scenario is unlikely: over time, he argues, all complex organizations evolve into oligarchies due to bureaucracy and specialization.<sup>26</sup> Thus, even the most democratic organizations will tend to be controlled by a small elite.

Second, the nature of organizational membership affects the range of actions leaders can pursue. In voluntary organizations, members who disagree with leaders' decisions can leave and join another organization that better represents their preferences, which may constrain leaders concerned with retaining members. But with mandatory membership, leaders have more freedom to act. Nevertheless, such actions must typically relate to the work of the organization in some way and not be overtly political lest the organization lose credibility with its members. Trade unions or professional associations with mandatory membership may have additional rules (either self-imposed or legally required) that restrict organizations from lobbying on certain issues.<sup>27</sup>

## 2. *Organizations and the State*

Although there is a wide range of organization theories in different disciplines (management, sociology, political science, economics, etc.), this section focuses on only three macro-level approaches to help understand the relation between organizations and the state: rational actor (utility maximizing) theory, environmental ecology, and new institutionalism. Borrowing ideas from economics, rational actor theory suggests that organizations seek to influence state policies for instrumental reasons, typically in order to advance the interests of their members.<sup>28</sup> That is, organizations seek to obtain benefits, secure favorable regulations, control entry to the market or the occupation, or deter competitors. As economist George Stigler argued, industry (or an occupation) seeks government regulation primarily for its own benefit, not for the benefit of

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26 ROBERT MICHELS, *POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY* 61-65 (1962). *But see* J. Craig Jenkins, *Non-Profit Organizations and Policy Advocacy*, in *THE NONPROFIT SECTOR: A RESEARCH HANDBOOK* 296, 306 (Walter W. Powell ed., 1987) (noting that the iron law of oligarchy is not ironclad where advocacy organizations remain small, rotate leadership, and are strongly committed to participatory values).

27 *See infra* note 103 and accompanying text.

28 *See* SCOTT, *supra* note 25, at 27-28; Lowery, *supra* note 25, at 31-33.



the general public or for purely political reasons.<sup>29</sup> Further, producer interests are more likely to invest in political action than are consumer interests due to producers' narrow focus on their own products or income, in contrast to consumers' more varied areas of concern.<sup>30</sup>

Mancur Olson notes, however, when collective benefits become available to all members of an organization, regardless of individual contributions, members may rationally decide to become free riders and take advantage of the benefits without actively contributing to them.<sup>31</sup> For example, when management increases employee wages, they all receive the raise whether or not they belong to the union that negotiated it. One solution to this problem is to make organizational membership compulsory, as in a closed union shop. In the absence of compulsory membership, organizations offer different types of incentives to attract individual members and avoid free riders.<sup>32</sup> These incentives may be material (tangible monetary rewards or economic opportunities), solidary (prestige, sociability, and status of belonging to the organization), or purposive (benefits from identification with a common purpose or goal).<sup>33</sup> This theory suggests that professional associations either seek to make membership mandatory or offer such incentives to overcome the collective action problem.

Larry Ribstein poses the question: why do lawyers devote time to lawmaking?<sup>34</sup> Not only do lawyers have an interest in the efficiency of law and the necessary expertise to work on law, he suggests, but lawyer associations—like other groups—can use their engagement with the state to overcome collective action problems. That is, “[l]awyers as a group acquire an aura of professionalism from lawmaking.”<sup>35</sup> That “aura of

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29 George J. Stigler, *A Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 3, 13 (1971).

30 For empirical support for this from studies of lobbying organizations in the United States, see FRANK R. BAUMGARTNER ET AL., *LOBBYING AND POLICY CHANGE: WHO WINS, WHO LOSES, AND WHY* 9 (2009); KAY LEHMAN SCHLOZMAN & JOHN T. TIERNEY, *ORGANIZED INTERESTS AND AMERICAN DEMOCRACY* 22 (1986). A problem with this theory, however, lies in the fact that empirical studies have not demonstrated the effectiveness of lobbying on behalf of narrow producer interests. If lobbying is ineffective or uncertain, why would rational actors continue with it? See Lowery, *supra* note 25, at 34-35.

31 MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION, PUBLIC GOODS AND THE THEORY OF GROUPS* 14-16 (1965).

32 *Id.* at 51.

33 Peter B. Clark & James Q. Wilson, *Incentive Systems: A Theory of Organizations*, ADMIN. SCI. Q. 129, 134-36 (1961).

34 Larry E. Ribstein, *Lawyers As Lawmakers: A Theory of Lawyer Licensing*, 69 MO. L. REV. 299, 329 (2004).

35 *Id.*

professionalism” provides a solidary incentive for members to identify with bar associations. Other values promoted by their engagement with lawmaking include professional legitimacy and credibility. For example, when the issue of multi-disciplinary practice (MDP) arose in the United States,<sup>36</sup> lawyer organizations actively opposed it in part to protect their market share, which was threatened by accounting firms.<sup>37</sup> Nevertheless, other crucial intangibles influenced the organizations’ positions. The conflict over MDP involved “struggles to define the contours of professional legitimacy – to define the social image that the legal profession will seek to project.”<sup>38</sup> By opposing MDPs on grounds of legal ethics, lawyer organizations could uphold the professional image of the lawyer as one worthy of “professional reward and respect.”<sup>39</sup>

A second macro-theory, environmental (or population) ecology, focuses less on the policy benefits to be gained from lobbying, and more on organizational adaptation and survival. Groups compete with one another in a constantly changing environment, and advocacy activity can help organizations maintain or increase their membership.<sup>40</sup> Indeed, empirical studies of why organizations lobby suggest they do so not only to influence public policy but also to maintain the organization.<sup>41</sup> When organizations need to secure support from allies in a coalition or thwart the opposition, the environment in which they operate becomes crucial for their actions. An ecological approach borrows from environmental niche theory<sup>42</sup> or from Darwinian evolutionary theory<sup>43</sup> to emphasize an organization’s environment and its changes over time, and to explain group activity through adaptation. Choosing when to attempt to influence law may depend on whether government or institutions “allow or impede access, the public opinion context in which debates takes place, and which other organized interests are also lobbying the issue.”<sup>44</sup> Considering these

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36 MDP is a partnership or other association of lawyers with nonlawyers (typically other professionals) that has, as one of its purposes, the delivery of legal services.

37 Yves Dezalay & Bryant G. Garth, *The Confrontation between the Big Five and Big Law: Turf Battles and Ethical Debates as Contests for Professional Credibility*, 29 LAW & SOC. INQUIRY 615, 616 (2004).

38 *Id.* at 617.

39 *Id.*

40 Lowery, *supra* note 25, at 30-31. See also HANNAN & FREEMAN, *supra* note 24, at 13-15.

41 William P. Browne, *Organizational Maintenance: The Internal Operation of Interest Groups*, 37 PUB. ADMIN. REV. 48, 50 (1977); Rorie Spill Solberg & Eric N. Waltenburg, *Why Do Interest Groups Engage the Judiciary? Policy Wishes and Structural Needs*, 87 SOC. SCI. Q. 558, 569 (2006).

42 Lowery, *supra* note 25, at 47-49.

43 HANNAN & FREEMAN, *supra* note 24, at 10-15.

44 Lowery, *supra* note 25, at 43.

contextual factors—uncertain, socially determined, and *not* always instrumental—David Lowery argues that the most fundamental goal of an organization is to survive as an organization and that all other goals are secondary.<sup>45</sup> Organizational survival thus may help explain why and when organized interests mobilize to seek legal change or preserve the status quo. That is, lawyer organizations may seek to ensure the profession's survival against threats from competitors or from the state itself.

Finally, new institutionalism offers a third perspective for understanding organizations and the state, particularly two broad camps of new institutionalism: historic and sociological.<sup>46</sup> These institutional approaches question the assumption of rational pursuit of a group's interests, and focus instead on the importance of historical development and shared cultural values of groups in society. But unlike the theories above, which consider organizations to be autonomous, historic institutionalism and sociological institutionalism view all organizations as deeply embedded in a larger structure. That is, “organizations are local instantiations of wider institutions . . . [i]nstitutions, understood as taken-for-granted beliefs, rules, and norms.”<sup>47</sup> These beliefs, rules and norms may be regulative (such as required by law), normative (enforced by shared values), or cognitive (mental models for understanding behavior).<sup>48</sup>

Historical institutionalism examines how norms and values change over time and how the past shapes the content of a group's interests and identity. For example, lawyer associations in post-colonial countries may relate to the state through the prism of their history with the colonial government. This has sometimes led to lawyer organizations taking strong positions of independence against the state. Historic institutionalism also draws on Arthur Stinchcombe's insights about the importance of the social and political conditions present at the time that an organization was founded and how these “imprinting” effects may persist over time.<sup>49</sup>

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45 *Id.* at 46-47, 53. Lowery draws on environmental ecology and resource dependence theory to expand on the theory of organizational survival. *Id.* at 47-52.

46 A third camp, rational choice, is not discussed here. Rational choice shares the assumptions of rational actor theory, but adds an emphasis on “how structural arrangements affect the strategic calculations of participants.” Howard Gillman & Cornell Clayton, *Beyond Judicial Attitudes: Institutional Approaches to Supreme Court Decision-Making*, in SUPREME COURT DECISION-MAKING: NEW INSTITUTIONALIST APPROACHES 1, 6 (Cornell W. Clayton & Howard Gillman eds., 1999). For elaboration on the three strands of new institutionalism, see *id.* at 5-7; SCOTT, *supra* note 25, at 24-32; Thomas A. Koelble, *The New Institutionalism in Political Science and Sociology*, 27 COMP. POL. 231, 232-41 (1995).

47 Olivier Berthod, *Institutional Theory of Organizations*, in GLOBAL ENCYCLOPEDIA OF PUBLIC ADMINISTRATION, PUBLIC POLICY, AND GOVERNANCE 1 (Ali Farazmand ed., 2016).

48 *Id.* at 2; SCOTT, *supra* note 25, at 33.

49 Arthur L. Stinchcombe, *Social Structures and Organizations*, in HANDBOOK OF

Moreover, historical institutionalism “provides us with the notion of ‘critical junctures,’ key ‘moments’ or periods in the history of any institution” that can explain how “organizations *see, act, and think* of themselves.”<sup>50</sup>

Sociological (or ethnographic) institutionalism focuses on how wider cognitive and normative structures in society affect every aspect of an organization, incorporating symbolic systems into the organization, and constituting it through tacitly understood rules.<sup>51</sup> Whether through affiliation with particular ideological groups, ethnic, religious, or racial identification, or family groups, organizations may support or oppose the state in particular ways because of their cultural context. Some of these commonalities also become important when analyzing an organizational sector, a group of organizations supplying a similar service or product.<sup>52</sup> Consider, as examples, the health care sector or the software industry. Another example is the legal sector, which may include lawyer organizations, law firms, judges, prosecutors, and other legal officials. Sectors possess strong social and cultural linkages, horizontally across organizations, and vertically with respect to administrative rules and the state. Thus, how an organization’s leaders relate to and think about government may depend in part on the institutional culture in that sector.

The state itself presents a higher-level institutional form beyond an institutional sector, including commonly understood frameworks of policymaking that affect how and when organizations can influence law. States differ in how policies are made, the relation between law and politics, and the activities considered to be government responsibilities, rather than private responsibilities. Thus, states vary in the benefits that can be obtained by lawyer associations through political action. The United States also sits as an outlier, with its cultural assumptions of liberal/individualism and strong civil society groups actively competing

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ORGANIZATIONS 142, 143-44, 153-60 (James G. March ed., 1965); *see also* SCOTT, *supra* note 25, at 115.

50 Kieran McEvoy & Rachel Rebouche, *Mobilizing the Professions: Lawyers, Politics, and the Collective Legal Conscience*, in JUDGES, TRANSITION, AND HUMAN RIGHTS 275, 278 (John Morison et al. eds., 2007).

51 SCOTT, *supra* note 25, at 29-31.

52 W. Richard Scott & John W. Meyer, *The Organization of Societal Sectors*, in ORGANIZATIONAL ENVIRONMENTS: RITUAL AND RATIONALITY 137 (John W. Meyer & W. Richard Scott eds., 1983). *See also* Paul DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, in THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS 63, 64-65 (Walter W. Powell & Paul DiMaggio eds., 1991) (describing “organizational fields” as “key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products”).

for advantage from a relatively passive state.<sup>53</sup> Thus, rational actor theory fits better at describing the proactive lobbying strategies of interest groups in the United States than it does for organizations working within authoritarian or corporatist states, where private individuals and groups have less ability to influence public policies.<sup>54</sup>

### 3. *Globalization of Law and Organizations*

In the twenty-first century, organizational theory must be expanded to place organization-state relations within a broader global context. Globalization has created a new legal field in which private and public organizations exert influence and defend their turf. National professional associations increasingly look to their own international professional associations to influence law affecting the professions at the national and transnational level.<sup>55</sup> Julia Evetts shows, for example, how professional associations in European countries (e.g., associations of engineers) have attempted to influence EU law through several different strategies.<sup>56</sup> Moreover, through consultation, debate, lobbying, and networking at international levels, international professional organizations are affecting professional licensing, training and regulation, areas that were once the sole purview of the nation-states.<sup>57</sup> As James Faulconbridge and Daniel Muzio put it, globalization has created a situation in which the national actors formerly assumed to be powerful regulators of the professions “have to learn to coexist with equally powerful and effective supranational actors.”<sup>58</sup> Consequently, professional organizations may seek to influence law at both the national and international levels.

Consider, for example, how organizations respond to a need for global conformity to new procedures or offer solutions to global problems.

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53 See, e.g., Terence C. Halliday, *Legal Professions and the State: Neocorporatist Variations on the Pluralist Theme of Liberal Democracies*, in *LAWYERS IN SOCIETY: COMPARATIVE THEORIES* 375, 376 (1989); Ronald L. Jepperson & John W. Meyer, *The Public Order and the Construction of Formal Organizations*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS*, *supra* note 52, at 220-25.

54 Lowery, *supra* note 25, at 30-31, 52.

55 See Julia Evetts, *International Professional Associations: The New Context for Professional Projects*, 9 *WORK, EMP. & SOC'Y* 763, 764 (1995) (noting that “international professional associations have become more influential (more authoritative) than nation state governments, in influencing EU directives, as well as global agreements, on professions and professional services”).

56 *Id.* at 770.

57 Julia Evetts, *Professionalism Beyond the Nation-State: International Systems of Professional Regulation in Europe*, 18 *INT'L J. SOC. & SOC. POL'Y* 47, 60 (1998).

58 James R. Faulconbridge & Daniel Muzio, *Professions in a Globalizing World: Toward a Transnational Sociology of the Professions*, 27 *INT'L SOC.* 136, 137 (2011).

Organizations may need to work with similar groups in other countries and also with global organizations. National actors and lawyer professional groups, for example, created new transnational institutions for dispute settlement in the development of international arbitration,<sup>59</sup> and have also constructed new transnational legal categories and norms. The concept of “international crime,” for instance, emerged as a legal category through a dialectical process in which demands from national political actors initiated global debate that led to a new legal framework for articulating such claims and new institutional mechanisms for adjudicating them.<sup>60</sup>

Globalization not only creates new transnational legal orders, but it also affects the practices and values of local and national organizations in lawmaking. Gregory Shaffer describes how intermediaries including government representatives, professional service providers, academics, and NGOs are the “carriers, conduits, and points of entry for the circulation of transnational legal norms” back to the national and local context.<sup>61</sup> When this occurs, organizations may seek legal change in their own countries to conform to transnational standards. Local and national organizations may also engage in advocacy due to their participation in international organizations, their collaboration with organizations from other countries, or their receipt of financial or technical assistance from other groups. As a result of these experiences, organizations can expand their work into new areas, learn new methods of doing business, name problems they had not previously diagnosed, and acquire strategies for addressing them, all prompting them to seek changes in the law.<sup>62</sup>

## *B. Theories of Legal Professions*

### *1. Functionalism*

A classic theory of the professions posits that they will use their

59 See YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 6-7 (1996); Florian Grisel, *Competition and Cooperation in International Commercial Arbitration: The Birth of a Transnational Legal Profession*, 51 *LAW & SOC'Y REV.* 790, 794 (2017).

60 Anne Holthoefter, *Constructing International Crime: Lawyers, States, and the Origin of International Criminal Prosecution in the Interwar Period*, 42 *LAW & SOC. INQUIRY* 711, 736, 738-739 (2017) (describing legal initiatives between World War I and II that form “the legal genealogy of the International Criminal Court”).

61 Gregory Shaffer, *The Dimensions and Determinants of State Change, in* *TRANSNATIONAL LEGAL ORDERING AND STATE CHANGE* 23, 41-42 (Gregory Shaffer ed., 2013).

62 For examples with respect to the impact of international lawyer organizations on the regulation of the legal profession, see Levin, Mather & de Groot-van Leeuwen, *supra* note 18, at 436-449, 453-65.

independence and expertise for the general good.<sup>63</sup> For Emile Durkheim and other structural functionalists, the professions offered one antidote to the selfish materialism otherwise found in a society composed of egoistic individuals.<sup>64</sup> This structural functionalist view of the mid-twentieth century, articulated especially by Talcott Parsons, elevated lawyers and saw them as powerful political actors with a degree of moral superiority who can play a major stabilizing role in society.<sup>65</sup> According to this view, independence permits professionals to pursue a broad, collective orientation rather than any narrow, special interests, imbuing them with moral superiority and legitimacy.<sup>66</sup> As Richard Abel notes, “if structural functionalism had to distinguish professions by means of a single characteristic, self-regulation would be the prime candidate.”<sup>67</sup> The arguments for professional self-regulation rest on the ideas that only fellow professionals have the necessary expertise to judge professional performance and on the importance of the profession’s independence from the state.<sup>68</sup> Although functionalism has been largely displaced by other theories,<sup>69</sup> the ideology behind it resonates in lawyers’ codes of conduct and in other bar rhetoric. It may also explain the profession’s attempt to influence law to maintain self-regulation.

## 2. Market Control

This theory of the professions takes a rational actor perspective and sees them as powerful groups that seek to influence law for self-interested reasons such as maintaining their professional power and advancing their collective social mobility. Magali Larson describes the professional project as an effort to attain market monopoly, social status, and work autonomy.<sup>70</sup> Andrew Abbott develops the concept of jurisdiction to link professional power with expertise and market control; groups compete for

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63 RICHARD L. ABEL, *AMERICAN LAWYERS* 35 (1989); John P. Heinz, *The Power of Lawyers*, 17 GA. L. REV. 891, 892 (1983).

64 ABEL, *supra* note 63, at 16.

65 Talcott Parsons, *A Sociologist Looks at the Legal Profession*, in *ESSAYS IN SOCIOLOGICAL THEORY* 370, 378-82, 384-85 (Talcott Parsons ed., 1964); Robert K. Merton, *The Functions of the Professional Association*, 58 AM. J. NURSING 50, 53 (1958).

66 Heinz, *supra* note 63, at 893.

67 ABEL, *supra* note 63, at 37.

68 *Id.*

69 For a critique of the usefulness of structural functionalism as an explanatory theory, see ABEL, *supra* note 63, at 232-37.

70 MAGALI SARFATTI LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* 49 (1977); see also ABEL, *supra* note 63, at 158.

jurisdiction over areas of work and persuade governments and the public that they have the special competence and expertise to do this work.<sup>71</sup> Examples of the legal professions' attempts to exert market control include efforts to restrict entry to the profession through overly rigorous bar admission requirements. Lawyer organizations also seek to protect lawyers' turf by resisting non-lawyer incursions into activities that lawyers perform.

### 3. *Client Interests*

Lawyer organizations may also act to influence the law to benefit their clients. Of course, such efforts can also benefit lawyers, because they can make lawyers' work more predictable or more remunerative, and may enhance their perceived value to their clients. It is important to note, however, that these motivations may not be conscious, but rather due to lawyers' "close identification with, and sharing in, [clients'] interests,"<sup>72</sup> a perspective that draws on sociological institutionalism.<sup>73</sup> Michael Powell notes that "[a]lthough lawyers may leave their immediate clients at the door of the bar association committee room, they are unable to leave behind the common culture and values they share with clients in general."<sup>74</sup> Likewise, when asking large firm lawyers how they would change the law if they could do so, Robert Nelson found not much disparity between client concerns and the lawyers' agenda for change in the legal fields in which they actually practice.<sup>75</sup> As he notes, "[s]ince lawyers come to adopt the positions of the corporate clients whom they represent, it is unlikely that their law reform activities will depart to any significant extent from the positions that they advocate for their clients."<sup>76</sup> In some cases, however, lawyers' identification with client interests can reduce the ability of a lawyer organization to engage in meaningful collective action due to the diversity of clients that the organization's membership represents.<sup>77</sup>

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71 ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* 59-69, 134-142 (1988). Abbott's focus on competition among professional groups for jurisdiction over work parallels the emphasis on organizational survival in organizational ecology theory. Both perspectives view groups in competition for resources within a wider environment.

72 POWELL, *supra* note 1, at 241.

73 *See supra* Part I.A.2.

74 POWELL, *supra* note 1, at 241.

75 Robert L. Nelson, *Ideology, Practice and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 *STAN. L. REV.* 503, 525 (1985).

76 *Id.* at 527.

77 *See* POWELL, *supra* note 1, at 180, 220; Heinz, *supra* note 63, at 908; Quintin Johnstone, *Bar*



#### 4. *Political Liberalism*

Finally, historical institutionalism has been applied to the legal profession to explain the reasons for and nature of political advocacy by lawyer organizations. Terence Halliday, in his study of the Chicago Bar Association, argues that as states develop and as legal professions become more secure vis-à-vis the state and acquire more resources, professional associations engage in political activities beyond those of market control.<sup>78</sup> Instead of “a vulnerable occupation” dependent on “an empowering state” (and thus seeking favors from the state to advance themselves), as professions become more established they are themselves empowered and the state may be weaker, facing political and structural crises.<sup>79</sup> Halliday suggests that “[t]he established legal profession, no longer absorbed with monopoly and its maintenance,” has the potential to commit its expertise to the democratic state and to assume more responsibility for liberal democratic government.<sup>80</sup> At this stage, “the established profession is less occupationally vulnerable, less reflexively self-protective and self-preoccupied, and less collectively narcissistic.”<sup>81</sup> Lawyers therefore may be willing and able to contribute their expertise to a state that is struggling.<sup>82</sup> Powell notes that sometimes professions “actually precipitate state action by drawing attention to areas” in which change is needed.<sup>83</sup> Why would they do this? One reason is the bar’s collective value commitments to the legitimacy of the law as an institution and to procedural justice.<sup>84</sup>

When comparing U.S. bar activities to those in other Western countries, Halliday and Lucian Karpik expand on these ideas to include political activities of lawyer organizations working in opposition to the state.<sup>85</sup> They suggest how the history of the bar, the relative autonomy of judges and courts in different countries, and the emphasis placed on

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*Associations: Policies and Performance*, 15 YALE L. & POL’Y REV. 193, 231-32 (1996); Jerry Van Hoy, *Intraprofessional Politics and Professional Regulation: A Case Study of the ABA Commission on Professionalism*, 20 WORK & OCCUPATIONS 90, 106-07 (1993).

78 TERENCE C. HALLIDAY, *BEYOND MONOPOLY: LAWYERS, STATE CRISES, AND PROFESSIONAL EMPOWERMENT* 346-47 (1987).

79 *Id.* at 347, 353.

80 *Id.* at 347.

81 *Id.* at 353.

82 *Id.* See also Powell’s discussion of “civic professionalism” in his study of the New York City Bar Association. POWELL, *supra* note 1, at 247-50.

83 POWELL, *supra* note 1, at 248.

84 *Id.* at 246, 249-50.

85 Halliday & Karpik, *supra* note 9, at 26, 56.

economic interests versus political goals influence the likelihood that lawyers will engage in collective action to advance political liberalism. In a later work, Halliday, Karpik and Malcolm Feeley examine lawyers in countries such as Chile, China, Israel, and Japan to test “the proposition that lawyers are active agents in the construction of liberal political regimes.”<sup>86</sup> By “liberal political regimes,” they mean those that embrace individual legal freedoms with a moderate state, an independent judiciary, and an autonomous civil society. Sometimes legal professions mobilize to defend political liberalism, but in other situations or countries, they are constrained from defending it or are openly hostile to it.

Scholars such as Stuart Scheingold and Austin Sarat have observed that activist or “cause” lawyers are often at the forefront of efforts to promote individual rights and liberal political regimes.<sup>87</sup> Cause lawyers are motivated not by money or status but by an interest in social change, as they seek to advance social justice and the interests of those without power.<sup>88</sup> Karpik discusses “political lawyers” who fight for political liberalism but distinguishes them from “cause lawyers.”<sup>89</sup> Regardless of the label, these activist lawyers can sometimes move lawyer organizations to lobby or otherwise work toward legal change.

## II. OVERVIEW OF SEVEN COUNTRIES

In view of these perspectives, when and why might we expect to see efforts by lawyer organizations to influence the law? Even when looking at a single country, it can be difficult to answer these questions. Cross-country comparisons add to the complexity. The history, politics, status, and role of lawyers in each country differ. So, too, does the composition of lawyer organizations and the relations between the lawyer organization

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86 Terence C. Halliday et al., *The Legal Complex and Struggles for Political Liberalism*, in *FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM* 1, 2 (Terence C. Halliday et al. eds., 2007).

87 See STUART A. SCHEINGOLD & AUSTIN SARAT, *SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING* (2004); *CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA* (Austin Sarat & Stuart Scheingold eds., 2001); *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* (Austin Sarat & Stuart Scheingold eds., 1998); *THE WORLDS CAUSE LAWYERS MAKE: STRUCTURE AND AGENCY IN LEGAL PRACTICE* (Austin Sarat & Stuart Scheingold eds., 2005).

88 In most of their work, Sarat and Scheingold restrict cause lawyering to progressive or liberal causes, but others have suggested that concept can and should be broadened. Thomas M. Hilbink, *You Know the Type. . . : Categories of Cause Lawyering*, 29 *LAW & SOC. INQUIRY* 657 (2004).

89 Lucien Karpik, *Political Lawyers*, in *FIGHTING FOR POLITICAL FREEDOM*, *supra* note 86, at 463, 491-92 (noting that political lawyers and cause lawyers are both “committed activists,” but they differ in resources, construction of judicial issues and relations with the bar).

and the state.

In order to consider a wide range of factors, we focus on lawyer organizations in seven countries: Brazil, China, Israel, Japan, Kyrgyzstan, Libya, and the United States. There are obvious limitations associated with the country selections. For example, while we consider some civil law countries, we have not included a European country in this analysis. One country in Africa—Libya—is included, but it is predominantly Arab and Berber, and therefore different than many other African countries. Nevertheless, the countries selected are of different sizes, in different regions, and represent different legal systems (civil, common law). They also represent different political systems (democracies, transitional governments, authoritarian regimes), and to some extent, different attitudes toward the lawyer’s role in civil society. The strength of the lawyer organizations in these countries, their relationship to the state, and their ability to mobilize also vary significantly. They do, however, share some common features. Lawyers in all seven countries (except in some U.S. jurisdictions) must belong to a mandatory lawyer organization. Most of these countries also have voluntary lawyer organizations through which lawyers seek to influence law. Some of the characteristics of the countries and their major lawyer organizations are described below.

#### OVERVIEW OF COUNTRIES AND BAR ORGANIZATIONS

	<b>Population (in millions)<sup>90</sup></b>	<b>Number of lawyers<sup>91</sup></b>	<b>Legal system<sup>92</sup></b>	<b>Type of government</b>	<b>Major bar organization/ date</b>
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90 United Nations Dep’t of Econ. & Soc. Affairs, Population Div., *World Population Prospects: The 2017 Revision, Key Findings and Advance Tables* tbl.1 (Working Paper No. ESA/P/WP/248, 2017), [https://esa.un.org/unpd/wpp/publications/Files/WPP2017\\_KeyFindings.pdf](https://esa.un.org/unpd/wpp/publications/Files/WPP2017_KeyFindings.pdf).

91 The number of “lawyers” indicated in this column reflects the members of each lawyer organization, except for the United States. The number of U.S. lawyers reflects the total number licensed to practice law in all U.S. jurisdictions. The numbers reflect estimates in some cases. For the sources consulted, listed in alphabetical order by country, see *Institucional/Quadro de Advogados [Institucional/Attorneys’ Framework]*, OAB, <http://www.oab.org.br/institucionalconselhoafederal/quadroadvogados> (last visited Mar. 12, 2019); *China Has More Than 365,000 Lawyers*, XINHUANET (July 2, 2018), [http://www.xinhuanet.com/english/2018-07/02/c\\_137296471.htm](http://www.xinhuanet.com/english/2018-07/02/c_137296471.htm); E-mail from Amit Pearlman, Israel Bar Ass’n, to Leslie C. Levin (Jan. 2, 2019, 03:46 EST) (on file with authors); *What Is the JFBA?*, JAPAN FED’N B. ASS’NS, <https://www.nichibenren.or.jp/en/about/us/profile.html> (last visited Mar. 12, 2019); Telephone Interview with Azamat Kerimbaev, ABA ROLI Country Director, Kyrgyzstan (June 20, 2017); ILAC, ILAC RULE OF LAW ASSESSMENT REPORT: LIBYA 2013, at 63 (May 9, 2013), <http://www.ilacnet.org/blog/2013/05/09/ilac-assessment-report-libya-2013/>; AM. BAR ASS’N, ABA NATIONAL LAWYER POPULATION SURVEY: LAWYER POPULATION BY STATE (2018), [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/National\\_Lawyer\\_Pop](https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Pop)

					<b>formed/type</b>
Brazil	209.3	1.19 million	Civil law	Federal presidential republic	OAB – 1930 mandatory
China	1,409	365,000	Civil law	Communist	ACLA – 1986 mandatory
Israel	8.3	75,000	Primarily common law	Parliamentary democracy	IBA – 1961 mandatory

	<b>Population (in millions)</b>	<b>Number of lawyers</b>	<b>Legal system</b>	<b>Type of government</b>	<b>Major bar organization/ date formed/type</b>
Kyrgyz Republic	6	2300	Civil law/post Soviet	Parliamentary republic/post-Soviet transition	Advokatura – 2014 mandatory
Libya	6.4	4000	Civil law/ Islamic law	In transition	LBA – 1962 mandatory
United States	324.5	1.34 million	Common law	Federal constitutional republic	ABA - 1878 voluntary (+ mandatory bar orgs. in 32 states & D.C.)

This section begins with countries with established democracies (the United States, Brazil, Japan, and Israel). Even within this group, the lawyer organizations differ greatly. The United States has no single mandatory national lawyer organization. In Israel and the United States, prosecutors belong to lawyer organizations, while in Brazil and Japan, they do not. As will be seen, the lawyer organizations also have different structures, different levels of political engagement, and different powers and roles vis-à-vis the judiciary and the state.

The discussion then turns to countries in transition, followed by those with autocratic regimes. Kyrgyzstan, as in other countries in Eastern Europe and Eurasia, has some leaders working to establish a more democratic government and judicial system after years of Soviet

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ulation\_by\_State\_2018.authcheckdam.pdf.

92 The information in this column and the next column comes from the Central Intelligence Agency's *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/>.

domination. Libya continues to experience armed conflict, but its legal profession has attempted to return to a more independent profession after years of domination by Muammar Qaddafi's regime. In China, lawyers work in an autocratic regime and are required to belong to a state-controlled lawyer organization. Again, these lawyer organizations are quite different from one another in their composition, histories, and ability to seek changes in the law.

To provide an overview of the lawyer organizations in the seven countries, this section briefly describes the country's legal system, the history of the legal profession, and the relationship between its lawyers and the state. It also describes the major lawyer organizations in each country. This information provides context for the discussion in Part III.

#### *A. Democracies*

##### *1. United States*

The United States is an example of an established legal profession in a democratic common law country. A few voluntary lawyer organizations first appeared in colonial America in the eighteenth century,<sup>93</sup> and others emerged in the early-to-mid nineteenth century,<sup>94</sup> but did not survive. In the 1870s, elite bar organizations with exclusive memberships began to appear, including the Association of the Bar of the City of New York (1870), the Chicago Bar Association (1874), and the American Bar Association (1878).<sup>95</sup> These exclusive organizations formed due to concern about political and judicial corruption and a desire to improve the standing of the legal profession.<sup>96</sup> Some voluntary lawyer associations later emerged because the elite bar organizations would not admit certain lawyers due to race, ethnicity, or immigrant status, or were not meeting the needs of non-elite lawyers.<sup>97</sup>

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93 From 1744-70, New York had a lawyers' association that was organized "for the purpose of resistance to the encroachment of the British Crown in the exercise of the King's prerogative." Marvella Webber, *Origin and Uses of Bar Associations*, 7 ABA J. 297, 297 (1921). The Suffolk County Bar Association was formed in Massachusetts in the mid-1770s. See HALLIDAY, *supra* note 78, at 60; Margaret H. Marshall, *John Adams: Lawyer, Absentee Chief Justice, and the Author of the Massachusetts Constitution*, 10 MASS. LEGAL HIST. 27, 33-34 (2004).

94 A lawyers' organization was formed in Philadelphia in 1802. Meredith Hanna, *The Organized Bar in Philadelphia*, 25 TEMP. L.Q. 301, 301 (1951); see also ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 15-16 (1953) (describing other bar associations).

95 HALLIDAY, *supra* note 78, at 64, 67.

96 See *id.* at 64, 67; POWELL, *supra* note 1, at 6, 9.

97For example, the Negro Bar Association, later known as the National Bar Association, was incorporated in 1925 after some of its founders were denied membership in the ABA. *History*, NAT'L

The organized bar in the United States has enjoyed a close relationship with the courts, which assume primary responsibility for regulating lawyers, but often delegates some of that authority to state bar organizations. Today, U.S. lawyers must be admitted to practice in one of the fifty states or the District of Columbia. Lawyers are required to join their state bar organization (known as a mandatory or unified bar) in thirty-two states and the District of Columbia.<sup>98</sup> Mandatory bars include practicing lawyers, judges, and non-practicing lawyers who wish to retain their law licenses. In the other jurisdictions lawyers are licensed by the state, but are not required to belong to a lawyer organization.<sup>99</sup> There are also hundreds of voluntary lawyer associations in the United States. Lawyers, judges, and law students sometimes belong to the same voluntary lawyer organizations.<sup>100</sup> Some of the voluntary organizations actively engage in law reform and lobbying efforts, including the almost 400,000-member American Bar Association (ABA) and the National Lawyers Guild.<sup>101</sup> Other voluntary lawyer organizations focus mainly on lawyer education, business networking, social exchange, and mutual support.<sup>102</sup>

In the United States, mandatory state bar organizations often play a major role in lawmaking on issues affecting lawyers and the administration of justice. But their ability to act in other legal spheres has been limited by case law and rules that prevent the expenditure of compulsory bar dues on political activity not related to the legal profession, administration of justice, or improving the quality of legal

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B. ASS'N, <https://www.nationalbar.org/NBA/History.aspx> (last visited Mar. 12, 2019). *See also About NYCLA*, N.Y. COUNTY LAW ASS'N, <http://www.nycla.org/NYCLA/About/Overview/NYCLA/About/AboutNYCLA.aspx?> (last visited Mar. 12, 2019) (noting that the strongest factor contributing to its founding was that “the only existing bar association in Manhattan precluded some lawyers from membership by virtue of ethnicity, religion, gender and race”).

<sup>98</sup> *See About Us*, A.B.A., [https://www.americanbar.org/about\\_the\\_aba.html](https://www.americanbar.org/about_the_aba.html) (last visited Mar. 12, 2019). The National Lawyers Guild was formed in 1937 to promote human rights and social justice. NAT'L LAW. GUILD, <https://www.nlg.org/about/history/> (last visited Mar. 12, 2019).

<sup>99</sup> For example, the New Jersey State Bar Association is a voluntary bar organization. *See* N.J. State Bar Ass'n Bylaws, Art. IV. New Jersey lawyers are admitted to practice pursuant to a process administered by the New Jersey Board of Bar Examiners and their annual registration is administered by the New Jersey courts. *See* N.J. Rules Governing Courts 1:27-1 (2018).

<sup>100</sup> Judges and prosecutors may also belong to their own specialty associations. The National District Attorneys Association, the Association of Prosecuting Attorneys, and the American Judges Association are examples of such voluntary specialty organizations.

<sup>101</sup> *See About Us*, A.B.A., [https://www.americanbar.org/about\\_the\\_aba.html](https://www.americanbar.org/about_the_aba.html) (last visited Mar. 12, 2019). The National Lawyers Guild was formed in 1937 to promote human rights and social justice. NAT'L LAW. GUILD, <https://www.nlg.org/about/history/> (last visited Mar. 12, 2019).

<sup>102</sup> *See, e.g.*, HELLENIC LAW. ASS'N, <http://www.helleniclawyersassociation.org/>.

services.<sup>103</sup> Voluntary lawyer organizations, on the other hand, can work to influence the law on a broader range of issues. For example, specialty bar organizations like the American Association for Justice (the plaintiffs' personal injury bar) engage in lobbying efforts to protect individuals' rights to obtain adequate compensation in the courts.<sup>104</sup> The ABA issues statements and resolutions, files amicus briefs, and writes letters to Congress and other officials on issues affecting lawyer regulation, the substantive law, the administration of justice, and political, social, and human rights.<sup>105</sup> The New York City Bar Association has spoken out on matters such as the U.S. withdrawal from the Paris Climate Agreement and the use of targeted drone strikes.<sup>106</sup>

As the largest U.S. bar association, the ABA merits some additional discussion. Although an elite organization for much of its history, it now actively seeks to attract lawyers in all substantive areas of the law and practice settings. Its members include U.S. lawyers, law students, non-U.S. legal professionals, and non-lawyers.<sup>107</sup> The ABA's approximately 600-member House of Delegates—which includes elected representatives from all the state bars—has responsibility for establishing formal ABA policy on professional and public issues.<sup>108</sup> The House of Delegates elects the officers of the ABA, including the president who serves for a one-year term.<sup>109</sup>

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103 *See* *Keller v. State Bar of California*, 496 U.S. 1, 13-14 (1990) (holding that attorneys who belong to mandatory bar have First Amendment right not to pay dues that are used to subsidize the organization's political and ideological activities); *Ariz. Sup. Ct. R. 32 (c) (8)* (2018) (member who objects to particular State Bar lobbying activities may request refund of portion of annual dues allocable to those activities); *Rules Regulating the Fla. Bar 2-9.3(c)* (2018) (same); *N.H. Bar Ass'n Const. art. 1* (limiting the activities of the mandatory bar "to those matters which are related directly to the administration of justice; the composition and operation of the courts; the practice of law and the legal profession").

104 *See, e.g., Advocacy*, AM. ASS'N FOR JUST., <https://www.justice.org/membership/advocacy> (last visited Mar. 12, 2019).

105 *See, e.g., Advocacy & Initiatives*, A.B.A., <https://www.americanbar.org/advocacy.html> (last visited Mar. 12, 2019).

106 *New York City Bar Association Statement on Withdrawal from Paris Climate Agreement*, N.Y.C. B (June 2, 2017), <http://www.nycbar.org/media-listing/media/detail/new-york-city-bar-association-statement-on-withdrawal-from-paris-climate-agreement>; N.Y.C. BAR, *THE LEGALITY UNDER INTERNATIONAL LAW OF TARGETED KILLINGS BY DRONES LAUNCHED BY THE UNITED STATES*, App. D (2014), <https://www2.nycbar.org/pdf/report/uploads/20072625-TheLegalityofTargetedInternationalKillingsbyUS-LaunchedDrones.pdf>.

107 *Membership FAQ*, A.B.A. (Jan. 7, 2019), <https://www.americanbar.org/membership/faq.html>.

108 AM. BAR ASS'N, *POLICY AND PROCEDURES HANDBOOK 2018-2019*, at 3, 9 (2018), [https://www.americanbar.org/content/dam/aba/administrative/board\\_of\\_governors/2018\\_2019\\_policy\\_and\\_procedures\\_handbook.pdf](https://www.americanbar.org/content/dam/aba/administrative/board_of_governors/2018_2019_policy_and_procedures_handbook.pdf).

109 *Id.* at 3, 22.

## 2. Brazil

Brazil provides an example of a post-colonial legal profession in a civil law democracy. Brazil declared its independence from Portugal in 1822.<sup>110</sup> According to Joaquim Falcão, “independence meant the rejection of absolutism and the adoption of liberalism and constitutionalism—initially monarchical and subsequently republican—as the national ideology.”<sup>111</sup> The elite Institute of Brazilian Lawyers (IAB), founded in 1843, regularly advised the government about legislation and helped draft the first republican constitution.<sup>112</sup> Its members’ conception of professionalism centered on “jurisprudential expertise as a specific way of influencing the state and society.”<sup>113</sup> The Order of Attorneys of Brazil (OAB), to which all Brazilian lawyers (*advogados*) must belong, was created in 1930 by Getulio Vargas’s government.<sup>114</sup> After Vargas seized emergency power in 1937, and shut down Congress and imposed a new authoritarian constitution, the OAB “took the lead of social and political criticism, claiming to be a voice for public interest, in defense of the juridical order and the rule of law.”<sup>115</sup> The OAB initially hesitated to act following the military coup in 1964, but a few years after the regime rewrote the constitution and suspended Congress, the OAB and IAB began criticizing the regime and defending human rights and the rule of law.<sup>116</sup> The OAB campaigned for a new constitutional convention to replace the military and eventually became an influential lobbyist and drafter in connection with the 1988 Constitution, which restored democracy to Brazil.<sup>117</sup>

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110 Joaquim Falcão, *Lawyers in Brazil*, in *LAWYERS IN SOCIETY: THE CIVIL LAW WORLD*, *supra* note 11, at 400, 400.

111 *Id.* at 401.

112 Maria da Gloria Bonelli, *Lawyers’ Associations and the Brazilian State, 1843-1997*, 28 *LAW & SOC. INQUIRY* 1045, 1052 (2003); *História da Instituição*, IAB, [iabnacional.org.br/institucional/historia-da-instituicao](http://iabnacional.org.br/institucional/historia-da-instituicao) (last visited Jan. 24, 2019).

113 Bonelli, *supra* note 112, at 1051. Nevertheless, in 1895, with the advent of the Republic, the IAB adopted a practice of neutrality, which included not making declarations on purely political issues. *Id.* at 1057.

114 *Id.* at 1045, 1048, 1059-60; Falcão, *supra* note 110, at 422-23. It was only after the OAB was formed that the practice of law was limited to those registered with the OAB. Falcão, *supra*, at 417.

115 Bonelli, *supra* note 112, at 1061.

116 MARIA HELENA MOREIRA ALVES, *STATE AND OPPOSITION IN MILITARY BRAZIL* 149, 157, 160-62 (1985); Eliane Botelho Junqueira, *The Brazilian Bar Association in the Struggle for Human Rights*, in *EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE, AND THE COMMUNITY* 158, 160 (Louise G. Trubek & Jeremy Cooper eds. 1999); Bonelli, *supra* note 112, at 1064-65. The OAB initially expressed approval of the new regime because it felt there was a need to establish civil order, but it subsequently shifted positions. Bonelli, *supra* note 112, at 1063-64.

117 MATTHEW M. TAYLOR, *JUDGING POLICY: COURTS AND POLICY REFORM IN DEMOCRATIC BRAZIL* 109, 113-14 (2008).



At that time, lawyers were viewed as the defenders of public liberties and human rights, and this conferred “great moral authority on OAB in the eyes of the government and civil society.”<sup>118</sup> According to Maria da Gloria Bonelli, “the defense of the juridical order has been at the core of lawyers’ collective identity, maintaining group cohesion and the public legitimacy of the OAB.”<sup>119</sup> The OAB also works to protect the market for private practitioners.<sup>120</sup> Nevertheless, defense of the Constitution remains “a principal ideational motivator.”<sup>121</sup>

Today, the OAB consists of more than one million lawyers and law interns.<sup>122</sup> It plays a central role in regulating the profession.<sup>123</sup> The OAB has twenty-seven sectional councils, one for each state or territory.<sup>124</sup> Much of its important regulatory and political decision making occurs in its eighty-one member Federal Council, which includes three councilors from each of the twenty-seven states.<sup>125</sup> The Federal Council elects the president for three-year terms.<sup>126</sup>

The OAB directly influences law primarily through public statements and litigation.<sup>127</sup> It has the power under the Constitution to file challenges to the constitutionality of actions by the federal government using the

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118 Falcão, *supra* note 110, at 425.

119 Bonelli, *supra* note 112, at 1047.

120 See Junqueira, *supra* note 116, at 164; Fabio de Sa e Silva, *Doing Well and Doing Good in an Emerging Economy: The Social Organization of Pro Bono among Corporate Lawyers and Law Firms in São Paulo, Brazil*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* 210, 224 n.17 (Luciana Gross Cunha et al. eds., 2018).

121 TAYLOR, *supra* note 117, at 110.

122 There are approximately 1.19 million lawyers and 29,000 student interns. *Institucional/Quadro de Advogados*, *supra* note 91. The OAB estimates that thirty percent of lawyers do not practice law. Maria da Gloria Bonelli & Pedro Fortes, *The Transformation of the Brazilian Legal Profession: Fragmentary Development, Democratization, and Globalization of Lawyers in Brazil*, in *LAWYERS IN 21ST CENTURY SOCIETIES: NATIONAL REPORTS* (Richard L. Abel & Ole Hammerslev eds., forthcoming 2019).

123 The OAB establishes the ethical code for lawyers, administers the bar examination, and investigates discipline complaints. Lei No. 8.906, de 4 de Julho de 1994, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 5.7.94; TAYLOR, *supra* note 117, at 115. Nevertheless, the legal profession is not solely controlled by the OAB. The bar exam, for example, is regularly modified in response to political pressures, judicial challenges and legislative proposals. Bonelli & Fortes, *supra* note 122.

124 Frederico de Almeida & Paulo André Nassar, *Ordem dos Advogados do Brasil and the Politics of Professional Regulation in Brazil*, in *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION*, *supra* note 120, at 181, 195.

125 See TAYLOR, *supra* note 117, at 116; Almeida & Nassar, *supra* note 124, at 195; Bonelli, *supra* note 112, at 1060.

126 Lei No. 8.906, de 4 de Julho de 1994, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 5.7.94, art. 65; Bonelli, *supra* note 112, at 1060.

127 TAYLOR, *supra* note 117, at 117.

Direct Action of Unconstitutionality (ADINs).<sup>128</sup> The IAB is small in comparison, but it remains an active lawyer organization in some cities and it declares itself “an intransigent defender of the democratic state of law, national sovereignty and fundamental rights.”<sup>129</sup> Brazil also has specialty bar organizations, such as the Brazilian Association of Real Estate Lawyers, the Brazilian Association of Criminal Lawyers, and lawyers’ unions.<sup>130</sup>

### 3. Japan

Japan is also a democracy with a civil law legal system. It was not until the mid-1870s that the Meiji government enacted regulations that enabled advocates (*daigennin*) to represent litigants in court.<sup>131</sup> The state required *daigennin* to form state-approved local organizations in an effort to control them.<sup>132</sup> In 1893, the Attorney Law created the profession of attorneys, renamed as *bengoshi*.<sup>133</sup> That law also created a mandatory bar association (*bengoshikai*) corresponding with the jurisdiction of each district court.<sup>134</sup> The national government regulated the profession through World War II, and attempted to control it with varying levels of success.<sup>135</sup> In 1949, after negotiations between bar associations and the government, a new

128 CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 103 (Braz.); TAYLOR, *supra* note 117, at 109, 117-18. Over time, the OAB’s privilege to file ADINS has been granted across most policy areas. Taylor, *supra*, at 117.

129 *História da Instituição*, *supra* note 112; Bonelli, *supra* note 112, at 1065, 1068-69.

130 See ASSOCIAÇÃO BRASILEIRA DE ADVOGADOS DO MERCADO IMOBILIÁRIO [BRAZILIAN ASS’N OF REAL EST. LAW.], <https://abami.org.br/> (last visited Jan. 26, 2019); ASSOCIAÇÃO BRASILEIRA DOS ADVOGADOS CRIMINALISTAS [BRAZILIAN ASS’N OF CRIM. LAW.], <https://www.abracrim.adv.br/> (last visited Jan. 26, 2019); UNIÃO BRASILEIRA DA ADVOCACIA AMBIENTAL [BRAZILIAN UNION OF ENVTL. LAW.], <https://ubaaweb.wordpress.com/> (last visited Jan. 26, 2019); Falcão, *supra* note 110, at 426-27.

131 See DARRYL E. FLAHERTY, PUBLIC LAW, PRIVATE PRACTICE: POLITICS, PROFIT, AND THE LEGAL PROFESSION IN NINETEENTH-CENTURY JAPAN 99-100 (2013); Richard W. Rabinowitz, *The Historical Development of the Japanese Bar*, 70 HARV. L. REV. 61, 64-65 (1956); *What Is the JFBA?*, *supra* note 91. Previously, *kujishi*, who were proprietors of inns at which litigants lodged while waiting for courts to hear their cases, sometimes counseled litigants, but they did not have legal training. Rabinowitz, *supra*, at 62-64.

132 Malcolm M. Feeley & Setsuo Miyazawa, *The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change*, in FIGHTING FOR POLITICAL FREEDOM, *supra* note 86, at 151, 161.

133 *Id.* at 160. Today, *bengoshi* are one of six legal services providers in Japan and the only one with full rights of audience in Japanese courts. See Ishida, *supra* note 11, at 383-85.

134 CIVIL PROCEDURE IN JAPAN § 2.01 [1][c](a) (Yasuhei Taniguchi et al. eds., 3d ed. 2018). In 1923, the Attorney Act was revised so that lawyers could form more than one bar association in a jurisdiction, Tokyo bar was subsequently split into three associations. Rabinowitz, *supra* note 131, at 72.

135 See Feeley & Miyazawa, *supra* note 132, at 161-66.

Practicing Attorney Act was passed.<sup>136</sup> The Act created the Japan Federation of Bar Associations (JFBA) for *bengoshi* and made the bar associations independent from the Minister of Justice and the Supreme Court.<sup>137</sup>

Feeley and Setsuo Miyazawa characterize the Japanese legal profession as “quintessentially homo politicus.”<sup>138</sup> Notwithstanding the government’s plan to use lawyer associations to control the profession, from the outset, “the bar was at the forefront of challenging a government not accustomed to being openly opposed.”<sup>139</sup> Indeed, the Japanese government’s efforts to restrict the profession over the years “helped define and reinforce the profession’s anti-government ethos.”<sup>140</sup> Thus, in the 1890s, the organized bar involved itself in the formation of new political parties that challenged the regime.<sup>141</sup> Bar associations were organized into committees, most of which addressed the protection of rights or the expansion of civil society institutions.<sup>142</sup> Opposition to the government by the mandatory Japanese bar receded in the 1930s, when the government cracked down on dissent.<sup>143</sup> Yet opposition by the bar reemerged in the post-war period, as did its anti-government ethos.<sup>144</sup>

Today, *bengoshi* are required by the Practicing Attorney Act of 1949 to register with the JFBA and to belong to one of the fifty-two local bar associations.<sup>145</sup> The JFBA is composed of about 40,000 *bengoshi* and 410 registered foreign lawyers.<sup>146</sup> The Act affords the JFBA significant authority to regulate the admission and discipline of lawyers. The Act also states in Article I that “[a] practicing attorney is entrusted with a mission to protect fundamental human rights and to realize social justice.”<sup>147</sup>

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136 U.S. occupation officials, who believed that the bar should be independent, aided efforts by the bar associations to oppose attempts by the Supreme Court and the Minister of Justice to impose greater restrictions on lawyers. ALFRED C. OPPLER, *LEGAL REFORM IN OCCUPIED JAPAN: A PARTICIPANT LOOKS BACK* 108 (1976); Feeley & Miyazawa, *supra* note 132, at 175.

137 Rabinowitz, *supra* note 131, at 76.

138 Feeley & Miyazawa, *supra* note 132, at 152.

139 *Id.* at 161.

140 *Id.* In addition, there is no tradition of a strong bond between the courts and the bar, and indeed, they are often at odds. *See* CIVIL PROCEDURE IN JAPAN, *supra* note 134, at § 2.01 [1][a]; *see also* Feeley & Miyazawa, *supra* note 132, at 151 (noting that the conservative judiciary has not sought to align itself with the bar, which has “aggressively promoted the idea of autonomous law and the liberal state”).

141 Feeley & Miyazawa, *supra* note 132, at 161.

142 *Id.*

143 *Id.* at 163.

144 *Id.* at 175.

145 *Id.*; *What is the JFBA?*, *supra* note 91.

146 *What is the JFBA?*, *supra* note 91.

147 Feeley & Miyazawa, *supra* note 132, at 175-76.

Miyazawa notes that this language expresses a “professional ideology which reflects the prewar status of practicing attorneys,” and “appears to have actually generated tangible commitments to human rights activities by a substantial number of lawyers.”<sup>148</sup>

The JFBA president is elected to a two-year term.<sup>149</sup> The JFBA sponsors nearly 100 special committees that provide networks of resources for attorneys handling novel issues on criminal justice, human rights and environmental issues.<sup>150</sup> The local bars also have authority to form committees, to comment on legislation, and to speak out on issues.<sup>151</sup> Other voluntary lawyer organizations active in social and political issues include the Japan Lawyers Association for Freedom (formed in 1921),<sup>152</sup> the Japan Young Lawyers Association (formed in 1954), and smaller associations of activist attorneys.<sup>153</sup> There are also a few specialty lawyer organizations such as the Japan Labor Lawyers Association and the Japan In-House Lawyers Association.<sup>154</sup>

#### 4. Israel

Another example of a democracy, Israel has a mostly common law legal system that derives from Ottoman and English law.<sup>155</sup> The Ottoman legal system, which governed until 1917, combined Islamic, European (mostly French), and Ottoman legal norms.<sup>156</sup> During the British Mandate,

148 Setsuo Miyazawa, *Lawyering for the Underrepresented in the Context of Legal, Social, and National Institutions: The Case of Japan*, in EDUCATING FOR JUSTICE AROUND THE WORLD, *supra* note 116, at 19, 21, 22; *see also* Feeley & Miyazawa, *supra* note 132, at 176 (noting that this language is more than an “empty slogan” and reaffirms the bar’s “longstanding sense of responsibility, central to its ethos”).

149 *Organization, JAPAN FED’N B. ASS’NS*, <https://www.nichibenren.or.jp/en/about/us/organization.html> (last visited Mar. 12, 2019).

150 Feeley & Miyazawa, *supra* note 132, at 177.

151 *See, e.g.*, CIVIL PROCEDURE IN JAPAN, *supra* note 134, at § 2.01 [1][c](a); *About the Tokyo Bar*, TOKYO B. ASS’N, <https://www.toben.or.jp/english/about/>.

152 The Japan Lawyers Association for Freedom was originally formed to organize the defense of striking workers in the shipbuilding industry. Feeley & Miyazawa, *supra* note 132, at 166. The Japan Young Lawyers Association was founded to promote the new Constitution. The latter is one of only a few organizations that include lawyers, judges, and legal academics. *Id.*

153 *Id.* at 177.

154 *See* LAB. LAW. ASS’N OF JAPAN, <http://roudou-bengodan.org/about/> (last visited Mar. 12, 2019); JAPAN IN-HOUSE LAW. ASS’N, <http://jila.jp/eng/index.html> (last visited Mar. 12, 2019).

155 Eyal Katvan et al., *Lawyers in Israel: Numbers, Make-up and Modes of Practice*, in LAWYERS IN 21ST CENTURY SOCIETIES: NATIONAL REPORTS, *supra* note 122.

156 Ron Harris et al., *Israeli Legal History: Past and Present*, in THE HISTORY OF LAW IN A MULTICULTURAL SOCIETY: ISRAEL, 1917-1967, at 1, 5 (Ron Harris et al. eds., 2002); Katvan et al., *supra* note 155; Assaf Likhovski, *The Time Has Not Yet Come to Repair the World in the Kingdom of God: Israeli Lawyers and the Failed Jewish Legal Revolution of 1948*, in JEWS AND THE LAW 359, 362, 363–64 (Ari Mermelstein et al. eds, 2008).

the emerging legal profession identified with the English legal system and its ideology as a way to ground their Western identity and to distinguish themselves from their Arab counterparts in the Ottoman world.<sup>157</sup> British legal ideology embraced a highly individualistic and formalistic free market philosophy.<sup>158</sup> According to this view—which Jewish-Palestinian lawyers adopted—“[t]he lawyers’ duty is to pursue their clients’ interests and the collective good emerges structurally from the system.”<sup>159</sup>

After Israel declared independence in 1948, lawyers sought an autonomous bar association, but these efforts were met by suspicion in a new state that prized nationalism and collectivism.<sup>160</sup> The Israeli parliament eventually passed the Israel Bar Association Act of 1961, which created the mandatory Israel Bar Association (IBA), and gave it a great deal of power and autonomy to govern the legal profession.<sup>161</sup> The Act stressed that the lawyer’s duty of loyalty to the client was central, with no suggestion that lawyers have a commitment to substantive justice or to work for the public good.<sup>162</sup>

During the first twenty years after Israel declared independence, lawyers and judges shared a strong bond because of their similar backgrounds and personal ties.<sup>163</sup> In addition, both groups were marginalized by the state, leading to interdependence between lawyers and the judiciary.<sup>164</sup> Until the late 1990s, the IBA mainly engaged with issues that were directly related to lawyers or the legal system.<sup>165</sup> At that time, some lawyers began to dissent from the IBA’s apolitical approach and promoted the idea that the bar had a collective responsibility to promote

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<sup>157</sup> See Issachar Rosen-Zvi, *Constructing Professionalism: The Professional Project of the Israeli Judiciary*, 31 SETON HALL L. REV. 760, 766-67 (2001).

<sup>158</sup> *Id.* at 769.

<sup>159</sup> *Id.*

<sup>160</sup> Katvan et al., *supra* note 155.

<sup>161</sup> *Id.*; Rosen-Zvi, *supra* note 157, at 766-67, 780; Neta Ziv, *Combining Professionalism, Nation Building and Public Service: The Professional Project of the Israeli Bar 1928-2002*, 71 FORDHAM L. REV. 1621, 1640 (2003). The IBA’s power continues to this day. As Limor Zer-Gutman notes, “Despite the enormous changes experienced by Israeli society, its law and the legal profession in the last half-century since regulation was instituted, no meaningful changes have taken place regarding the Bar’s status and powers.” Limor Zer-Gutman, *Israel: Regulation of Lawyers and Legal Services in Israel*, in INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES 139, 140 (Andrew Boon ed., 2017).

<sup>162</sup> Ziv, *supra* note 161, at 1637-38, 1643-44, 1646-47.

<sup>163</sup> Rosen-Zvi, *supra* note 157, at 772.

<sup>164</sup> *Id.* at 774-77. Rosen-Zvi explains that lawyers drew their authority as “guardians of the rule of law”—at least in the formalistic sense—from their proximity to judges. *Id.* at 775.

<sup>165</sup> See, e.g., Ziv, *supra* note 161, at 1625 (noting that “[i]n an era pervaded by severe human rights violations and infringements on the rule of law, the bar maintained its ‘apolitical and independent’ stance”).

substantive justice.<sup>166</sup> Since the early 2000s, when a new IBA president entered office with a liberal agenda and demanded that the organization take a position on human rights violations in Israel and the Occupied Territories,<sup>167</sup> the IBA has presented itself as having a special role and responsibility in broader debates about public affairs.<sup>168</sup> In 2016, at the IBA's suggestion, the language in the IBA Act was amended to state that the IBA should "protect the rule of law, human rights and the basic values of the State of Israel."<sup>169</sup>

Israel has more than 75,000 lawyers, making it the country with the largest per capita number of lawyers in the world.<sup>170</sup> The IBA is the only bar association in Israel.<sup>171</sup> Its president is elected to a four-year term and serves as the chair of an elected Central Committee.<sup>172</sup> Some Israeli lawyers also participate in legal advocacy work through NGOs.<sup>173</sup> One such organization, Adalah, an NGO primarily composed of Arab-Palestinian Israeli lawyers, advocates for non-discriminatory treatment of Arab-Israeli citizens.<sup>174</sup> Another, the Association for Civil Rights in Israel, established in 1972, works for human rights in Israel and the Occupied Territories.<sup>175</sup>

## B. Transitional Governments

### 1. Kyrgyzstan

Kyrgyzstan, a country in political transition, was dominated at times by the Mongolians, Manchurians, and Uzbeks, and became part of the

166 Neta Ziv, *Human Rights Law and Public Interest Lawyering: A Study on the Interdependence of Jurisprudence and the Legal Profession in Israel* 82-83 (June 2001) (unpublished J.S.D. dissertation, Stanford University) (on file with authors).

167 Katvan et al., *supra* note 155; Zer-Gutman, *supra* note 161, at 142.

168 See Katvan et al., *supra* note 155; Zer-Gutman, *supra* note 161, at 143.

169 Katvan et al., *supra* note 155; E-mail from Limor Zer-Gutman, Lecturer, Haim Striks School of Law, to Leslie C. Levin (July 13, 2018, 06:40 EDT) (on file with authors).

170 See Katvan et al., *supra* note 155; E-mail from Amit Pearlman, *supra* note 91.

171 Israel's High Court of Justice has interpreted the IBA Act to mean that the IBA is meant to be the only bar association in Israel. H.C.J. 2334/02 Stanger v. Chair, Knesset 58(1), 786 (2003) (Isr.).

172 The Central Committee includes the head of each of the districts in Israel. See Zer-Gutman, *supra* note 161, at 148.

173 Philip W. Chung, Note, *The Regulation of Israel's Legal Profession and Public Interest Lawyering*, 30 GEO. J. LEGAL ETHICS 659, 672 (2017).

174 Gad Barzilai, *The Ambivalent Language of Lawyers in Israel: Liberal Politics, Economic Liberalism, Silence and Dissent*, in *FIGHTING FOR POLITICAL FREEDOM*, *supra* note 86, at 247, 270.

175 Ronen Shamir & Sara Chinski, *Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Courts*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES*, *supra* note 87, at 227, 235; *About the Association for Civil Rights in Israel*, ASS'N FOR C.R. IN ISRAEL, <http://www.acri.org.il/en/mission/>.

Russian empire in 1876.<sup>176</sup> During the Soviet period, lawyers who represented clients' private interests were members of legal collectives administered by government agencies.<sup>177</sup> The 1977 USSR Constitution declared collegia of advocates to be independent of the state as "voluntary associations of individuals who carry out advocate activity," although oversight of the profession by state bodies and the Communist Party continued.<sup>178</sup> Kyrgyzstan obtained its independence from the Soviet Union in 1991.<sup>179</sup> The new government immediately faced the problem of widespread corruption, including in the judiciary.<sup>180</sup> Following two revolutions—in 2005 and 2010—Kyrgyzstan became the first parliamentary republic in central Asia.<sup>181</sup>

Today Kyrgyzstan is a Muslim majority country comprised mostly of ethnic Kyrgyz, ethnic Uzbeks, and Russians.<sup>182</sup> "Advocates" are licensed legal services providers authorized to represent clients in criminal matters.<sup>183</sup> "Lawyers" are unlicensed individuals with a law diploma who work on legal matters in government, corporations, and on their own.<sup>184</sup> Individuals need no legal training in order to represent parties in civil actions.<sup>185</sup>

In 1999, the government passed a Law on Advocates' Activity that protected the rights of advocates to join voluntary associations.<sup>186</sup> Some advocates continued to belong to collegia of advocates. The voluntary Association of Attorneys of Kyrgyzstan (AAK), which includes a variety

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176 See Robert Lowe, *Nation Building and Identity in the Kyrgyz Republic*, in CENTRAL ASIA: ASPECTS OF TRANSITION 106, 107-08 (Tom Everett-Heath ed., 2003); *Kyrgyzstan Profile – Timeline*, BBC NEWS (Feb. 26, 2018), <https://www.bbc.com/news/world-asia-16185772>.

177 See Albert C. Malone, Jr., *Soviet Bar*, 46 CORNELL L. REV. 258, 258 (1961).

178 INT'L COMM'N OF JURISTS, TOWARDS A STRONGER LEGAL PROFESSION IN THE RUSSIAN FEDERATION 8-9 (2015), <http://www.icj.org/wp-content/uploads/2015/11/Russia-Towards-a-Stronger-Legal-Profession-Publication-2015-Eng.pdf>.

179 Lowe, *supra* note 176, at 106.

180 See MILLENNIUM CHALLENGE CORP., MILLENNIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM CONCEPT PAPER OF THE KYRGYZ REPUBLIC 1, 2 (2007); INT'L CRISIS GRP., KYRGYZSTAN: THE CHALLENGE OF JUDICIAL REFORM 1 (2008), <https://d2071andvip0wj.cloudfront.net/150-kyrgyzstan-the-challenge-of-judicial-reform.pdf>. One poll rated the judiciary as the country's most loathed institution. Chris Rickleton, *Kyrgyzstan: Unpopular Judiciary Difficult to Reform*, EURASIANET (Aug. 10, 2012), [www.eurasianet.org/node/65246](http://www.eurasianet.org/node/65246).

181 MILLENNIUM CHALLENGE CORP., *supra* note 180, at 3-4; AM. BAR. ASS'N RULE OF LAW INITIATIVE, LEGAL PROFESSION REFORM INDEX FOR THE KYRGYZ REPUBLIC 4 (2014) [hereinafter ABA ROLI LPRI], <https://www.americanbar.org/content/dam/aba/directories/roli/kyrgyzstan/roli-kyrgyz-republic-legal-profession-reform-index-2014.authcheckdam.pdf>.

182 ABA ROLI LPRI, *supra* note 181, at 3.

183 *Id.* at 6.

184 *Id.*

185 *Id.*

186 *Id.* at 50.

of legally trained professionals, was formed in 1995 with the assistance of the ABA's Central and Eastern Europe Law Initiative.<sup>187</sup> The Advocates' Union (AU), a voluntary organization composed exclusively of advocates, was formed in 2002 due to the efforts of the Ministry of Justice.<sup>188</sup> Two years later, work began on a new Law of Advocacy to regulate advocates and create a unified bar. The AAK and the AU supported these efforts with "behind the scenes" help from the ABA Rule of Law Initiative (ABA ROLI).<sup>189</sup> Due to political upheaval in Kyrgyzstan, it was not until 2014 that the law was passed and a mandatory bar organization, the *Advokatura*, was formed as an independent organization.<sup>190</sup> Only practicing advocates belong to the *Advokatura*. Its highest governing body is the elected Congress of Advocates, which convenes every three years. Its nine-member Board of Advocates has broad powers to ensure self-regulation of the profession.<sup>191</sup> Initially only a small number of advocates joined the *Advokatura*, but its members now number about 2300.<sup>192</sup>

## 2. Libya

Libya, another country in transition, was part of the Ottoman Empire for about 350 years. Libya came under Italian rule in 1911, was ruled by the French and the British beginning in 1943, and became independent in 1951.<sup>193</sup> The national Libyan Bar Association (LBA) was established in 1962, with five regional bar associations.<sup>194</sup> In 1969, Qaddafi led a coup and vested his Revolutionary Command Council with legislative,

187 SWISS COOPERATION OFFICE IN THE KYRGYZ REPUBLIC, KYRGYZ REPUBLIC JUDICIAL SYSTEM DIAGNOSTIC: MEASURING PROGRESS AND IDENTIFYING NEEDS 73 (2013), [http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Kyrgyzstan\\_Judicial\\_System\\_Diagnostic\\_Report.pdf](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Kyrgyzstan_Judicial_System_Diagnostic_Report.pdf); ABA ROLI LPRI, *supra* note 181, at 50. The AAK includes advocates, lawyers, judges, prosecutors, law teachers, and others. RUSLAN KHAKIMOV, THE LEGAL PROFESSION IN KYRGYZSTAN 6-7 (2008), <https://www.osce.org/odihr/36315?download=true>.

188 ABA ROLI LPRI, *supra* note 181, at 50. Only advocates belong to the Advocates Union. SWISS COOPERATION OFFICE IN THE KYRGYZ REPUBLIC, *supra* note 187, at 9.

189 See AZAMAT KERIMBAEV & STEPHEN MACKENZIE, ABA RULE OF LAW INITIATIVE, SUPPORT TO THE KYRGYZSTANI LEGAL DEFENSE COMMUNITY QUARTERLY REPORT: APRIL 1, 2013-JUNE 30, 2013, at 1 (2013), [https://pdf.usaid.gov/pdf\\_docs/PA00MJJ3.pdf](https://pdf.usaid.gov/pdf_docs/PA00MJJ3.pdf). The program was then known as the ABA Central and East European Law Initiative. It later became known as ABA ROLI.

190 INT'L COMM'N OF JURISTS, THE BIRTH OF A NEW ADVOKATURA IN THE KYRGYZ REPUBLIC 7 (2016), <http://www.refworld.org/pdfid/57ee88304.pdf>; ABA ROLI LPRI, *supra* note 181, at 51.

191 LAW ON ADVOCACY, arts. 4-7 (Kyrgyz); INT'L COMM'N OF JURISTS, *supra* note 190, at 12.

192 INT'L COMM'N OF JURISTS, *supra* note 190, at 7; Telephone Interview with Azamat Kerimbaev, *supra* note 91.

193 See ILAC, *supra* note 91, at 15, 17; Jessica Carlisle, *Libya: Lawyers Between Ideology and the Market*, in *LAWYERS IN 21ST CENTURY SOCIETIES*, *supra* note 122.

194 ILAC, *supra* note 91, at 61.



executive and judicial authority.<sup>195</sup> The LBA maintained its independence until 1981, but thereafter, legislation significantly restricted lawyers' activities and the bar came under the control of the regime.<sup>196</sup> Lawyers were required to become state salaried as members of the Directorate of People's Defense (subsequently known as "people's lawyers").<sup>197</sup> Even after the restoration of lawyers' right to engage in private practice in the 1990s,<sup>198</sup> the Qaddafi government controlled the selection of bar leaders and the manner in which lawyers could practice.<sup>199</sup> Lawyers advocated for more control over bar leadership in the early 2000s, but were unsuccessful during the Qaddafi regime.<sup>200</sup>

With the fall of Qaddafi in late 2011, the LBA and its regional bar associations quickly became active in their own governance, electing provisional officers in early 2012.<sup>201</sup> The organization had to overcome distrust towards certain lawyers who were viewed as having colluded with the Qaddafi regime.<sup>202</sup> In 2014, Libya passed a new law on Law Practice that made the LBA a mandatory lawyer organization with seven regional associations.<sup>203</sup> The LBA does not include prosecutors, "people's lawyers," other government lawyers, or judges; those groups fall under the direction of the Minister of Justice.<sup>204</sup>

The new law provides for the LBA to select its own leaders and to play an important role in the admission and discipline of lawyers.<sup>205</sup> The General Assembly of the 4000-member LBA chooses a president and deputy president.<sup>206</sup> The Board of the LBA includes the president, the deputy president, and seven members, each representing one of the bar's

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195 Adam Abdelmoula, *Libya: The Control of Lawyers by the State*, 17 J. LEGAL PROF. 55, 55 (1992).

196 Carlisle, *supra* note 193; Abdelmoula, *supra* note 195, at 62-65; ILAC, *supra* note 91, at 23.

197 Carlisle, *supra* note 193.

198 *Id.*; Abdelmoula, *supra* note 195, at 73-74.

199 Carlisle, *supra* note 193; Abdelmoula, *supra* note 195, at 66-68, 73, 74.

200 *See infra* notes 240-43 and accompanying text.

201 ILAC, *supra* note 91, at 62; Telephone Interview with Kevin George, former Country Director, ABA ROLI Libya (May 2, 2017).

202 Telephone Interview with Kevin George, *supra* note 201.

203 LAW NO. 3 OF 2014 ON LAW PRACTICE, arts. 7, 41 (Libya).

204 *See* Jessica Carlisle, *Access to Justice and Legal Aid in Libya: The Future of the People's Lawyers*, in *SEARCHING FOR JUSTICE IN POST-GADDAFI LIBYA* 79, 82-83, 96 (Jan Michiel Otto et al. eds., 2013). People's lawyers provide representation in criminal, civil, family and administrative matters, but are salaried by the state. Nasser Algeheiti, *The Role of Criminal Defense Lawyers in the Administration of Justice in Libya: Challenges and Prospects*, in *SEARCHING FOR JUSTICE IN POST-GADDAFI LIBYA*, *supra*, at 92, 96.

205 LAW NO. 3 OF 2014 ON LAW PRACTICE, arts. 7, 13, 41, 43-45, 52-53, 55 (Libya).

206 *Id.* arts. 53-54.

branches.<sup>207</sup> It has been difficult for the LBA to accomplish its initial objectives—such as to draft an ethics code—due to the ongoing violence in the country. Other lawyer organizations have also emerged, such as the Hakki Organization (women lawyers concerned with the rights of women and children),<sup>208</sup> the Libyan Organization for Monitoring Human Rights Violations,<sup>209</sup> and the Libyan Lawyers’ Organization, which focuses on transitional justice and constitution building.<sup>210</sup>

### *C. Authoritarian Government - China*

Lawyers did not emerge as an organized profession in China until the early twentieth century.<sup>211</sup> After the Communists took power, the profession was purged and reconstituted according to the Soviet model before it was essentially eliminated in the late 1950s.<sup>212</sup> After the rebirth of the legal profession in 1979, lawyers were closely embedded in the state bureaucracy.<sup>213</sup> The new legal profession in China was established by the Interim Regulation on Lawyers, which took effect in 1982 and defined lawyers as “state legal workers” whose work was to “serve the cause of socialism.”<sup>214</sup> Privatization of the bar began in the late 1980s and it accelerated thereafter.<sup>215</sup> The Chinese government deliberately sought to rapidly expand the number of lawyers to meet the needs of economic reform.<sup>216</sup> Today, some elite Chinese lawyers have created mega firms modeled after global law firms in England and the United States, including with offices outside mainland China.<sup>217</sup> Other legal services providers in China, known as basic-level legal service workers, can also perform most

<sup>207</sup> *Id.* art. 55.

<sup>208</sup> *Promoting Change Through Women’s Legal Network in Libya*, ABA ROLI (Mar. 2017) (on file with authors).

<sup>209</sup> ILAC, *supra* note 91, at 65.

<sup>210</sup> *Id.* at 66.

<sup>211</sup> Sida Liu, *Lawyers in Chinese Society: A Tale of Four Decades*, in *LAWYERS IN 21ST CENTURY SOCIETIES*, *supra* note 122.

<sup>212</sup> *Id.*

<sup>213</sup> Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China’s Transition from Socialism*, 113 *AM. SOC. REV.* 352, 365 (2007).

<sup>214</sup> SIDA LIU & TERENCE C. HALLIDAY, *CRIMINAL DEFENSE IN CHINA: THE POLITICS OF DEFENSE LAWYERS AT WORK* 21 (2016).

<sup>215</sup> Michelson, *supra* note 213, at 371, 372.

<sup>216</sup> Liu, *supra* note 211, at 3.

<sup>217</sup> *Id.* at 8-9, 17-18. Many other Chinese law firms have also expanded overseas through international offices and referral networks, in part due to the Chinese government’s “Going Out” strategy, which encourages Chinese businesses to operate abroad. See Jing Li, *All Roads Lead to Rome: Internationalization Strategies of Chinese Law Firms* 35 (Nov. 29, 2018) (unpublished), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3289037](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3289037).

legal work, except criminal defense.<sup>218</sup>

The primary lawyer organization in China is the 340,000-member All-China Lawyers Association (ACLA), formed in 1986, with mandatory membership and close ties to the state. Indeed, ACLA's Charter lists upholding Party membership as the first of its goals.<sup>219</sup> China also has provincial and municipal lawyers' organizations, such as the Beijing Lawyers Association (BLA).<sup>220</sup> The Communist Party maintains control of the bar associations through provincial and local justice bureaus, which then influence provincial and local bar associations. As Sida Liu and Terence Halliday have noted, "Bar Association leaders are appointed from above, not elected by lawyers, even if there is a cosmetic 'election' to confirm appointments."<sup>221</sup> In the early-to-mid 2000s, the BLA had a Committee on Constitutional Law and Human Rights, which not only provided a platform for progressive lawyers to develop networks, but also became involved in some rights defense cases.<sup>222</sup> The progressive work of the committee was effectively ended by the bar association in 2007.<sup>223</sup>

Chinese activist lawyers have also independently engaged in collective action, but bar associations have rarely supported those efforts.<sup>224</sup> One such community, the "die-hard" lawyers, emerged in 2011, in part as a response to government prosecution of lawyers who were vigorously defending their clients.<sup>225</sup> The die-hard lawyers came from all over China and communicated primarily through social media.<sup>226</sup> In 2015, the Chinese government initiated a large-scale crackdown on activist lawyers, with more than two hundred questioned, detained, imprisoned or

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218 Liu, *supra* note 211, at 5. There are also separately licensed enterprise legal advisors in state-owned enterprises, patent agents, and trademark agents. The jurisdictional boundaries between the legal services providers are "poorly defined" and "interprofessional competition is prevalent." *Id.* at 6.

219 EVA PILS, CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE 151 (2014).

220 See *Independence of Lawyers: The Role of Justice Bureaus and Lawyers' Associations*, HRIC (2013), <https://www.hrichina.org/en/independence-lawyers-role-justice-bureaus-and-lawyers-associations>.

221 LIU & HALLIDAY, *supra* note 214, at 107. In addition, individuals in the government justice bureaus sometimes serve as the general secretary of the lawyer associations. See PILS, *supra* note 219, at 149, 151, 167-71.

222 Hualing Fu & Richard Cullen, *Climbing the Weiwan Ladder: A Radicalizing Process for Rights-Protection Lawyers*, 205 CHINA Q. 40, 42 (2011); Sida Liu & Terence C. Halliday, *The Ecology of Activism: Professional Mobilisation in an Authoritarian Regime* 8 (Dec. 29, 2018) (unpublished manuscript) (on file with authors).

223 Liu & Halliday, *supra* note 222, at 14.

224 For some exceptions where lawyer associations in China attempted to defend lawyers against state action, see LIU & HALLIDAY, *supra* note 214, at 68-70, 153-154.

225 Liu, *supra* note 211, at 14; Liu & Halliday, *supra* note 222, at 28.

226 Liu & Halliday, *supra* note 222, at 29.

“disappeared.”<sup>227</sup> Some bar associations have also disciplined lawyers for their statements against the bar association and the regime.<sup>228</sup>

### III. FROM OCCUPATIONAL CONCERNS TO HUMAN RIGHTS: ACTIVITIES BY LAWYER ORGANIZATIONS

How have the lawyer organizations in these seven countries tried to affect law over the last forty years? When have they promoted legal changes or worked to protect the legal status quo? Case studies of these countries during this period suggest activities that fall along a continuum from the most self-interested to the most altruistic. In some ways, as will be discussed below, this continuum mirrors the different perspectives in organizational theory, with activities that range from narrow professional concerns, to those of clients, the judiciary and the administration of justice, and to broader engagement with political issues. These four (sometimes overlapping) categories provide a framework for our discussion of the advocacy efforts of the lawyer associations.

#### *A. Working for Issues Affecting the Legal Profession as an Occupation*

Not surprisingly for an occupational interest group, lawyer organizations often attempt to exert influence on issues that directly affect lawyers' ability to perform and profit from their work. They seek to define, expand or defend their monopoly on the provision of legal services, raise their status, or improve their economic circumstances. In order to facilitate these efforts, lawyer organizations work to attain or preserve the right to self-regulate. They also speak out in defense of lawyers who are threatened or prosecuted.

#### *1. Self-regulation*

Many lawyer organizations view the right to self-regulate as necessary for lawyers to maintain their independence from government domination, and to protect the judicial system and defend against incursions on individual liberties by the state.<sup>229</sup> In the United States, the ABA Model

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227 LIU & HALLIDAY, *supra* note 214, at 165; Hualing Fu, *The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State*, 27 J. CONTEMP. CHINA 554, 562 (2018).

228 Liu, *supra* note 211, at 15.

229 See, e.g., MODEL RULES OF PROF'L CONDUCT Preamble (AM. BAR ASS'N 1983); ABEL, *supra* note 63, at 37; Zer-Gutman, *supra* note 161, at 147; Robert W. Gordon, *The Independence of Lawyers*,

Rules of Professional Conduct proclaim the importance of self-regulation by the legal profession.<sup>230</sup> U.S. bar organizations have fought for lawyers to maintain the right to promulgate their own rules of professional conduct without interference by Congress, federal agencies, or state legislatures. For example, the ABA opposed efforts by Congress to impose gatekeeper obligations on lawyers that would require them to reveal confidential information to prevent money laundering. The ABA argued, in part, that such legislation would undermine attorney-client privilege, confidentiality, traditional state court regulation of the profession, and lawyer independence.<sup>231</sup> Likewise, the California State Bar unsuccessfully fought efforts by the state legislature to move control of the lawyer discipline system from a lawyer-dominated process to a more independent State Bar court.<sup>232</sup>

Similar attempts to preserve self-regulation of the legal profession can be seen in Israel, where the IBA advised and lobbied against efforts to amend the Bar Act in ways that could affect the IBA's governance and power.<sup>233</sup> For example, in 2008, the IBA successfully limited proposals to significantly reduce the IBA's control over the lawyer discipline process through advocacy within the Ministry of Justice and among Knesset members.<sup>234</sup> Likewise, when a public commission proposed amendments to the IBA Act that would reform the structure and control of the IBA, the organization vigorously opposed those efforts. The resulting 2016 amendments largely ended up reflecting the IBA's position.<sup>235</sup>

In some emerging democracies with little history of lawyer self-regulation, the story is different and reflects the limits on lawyers' independence due to their historical relationship to the state. After the fall of the Soviet Union, the Ministry of Justice in Kyrgyzstan oversaw

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68 B.U. L. REV. 1, 10-12 (1988); Bruce Green, *Lawyers' Professional Independence: Overrated or Undervalued?*, 46 AKRON L. REV. 599, 602-06 (2013).

230 MODEL RULES OF PROF'L CONDUCT Preamble [10], [11] (AM. BAR ASS'N 1983).

231 *Gatekeeper Regulations on Lawyers*, A.B.A. (Feb. 7, 2019), [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/independence\\_of\\_the\\_legal\\_profession/bank\\_secretary\\_act.html](https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession/bank_secretary_act.html).

232 RICHARD L. ABEL, *LAWYERS ON TRIAL: UNDERSTANDING ETHICAL MISCONDUCT* 21-59 (2011); William T. Gallagher, *Ideologies of Professionalism and the Politics of Self-Regulation in the California State Bar*, 22 PEPP. L. REV. 485, 546-63 (1995).

233 Katvan et al., *supra* note 155; Neta Ziv, *Regulation of Israeli Lawyers, From Professional Autonomy to Multi-Institutional Regulation*, 77 FORDHAM L. REV. 1763, 1779, 1781-82, 1785-88 (2009); Yonah Jeremy Bob, *Ministers to Take Up Bill to Reform Bar Association*, JERUSALEM POST, June 12, 2015.

234 Ziv, *supra* note 233, at 1785-88. These efforts resulted in only "minor changes" to the existing law. Katvan et al., *supra* note 155.

235 Katvan et al., *supra* note 155.

regulation of the legal profession.<sup>236</sup> Starting in 2004, activist lawyers in Kyrgyzstan began drafting legislation providing for a self-regulatory model of lawyer regulation with a unified, compulsory bar association.<sup>237</sup> Some advocates opposed the creation of the compulsory *Advokatura* in 2014 for reasons including fear that the association would be used by authorities to interfere with lawyer independence and suspicion of bureaucracies.<sup>238</sup> Indeed, five defense advocates filed a complaint with the Supreme Court of Kyrgyzstan challenging the constitutionality of the legislation requiring lawyers to join the *Advokatura*, but that challenge failed.<sup>239</sup>

In Libya, self-regulation by the legal profession was impossible after Qaddafi nationalized the Libyan legal profession in 1981.<sup>240</sup> Libyan lawyers' collective efforts were largely aimed at obtaining some control over their bar organizations. For example, in 2005 lawyers protested after the Qaddafi regime appointed a leader to the Benghazi Bar Association against the members' will, and again in early 2011, when he overstayed his term.<sup>241</sup> In 2010 they demonstrated for the right to form a lawyers' union.<sup>242</sup> Only after Qaddafi's fall did the LBA help draft a law in 2013, with assistance from ABA ROLI, giving them the right to hold their own elections of bar association leaders and the right to self-regulate.<sup>243</sup>

In China, lawyer self-regulation does not operate in any meaningful way. ACLA operates under control of the Ministry of Justice.<sup>244</sup> In 2008 some activist Chinese lawyers attempted to challenge state control over the BLA by asking for the direct election of officers and for a decrease in the mandatory bar fees.<sup>245</sup> The BLA responded that the election process was democratic and that "inflammatory" statements to the contrary violated the law.<sup>246</sup> After intense political conflict, the BLA made a few

236 INT'L COMM'N OF JURISTS, *supra* note 190, at 6.

237 See Telephone Interview with Azamat Kerimbaev, *supra* note 91.

238 INT'L COMM'N OF JURISTS, *supra* note 190, at 7-8.

239 See Brief Summary of Constitutional Challenge to the Law on Advocacy and Advocate Activities; Ruling of the Constitutional Chamber, Supreme Court of the Kyrgyz Republic, Mar. 11, 2015 (on file with authors).

240 See *supra* notes 196-200 and accompanying text.

241 ILAC, *supra* note 91, at 25; Ahmad Shokr, *Benghazi's Lawyers, Libya's Revolutionaries*, EGYPT INDEP. (Mar. 10, 2011), <https://www.egyptindependent.com/benghazis-lawyers-libyas-revolutionaries/>.

242 LINDSEY HILSUM, SANDSTORM: LIBYA IN THE TIME OF REVOLUTION 33 (2012).

243 See LAW NO. 3 OF 2014 ON LAW PRACTICE (Libya); Levin, Mather & de Groot-van Leeuwen, *supra* note 18, at 462, 468.

244 LIU & HALLIDAY, *supra* note 214, at 21.

245 *Id.* at 108-111.

246 *Id.* at 110.

symbolic concessions, including a reduction in membership fees, but at least twenty lawyers who led the fight for change were disbarred or forced out of their law firms.<sup>247</sup> Further evidence of the government's tight control of lawyer regulation can be seen in 2016 administrative regulations that require lawyers to establish Communist party branches in law firms.<sup>248</sup>

## 2. Controlling Size and Quality of the Profession

As suggested by market control theory, many lawyer organizations also seek to control admission to the bar, thereby limiting the size of the legal profession. In the United States, at the time of the ABA's founding, it established a Committee on Legal Education to tighten admission requirements.<sup>249</sup> As Abel notes, "the battle to control supply was waged on a number of fronts."<sup>250</sup> During the early twentieth century, the ABA worked to persuade state licensing authorities to adopt heightened entry requirements, including that lawyers attend law school and pass a rigorous bar examination.<sup>251</sup>

In some other countries with well-established lawyer organizations, the organizations worked aggressively to limit the number of new lawyers admitted to practice. For example, in Japan, where the bar passage rate for the National Bar Examination was fixed at less than three percent as late as 1998, the JFBA strenuously opposed efforts by the Ministry of Justice to raise the number of applicants allowed to pass the bar examination annually.<sup>252</sup> In 2001, the Justice System Reform Council recommended that the pass rate be increased to 3000 examinees by 2010, but that rate has never been reached.<sup>253</sup> The JFBA has frequently advocated to limit the number of successful bar examinees and to reduce the number of law schools.<sup>254</sup> In 2015, it succeeded in convincing the government to reduce

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247 *Id.* at 110; Liu, *supra* note 211, at 14.

248 Measures for the Administration of Law Firms (promulgated by the Ministry of Justice, Sept. 6, 2016, effective Nov. 1, 2016), art. 4, CLI.4.280850(EN) (Lawinfochina).

249 ABEL, *supra* note 63, at 46.

250 *Id.* at 48.

251 *Id.* at 47-48, 54-57, 63.

252 Kay-Wah Chan, *Setting the Limits: Who Controls the Size of the Legal Profession in Japan?*, 19 INT'L J. LEGAL PROF. 321, 325-27 (2012); Setsuo Miyazawa, *Reform in Japanese Legal Education*, 1 ASIAN-PAC. L. & POL'Y J. 89, 90-93 (2001). It was not until 2005 that more than three percent of test-takers were allowed to pass the exam. Masayuki Murayama, *Japan: Toward Stratification, Diversification, and Specialisation*, in LAWYERS IN 21ST CENTURY SOCIETIES, *supra* note 122.

253 Murayama, *supra* note 252.

254 *Resolution to Address Issues in Concert to Ensure the Realization of Systemic Reform in the Fostering of Legal Professionals*, JAPAN FED'N B. ASS'NS (Mar. 11, 2016), [https://www.nichibenren.or.jp/en/document/statements/160311\\_2.html](https://www.nichibenren.or.jp/en/document/statements/160311_2.html); Chan, *supra* note 252, at 329-

the annual cap on the number of lawyers who could be admitted from 2000 to 1500.<sup>255</sup> Likewise in Israel, the IBA has warned since the 1960s about the “overcrowding” of the profession.<sup>256</sup> The IBA has both acted unilaterally and with the assistance of the Ministry of Justice to make it more difficult for applicants to pass the bar examination.<sup>257</sup> It has also successfully lobbied to extend the apprenticeship period, a prerequisite for taking the bar examination.<sup>258</sup> In Brazil, the OAB pressed the government to control the number of university places for law students to reduce the number of lawyers produced.<sup>259</sup> When that failed, the OAB made the bar examination mandatory in 1994 to limit the number of practicing lawyers.<sup>260</sup> Lawyer organizations claim that these measures help ensure the quality of lawyers for the public’s benefit,<sup>261</sup> but their efforts also act as a form of market control.

Legal professions must also maintain lawyer quality and ethical behavior so that the public holds lawyers in high esteem, trusts lawyers to represent them, and permits the profession to self-regulate.<sup>262</sup> Lawyer organizations therefore seek to influence the law through ethical rules and disciplinary processes that sanction lawyers for rule violations. In the United States, the ABA promulgates model ethical rules which state courts

31; Stacey Steele, *Japan’s National Bar Exam: Results from 2015 and the Impact of the Preliminary Qualifying Examination*, 41 J. JAPAN L. 55, 60 (2016).

<sup>255</sup> See Murayama, *supra* note 252.

<sup>256</sup> Eyal Katvan, *The “Overcrowding of the Profession” Argument and the Professional Melting Pot*, 19 INT’L J. LEGAL PROF. 301, 304 (2012).

<sup>257</sup> See Zer-Gutman, *supra* note 161, at 151-52; Yonah Jeremy Bob, *Is Bar Association Trying to Drive Away Olim?*, JERUSALEM POST (Jan. 6, 2016), <http://www.jpost.com/Israel-News/Is-Bar-Association-trying-to-drive-away-olim-440650>; Evelyn Gordon, *Law Students Take Bar to Court Over Exam*, THE JERUSALEM POST, Apr. 23, 1996. In recent years, due to changes in the bar exam made possible by an amendment to the IBA Act initiated by the IBA president, the passage rate has dropped from 70-80% to 30%. See Limor Zer-Gutman, *Hazards Inherent in the Exclusive Jurisdiction of the Legal Profession 10* (2019) [hereinafter *Hazards Inherent in the Exclusive Jurisdiction of the Legal Profession*] (unpublished manuscript) (on file with authors).

<sup>258</sup> Katvan et al., *supra* note 155 (discussing the IBA’s “incessant preoccupation” with the length of the apprenticeship).

<sup>259</sup> Falcão, *supra* note 110, at 424-25. More recently, the OAB has developed its own evaluation of law schools to place pressure on the government and to restrain the proliferation of schools. Bonelli & Fortes, *supra* note 122.

<sup>260</sup> Bonelli & Fortes, *supra* note 122.

<sup>261</sup> See Kay-Wah Chan, *Justice System Reform and Legal Ethics in Japan*, 14 LEGAL ETHICS 73, 75 (2011); Katvan, *supra* note 256, at 306, 309-10.

<sup>262</sup> Indeed, part of the impetus for the formation of the elite U.S. lawyer organizations in the 1870s was to raise the status of the profession. See HALLIDAY, *supra* note 78, at 64-68; POWELL, *supra* note 1, at 7, 14. Organizations like the Chicago Bar Association and the New York City Bar Association quickly turned their attention to issues like lawyer discipline in order to improve the perception and stature of the profession. See HALLIDAY, *supra*, at 78; POWELL, *supra*, at 18-21.



largely adopt and impose on lawyers.<sup>263</sup> The ABA has also promulgated model rules of disciplinary enforcement for states to follow when handling grievances against lawyers.<sup>264</sup> Likewise, lawyer organizations in Brazil, Israel, and Japan have drafted codes of lawyer conduct and rules relating to discipline pursuant to statutory authority.<sup>265</sup> Even in countries with fragile governments and legal systems, like Kyrgyzstan and Libya, lawyer organizations have proposed legislation governing lawyers that contains ethical standards and disciplinary processes.<sup>266</sup> International lawyer organizations sometimes assist national lawyer groups with these efforts.<sup>267</sup>

### 3. *Defining, Expanding and Defending the Market*

In many countries, lawyer organizations have sought to influence the law so as to define, expand, or defend their turf, that is, the territory in which lawyers are the exclusive providers of legal services. The precise scope of the legal professions' exclusive turf differs in every country, but typically encompasses, at a minimum, representation of clients in courts of general jurisdiction.<sup>268</sup> Lawyer organizations in some countries are attempting to expand lawyers' turf or defend it from incursions by other service providers, demonstrating rational action to advance lawyers' interests through market control. Elsewhere the organizations are still working to define the areas in which lawyers have the exclusive right to practice law. Their circumstances and actions are shaped by lawyers' history in those countries and the nature of the state.

Where legal professions have already staked out their exclusive turf, lawyer organizations often work to preserve lawyers' monopoly over the

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263 See ABA CANONS OF PROF'L ETHICS (1908). The ABA Model Rules of Professional Conduct have been adopted in some form in forty-nine states and the District of Columbia. *Alphabetical List of Jurisdictions Adopting Model Rules*, A.B.A. (Aug. 17, 2018), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/alpha\\_list\\_state\\_adopting\\_model\\_rules.html](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html).

264 See ABA MODEL RULES FOR LAWYER DISCIPLINARY ENF'T (2002).

265 See, e.g., Lei No. 8.906, de 4 de Julho de 1994, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 5.7.94; Bengoshihō [Attorney Act], Law No. 205 of June 10, 1949, art. 33 (vii)-(viii) (Japan); OAB, Código de Ética e Disciplina da Ordem dos Advogados do Brasil [Code of Ethics and Discipline of the OAB] (2015), <http://s.oab.org.br/PDF/CFOAB-CED.pdf> (Braz.); Bar Association Rules (Professional Ethics), 5746-1986 (Isr.); Bar Association Rules (Procedures in Disciplinary Courts), 5722-1962 (Isr.).

266 See, e.g., ABA ROLI LPRI, *supra* note 181, at 53-54; INT'L COMM'N OF JURISTS, *supra* note 190, at 6; Telephone Interview with Kevin George, *supra* note 201.

267 See Levin, Mather & de Groot-van Leeuwen, *supra* note 18, at 462-63.

268 Kyrgyz and China are exceptions because non-lawyers can represent litigants in civil court matters.

provision of legal services. For example in Israel, the IBA has vigorously enforced provisions in the IBA Act that prohibit the unauthorized practice of law to ensure lawyers remain the exclusive providers of legal services.<sup>269</sup> It has brought litigation to prevent non-lawyer service providers from assisting clients in filing claims in areas including family, debt collection, disability and medical entitlements.<sup>270</sup> For a while, it even resisted efforts by law school clinics to provide legal representation.<sup>271</sup> The IBA has also fought the incursion of online legal services providers.<sup>272</sup> In the United States, state bar associations have challenged LegalZoom and other online providers that compete with lawyers for work.<sup>273</sup> In Washington State, some bar organizations fought the creation of a new class of legal services providers called limited license legal technicians, who can provide legal advice in the area of family law.<sup>274</sup> In Brazil, the OAB fought efforts to create a separate paralegal profession, calling such efforts “unconstitutional.”<sup>275</sup> In Japan, the JFBA unsuccessfully opposed efforts by other legal services providers to change the law so that judicial scriveners could appear in summary courts and administrative scriveners could represent clients in certain administrative actions.<sup>276</sup>

In some countries, lawyer organizations have not only sought to

<sup>269</sup> Katvan et al., *supra* note 155; Zer-Gutman, *supra* note 161, at 156-57; Ziv, *supra* note 233, at 1776-77.

<sup>270</sup> Katvan et al., *supra* note 155; Zer-Gutman, *supra* note 161, at 156. Likewise, the IBA opposed reforms to streamline the collection of small judgments due to concerns that the reforms would make parties less likely to retain lawyers' services. Yonathan A. Arbell, *Adminization: Gatekeeping Consumer Contracts*, 71 VAND. L. REV. 121, 174 (2014).

<sup>271</sup> Hazards Inherent in the Exclusive Jurisdiction of the Legal Profession, *supra* note 257, at 20-21.

<sup>272</sup> Zer-Gutman, *supra* note 161, at 157.

<sup>273</sup> See Robert Ambrogi, *Latest Legal Victory Has LegalZoom Poised for Growth*, ABA J. (Aug. 2014), [http://www.abajournal.com/magazine/article/latest\\_legal\\_victory\\_has\\_legalzoom\\_poised\\_for\\_growth](http://www.abajournal.com/magazine/article/latest_legal_victory_has_legalzoom_poised_for_growth); Lizzy McLellan, *For Avvo, Rocket Lawyer, LegalZoom, Pa. Ethics Rules Uncertain*, LEGAL INTELLIGENCER (July 3, 2017), <https://www.law.com/thelegalintelligencer/sites/thelegalintelligencer/2017/07/03/for-avvo-rocket-lawyer-legalzoom-pa-ethics-rules-uncertain/>.

<sup>274</sup> Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 MISS. L.J. SUPRA 75, 97, 102-110 (2013). The proposal was opposed at various times by the Board of Governors of the Washington State Bar Association, and by local and specialty bar associations. *Id.* at 97 nn.101, 107.

<sup>275</sup> *Conselho Federal da OAB vai Contra Projeto de lei que Cria Carreira de Paralegal* [OAB Federal Council Opposes Bill to Create a Paralegal Career], CONSULTOR JURÍDICO (Aug. 7, 2014), <https://www.conjur.com.br/2014-ago-07/oab-nacional-repudia-projeto-lei-cria-carreira-paralegal>; see also Bonelli & Fortes, *supra* note 122.

<sup>276</sup> Sayuri Umeda, *Japan: Other Professionals Expand Practice Areas, Lawyers Displeased*, GLOBAL LEGAL MONITOR, Sept. 17, 2014; E-mail from Kyoko Ishida, Assoc. Professor, Waseda Law School, to Leslie C. Levin (Feb. 27, 2019, 11:01 EST) (on file with authors).

prevent incursions by non-lawyers on their turf, but have worked to limit the impact of global lawyer competitors. After Brazil saw an influx of competitors from large global law firms in the 1990s, the OAB's Federal Bar Council issued a rule in 2000 prohibiting foreign lawyers from engaging in litigation in Brazil or advising clients on Brazilian law.<sup>277</sup> In 2011, it acted to further limit foreign lawyers' ability to do business by prohibiting associations between Brazilian and foreign law firms and punishing firms that maintained such alliances.<sup>278</sup> These debates about regulation of foreign law firms reflected conflict over turf as well as ideological differences over the essence of lawyering in Brazil: traditional "public lawyering" with its constitutionally protected status vs. lawyering as a commodity.<sup>279</sup> Such internal organizational conflicts reveal differences over values and taken-for-granted ways of viewing the world, a central focus of new institutionalism.

Similarly, in Japan in the 1980s, the JFBA fought hard to limit competition by foreign lawyers, and battled with the Japanese government and the ABA concerning the right of foreign lawyers to practice in Japan.<sup>280</sup> The JFBA's continued efforts to limit competition by foreign lawyers long prevented foreign law firms from being able to open branch offices in Japan, even though Japanese law firms could do so.<sup>281</sup> Likewise in Israel, the IBA unsuccessfully objected to an amendment to the IBA Act to permit foreign lawyers to work in Israel, but it was nevertheless able to limit the scope of foreign lawyers' permissible work and to prevent them from forming partnerships with Israeli lawyers.<sup>282</sup>

In developing countries, lawyer organizations focus first on defining lawyers' turf and protecting their economic interests. In Libya, lawyer

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277 See Almeida & Nassar, *supra* note 124, at 182, 196.

278 *Id.* at 197-99.

279 See Almeida & Nassar, *supra* note 124, at 182-83, 200-01.

280 CIVIL PROCEDURE IN JAPAN, *supra* note 134, at § 2.02 [3][b].

281 Allison Bettin, *Foreign Lawyers Fight for Reform in Japan*, JAPAN TODAY, Sept. 28, 2015. It was not until 2014 that Japan permitted foreign law firms to open branch offices in Japan. See Gaikoku bengoshi ni yoru hōritsu jimū no toriatsukai ni kansuru tokubetsu sochi-hō [Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers], Law No. 69 of 2014, art. 50-2, translated in (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp/law/detail/?re=2&ky=ask&ia=03&page=11&la=01> (Japan). See also GAIBEN KYOKAI, POLICY RECOMMENDATIONS ON INTERNATIONAL LEGAL SERVICES IN JAPAN 4 (2011), <http://gaibenkyokai.org/PositionPaperEnglish.pdf> (discussing limitation on foreign lawyers on opening more than one office in Japan). Initially, the revised rules required that the firms employ only foreign lawyers, but foreign firms may now employ *bengoshi*. Bettin, *supra*; E-mail from Kyoko Ishida, Assoc. Professor, Waseda Law School, to Leslie C. Levin (Feb. 7, 2019, 18:29 EST) (on file with authors).

282 See Katvan et al., *supra* note 155.

organizations helped draft the 2014 Law on Legal Practice, which provides that only Libyan citizens who reside in Libya can be admitted to appear in court.<sup>283</sup> Libyan lawyers may not use non-lawyers to assist them in practicing law or as intermediaries.<sup>284</sup> Foreign lawyers may only appear in court with the permission of the bar association's president, and those lawyers must work with a Libyan lawyer.<sup>285</sup> The law further advances Libyan lawyers' economic interests by requiring foreign companies to consult with a Libyan lawyer before performing any activities in Libya.<sup>286</sup> Although Kyrgyzstan's laws governing law practice are not as restrictive, only citizens are permitted to become licensed advocates.<sup>287</sup> Currently, individuals without legal training can represent parties in civil cases in Kyrgyzstan,<sup>288</sup> but the *Advokatura* is exploring whether licensed advocates should seek a monopoly over client representation in civil cases.<sup>289</sup>

In contrast, in China, where lawyers exercise little control over the lawyer organizations, "jurisdictional boundaries between different groups of law practitioners are often poorly defined and interprofessional competition is prevalent."<sup>290</sup> Thus, while lawyers have consolidated their status as the primary legal profession in China, they "have not achieved any durable monopoly."<sup>291</sup> The Ministry of Justice allowed foreign law firms to establish a presence in mainland China in 1992, but they are not permitted to handle "Chinese legal affairs" or to employ licensed Chinese lawyers.<sup>292</sup> Nevertheless, the government does not actively enforce these rules.<sup>293</sup> In 2006, the Shanghai Lawyers Association decried rule violations by foreign law firms—along with other alleged "illegal business activities"—but the Ministry of Justice took no meaningful action.<sup>294</sup> The government's inaction was likely due, in part, to concerns that limiting the

283 LAW NO. 3 OF 2014 ON LAW PRACTICE, art. 4 (Libya).

284 *Id.* art. 35.

285 *Id.* art. 25.

286 *Id.*

287 LAW ON ADVOKATURA, art. 19 (Kyrg.). It does, however, permit others to practice in the country subject to inter-country agreements. *See How to practice in Kyrgyzstan*, THE LAW SOC'Y (June 9, 2017), <http://communities.lawsociety.org.uk/international/regions/cis/kyrgyzstan/how-to-practice-in-kyrgyzstan/5061925.fullarticle>.

288 ABA ROLI LPRI, *supra* note 181, at 5-6.

289 Resolution of the Second International Scientific and Practical Conference of the Advokatura 2 (2016) (on file with authors).

290 Liu, *supra* note 211, at 5-6.

291 *Id.* at 6.

292 *Id.* at 17.

293 *Id.* at 17-18; Robert Lewis, *Taxing Times*, THE LAWYER, April 2, 2013.

294 Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 LAW & SOC'Y REV. 771, 772, 795 (2008).

legal work of foreign law firms in China might also limit foreign investment there.<sup>295</sup>

#### 4. *Self Defense*

In some countries, lawyer organizations seek to influence the law in order to protect lawyers' physical safety and their ability to perform their work without imprisonment or loss of their law licenses. They do this to help lawyers survive individually and as a profession.<sup>296</sup> For example, in Kyrgyzstan, some advocates faced physical attacks and threats of prosecution.<sup>297</sup> In 2010, before formation of the *Advokatura*, a group of 161 advocates demanded that Kyrgyz authorities guarantee security in court cases after threats and assaults on them and their clients in the courthouse.<sup>298</sup> The 2014 Law on *Advokatura*, which advocate groups helped draft, included protections for advocates when performing their work, including from arrests.<sup>299</sup> In 2017, the *Advokatura* formed a commission that met with the Chief Prosecutor and subsequently recommended sending a letter to the Prosecutor's Office urging that attacks on advocates be prosecuted under the same statute covering attacks on judges and prosecutors.<sup>300</sup> Ultimately, the letter was not sent because of a lack of consensus within the organization, as some advocates represented families of victims who engaged in some of the violence against the lawyers.<sup>301</sup>

Similarly, in Libya in 2011, members of the Benghazi Bar Association participated in protests following the Qaddafi regime's arrest of lawyer Fathi Terbil, a human rights lawyer.<sup>302</sup> After the fall of the regime, lawyers, prosecutors, and judges endured frequent threats and physical

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<sup>295</sup> *Id.* at 798.

<sup>296</sup> Indeed, the United Nations Rapporteur on the independence of judges and lawyers has stated that bar associations have a role to play in assisting lawyers who are arrested or detained. *See* Leandro Despouy (Special Rapporteur on the independence of judges and lawyers), *Independence of Judges and Lawyers*, ¶ 69, U.N. Doc. A/64/181 (July 28, 2009).

<sup>297</sup> ABA ROLI LPRI, *supra* note 181, at 10-13; INT'L COMM'N OF JURISTS, *supra* note 186, at 14-15.

<sup>298</sup> *Kyrgyzstan: Lawyers Demand Protection*, RELIEFWEB (Oct. 19, 2010), <https://reliefweb.int/report/kyrgyzstan/kyrgyzstan-lawyers-demand-protection>.

<sup>299</sup> LAW ON ADVOKATURA, art. 29 (Kyrg.).

<sup>300</sup> Cases of the Committee on the Protection of the Professional Rights of Advocates (2017) (on file with authors).

<sup>301</sup> E-mail from Azamat Kerimbaev, ABA ROLI Country Director, Kyrgyzstan, to Leslie C. Levin (Jan. 24, 2018, 2:01 EST) (on file with authors).

<sup>302</sup> HILSUM, *supra* note 242, at 8, 11-13.

attacks.<sup>303</sup> The LBA issued statements calling for the protection of lawyers.<sup>304</sup> In 2015, the LBA held demonstrations at the Tripoli courthouse to protest the assaults, arrests, and detentions of lawyers and others associated with the legal profession.<sup>305</sup> Again in 2017, the LBA held street protests after militia kidnapped a Tripoli lawyer.<sup>306</sup>

The need to defend lawyers also arises in China, but the state-controlled lawyer organizations rarely act to defend their members. In the early 2000s some criminal defense lawyers were arrested or imprisoned when acting to represent their clients.<sup>307</sup> For example, the Inner Mongolia Lawyers Association brought close to a hundred lawyers to attend the 2003 trial of Ma Guangjun, a defense lawyer who was criminally prosecuted for allegedly advising witnesses in his client's criminal case to commit perjury.<sup>308</sup> Criminal defense lawyers sometimes posted comments on the ACLA internet bulletin board to resist state power and publicize the issues; the website enabled lawyers "to reveal problems, exchange opinions, and promote collective ideologies."<sup>309</sup> Ultimately, however, the ACLA forum was effectively shut down after 2007 due to the political nature of some of the discussion.<sup>310</sup> Thereafter, some Chinese lawyers continued to communicate via the internet and even engaged in protest.

One instance of this collective mobilization occurred in defense of Li Zhuang in a trial that attracted great attention. Li Zhuang, a lawyer from a prestigious Beijing law firm, was hired to represent a client charged with organized crime activities in Chongqing.<sup>311</sup> Li himself was then charged by local authorities with violation of "Big Stick 306," essentially "lawyer's perjury" committed in connection with his work.<sup>312</sup> His case in 2009-2011 provided a catalyst for Chinese lawyers' frustration over the

303 *Libya: ICC Judges Reject Sanussi Appeal*, HUM. RTS. WATCH (July 24, 2014), <https://www.hrw.org/news/2014/07/24/libya-icc-judges-reject-sanussi-appeal>. At least four judges and prosecutors were the victims of political assassinations in 2013. *Id.*

304 E-mail from Omar Badawi, ABA ROLI Country Director, Libya, to Leslie C. Levin (Feb. 8, 2018, 17:54 EST) (on file with authors).

305 *News*, EL-ATRASH L. OFF. (May 12, 2015), [http://www.el-atrash.com/en/news/news/bycategory//publish\\_date/desc/5/12/page-1.htm](http://www.el-atrash.com/en/news/news/bycategory//publish_date/desc/5/12/page-1.htm).

306 E-mail from Omar Badawi, *supra* note 304.

307 LIU & HALLIDAY, *supra* note 214, at 45-50.

308 *Id.* at 48-50, 68.

309 Sida Liu & Terrence C. Halliday, *Recursivity in Legal Change: Lawyers and Reforms of China's Criminal Procedure Law*, 34 LAW & SOC. INQUIRY 911, 934 (2009).

310 LIU & HALLIDAY, *supra* note 214, at 151.

311 *Id.* at 124.

312 *Id.* at 44-45, 57-60. Under "Big Stick 306," defense lawyers accused of fabricating evidence or convincing witnesses to change their testimony can be arrested and prosecuted for perjury. "Big Stick 306" and *China's Contempt for the Law*, N.Y. TIMES (May 5, 2011), <https://www.nytimes.com/2011/05/06/opinion/06fri3.html>.

government's abusive practice of arresting lawyers for simply defending clients charged with crimes. Connecting through online networks such as Weibo, scholars and "legal professionals from all over China demonstrated an extraordinary degree of collective solidarity" in defense of Li.<sup>313</sup> Hundreds of lawyers and law students showed up at his trial.<sup>314</sup> ACLA and the local bar associations remained quiet or opposed this informal mobilization of lawyers.<sup>315</sup> Shortly following Li's release in 2011, after four other lawyers were detained in Beihai, Guangxi Province, under Article 306, lawyers formed a group to provide legal assistance and called for ACLA's attention to the case. Eventually ACLA and the Guangxi Lawyers Association expressed support for the accused lawyers.<sup>316</sup> After the 2011 crackdown, other activist lawyers continued to work together in a coordinated fashion through their networked, close-knit community, but outside the government-controlled bar organizations.<sup>317</sup> Global organizations have supported these efforts.<sup>318</sup>

*B. Acting on Issues to Benefit Clients (but also Sometimes Benefitting Lawyers)*

Lawyer organizations also act to influence the law in order to benefit clients. In doing so, they can be seen as rational actors, because these efforts may also benefit lawyers. Benefits can include making it easier for lawyers to predict legal outcomes, broadening the market for lawyers' services, or preserving the attorney-client relationship. At the same time, organizational advocacy to benefit clients may reflect the shared values of key actors within the organization and their clients.

In countries where legal professions are relatively weak with respect to the state, lawyer organizations may first act to influence the criminal law. In China, as just noted, criminal defense emerged as a crucial site for struggle between the legal profession and the authoritarian state. Discussions on the ACLA forum, for example, reveal the challenges lawyer confront when representing criminal defendants.<sup>319</sup> Activist

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313 LIU & HALLIDAY, *supra* note 214, at 138.

314 Sida Liu et al., *The Trial of Li Zhuang: Chinese Lawyers' Collective Action Against Populism*, 1 ASIAN J.L. & SOC'Y 79, 93 (2014).

315 Indeed, some bar associations warned their members not to discuss or participate in the case. LIU & HALLIDAY, *supra* note 214, at 70, 138.

316 *Id.* at 153.

317 *Id.* at 158; Fu, *supra* note 227, at 561-62.

318 Fu, *supra* note 227, at 560, 564.

319 LIU & HALLIDAY, *supra* note 214, at 15.

lawyers also mobilized as “die-hard lawyers” to protect their clients in criminal cases. For example, in 2012, Zhou Ze organized a group of over 100 lawyers to defend 57 defendants in an organized crime case in the Guizhou Province.<sup>320</sup> During the trial, die-hard lawyers wrote six open letters to the Supreme People’s Court, the Supreme People’s Procuracy, the Minister of Justice, and provincial authorities in Guizhou.<sup>321</sup> In 2015, human rights lawyers representing the family of a police shooting victim in Qingan mobilized the public and the media to hold police accountable and to highlight abuses of police power.<sup>322</sup> Such advocacy in the criminal context has become less prevalent since the government’s 2015 crack-down on lawyers.

Bar associations in China also occasionally attempt to influence the law on commercial issues in ways that benefit their clients. For example, in 2004, the BLA submitted a legislative opinion—after the Legislative Affairs Office solicited it—regarding a draft Corporation Act Amendment. The Legislative Affairs Office ultimately adopted the legislative suggestions from the BLA, which recommended that the initial investment for a limited liability company (LLC) should be reduced from 100,000 RMB to 50,000 RMB.<sup>323</sup> Since then, the BLA has held conferences to discuss specific laws.<sup>324</sup> For instance, in 2012, the BLA’s Committee on Media and Publication submitted a legislative opinion concerning the Film Industry Promotion Law, which sought to promote industry interests under the tax laws, lower the initial investment threshold, and otherwise help to develop the international market.<sup>325</sup> In 2013, BLA committees initiated a conference to prepare a legislative draft memo concerning legal regulation of LLCs that would, among other things, save transition costs for the companies.<sup>326</sup>

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<sup>320</sup> Liu & Halliday, *supra* note 222, at 31.

<sup>321</sup> *Id.* at 32.

<sup>322</sup> Fu, *supra* note 227, at 556.

<sup>323</sup> *The State Council Commissioned the Law Society for the First Time to Collect Legislative Opinions*, GUANGZHOU LAW. ASS’N (Aug. 4, 2004), <http://www.gzlawyer.org/info/e506f2ac2e564cbcbf1ce2291e973497>.

<sup>324</sup> *Id.*

<sup>325</sup> *Shi Lüxie Chuanmei yu Xinwen Chuban Falü Zhuanye Weiyuanhui Juban Dianying Chanye Cujinfa* (Zhengqiu yijiangao) Yantaohui Bingxiang Guowuyuan Fazhiban Tijiao Shumian Yijian (市律协传媒与新闻出版法律专业委员会举办《电影产业促进法(征求意见稿)》研讨会并向国务院法制办提交书面意见) [Municipal Lawyer Association Media and News Publication Law Committee Organized a Seminar on *Movie Industry Promotion Law (Draft)* and Submitted Comments to the State Council], BEIJING LAW. ASS’N (Jan. 17, 2012), <https://www.beijinglawyers.org.cn/cac/1436497767185.htm>.

<sup>326</sup> *Beijing Lawyers Association Corporate Law Committee Briefing*, BEIJING CONTRACT L. FIRM (Apr. 8, 2013), <http://bjhtlawyer.com/lawyerRead.asp?NewsID=3555>.



In countries with more autonomous legal professions such as the United States, lawyer organizations often seek to influence the law to promote their clients' interests. For example, the ABA recently opposed provisions in the draft Counter Terrorism and Illicit Finance Act because it would "impose burdensome and intrusive regulations on millions of small businesses and their lawyers."<sup>327</sup> When business interests pushed tort law reform to curb personal injury and product liability litigation and cap damages, the Association of Trial Lawyers of America vigorously opposed it.<sup>328</sup> This opposition from the plaintiffs' bar was designed to protect their clients— injured plaintiffs—by preserving their opportunity for full recovery. But preventing such reforms would also advantage the lawyers by preserving their fees and client base. Likewise, the American Immigration Lawyers Association has worked to increase the number of visas available for skilled workers,<sup>329</sup> which benefits their clients while also providing more work for immigration lawyers. In these cases, it was voluntary organizations that pursued these goals, rather than mandatory state bars, which are more heterogeneous in their interests and more constrained in their ability to act.

Lawyer organizations in other democratic countries also occasionally act to influence the law in ways that directly benefit clients. In Israel, the IBA threatened to take Israel's Prisons Service to court when it changed its rules to limit defense lawyers' prison visits to clients.<sup>330</sup> The IBA also opposed efforts to raise the monetary limit for small claims court, where parties are not represented by lawyers. The IBA noted that defendants (often their business clients) could not choose the venue for hearing the claim and would be forced into that forum.<sup>331</sup> This change also would have hurt Israeli lawyers by allowing more parties to litigate without them. In Japan, the Japan Labor Lawyers Association issued a statement during the debate over the revision of the Working Hours law, calling for changes in

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327 Letter from Hilarie Bass, ABA President, to Rep. Jeb Hensarling, Chair, Comm. on Financial Servs., U.S. House of Representatives (Nov. 27, 2017).

328 Clifton Barnes, *Tort Reform Momentum Slowed But Not Stopped*, B. LEADER 6, 6, (July-Aug. 2005).

329 Keith Donoghue, *Immigration Bar Marks Its Mark on the Hill; But Did AILA Abandon Illegals?*, LEGAL TIMES, April 15, 1996; *Immigration Lawyers Urge Mass Lobbying of Elected Officials*, GLOBAL ATLANTA (Sept. 16, 2000), <https://www.globalatlanta.com/immigration-lawyers-urge-mass-lobbying-of-elected-officials/>.

330 Yonah Jeremy Bob & Ben Hartman, *Limit on Prison Visits Infuriates Lawyers*, JERUSALEM POST (June 9, 2016), <https://www.jpost.com/Israel-News/Limit-on-prison-visits-to-clients-infuriates-lawyers-456327>.

331 Lilach Weissman, *Small Claims Court Claims Limit Raised*, GLOBES (July 7, 2008), <https://en.globes.co.il/en/article-1000359029>.

the working hours system that would benefit their clients, who are generally employees.<sup>332</sup>

Lawyer organizations have also worked together to oppose international regulatory efforts that could hurt their clients. For example, bar associations, including the International Bar Association, the Council of Bars and Law Societies of Europe, the ABA, and the JFBA, negotiated with the Financial Action Task Force (FATF), an intergovernmental body that was developing anti-money laundering standards, to resist requirements that lawyers report their clients' suspicious financial transactions.<sup>333</sup> Subsequently, the JFBA opposed money laundering legislation in Japan that would require lawyers to report suspicious financial deals that they become aware of, arguing that it would "undermine clients' confidence in lawyers."<sup>334</sup> In Israel, the IBA also vigorously opposed such gatekeeping requirements.<sup>335</sup> The OAB filed a lawsuit after a 2012 anti-money laundering law went into effect in an effort to exempt Brazilian attorneys from having to disclose such information about their clients.<sup>336</sup> In the United States, the ABA has repeatedly opposed federal legislation that would bring lawyers under the Bank Secrecy Act regulations or impose other disclosure requirements on lawyers.<sup>337</sup> These efforts benefits clients—whose activities may otherwise be reported to law enforcement authorities—and lawyers as well, who would be forced to choose between obeying the law and preserving client relationships. The efforts also illustrate the importance of global collaboration among lawyer organizations as they develop strategies for responding to new legal threats and initiatives.

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<sup>332</sup> See *The Labour Lawyers Association of Japan Issues a Statement on the Debate over Revision of the Working Hours Law*, JAPAN INST. FOR LAB. POL'Y & TRAINING (2006), [https://www.jil.go.jp/english/archives/emm/2006/no.58/58\\_si.html](https://www.jil.go.jp/english/archives/emm/2006/no.58/58_si.html).

<sup>333</sup> Kevin L. Shepherd, *Guardians at the Gate: The Gatekeeper Initiative and the Risk-Based Approach for Transactional Lawyers*, 43 REAL. PROP. TRUST & ESTATE L.J. 607, 626, 628, 630 (2009).

<sup>334</sup> *Minister Asks Lawyers to Divulge Client Information to Stem Money Laundering*, JAPAN ECON. NEWSWIRE, Oct. 20, 2006.

<sup>335</sup> Katvan et al., *supra* note 155.

<sup>336</sup> Arinos Fonseca, *O Papel Do Advogado Frente Às Alterações Na Lei de Lavagem de Dinheiro* [The Role of the Lawyer in Light of the Amended Money Laundering Law], 3 REVISTA JURÍDICA DIREITO & REALIDADE, 199, 212-213 (2014).

<sup>337</sup> Shepherd, *supra* note 333, at 662-63; *Gatekeeper Regulations on Lawyers*, A.B.A. (Feb. 7, 2019), [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/independence\\_of\\_the\\_legal\\_profession/bank\\_secrecy\\_act.html](https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession/bank_secrecy_act.html).

*C. Issues Directly Affecting Courts and the Administration of Justice.*

Lawyer organizations also seek to improve the administration of justice or the legitimacy of the judicial system. In some cases, lawyer organizations take the lead or work cooperatively with courts or legislative bodies to improve the administration of justice. They also act to protect courts from threats to judicial independence or to the courts' legitimacy, thereby supporting the shared values of this institutional sector. In other cases, the organizations oppose the courts when lawyers view them as corrupt, overreaching, or inefficient.

*1. Improving and Protecting the Judicial System*

As Halliday and Karpik have noted, "as a political reality, bar autonomy cannot be dealt with as a separate fact in any country" and "is linked to the relative autonomy of judges and the courts."<sup>338</sup> Thus, lawyers have a vested interest in securing or maintaining the independence of the judiciary. In some countries, lawyers also view their own standing as tied to the legitimacy of the judicial system. In the United States, for example, bar associations have worked to improve the courts, devoting substantial resources to, inter alia, judicial selection, procedural rules, and court administration.<sup>339</sup> They will also defend the courts against attacks on the courts' legitimacy. This can be seen in bar organizations' responses to President Donald Trump's attacks on judges, which appeared to be an attempt to intimidate judges or undermine the legitimacy of their decisions. In one such episode, then-candidate Trump claimed that a federal judge who was hearing two cases involving Trump University was treating him "very unfairly," and had "an absolute conflict" of interest because of the judge's "Mexican heritage."<sup>340</sup> ABA President Paulette Brown swiftly responded, "levying personal criticism at an individual judge for lawfully made decisions crosses the line of propriety and risks

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338 HALLIDAY & KARPIK, *supra* note 9, at 33.

339 See HALLIDAY, *supra* note 78, at 150-52, 161-63; POWELL, *supra* note 1, at 196-200; AM. BAR ASS'N, STANDING COMMITTEE ON THE FEDERAL JUDICIARY, <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Backgrounder.pdf>.

340 Brent Kendall, *Trump Says Judge's Mexican Heritage Presents "Absolute Conflict,"* Wall St. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>. He also threatened possible legal action against the judge. See Debra Cassens Weiss, *Trump Suggests Possibility of Civil Case against Federal Judge; What About a Recusal Motion?*, ABA J. (June 2, 2016), [http://www.abajournal.com/news/article/trump\\_suggests\\_possibility\\_of\\_civil\\_case\\_against\\_federal\\_judge\\_what\\_about\\_a](http://www.abajournal.com/news/article/trump_suggests_possibility_of_civil_case_against_federal_judge_what_about_a).

undermining judicial independence.”<sup>341</sup> In a later instance, after a federal judge enjoined Trump’s executive order banning immigrants from seven Muslim-majority countries, Trump referred to the ruling of the “so-called judge” as “ridiculous.”<sup>342</sup> ABA President Linda Klein replied that “personal attacks on judges are attacks on our constitution” and that “we as lawyers are called upon to protect it.”<sup>343</sup>

Even in countries where judges and lawyers are not as closely aligned, lawyer organizations sometimes take steps to defend the judicial system. For example, in Japan, the JFBA has issued recommendations to institute and improve a lay judge system.<sup>344</sup> It has also called for increased funding of the judiciary.<sup>345</sup> Similarly, in Brazil, the OAB has called for the hiring of more judges to speed up the processing of cases.<sup>346</sup> Of course, some of these efforts to improve the courts benefit lawyers and their clients as well, by making it easier to navigate the judicial system.

In countries with weaker lawyer organizations, these organizations also sometimes work to bolster the independence and workings of the courts. Libya’s Tripoli Bar Association, in partnership with a transitional justice program, ran the Libyan Trial Monitoring Network, which was established

341 *Statement of ABA President Paulette Brown on Judicial Independence and Impartiality*, A.B.A. (June 27, 2016), [https://www.americanbar.org/news/abanews/aba-news-archives/2016/06/statement\\_of\\_abapre.html](https://www.americanbar.org/news/abanews/aba-news-archives/2016/06/statement_of_abapre.html). The Los Angeles Bar Association also called on President Trump to withdraw his “appalling and intemperate remarks.” *LACBA Responds to Donald Trump’s Comments on U.S. District Judge Gonzalo Curiel*, L.A. COUNTY B. ASS’N, <https://www.lacba.org/news-and-publications/lacba-news/articles/lacba-responds-to-donald-trump-s-comments-about-u-s-district-judge-gonzalo-curiel>.

342 Amy B. Wang, *Trump Lashes Out at “So-Called Judge” Who Temporarily Blocked Travel Ban*, WASH. POST (Feb. 4, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/02/04/trump-lashes-out-at-federal-judge-who-temporarily-blocked-travel-ban/?utm\\_term=.da4a58053c38](https://www.washingtonpost.com/news/the-fix/wp/2017/02/04/trump-lashes-out-at-federal-judge-who-temporarily-blocked-travel-ban/?utm_term=.da4a58053c38).

343 Terry Carter, *Judicial Independence “Not Up for Negotiation,” ABA President Says in Speech Addressing Trump Tweets*, ABA J. (Feb. 6, 2017), [http://www.abajournal.com/news/article/klein\\_the\\_aba\\_must\\_defend\\_the\\_rule\\_of\\_law\\_and\\_the\\_independence\\_of\\_the\\_judic](http://www.abajournal.com/news/article/klein_the_aba_must_defend_the_rule_of_law_and_the_independence_of_the_judic).

344 *Activities to Improve the Legal System*, JAPAN FED’N B. ASS’NS, 17, 30, [https://www.nichibenren.or.jp/library/en/about/data/JFBA\\_Brochure.pdf](https://www.nichibenren.or.jp/library/en/about/data/JFBA_Brochure.pdf); *Proposal Concerning Reform of the Saiban-in (Lay Judge) Trial System for the Post Third Year Review of the Implementation of the Saiban-in Act*, JAPAN FED’N B. ASS’NS (Mar. 15, 2012), [https://www.nichibenren.or.jp/en/document/opinionpapers/20120315\\_2.html](https://www.nichibenren.or.jp/en/document/opinionpapers/20120315_2.html).

345 JAPAN FED’N BAR ASS’NS, RECOMMENDATIONS ON THE POPULATION OF LEGAL PROFESSIONALS IN THE FORESEEABLE FUTURE 9 (2009), <https://www.nichibenren.or.jp/library/en/document/data/090318.pdf>.

346 *See, e.g., OAB Entrega Manifesto da Advocacia Brasileira ao Presidente do Senado [OAB Hands Over Brazilian Advocacy Manifesto to the President of the Senate]*, OAB (Aug. 23, 2017), <http://www.oab.org.br/noticia/55477/oab-entrega-manifesto-da-advocacia-brasileira-ao-presidente-do-senado?argumentoPesquisa=demora>; Claudio Lamachia, *A Hora e a Vez da Justiça [The Time and Turn of Justice]*, OAB (Mar. 24, 2017), <http://www.oab.org.br/noticia/54911/artigo-a-hora-e-a-vez-da-justica?argumentoPesquisa=demora>.

in 2013 to support the right to a fair trial, promote accountability, and assist in judicial reform.<sup>347</sup> In Kyrgyzstan, the AAK worked with the Supreme Court and NGOs to monitor and evaluate activities aimed at increasing the independence of the judiciary and reducing rampant corruption in the legal system.<sup>348</sup> It is not clear, however, whether these activities were initiated by local lawyer organizations or by other actors.<sup>349</sup>

Nevertheless, lawyer organizations do not always support the courts. When they believe the courts are acting unfairly, exceeding their power, or acting against lawyers' interests, the organizations may oppose them. For example, in Japan, the Hokkaido Bar Association lodged a protest against the Sapporo High Court for rendering decisions so quickly that it appeared the judges were not carefully considering the cases.<sup>350</sup> Brazil's OAB has sharply criticized the courts for not acting to address serious backlogs.<sup>351</sup> One OAB president criticized judges for only working on Tuesdays, Wednesdays and Thursdays and called on them to work longer hours to reduce the backlog.<sup>352</sup>

In Israel, the IBA's efforts to influence law with respect to the judicial system illustrate the complicated relations of bar association leaders and the shifting dynamics among lawyer organizations, courts, and other state actors. The IBA is "an important venue of political struggles" and election to bar leadership offers a platform for politically ambitious lawyers.<sup>353</sup> IBA presidents can—and do—speak out on issues without consulting with the larger membership, because of its hierarchical leadership structure. After three decades of harmonious relations between bench and bar, in 1992, the IBA president accused the judiciary of corruption and claimed

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347 *Supporting Libya's Democratic Transition Through Justice and Accountability*, NO PEACE WITHOUT JUSTICE (2017), <http://www.npwj.org/ICC/Supporting-Libya%E2%80%99s-Democratic-Transition-through-Justice-and-Accountability.html>.

348 ABA ROLI LPRI, *supra* note 181, at 53; MILLENNIUM CHALLENGE CORP., *supra* note 180, at 3-4.

349 For example, the U.S. State Department has funded projects to increase the quality and efficiency of Kyrgyz's court system in collaboration with the Supreme Court of Kyrgyz, the Association of Jurists of Kyrgyzstan, the AAK, and ABA CEELI. See MILLENNIUM CHALLENGE CORP., *supra* note 180, at 3-4.

350 *Sapporo High Court Criticized for Speedy Decisions*, JAPAN TIMES (Feb. 26, 2017), <https://www.japantimes.co.jp/news/2017/02/26/national/crime-legal/sapporo-high-court-criticized-speedy-decisions/>.

351 *The OAB and the Slowness of the Judiciary: "Rio Grande Needs More Judges!"*, APUSM, July 12, 2014; *OAB Entrega Manifesto da Advocacia Brasileira ao Presidente do Senado*, *supra* note 346.

352 *Ophir: Morosidade de Justiça Não é Mito e se Deve a Trabalho de Juizes tqq* [*Ophir: The Slowness of Justice Is Not A Myth and Is Due to Judges Working Only on Tuesday, Wednesday and Thursday*], JUSBRASIL (Feb. 4, 2010), <https://oab.jusbrasil.com.br/noticias/2075543/ophir-morosidade-da-justica-nao-e-mito-e-se-deve-a-trabalho-de-juizes-tqq>.

353 Barzilai, *supra* note 174, at 264.

that judges were appointing their close friends to administer receiverships.<sup>354</sup> Then in 1996, the IBA—along with influential leaders—began to criticize the Supreme Court’s political activism under the leadership of Chief Justice Aharon Barak.<sup>355</sup> The same IBA president claimed that the Supreme Court had exceeded its institutional power, the judicial system did not function properly in other respects, and it was collapsing under its caseload.<sup>356</sup> These attacks came shortly after the Supreme Court issued two decisions unfavorable to the IBA’s interests.<sup>357</sup> The IBA president’s statements infuriated the judiciary and also created internal rifts within the IBA.<sup>358</sup> Yet by 2001, a new IBA president was defending the Supreme Court against attacks by religious members of the Knesset who called for constitutional issues to be heard by a different court.<sup>359</sup> And in 2007, an IBA president called for the appointment of a public committee to protect the independence of the judicial system.<sup>360</sup>

Nevertheless, in 2015, the IBA again drew the Supreme Court’s ire by publishing the results of lawyers’ evaluations of judges and justices.<sup>361</sup> The IBA president defended the survey as necessary to help improve the judicial system, while the court claimed that the government’s oversight of the judiciary was sufficient, suggesting that the survey was carried out for political reasons.<sup>362</sup> According to one news report, the underlying disagreement reflected a broader battle between the Supreme Court president and the IBA president “over the future of the association, which bodies of lawyers should run it, and its relations with the court.”<sup>363</sup> Yet in 2017, the IBA threatened to have its members strike to show solidarity with judges in order to obtain an increase in judges’ pensions.<sup>364</sup> The

354 Rosen-Zvi, *supra* note 157, at 760.

355 Ziv, *supra* note 233, at 1779.

356 *Id.*; Rosen-Zvi, *supra* note 157, at 809-810.

357 Rosen-Zvi, *supra* note 157, at 808-810.

358 *Id.* at 811-12.

359 Nina Gilbert, *MKs Slam “Elitist” Supreme Court in Constitutional Parlay*, JERUSALEM POST, Aug. 29, 2001, at 5.

360 Jonathan Rosenblum, *Putting the Fox in Charge*, JERUSALEM POST, Aug. 24, 2007, at 8.

361 See Yonah Jeremy Bob, *Bar Association Publishes 1st Survey on Judges in 10 Years*, JERUSALEM POST (Jan. 12, 2015), <https://www.jpost.com/Israel-News/Bar-Association-publishes-1st-survey-on-judges-in-10-years-387486>. From 2004-2006, the IBA had also surveyed Israeli lawyers for the purpose of evaluating judges and justices. The Supreme Court was “infuriated” and claimed that the bar’s efforts were an “undemocratic move” intended to contravene judicial independence. See Barzilai, *supra* note 174, at 266.

362 Bob, *supra* note 361.

363 *Id.*

364 Stuart Winer, *Lawyers Jump into the Fray to Back Judges in Pension Feud*, TIMES OF ISRAEL (Mar. 29, 2017), <https://www.timesofisrael.com/lawyers-jump-into-the-fray-to-back-judges-in-pension-feud/>.

pensions depend on years of service on the bench, making judges reluctant to retire and hindering the appointment of new judges. The IBA president argued that, “the ones who are paying the price are the attorneys and the litigants.”<sup>365</sup> Thus, while the IBA’s motivations for their actions were mixed, they suggest some effort to improve the judiciary and to ensure that it serves its proper role in a democracy.

In China, the legal profession must contend with a judiciary that is “treated as an administrative arm of the Party-state.”<sup>366</sup> Through online discussions and organized activities, criminal defense lawyers have expressed their grievances about specific cases and sought to hold courts accountable. For example, as previously noted, in 2012 Zhou Ze organized a lawyer group through the Twitter-like Weibo to travel to Guizhou province to represent fifty-seven defendants in an organized crime case.<sup>367</sup> Through Weibo and blogs, the group “reported on the court hearings in real time . . . and exposed serious procedural violations by the judges and prosecutors.”<sup>368</sup> In 2014, over 200 lawyers in China signed an open letter to government authorities after a judge ordered a lawyer who was representing a practitioner of Falun Gong to be physically removed from the courtroom because the lawyer persisted in making a constitutional argument in his client’s defense.<sup>369</sup>

## 2. Access to Justice

Access to justice and primarily, access to legal representation, is another area in which lawyer organizations seek to influence the law. Many individuals throughout the world cannot afford a lawyer or adequately represent their own legal interests. This undermines respect for the courts and the administration of justice. The United Nations Basic Principles on the Role of Lawyers state that “[g]overnments shall ensure the sufficient funding and other resources for legal services to the poor, and as necessary, to other disadvantaged persons.”<sup>370</sup> Nevertheless, few countries adequately fund legal aid. Lawyer organizations often advocate for greater access to legal representation and increased funding for legal aid.

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<sup>365</sup> *Id.*

<sup>366</sup> Halliday et al., *supra* note 86, at 20.

<sup>367</sup> See *supra* note 320 and accompanying text.

<sup>368</sup> LIU & HALLIDAY, *supra* note 214, at 157.

<sup>369</sup> Matthew Robertson, *Chinese Lawyers Outraged as Colleague is Dragged from Court*, EPOCH TIMES, Dec. 14, 2014.

<sup>370</sup> U.N. Basic Principles on the Role of Lawyers, *supra* note 14, at art. 3.

Japan's bar has a long-standing commitment to supporting legal aid. The JFBA and the Japan Civil Liberties Union established Japan's Legal Aid Association in 1952, which provided civil legal aid to the indigent.<sup>371</sup> The JFBA also advocated for the Civil Legal Aid Act in 2000, which placed the responsibility on the government for supporting the legal aid system.<sup>372</sup> In addition, the JFBA has advocated for increased funding and expanded legal aid.<sup>373</sup> The JFBA has also issued eleven "declarations on judicial reform" since 1990 in an effort to make the justice system more accessible to its users.<sup>374</sup>

In the United States, the ABA urged the Senate in 1974 to pass legislation forming the Legal Services Corporation ("LSC") to help fund civil legal services for persons of limited means.<sup>375</sup> When President Ronald Reagan attempted to eliminate the LSC during the 1980s, the ABA lobbied Congress to preserve it and to resist financial cuts.<sup>376</sup> Since then, the ABA and other U.S. bar organizations have consistently opposed cuts and advocated for increased funding for legal services for the poor.<sup>377</sup>

371 CIVIL PROCEDURE IN JAPAN, *supra* note 134, at § 2.01 [3][f](a); Murayama, *supra* note 252.

372 Murayama, *supra* note 252; LATHAM & WATKINS LLP, PRO BONO PRACTICES AND OPPORTUNITIES IN JAPAN 3 (2010), <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-japan.pdf>.

373 See, e.g., *Emergency Resolution to Seek Drastic Fiscal Measures for Civil Legal Aid Activities*, JAPAN FED'N B. ASS'NS (2002), <https://www.nichibenren.or.jp/en/meetings/year/2002/20020524.html>. In 2004, a law was enacted to establish an independent agency, known as the Japan Legal Support Center, to provide civil legal aid using full-time lawyers. See *Duties of the Japan Legal Support Center and the JFBA*, JAPAN FED'N B. ASS'NS, [https://www.nichibenren.or.jp/en/about/judicial\\_system/legal\\_aid\\_and\\_jlsc.html](https://www.nichibenren.or.jp/en/about/judicial_system/legal_aid_and_jlsc.html) (last visited Mar. 12, 2019); CIVIL PROCEDURE IN JAPAN, *supra* note 134, at § 2.01 [3][f](b). The JFBA has continued to urge the government to expand legal aid in other contexts. See *Reform of the Criminal Justice System*, JAPAN FED'N B. ASS'NS, [https://www.nichibenren.or.jp/en/about/activities/Criminal\\_Justice.html](https://www.nichibenren.or.jp/en/about/activities/Criminal_Justice.html) (last visited Mar. 12, 2019) (urging the establishment of a court-appointed attorney system for suspects in criminal matters); *Provisional Legislative Proposal for the Realization of Government-Funded Legal Aid for Victims of Crimes*, JAPAN FED'N B. ASS'NS (Mar. 15, 2012), <https://www.nichibenren.or.jp/en/document/opinionpapers/20120315.html> (urging the government to provide legal aid for crime victims).

374 *Justice System Reform*, JAPAN FED'N B. ASS'NS, [https://www.nichibenren.or.jp/en/about/judicial\\_system/justice\\_system\\_reform.html](https://www.nichibenren.or.jp/en/about/judicial_system/justice_system_reform.html) (last visited Mar. 12, 2019). These recommendations contributed to the passage of twenty-four laws related to justice system reform by the end of 2004. *Id.*

375 120 CONG. REC. 22609 (daily ed. July 10, 1974).

376 Stuart Taylor, *House Action Near in the Fight Over Legal Aid*, N. Y. TIMES, June 16, 1981, at B10.

377 See, e.g., Rhonda McMillion, *ABA Steps Up Calls for Increased Legal Service Corp. Funding*, ABA J. (May 2014), [http://www.abajournal.com/magazine/article/aba\\_steps\\_up\\_calls\\_for\\_increased\\_legal\\_service\\_corp\\_funding](http://www.abajournal.com/magazine/article/aba_steps_up_calls_for_increased_legal_service_corp_funding); *Statement of ABA President re: Eliminated Funding for the Legal Services Corporation*, A.B.A. (March 16, 2017), <https://www.americanbar.org/news/abanews/aba-news->



Some voluntary lawyer organizations have also advocated for a “civil Gideon” requirement that would require the government to provide indigent individuals with legal representation in certain civil cases.<sup>378</sup>

In Brazil, the 1988 Constitution, drafted with OAB’s help, provides that “the state shall provide full and free-of-charge legal assistance to all who prove insufficiency of funds.”<sup>379</sup> In most courts, parties must be represented by a lawyer.<sup>380</sup> The Constitution provides for the creation of states’ Public Defender’s Offices for individuals who cannot afford a lawyer,<sup>381</sup> but some states failed to establish such offices. Instead, the government relied on the ad hoc appointment of private lawyers to provide legal aid in civil and criminal cases, paying the lawyers from government funds.<sup>382</sup> A public defenders’ association successfully challenged the constitutionality of relying entirely on private lawyers in Santa Catarina and São Paulo, forcing these states to create public defender’s offices.<sup>383</sup>

Today, public defenders cannot meet the demand for legal representation and so states also pay private lawyers to represent the indigent clients. When the São Paulo state public defenders’ office was established, it took control over legal aid funding and recruitment of these supplementary private lawyers, putting it in conflict with the bar, which claimed it should be a mandatory intermediary in the recruitment

archives/2017/03/statement\_of\_abapre3.html; Michael Marciano, *Lawyers Warn Against “Devastating” Cuts to Legal Services*, Conn. L. Trib., March 27, 2017, at 1.

<sup>378</sup> States are required to provide criminal defendants who cannot afford a lawyer with counsel. See *Gideon v. Wainwright*, 372 U.S. 335 (1963). Some bar associations have advocated for a similar requirement in civil cases. See, e.g., AM. BAR ASS’N, ABA HOUSE OF DELEGATES RESOLUTION 112A (2006),

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_resolution\\_06a112a.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_resolution_06a112a.pdf); BOSTON BAR ASS’N, GIDEON’S NEW TRUMPET: EXPANDING THE CIVIL RIGHT TO COUNSEL IN MASSACHUSETTS (2008), [http://www.bostonbar.org/prs/nr\\_0809/GideonsNewTrumpet.pdf](http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf); PHILA. B. ASS’N’S CIV. GIDEON CORNER, <http://philadelphiabar.org/page/CivilGideon>.

<sup>379</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] tit. II, ch. 1, art. 5, ¶ LXXIV (Braz.); Antonio Gidi & Hermes Zaneti, Jr., *Brazilian Civil Procedure in the “Age of Austerity”?*, 8 ERASMUS L. REV. 245, 247 (2015).

<sup>380</sup> See Gidi & Zaneti, *supra* note 379, at 253.

<sup>381</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 134 (Braz.).

<sup>382</sup> See de Sa e Silva, *supra* note 120, at 235.

<sup>383</sup> *STF Julga Inconstitucional Atuação da OAB No Lugar da Defensoria Pública em SC [STF Deems the OAB Action in Place of Public Defenders in SC Unconstitutional]*, SUPREMO TRIBUNAL FEDERAL (Mar. 14, 2012),

<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=202643>; *PGR questiona lei que determina realização de convênio entre OAB-SP e Defensoria Pública [PGR Questions Law that Determines Agreement between OAB-SP and Public Defender’s Office]*, SUPREMO TRIBUNAL FEDERAL (Oct. 21, 2008),

<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=98000&caixaBusca=N>.

process.<sup>384</sup> The bar ultimately lost that battle. As Fabio de Sa e Silva notes, “the clear goal of the bar in this conflict was to protect—and to some extent control—the market for legal services to the poor.”<sup>385</sup> Thus, private lawyers essentially compete with the public defenders for funding.<sup>386</sup> Public defenders do not all belong to the OAB,<sup>387</sup> and this, too, may account for why the OAB does not speak out for increased funding for public defenders’ offices.

In other democratic countries, support by the organized bar for legal aid has emerged over time. In Israel, when the IBA Act passed in 1961, there was little discussion of lawyers having any duties to ensure equal access to justice.<sup>388</sup> When the government established a public defenders’ office for criminal defense in 1995, the bar’s response was “ambiguous”—expressing concern that many criminal defendants lacked representation, but anxious about the entry of state-funded lawyers in a field dominated by the private bar.<sup>389</sup> The IBA has not supported increased funding for the public defenders’ office and has resisted expansion of its role.<sup>390</sup> It was not until the late 1990s that the IBA began to evince real concern about access to justice issues in the civil context.<sup>391</sup> When the government proposed a ten percent cut in civil legal aid funding in 2003 and 2007, the IBA president objected, arguing that it would affect the quality of legal representation for clients because lawyers would not be willing to work for the reduced fees.<sup>392</sup> Such cuts also affected the income of private lawyers who were providing much of the legal aid.

Countries transitioning from socialist or communist government had

384 de Sa e Silva, *supra* note 120, at 235.

385 *Id.* at 235 n.25.

386 Juliana Dal Piva, *When Justice Falls Short: Brazil Needs 10,000 More Public Defenders*, UNIVISION NOTICIAS (Apr. 7, 2017), <https://www.univision.com/noticias/criminalidad-y-justicia/when-justice-falls-short-brazil-needs-10-000-more-public-defenders>.

387 In March 2018, the Superior Court decided that public defenders are not required to belong to the OAB. STJ Resp. 1.710.555; Pedro Canário, *Defensores Públicos Não Precisam de Inscrição na OAB, Decide 2a Turma do STJ [Public Defenders Do Not Need to be Registered in the OAB, Decides 2nd Class of STJ]*, CONSULTOR JURÍDICO (Mar. 1, 2018), <https://www.conjur.com.br/2018-mar-01/defensores-publicos-nao-inscritos-oab-decide-stj>. That case is still pending in the courts.

388 Ziv, *supra* note 161, at 1637-38, 1646.

389 *Id.* at 1659. Prior to that time, publicly funded criminal defense was provided by the private bar. Katvan et al., *supra* note 155.

390 Hazards Inherent in the Exclusive Jurisdiction of the Legal Profession, *supra* note 257, at 19-20.

391 See Ziv, *supra* note 161, at 1659-61.

392 Knesset Comm. for Constitution, Law and Justice, Transcript Number 6522, June 9, 2003; Knesset Comm. for Constitution, Law and Justice, Transcript No. 120, Jan. 23, 2007. In 2007, the IBA also advocated against cutting the funding for the Public Defender’s office. Protocol of Government Legis. Comm., Jan. 23, 2007 (Isr.).

some history of legal aid. During the Soviet regime, lawyers practiced in collectives (also known as “consultation offices”) and the government set the fees they could charge.<sup>393</sup> Lawyers were required to handle certain types of cases (e.g., worker’s compensation, alimony) and some matters for classes of individuals (e.g., servicemen, the disabled) without charge.<sup>394</sup> Fees might also be waived in other types of cases if the client could not afford them.<sup>395</sup> In post-Soviet Kyrgyzstan, the constitution provides that all citizens have the right to legal aid without charge if they lack sufficient means to pay.<sup>396</sup> Nevertheless, there is a shortage of legal aid lawyers in some areas and the pay is very low.<sup>397</sup> The 2016 Law on State Guaranteed Legal Aid provides for legal aid for income-qualified individuals in criminal, civil, and administrative cases.<sup>398</sup> The Ministry of Justice initiated the drafting of the law, but the *Advokatura* added a recommendation to increase funding for legal aid.<sup>399</sup> Of course, since advocates would be paid from those funds, this recommendation also reflected lawyers’ self-interest.

Likewise in 1981, the Qaddafi regime enacted legislation that mandated that all Libyan lawyers become salaried members of the Department of People’s Legal Defense.<sup>400</sup> Even after the regime permitted lawyers to resume private practice, those who continued as “people’s lawyers” provided free representation to Libyans.<sup>401</sup> After 2011, people’s lawyers—who receive different training than private lawyers<sup>402</sup>—continued to provide free representation in criminal cases and in some civil and administrative cases.<sup>403</sup> Only private lawyers belong to the LBA, which seemingly has not advocated for increased support for legal aid.

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393 M. CHERIF BASSIOUNI & V. M. SAVITSKI, *THE CRIMINAL JUSTICE SYSTEM OF THE USSR* 43 (1979); GEORGE DANA CAMERON, *THE SOVIET LAWYER AND HIS SYSTEM* 55 (1978).

394 CAMERON, *supra* note 393, at 55-56.

395 BASSIOUNI & SAVITSKI, *supra* note 393, at 43.

396 CONST. OF KYRGYZ REPUBLIC, art. 40, ¶ 3.

397 See ABA ROLI LPRI, *supra* note 181, at 46-47; ODIHR REPORT ON THE REGIONAL EXPERT ROUNDTABLE ON LEGAL AID IN CRIMINAL PROCEEDINGS IN CENTRAL ASIA 17 (2013), <https://www.osce.org/odihr/104375?download=true>.

398 ELIDA K. NOGOIBAEVA & SANIIA TOKTOGAZIEVA, *FREE LEGAL AID IN THE KYRGYZ REPUBLIC: LEGAL FRAMEWORK, POLICIES AND PRACTICES IN RENDERING LEGAL ASSISTANCE FOR VULNERABLE GROUPS* 3 (2017).

399 E-mail from Azamat Kerimbaev, ABA ROLI Country Director in Kyrgyzstan, to Leslie C. Levin (Feb. 14, 2018, 05 5:14 EDT) (on file with authors).

400 Carlisle, *supra* note 193.

401 *Id.*

402 Carlisle, *supra* note 204, at 82.

403 Nasser Algehitta, *The Role of Criminal Defence Lawyers in the Administration of Justice in Libya: Challenges and Prospects*, in *SEARCHING FOR JUSTICE IN POST-GADDAFI LIBYA*, *supra* note 204, at 96.

Private lawyers often view people's lawyers with suspicion because they enabled the Qaddafi government by representing defendants in the notoriously unfair People's Courts.<sup>404</sup> Practically speaking, Libya's political instability makes it difficult for the courts in the country to function.<sup>405</sup> Legal aid, to the extent it exists, appears to be provided by funding from donors outside of Libya.<sup>406</sup>

In China, the impetus for a well-developed legal aid system has mainly come from the government. The government's Five-Year Plan for National Economic and Social Development (2001-2005) made developing a legal aid system a goal.<sup>407</sup> China's 2003 regulations on Legal Aid state that the government has a duty to provide legal aid.<sup>408</sup> Government funding has increased in recent years, providing legal aid in criminal cases and in some civil and administrative matters by lawyers, public notaries, legal affairs workers, and others.<sup>409</sup> Even though China still has unmet legal needs and uneven quality of representation,<sup>410</sup> lawyer organizations have rarely sought to influence the law on this issue.<sup>411</sup> This may be because the government has been active in working to expand legal aid,<sup>412</sup> because the bar leadership does not want to be viewed as critical of the government, or because the lawyers' organizations do not view this to be their responsibility.

Addressing the access to justice problem presents challenges for the legal profession, because it pits some lawyers' economic interests against the goal of helping litigants better navigate the legal system without a

404 See Carlisle, *supra* note 193. In contrast, many private practitioners had refused to appear in the People's Courts because of the abuses that occurred there. *Id.*

405 *Id.*

406 See, e.g., Lori Brumat, *Libya: Meet Salah, Keeping Hope for Redress in the Absence of a State, Amid a Civil War*, OMCT (Dec. 2015), <http://www.omct.org/human-rights-defenders/links/libya/2015/12/d23507/> (describing Libyan Network for Legal Aid).

407 *Legal Aid*, CHINA LEGAL INFO. CTR., [http://www.chinadaily.com.cn/m/chinalic/2017-07/07/content\\_30036063.htm](http://www.chinadaily.com.cn/m/chinalic/2017-07/07/content_30036063.htm) (last updated July 7, 2017).

408 *Id.*; AARON HALEGUA, U.S.-ASIA L. INST., WHO WILL REPRESENT CHINA'S WORKERS? LAWYERS, LEGAL AID, AND THE ENFORCEMENT OF LEGAL RIGHTS 22 (2016), <https://static1.squarespace.com/static/53960c86e4b010f46523d1fc/t/57f1cedd9de4bb8a69b0cfbd/1524770150399/Halegua%2C+Who+Will+Represent+China%27s+Workers%3F+%282016%29.pdf>.

409 HALEGUA, *supra* note 408, at 19; Allen C. Choate, *Legal Aid in China* app. I (Asia Foundation Working Paper Series, No. 12, 2000), <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan017813.pdf>.

410 HALEGUA, *supra* note 408, at 20-23, 28-29.

411 One exception was that in 2006, ACLA issued an opinion calling upon provincial-level governments to provide legal aid to migrant workers. *Id.* at 35.

412 For example, in February 2018 the vice Minister of Justice announced plans to expand legal aid so that it is available to all villagers. *China to Build National Public Legal Service by 2020*, CHINA LEGAL INFO. CTR. (Feb. 8, 2018), [http://www.chinadaily.com.cn/m/chinalic/2018-02/08/content\\_35686609.htm](http://www.chinadaily.com.cn/m/chinalic/2018-02/08/content_35686609.htm).

lawyer. Yet lawyer organizations also recognize that by not addressing access to justice, non-lawyers may be given greater latitude to represent parties in court and elsewhere. This tension helps explain some of the organized bars' battles over pro bono. In the United States, a few bar organizations have proposed a pro bono requirement, but most lawyer organizations have opposed it.<sup>413</sup> In Israel, division in the IBA arose over whether to establish even a voluntary pro bono program, with some members objecting due to concerns about unfair competition and its impact on lawyers' livelihoods.<sup>414</sup> The IBA eventually supported pro bono in 2002, and in 2009 it initiated legislation for the first time for the IBA—but not individual lawyers—to provide free legal services to the poor.<sup>415</sup>

The pro bono story in Brazil similarly reflects divisions in the bar. The corporate bar and legal elite supported the idea of pro bono service, because it reflected clients' interests in corporate social responsibility, which was transmitted by international organizations, and also elite lawyers' conceptions of their role in society.<sup>416</sup> Yet other lawyers, including some who represented low-income clients, viewed pro bono practice as unfair competition for clients and pressured the OAB leadership to limit or prohibit it.<sup>417</sup> The OAB in São Paulo became persuaded that pro bono could lead to unfair competition and adopted a rule that limited pro bono work to the giving of legal advice outside of court to non-profit organizations, but not to individuals who could not pay for legal services.<sup>418</sup> It was only after the Federal Ministério Público held a public hearing about this bar regulation, signaling that he would litigate against it, that the OAB rewrote the pro bono rule so that pro bono legal service could be performed for needy individuals.<sup>419</sup>

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413 See Leslie C. Levin, *Pro Bono and Low Bono in the Solo and Small Firm Context*, in PRIVATE LAWYERS & THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION 155, 158 (Robert Granfield & Lynn Mather eds., 2009); Scott Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 30-32 (2004).

414 Ziv, *supra* note 161, at 1665; Ziv, *supra* note 233, at 1780; Ruth Sinai, *Practicing Law as a Mission*, HAARETZ, Dec. 13, 2001. Prior to that time, the IBA's ethics code provided that lawyers must be paid for legal representation. See Sinai, *supra*.

415 Dan Izenberg, *Bill Would Oblige Bar to Provide Free Legal Aid*, JERUSALEM POST, Oct. 13, 2009. It took five years before the legislation was enacted. Zer-Gutman, *supra* note 161, at 144.

416 de Sa e Silva, *supra* note 120, at 217, 223.

417 See *id.* at 224; Almeida & Nassar, *supra* note 124, at 202-03; Bonelli & Fortes, *supra* note 122.

418 Almeida & Nassar, *supra* note 124, at 203-04; de Sa e Silva, *supra* note 120, at 225.

419 Almeida & Nassar, *supra* note 124, at 204; de Sa e Silva, *supra* note 120, at 236-38.

*D. Acting to Advance Human Rights or to Address Other Issues Affecting Civil Society*

Besides their efforts to benefit themselves, their clients, or the judicial system, lawyer organizations also work to advance human rights or other ideological or political issues. The JFBA, for example, publicizes its positions on a wide range of issues, seeking to promote human rights or oppose government actions it views as illegitimate. For instance, in 2014 the JFBA called on Prime Minister Shinzo Abe's ruling coalition to withdraw legislation that would allow Japan's self-defense forces to fight to protect allies even without a direct threat to Japan. The bar saw the legislation as contrary to Japan's Constitution, which states: "the right of belligerency of the state will not be recognized."<sup>420</sup> The JFBA joined demonstrations and spoke out to oppose this legislation, which ultimately passed notwithstanding strong public opposition.<sup>421</sup> The JFBA has also taken a stand on many human rights issues, such as capital punishment.<sup>422</sup> In addition, the JFBA has advocated on purely political issues, such as urging the government to withdraw from nuclear power generation in the wake of Japan's 2011 nuclear disaster and seeking changes in the agreement with the United States concerning the presence of U.S. armed forces in Japan.<sup>423</sup>

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420 NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 9 (Japan); *JFBA Opposes Right to Collective Self-Defense, Nuclear Power*, JAPAN ECON. NEWSWIRE, May 30, 2014.

421 *Opinion Concerning the Cabinet's Decision Approving the Exercise of the Right to Collective Self-Defense, etc.*, JAPAN FED'N B. ASS'NS (Sept. 18, 2014), <https://www.nichibenren.or.jp/en/document/opinionpapers/20140918.html>;

64th JFBA General Meeting – Resolution Opposing the Approval of Exercising the Right to Collective Self-Defense, JAPAN FED'N B. ASS'NS (May 31, 2013), <https://www.nichibenren.or.jp/en/document/statements/130531.html>; Agence France-Presse, *Japan Lawyers Join Opposition to Controversial Security Bills*, DEFENSE NEWS (Aug. 26, 2015), <https://www.defensenews.com/global/asia-pacific/2015/08/26/japan-lawyers-join-opposition-to-controversial-security-bills>.

422 *Statement Protesting Execution of the Death Penalty and Reiterating Our Request for Suspension of Executions and the Launch of a Nationwide Debate on the Abolition of the Death Penalty*, JAPAN FED'N B. ASS'NS (Sept. 12, 2013), <https://www.nichibenren.or.jp/en/document/statements/year/2013/130912.html>; *Statement on Executions of Death Penalty*, JAPAN FED'N B. ASS'NS (Apr. 27, 2007), <https://www.nichibenren.or.jp/en/document/statements/year/2007/20070427.html>; Elaine Lies, *Japan Lawyer's Group Seeks to End Death Penalty*, REUTERS (Oct. 7, 2016), <https://www.reuters.com/article/us-japan-deathpenalty-idUSKCN127190>.

423 See *Statement Calling for the Realization of Non-Nuclear Power Policies through the Early Establishment of the Basic Law on Non-Nuclear Power Plants*, JAPAN FED'N B. ASS'NS (Sept. 21, 2012), <https://www.nichibenren.or.jp/en/document/statements/year/2012/120921.html>; *Opinion with Regard to the Status of Forces Agreement Between Japan and the U.S.*, JAPAN FED'N B. ASS'NS (Feb. 20, 2014), [https://www.nichibenren.or.jp/en/document/opinionpapers/20140220\\_2.html](https://www.nichibenren.or.jp/en/document/opinionpapers/20140220_2.html).

Like in Japan, the legal profession in Brazil views its role as a protector of civil liberties and human rights.<sup>424</sup> By the mid-1970s, the OAB was fighting political repression precipitated by the 1964 military coup and it eventually played a significant role in the democratization of the country.<sup>425</sup> The OAB has also involved itself in other human rights activities. Starting in 1980, the OAB formed Human Rights Commissions in its federal council and regional associations.<sup>426</sup> It has spoken out on racial discrimination and in 2008, it asked the Supreme Court to exempt torture that occurred during the military regime from the Amnesty Law to allow prosecution of those responsible for killings.<sup>427</sup> In 1992, the OAB's president filed charges for high crimes against the then-President Collor de Mello, which led to his impeachment.<sup>428</sup> The OAB also voted in 2016 to support the impeachment of President Dilma Rousseff and to add new impeachment charges of obstructing justice.<sup>429</sup> This vote put the OAB squarely in the midst of political conflict and was controversial within the organization. Indeed, the smaller, voluntary IAB opined that it considered the impeachment of Rousseff to be unconstitutional.<sup>430</sup>

In contrast to Japan and Brazil, the Israeli bar does not share a deep tradition of speaking out on social justice or other issues concerning civil society.<sup>431</sup> During its first forty years, the IBA rarely became involved in public matters unrelated to the legal system or legal representation.<sup>432</sup> In the 1990s, some IBA members formed a group within the IBA called *Lishka Acheret* ("A Different Bar") that challenged the bar to speak out

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424 See *supra* notes 118-19 and accompanying text; TAYLOR, *supra* note 117, at 115; Falcão, *supra* note 110, at 426.

425 See, e.g., ALVES, *supra* note 116, at 149, 157, 161-62; Junqueira, *supra* note 116, at 163.

426 TAYLOR, *supra* note 117, at 112; Falcão, *supra* note 110, at 426.

427 Cecilia MacDowell Santos, *Transnational Legal Activism and the State: Reflections on Case Against Brazil in the Inter-American Commission on Human Rights*, 4 SUR. REVISTA INTERNACIONAL DE DIREITOS HUMANOS 29 (2007); Nina Schneider, *Impunity in Post-authoritarian Brazil: The Supreme Court's Recent Verdict on the Amnesty Law*, 90 EUR. REV. LATIN AM. & CARIBBEAN STUD. 39, 49 (2011).

428 E-mail from Fabio de Sa e Silva, Professor of Brazilian Studies, University of Oklahoma, to Lynn Mather (Feb. 27, 2019, 11:33 EST) (on file with authors). Collor resigned just before the impeachment trial, but the Brazilian Senate held the trial and voted for impeachment. See Alexandra Rattinger, *The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States*, 49 U. MIAMI INTER-AM. L. REV. 129, 149 (2018).

429 Anthony Boadle, *Brazil Lawyers File New Impeachment Case Against Rousseff*, REUTERS (Mar. 28, 2016), <http://reut.rs/1MOnFcP>.

430 *Impeachment de Dilma é Inconstitucional, Diz Instituto dos Advogados do Brasil [Impeachment of Dilma is Unconstitutional, Says Brazilian Bar Association]*, CONSULTOR JURÍDICO (Aug. 5, 2016), <https://www.conjur.com.br/2016-ago-05/iab-aprova-parecer-contrario-impeachment-dilma>.

431 Barzilai, *supra* note 174, at 255, 259.

432 Katvan et al., *supra* note 155; Ziv, *supra* note 161, at 1659.

against human rights abuses.<sup>433</sup> In 1999, they helped elect an IBA president with a “left-liberal” agenda who demanded that the IBA take on position human rights issues in Israel and the West Bank.<sup>434</sup> Thereafter, the IBA’s Human Rights Committee warned soldiers who were carrying out targeted assassinations of Palestinian militants and officers who ordered demolitions of houses owned by Palestinians that military personnel could be prosecuted for war crimes.<sup>435</sup> It has also spoken out against gender discrimination in the military.<sup>436</sup>

Bar associations in the United States have a mixed tradition of speaking out on human rights and rule of law issues, but for somewhat different reasons. As previously noted, mandatory U.S. bar associations are often unable to use bar dues to promote political positions.<sup>437</sup> Sometimes voluntary lawyer organizations also encounter difficulty speaking out on certain issues. When the ABA’s House of Delegates adopted a resolution in 1990 in favor of a woman’s right to an abortion, it faced strong dissent from its politically diverse membership, and ultimately retreated from that position.<sup>438</sup> Yet the ABA was able to pass a resolution in 1997 calling for a moratorium on capital punishment until jurisdictions improved their sentencing policies and procedures. Critics of the resolution argued that, like abortion, this was a political matter, but advocates successfully argued that the issue of capital punishment directly related to the judicial system.<sup>439</sup> The ABA also acted to influence the law concerning the “war on terrorism” by opposing the use of torture.<sup>440</sup> Other voluntary bar organizations in the United States have also sought to

433 Ziv, *supra* note 161, at 1662.

434 See Katvan et al., *supra* note 155.

435 Ferry Biederman, *Human Rights Groups File Petition Against Israeli Army*, INTER PRESS SERV., Jan. 25, 2002.

436 Yaakov Lappin, *IDF Rejects Allegations of Discrimination Against Female Soldiers Receiving Fertility Treatment*, JERUSALEM POST (Mar. 8, 2016), <https://www.jpost.com/Israel-News/IDF-rejects-allegations-of-discrimination-against-female-soldiers-receiving-fertility-treatment-447230>.

437 See *supra* note 103 and accompanying text.

438 See, e.g., David Margolick, *Bar Group, in Shift, Adopts Neutral Policy on Abortion*, N.Y. TIMES, Aug. 9, 1990, at A20.

439 Austin Sarat, *State Transformation and the Struggle for Symbolic Capital: Cause Lawyers, the Organized Bar, and Capital Punishment in the United States*, in CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA, *supra* note 87, at 186, 202-04.

440 AM. BAR ASS’N, ABA HOUSE OF DELEGATES RESOLUTION 10-B (2004), [http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/torture/torturepolicy2004\\_10\\_B.pdf](http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/torture/torturepolicy2004_10_B.pdf) (resolution condemning use of torture). The ABA has also been very active in promoting human rights through ABA ROLI. *Human Rights and Access to Justice*, A.B.A., [https://www.americanbar.org/advocacy/rule\\_of\\_law/what-we-do/human-rights-access-to-justice.html](https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice.html) (last visited Mar. 12, 2019).



influence the law with respect to human rights and rule of law issues. Thus, the Massachusetts Bar Association has called for the end of the government policy that resulted in the separation of immigrant children from their parents at the U.S. border.<sup>441</sup> The National Bar Association, composed of predominantly African-American attorneys and judges, has met with members of the legislative and executive branches to advance their agenda, including dismantling the system of mass incarceration.<sup>442</sup>

Even in authoritarian regimes, lawyer organizations sometimes act collectively to influence human rights and the rule of law. In Libya, notwithstanding the Qaddafi regime's significant control over lawyers, the Tripoli Bar Association attempted to take an active role in monitoring human rights.<sup>443</sup> In 2008, it wrote a letter to authorities demanding the investigation of the kidnapping of lawyer Dhaw Al-Mansuri, president of the Center for Democracy, and in 2009, it established a fact-finding committee that requested access to Ain Zara prison.<sup>444</sup> The Benghazi courthouse and the Benghazi Bar Association were "cradles of rebellion" in the final year of Qaddafi's rule.<sup>445</sup> Post Qaddafi, international organizations have worked with the LBA and other lawyer organizations to support the bar in its efforts to ensure free elections and advance human rights.<sup>446</sup> Yet in Kyrgyzstan, where lawyer organizations remain relatively new, they have not been actively involved in human rights advocacy.<sup>447</sup> The mandatory *Advokatura* has focused primarily on internal issues.<sup>448</sup>

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441 *Massachusetts Bar Association President: End Border Policy that Separate Children from Parents*, MASS. B. ASS'N NEWS (June 20, 2018), <https://www.massbar.org/docs/default-source/press-releases/2018/06-20-18-massbar-president---end-border-policy-that-separates-children-from-parents.pdf?sfvrsn=8> (referring to policy as "inhumane" and "immoral").

442 Benjamin L. Crump, *A Year in Review*, NAT'L BAR ASS'N MAG., July 2016, at 20, [https://gallery.mailchimp.com/b493e6c4d31beda32fdaf8e2d/files/FINAL\\_NBA\\_Magazine\\_2016.01.pdf](https://gallery.mailchimp.com/b493e6c4d31beda32fdaf8e2d/files/FINAL_NBA_Magazine_2016.01.pdf).

443 See HUMAN RIGHTS WATCH, TRUTH AND JUSTICE CAN'T WAIT: HUMAN RIGHTS DEVELOPMENTS IN LIBYA AMID INSTITUTIONAL OBSTACLES 29 (2009), <https://www.hrw.org/sites/default/files/reports/libya1209webwcover.pdf>.

444 *Id.* at 29, 32.

445 ILAC, *supra* note 91, at 61. Khalid al-Saji, the chairman of the LBA, was reportedly one of the fourteen men who launched the revolt. Clemens Hoges, *A Courthouse in Benghazi: The Nerve Center of the Revolution*, DER SPIEGEL (Mar. 4, 2011), <http://www.spiegel.de/international/world/a-courthouse-in-benghazi-the-nerve-center-of-the-libyan-revolution-a-749227.html>.

446 See, e.g., Am. Bar Ass'n Rule of Law Initiative, *Libyan Lawyers Prepare for Elections*, July 27, 2012 (on file with authors); *Promoting Change Through Women's Legal Network in Libya*, *supra* note 208.

447 They have, however, cooperated in providing workshops aimed at training human rights lawyers. See *Empowering Young Lawyers in Kyrgyzstan Through Human Rights Training*, UN HUMAN RIGHTS OFF. OF THE HIGH COMM'R (Dec. 30, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/EmpoweringyounglawyersinKyrgyzstan.aspx>.

448 E-mail from Azamat Kerimbaev, ABA ROLI Country Director in Kyrgyzstan, to Leslie C.

In China, the bar associations rarely seek to influence the law relating to human rights issues, in part, due to state control. Nevertheless, in 2001, the Beijing Lawyers Association set up a Committee on Constitutional Law and Human Rights (CCLHR), and in 2004, ACLA created a similar committee.<sup>449</sup> For a while, the CCLHR offered a platform for politically liberal lawyers to develop professional networks and in the mid-2000s, to become involved in rights defense cases.<sup>450</sup> In 2007, the BLA effectively ended the “human rights” aspects of the CCLHR.<sup>451</sup> Nevertheless, networks of activist lawyers in China have continued to advance a number of human rights issues including freedom of speech and religion.<sup>452</sup> They have worked online with international lawyer organizations, UN advocacy groups, and NGOs to push for expanded human rights in China.<sup>453</sup>

#### IV. WHEN AND WHY DO LAWYER ORGANIZATIONS ACT TO INFLUENCE LAW?

Although only seven countries are examined here, the discussion provides some insights into collective lawyer activities to influence law. At the very least, lawyer organizations must have the *ability* to act on legal issues. Their ability, in turn, depends on their strength as organizations, something that organizational theories can help explain. Broadly speaking, their ability to act depends on the organization’s micro-level characteristics, relations between the lawyer organization and the state, and support for the profession from the international legal community.

Characteristics of the lawyer organization constitute one important factor that affects organizations’ ability to influence law. New lawyer associations such as Kyrgyz’s *Advokatura* face questions of legitimacy—even among its members—that likely inhibit any such efforts. New associations must also focus on establishing internal structures and rules before attempting lawmaking on issues unrelated to their own immediate interests. In contrast, older established bar associations such as in Brazil and the United States have a history of—and mechanisms for—working to influence the law. Such mechanisms include, for example, the OAB’s constitutional standing to file cases before Brazil’s Supreme Court, and the

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Levin (Mar. 20, 2018: 1:23 EDT) (on file with authors).

449 Liu & Halliday, *supra* note 222, at 12-13.

450 *Id.* at 13.

451 *Id.* at 14.

452 LIU & HALLIDAY, *supra* note 214, at 101-04; *see also* Fu, *supra* note 227, at 565 (describing advocacy on issues relating to discrimination).

453 *Id.* at 158-60.

ABA's Governmental Affairs Office in Washington, D.C., which conveys the ABA's views to government entities.<sup>454</sup> As voluntary lawyer associations become stronger and attract more members, they may also become more solvent, enabling them to hire staff (e.g., lobbyists, public relations personnel) to facilitate efforts to influence the law.<sup>455</sup>

The membership composition of lawyer organizations also affects their ability to act. Organizations with lawyers from different practice settings or political ideologies tend to disagree about preferred directions of legal change and whether to take action at all. When lawyer organizations fail to act, new organizations may emerge. In the United States, when elite bar associations failed to represent the interests of non-elite members, new lawyer associations sprung up to fulfill those needs. Likewise, new organizations were established in Japan to work for political and social changes that some lawyers sought.

The method of decision making within a lawyer organization also influences its ability to act. For instance, in China, the government-selected bar leadership controls many of its decisions. In hierarchical lawyer organizations, bar leaders can act on behalf of the organization, allowing them some political space to advance their own values or ambitions. This can be seen in Brazil's OAB, where decision making is consolidated within a fairly small group of leaders, and in Israel's IBA, where its president can speak freely on many issues. In contrast, in lawyer organizations such as the ABA, which requires voting by the almost 600-member House of Delegates, leaders have a more difficult time convincing members to act on law reform. This can sometimes be circumvented, however, by pronouncements by the ABA president, or actions by ABA committees, which do not require such approval.

In addition, the relationship between lawyer organizations and the state reveals a good deal about lawyers' collective ability to influence the law. Authoritarian governments, like China or Libya under Qaddafi, can limit lawyer organizations' ability to operate autonomously, especially on matters that threaten state interests. Efforts within such organizations by rank and file lawyers to affect the law—or even to achieve self-governance of the organizations—can be readily thwarted and even dangerous.

Even in democracies, laws governing lawyer organizations can limit or facilitate their ability to act to influence the law.<sup>456</sup> In Israel, lawyers

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454 See *supra* note 128 and accompanying text; *Advocacy & Initiatives*, *supra* note 105.

455 See HALLIDAY, *supra* note 78, at 290, 304.

456 Government policy can also constrain lawyer organizations from acting. For example, the

cannot form other bar associations, thus presenting obstacles for lawyers with different views from IBA leadership from acting collectively. In the United States, mandatory state bars are constrained in their ability to engage in advocacy for political or ideological purposes. Yet in Brazil, the OAB has legal standing to directly challenge state actions it views as unconstitutional, making it easier for that association to act on a wide range of subjects.

The emergence of international actors and transnational legal orders changes relations between organizations and the state. For the legal profession in particular, a growing global legal community focused on rule of law and human rights issues has empowered lawyer organizations in many countries, sometimes allowing them to counter state power. When working with lawyer organizations, groups such as the International Bar Association and the Council of Bars and Law Societies of Europe transmit international standards contained in the U.N Basic Principles on the Role of Lawyers and the European Parliament's Resolution on the Legal Professions.<sup>457</sup> Global lawyer organizations also provide support to informal lawyer networks in their attempts to influence law in China and elsewhere. In Libya, immediately after the fall of Qaddafi, the organized bar received assistance from ABA ROLI in its work on legislation that restored the bar's autonomy. ABA ROLI also helped advocates in Kyrgyzstan with the law establishing the *Advokatura*.

Even when lawyer associations are *able* to attempt to influence law, other factors affect *why* they do so. Consider the many different activities of the lawyer organizations in these seven countries. Why the organizations acted—or why they did not—can be explained by elements of organization theory as applied to the legal profession.

Viewing lawyer groups as rational, self-interested actors provides one important lens for understanding why lawyer organizations act. That is, they act to advance their professional power and status through efforts to preserve lawyers' autonomy, define and expand the legal market, and protect themselves from attack. In Israel and many U.S. jurisdictions, lawyers also sought compulsory bar membership to enable them to

ABA was constrained from directly participating in efforts to draft a code of conduct for the International Criminal Court because the United States had not ratified the treaty establishing the court. *See* Levin, Mather & de Groot-van Leeuwen, *supra* note 18, at 454.

<sup>457</sup> These standards emphasize the importance of lawyer independence and advance the view that lawyers have a crucial role to play in promoting justice and guaranteeing respect for human rights. *See U.N. Basic Principles on the Role of Lawyers*, *supra* note 14, at arts. 4, 14, 16, 23-24; Resolution on the Legal Professions and the General Interest in the Functioning of Legal Systems, EUR. PARL. DOC. P6\_TA(2006)0108, pts. A, D, E, K(4) (2006).

advocate more effectively for the profession.<sup>458</sup> Organizations lobbied against expansion of the size of the bar in Israel, Japan, and Brazil, and for restrictions on foreign lawyers. The frequency of lobbying by lawyer organizations to protect lawyers from competition also supports theories of organizational maintenance. When successful, such lobbying brings material benefits to their members and also strengthens the organizations.

When lawyer organizations work on law to benefit their clients, they may also benefit lawyers themselves—for example, by making their work easier, expanding the pool of clients, or making their work more remunerative. Examples from the commercial context in China, Israel, and the United States show bar associations attempting to influence the law in order to provide benefits for their corporate clients. Likewise, lawyer organizations in Brazil, Israel, Japan and the United States opposed anti-money laundering regulation that would force lawyers to disclose client information. Yet, new institutionalist explanations also apply here since such lobbying may reflect the shared norms and ways of seeing the world of corporate lawyers and their corporate clients.<sup>459</sup> Or, to take an example from specialty bars in the United States, when plaintiffs' lawyers, immigration lawyers or criminal defense bars work on law reform, they can be understood as pursuing shared ideological goals when they seek to advance their clients' causes. In other words, mutual ideals—rooted in institutional culture—and not only self-interest, may explain the actions of lawyer organizations. Indeed, such efforts to advance clients' interests may entail costs for lawyers. Attempts by networks of criminal defense lawyers in China to expose rights violations by state officials would benefit their clients. But such advocacy also came at great personal cost to the lawyers as they risked arrest or loss of their licenses for their actions.

Lawyer organizations in all seven countries devoted energy to issues directly affecting the courts and the administration of justice. This third category can also be explained, in part, by the shared cultural and political values of lawyers in their institutional sector, which permeate individual organizations. That is, political liberalism motivates lawyers in some countries to work collectively for due process and the rule of law, and to oppose an authoritarian state and a weak judiciary. In Kyrgyzstan, where

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<sup>458</sup> See, e.g., DAYTON D. MCKEAN, *THE INTEGRATED BAR* 41, 45 (1963); Gallagher, *supra* note 232, at 522-25 (providing examples of lawyers asking the courts to form mandatory U.S. state bar associations); E-mail from Limor Zer-Gutman, Lecturer, Haim Striks School of Law, to Leslie C. Levin (Feb. 23, 2019, 16:33 EST) (on file with authors).

<sup>459</sup> See *supra* notes 75-76 and accompanying text (suggesting that corporate lawyers and clients have similar normative views due to their shared institutional culture).

lawyer organizations view the courts as corrupt or lacking legitimacy, they sometimes act through projects designed to increase the independence and integrity of the judiciary.<sup>460</sup> Even where courts are stronger institutions, lawyer organizations may oppose the courts if the courts' actions are seen as threatening the rule of law. Thus, in Israel, the IBA opposed the Supreme Court when it believed the court was exceeding its institutional power and acting on political questions. In Brazil and Japan, lawyer associations spoke out when they believed the courts were not acting expeditiously or fairly.

In democratic countries, such as Brazil, Israel, Japan, and the United States, lawyer organizations have worked to strengthen the courts and to defend the judiciary when it was under attack. Selfless reasons alone do not explain such organizational actions. Since lawyers' legitimacy and importance often depend upon the courts' legitimacy, lawyer organizations have a vested interest in maintaining the independence and integrity of the judiciary. In addition, in countries like the United States, the courts often protect lawyers from extensive legislative regulation,<sup>461</sup> so ensuring the independence of the courts from the other political branches serves lawyers' interests as well.

Conflicts sometimes arise, however, between lawyers' self-interests and their interest in improving courts and the administration of justice. This can be seen in some efforts to expand access to justice, which promotes the rule of law and improves the administration of justice. Lawyer organizations lobbied to expand government funding for legal services in Japan and the United States, which would increase access to justice and presumably, fees paid to legal aid lawyers. But lawyer associations in Brazil and Israel were divided over lawyers engaged in pro bono due, in part, to concerns about their economic self-interest in being paid for their work. These examples underscore how conflict over what constitutes an organization's "self-interest" in a heterogeneous lawyer organization complicates its decision to work for or against legal change.

Finally, the importance of the norms and values of political liberalism, with lawyers working to curb state power and promote a moderate state, was shown through actions by lawyer associations in Brazil, Japan, Libya, and the United States to promote human rights, defend political prisoners,

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460 *See supra* notes 348-49 and accompanying text. Of course, in some cases, advocates may not be motivated by political liberalism, but may simply wish to spare their clients the cost of paying bribes or may prefer to work in a system in which corruption is less pervasive.

461 BARTON H. BARTON, *THE LAWYER-JUDGE BIAS IN THE AMERICAN LEGAL SYSTEM* 113, 115-20 (2011).

and support persecuted minorities. When lawyers conceive of their professional role in society as important for moderating the state and historically have done so, they sometimes act to influence law for that purpose. Thus, as previously noted, Japan's lawyer organizations have a long-standing commitment to social justice and a history of opposition to the state, which includes active pursuit of civil rights and human rights agendas. Similarly, in Brazil, the OAB views itself as a defender of democratic values. The history of both organizations has empowered them to engage with wide-ranging political issues that are removed from concerns about lawyers or the judiciary, such as the JFBA's opposition to nuclear power and the OAB's votes for presidential impeachment.

As historic institutionalism would suggest, the history of other lawyer organizations makes them more reluctant to speak out on political issues. In Israel, when the Knesset debated the act creating the IBA in 1961, most of the discussions "rested upon an assumption that the bar does *not* carry strong societal or other collective commitments."<sup>462</sup> This shared assumption "imprinted" the organization so that until the early 2000s, the IBA focused its efforts to influence the law primarily on issues affecting the interests of lawyers, clients, and the legal system, narrowly defined. In China, lawyers operate within a society that shares an altogether different conception of the state and the individual rooted in traditional attitudes about the importance of social harmony and reinforced by communist ideology. It is not just that there is little history of opposition to the state, but rather, it is contrary to societal values to do so.

Even when lawyer organizations prefer to avoid political engagement, however, cause lawyers may be able to "push" them to take action, especially during periods of political conflict or crisis.<sup>463</sup> Cause lawyers in the United States, for example, were able to move the ABA to call for a moratorium on the hotly contested issue of the death penalty.<sup>464</sup> In Israel in the 1990s, some IBA members eventually moved the bar to speak out against human rights abuses involving Israeli security forces and Israel's military.<sup>465</sup> In China, activist lawyers were eventually able to force ACLA and the Guangxi Provincial Lawyers Association to express support for accused lawyers who had been detained in Beihai.

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462 Ziv, *supra* note 166, at 62.

463 ECON. & SOC. RESEARCH COUNCIL, THE EFFECTIVENESS OF BAR ASSOCIATIONS IN CONFLICT & CRISIS 25 (Dec. 2016), <https://lawyersconflictandtransition.org/themainevent/wp-content/uploads/2014/07/THE-EFFECTIVENESS-OF-BAR-ASSOCIATIONS-IN-CONFLICT-AND-CRISIS.pdf>. See also McEvoy & Rebouche, *supra* note 50, at 276.

464 See Sarat, *supra* note 439, at 189-90, 196-201, 204-05.

465 Ziv, *supra* note 161, at 1663.

Lawyer organizations, like all organizations, make compromises not only to satisfy members with diverging views, but also to negotiate their relationship with the state and institutional actors. As organizational theories suggest, rational organizational leaders might lobby government for benefits for their membership, but at the same time they must be concerned with organizational survival. Since groups operate in competition with others, according to environmental ecology theory, the need for organizational survival might mean foregoing efforts to influence the law in order to garner support from other interest groups or institutions. The IBA, for example, has supported Israel's Ministry of Justice in the selection of right-leaning judges in apparent exchange for protection of the IBA's right to self-regulate.<sup>466</sup> The ABA eventually modified its confidentiality rules to align with the Securities and Exchange Commission's efforts to regulate lawyer conduct to maintain its influence in the realm of lawyer regulation.<sup>467</sup>

Yet even where lawyer organizations historically have worked to promote political liberalism, there may be times when they will not do so. Halliday, Karpik and Feeley argue that the "legal complex" mobilizes selectively for legal freedom.<sup>468</sup> They identify two instances where the legal complex will not act despite a history of commitment to political liberalism (observations that seemingly also apply to lawyer organizations). One is when a "singular moment punctuates an otherwise liberal record" or what historical institutionalists call a "critical moment."<sup>469</sup> An example would be when the United States was gripped by fear of Communism in the 1950s and the ABA did little to oppose McCarthyism.<sup>470</sup> A second instance of inaction by the legal complex is

<sup>466</sup> See Hazards Inherent in the Exclusive Jurisdiction of the Legal Profession, *supra* note 257, at 22-25; Yonah Jeremy Bob, *Will Israel Bar Association President Allegations End Shaked's Revolution?*, JERUSALEM POST (Dec. 26, 2018), <https://www.jpost.com/Israel-News/Will-Israel-Bar-Association-president-allegations-end-Shaked-revolution-575500>; Yonah Jeremy Bob, *Shaked, Hayut Battle Over Future of High Court*, JERUSALEM POST (Feb. 21, 2018), <https://www.jpost.com/Israel-News/Shaked-Hayut-battle-over-future-of-High-Court-543206>.

<sup>467</sup> See, e.g., Michael Ariens, "Playing Chicken": *An Instant History of the Battle Over Exceptions to Client Confidences*, 33 J. LEGAL PROF. 239, 279-81 (2009); Roger C. Cramton et al., *Legal and Ethical Duties of Lawyers After Sarbanes-Oxley*, 49 VILL. L. REV. 725, 728-33 (2004).

<sup>468</sup> Halliday, Karpik, and Feeley use the term "legal complex" to mean "the system of relations among legally trained occupations which mobilize on a particular issue." See Halliday et al., *supra* note 86, at 6-7. This may include, for example, lawyers, judges, prosecutors, legal academics, and others depending upon the country and the issue.

<sup>469</sup> *Id.* at 25.

<sup>470</sup> JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 238-39 (1976). In fact, the ABA recommended that lawyers attest to their anti-Communist loyalty by being required to take an anti-Communist oath. *Id.* at 239-40. Not all U.S. bar associations supported McCarthy's investigations. See, e.g., GEORGE MARTIN, *CAUSES AND CONFLICTS: THE*



where an “enduring threat inhibits a legal complex from extending its habitual liberalism to every issue.”<sup>471</sup> This can be seen in the reluctance of the Israeli bar to speak out forcefully on the rights of Palestinians and on national security issues.<sup>472</sup> In that case, the perceived threat to the security of the state allowed government leaders to supersede legal protections.

As the preceding discussion suggests, environmental forces on organizations play a large role in *why* organizations act (or fail to act), suggesting the importance of asking: What is the historical role of lawyer organizations with respect to the state? What is lawyers’ collective understanding of their role? That is, how do lawyers see their role as legal professionals in these countries? Whose interests are they representing—the government’s? The public’s? Their clients’? Their own? Does the public mood provide political space for action or are security threats perceived to be too grave? Lawyer organizations operate in a wider institutional and organizational setting, and this embeddedness affects their actions. Where do allies or opponents of the organization stand on an issue? Are lawyers within the organization acting to push particular causes, or are global lawyer organizations encouraging action?

Even when lawyer organizations lobby on an issue, there may be multiple reasons behind it. That is to say, internal organizational politics also explain group efforts. Lawyer associations are comprised of many members and the activities of the leaders may not reflect the priorities or views of the rank and file. Likewise, committee actions and statements can be at odds with others within the same lawyer organization. In addition, when seeking to influence law, lawyer organizations—like any other political actor—use public interest rhetoric to justify positions that internal deliberations reveal to be based on self-interest.

#### CONCLUSION

This attempt to map the terrain is limited in several respects, including that it focuses mostly on the largest lawyer organizations in seven countries and does not provide a fine-grained account of their internal deliberations. In addition, this study only reviews efforts by lawyer organizations to influence law over the last few decades. The picture might look quite different in ten years. For instance, as Kyrgyz’s new *Advokatura* becomes more established, it may be able to look beyond

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CENTENNIAL HISTORY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 263-64 (1997).

<sup>471</sup> Halliday et al., *supra* note 86, at 25.

<sup>472</sup> *Id.*

advocates' interests to engage in additional lawmaking efforts. This will depend, in part, on internal politics in Kyrgyzstan, and whether advocates' conceptions of their role in society changes from the views prevalent in the Soviet period to those that align with international standards. Likewise, if the political situation in Libya proceeds in a democratic direction, the LBA may be able to act in additional ways to strengthen government institutions and to otherwise influence the law. Alternatively, in the future it may become much more difficult for lawyer organizations to act, with reactionary or authoritarian powers reasserting control as they have recently done in Hungary and Turkey. The internet and international lawyer organizations will no doubt continue to disseminate norms and values, and empower—or limit—lawyer organizations in ways they have not yet imagined.

Further research on these lawyer organizations, other lawyer organizations in the countries (where applicable), and how they operate in their political environment is needed. Case studies of lawyer organizations in additional countries will also help us better understand when and why lawyer organizations act (or do not act) to influence the law. Moreover, the account of lawmaking efforts by lawyer organizations reported here suggests other important questions for research. *How* do lawyer organizations seek to influence law? As lawyers, do they tend toward strategies not typically used by other organizations because of their access to judges and government officials, or do they act like other organizations with respect to lobbying? How does a country's history affect its lawyer organizations vis-à-vis attempts to influence the law? In which countries have the global influences on lawyer organizations been most (and least) pronounced, and why? And the obvious next question: how *successful* are lawyer organizations in their efforts to influence law?

Lawyer organizations operated as guilds centuries ago to protect their livelihoods and increase their power. Describing (and decrying) bar insistence on self-regulation and mandatory membership in the United States, J.A.C. Grant observed, "the guild has returned. Its purposes are the same as in the Middle Ages."<sup>473</sup> Today we still see substantial effort devoted to protecting lawyers' independence, status, and monopoly on legal services. Yet, there are also numerous examples of lawyer organizations acting to defend the courts, improve the administration of justice, and secure access to justice. Significant efforts have also been made by lawyer organizations in some countries to advance human rights

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473 J.A.C. Grant, *The Gild Returns to America*, 4 J. POLITICS 303, 316 (1942).

and improve civil society, though these are less common. Under what circumstances will lawyer organizations act to influence the law beyond the guild's interests? This study begins to answer that question.