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## Globalization of Anglo-American Common Law vs. Strong Nation State: Evidence from the Use of Legal Counsel in Cross-Border Business Transactions Involving China

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# Globalization of Anglo-American Common Law vs. Strong Nation State: Evidence from the Use of Legal Counsel in Cross-Border Business Transactions Involving China

JING LI\*

Large international law firms are an important pillar of globalization.<sup>1</sup> By adopting an entrepreneurial approach, law firms proactively seek to exploit new market opportunities for legal services and develop corporate contacts, and thus can be internationally oriented.<sup>2</sup> In particular, English and American law firms have been the precursor in helping the internationalization process of the businesses with a built-in global dimension.<sup>3</sup> Relative to their code-based civilian counterparts, these law firms were the earlier entrants into global markets, thanks, among other things, to the prevalent use of Anglo-American common law in international business transactions.<sup>4</sup>

Although there is not so much in the literature against the part played by the Anglo-American firms in exporting the common law, especially the U.S. law and capitalism abroad, such enthusiastic account of the diffusion of American legal style<sup>5</sup> has been criticized for examining global change only through the eyes of the exporters but not those of the importers.<sup>6</sup> The reason is that any attempt at cross-border transfer of law will presumably be subjected to a considerable degree of cultural and institutional translation and adaptation by the importers.<sup>7</sup> In addition to this, another long-existing problem with the existing research efforts on global diffusion of law is that

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1. John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOB. LEGAL STUD. 35, 41 (2007).

2. Sigrid Quack, *Recombining National Variety: Internationalisation Strategies of American and European Law Firms*, 5 J. STRATEGY & MGMT. 154, 159 (2012).

3. John Flood, *Institutional Bridging: How Large Law Firms Engage in Globalization*, 54 B.C. L. REV. 1087, 1088 (2013).

4. Martin Shapiro, *The Globalization of Law*, 1 IND. J. GLOB. STUD. 37, 39 (1993); see also Flood, *Lawyers as Sanctifiers*, *supra* note 1, at 41.

5. Shapiro, *supra* note 4, at 39; see also Daniel R. Kelemen & Eric C. Sibbitt, *The Globalization of American Law*, 58 INT'L ORG. 103, 105 (2004).

6. David Levi-Faur, *The Political Economy of Legal Globalization: Juridification, Adversarial Legalism, and Responsive Regulation. A Comment*, 59 INT'L ORG. 451, 457 (2005).

7. Sigrid Quack, *Legal Professionals and Transnational Law-Making: A Case of Distributed Agency*, 14 ORGANIZATION 643, 649 (2007).

they have concentrated on the developed industrial democracies in Europe,<sup>8</sup> such as Germany<sup>9</sup> and Italy,<sup>10</sup> as well as Japan.<sup>11</sup> True, the literature has already drawn remarkable contrast between the state-regulated professions of continental Europe<sup>12</sup> and the privately regulated professions of the Anglo-American world.<sup>13</sup> But not every country can be classified into such a bipolar system. Given the rapid growth of China's global influence as a new superpower in recent years, political economists start to reflect on the so-called Chinese model of capitalism, which is hard to find its place in either the liberal market economy or the coordinated market economy camp.<sup>14</sup> Such difficulty is embodied in a framework of important observations. Among other things, China witnesses a tense, and often contradictory, coexistence of an export-oriented capitalism with the authoritarian rule of a party-state, and of the resilient state control across key sectors of the economy with the "liberalized foreign investments and transnational engagements enabled by the open-door policy."<sup>15</sup> As such, China should form a triangular relationship with the varieties of capitalism dichotomy, rather than be awkwardly forced into it.<sup>16</sup>

This then brings up an interesting issue: the literature on transnational lawmaking so far seems "to converge on an implicit assumption that the development of transnational law is strongly shaped by American and British law traditions when government is weak or absent."<sup>17</sup> Such an assumption, however, apparently does not hold true for China. In particular, while the Chinese government assumes a key role in shaping the trajectories of professionalization, its relationship with the legal profession involves more

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8. See generally Shapiro, *supra* note 4; See generally Kelemen & Sibbitt, *supra* note 5.

9. See Glenn Morgan & Sigrid Quack, *Institutional Legacies and Firm Dynamics: The Growth and Internationalization of UK and German Law Firms*, 26 ORG. STUD. 1765 (2005); See Quack, *Recombining National Variety*, *supra* note 2.

10. See Daniel Muzio Daniel & James R. Faulconbridge, *The Global Professional Service Firm: One Firm? Models versus Italian Distant Institutionalised Practices*, 34 ORG. STUD. 897 (2013); See James R. Faulconbridge & Daniel Muzio, *Global Professional Service Firms and the Challenge of Institutional Complexity: 'Field Relocation' as a Response Strategy*, 53 J. MGMT. STUD. 8 (2016).

11. See Kelemen & Sibbitt, *supra* note 5, at 108.

12. See MICHAEL BURRAGE & ROLF TORSTENDAHIL, *PROFESSIONS IN THEORY AND HISTORY: RETHINKING THE STUDY OF THE PROFESSIONS* (Sage Publications 1990); ROLF TORSTENDAHIL & MICHAEL BURRAGE, *THE FORMATION OF PROFESSIONS: KNOWLEDGE, STATE AND STRATEGY* (Sage Publications 1990).

13. ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* (Chicago: University of Chicago Press 1988); RICHARD L. ABEL, *THE LEGAL PROFESSION IN ENGLAND AND WALES* (New York: Blackwell 1988).

14. PETER A. HALL & DAVID SOSKICE, *VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE* (Oxford: Oxford University Press, 2001).

15. Jun Zhang & Jamie Peck, *Variiegated Capitalism, Chinese Style: Regional Models, Multi-scalar Constructions*, 50 REG'L STUD. 52, 60 (2016).

16. See Jamie Peck & Jun Zhang, *A Variety of Capitalism. . . With Chinese Characteristics?*, 13 J. ECON. GEOGRAPHY 357, 362 (2013); See also Zhang & Peck, *Variiegated Capitalism, Chinese Style*, *supra* note 15, at 52.

17. Quack, *Legal Professionals and Transnational Law-Making*, *supra* note 7, at 648.

than a universal form of compromise. Relative to the laissez-faire history of the legal profession in the Anglo-American world, which is organized in a rather uniform manner, the legal profession of China shows deep political embeddedness in the state bureaucracy, which is a result of both its unique historical development path and institutional context.<sup>18</sup> As such, what will happen when the globalization of Anglo-American common law meets with the strong Chinese nation state? Will common law and large Anglo-American law firms be able to repeat their victories elsewhere and “Americanize” the Chinese commercial law practices? Alternatively, given China’s emergence as an important “norm-maker” and “norm-shaker,” will its behemoth State-owned Enterprises (SOEs), enforcing the nation’s neo-mercantilist approach in their global strategies,<sup>19</sup> be more inclined to retain Chinese law firms in engineering their cross-border transactions, and thus export Chinese law?

Despite that these questions are highly relevant to the end of understanding the dynamics in global governance of business transactions, they are in general still very much under-researched, let alone being examined and answered empirically. This article aims to shed light on this issue by looking at the choices of legal counsel in cross-border business transactions involving China. The weight of China in the global economy not only makes this study important on a global basis, but also directly enables a rich set of observations to start with. I use the data from *Zephyr*,<sup>20</sup> an international data provider specializing in business deals information. The object of study is 1,393 cross-border transactions dated<sup>21</sup> from January 1, 2010 to December 31, 2018 where a Chinese business firm is a party, and where at least one legal counsel (law firm) is identifiable. Overall, it is found that large Anglo-American law firms very much still dominate the international business law market, which is evidenced not only by the number of representations attributable to them, but also by the variety of countries of their clients.<sup>22</sup> In this light, this article offers evidence that none of the importance of contracts and private ordering in international business transactions, the sovereign of common law, the existing experience advantage, and the universality of the English language is easy to shake given the force of path dependency. In the meantime, it is also true to argue that Chinese law firms are indeed catching up. Although they are not yet able to compete with their powerful counterparts from the United States or United Kingdom, the market has already started tilting to their side. This is

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18. Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China’s Transition from Socialism*, 113 AM. J. SOC. 352, 365 (2007); See also Sida Liu, *Lawyers, State Officials and Significant Others: Symbiotic Exchange in the Chinese Legal Services Market*, 206 CHINA Q. 276, 281–85 (2011).

19. See Ronald J. Gilson, & Curtis J. Milhaupt, *Sovereign Wealth Funds and Corporate Governance: A Minimalist Response to the New Mercantilism*, 60 STAN. L. REV. 1345, 1346 (2008).

20. *Zephyr*, BUREAU VAN DIJK, <https://www.bvdinfo.com/en-gb/our-products/data/economic-and-ma/zephyr> (last visited July 17, 2020).

21. Including date of announcement and (assumed) completion.

22. See *infra* Sections III.A & III.C.

particularly evidenced by the high proportion of lower-tiered law firms in advising inbound cross-border investments into China.<sup>23</sup> As a group, Chinese SOEs did not seem to be more inclined towards hiring Chinese law firms; in contrast, they were advised by Anglo-American legal counsel even more often than ordinary Chinese clients.<sup>24</sup> Having admitted the integral benefits of using U.S. and U.K. legal counsel in the international business setting, such concession of Chinese SOEs to the dominance of Anglo-American common law may also be caused by the counterparty's reluctance to be bound by Chinese law and judicial institutions, where the state has already a deeply embedded role. In this light, countries hosting investments from Chinese SOEs may not need to be over alarmed about the looming state power, which is somehow checked by the SOEs' engagement and interaction with their deal counsel when entering these countries.

This article is organized as follows. Section I reviews the relevant literature. Section II explains the methods of approaching the data. Section III presents and analyzes the data, and Section IV discusses the findings and important implications. The last Section concludes.

## I. Literature Review

### A. THE GLOBALIZATION OF COMMERCIAL LAW THROUGH LARGE INTERNATIONAL LAW FIRMS AND THE ROLE OF THE STATE

Given the globalization of markets and organizations, as well as the cross-border business activities of the multinational corporations, state and supranational lawmaking have nevertheless not been able to keep pace with the rapid developments in the globalization of law.<sup>25</sup> As a result, states' legal systems are no longer a sufficient condition for transnational business and enterprises. In the opinion of John Flood, this is an important reason explaining the rise of large international law firms.<sup>26</sup> By helping their clients with managing uncertainty in cross-border transactions and stabilizing expectations, these law firms have been able to create a set of "typified solutions" that function autonomously.<sup>27</sup> In particular, offering such typified solutions need creative lawyering to facilitate their progress and deal with the regulatory obstacles that were put in their way. More generally, previous research has pointed out several ways in which business lawyers could add value to their clients,<sup>28</sup> such as transaction cost engineering by creating

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23. See *infra* Section III.B.

24. See *infra* Section III.C.

25. Flood, *supra* note 1, at 38.

26. *Id.*

27. *Id.* at 37, 57; John Flood & Fabian Sosa, *Lawyers, Law Firms, and the Stabilization of Transnational Business*, 28 NW. J. INT'L L. & BUS. 489, 490–91 (2008).

28. See Praveen Kosuri, *Beyond Gilson, The Art of Business Lawyering*, 19 LEWIS & CLARK L. REV. 463, 480–81 (2015).

structures that minimize (regulatory) inefficiencies,<sup>29</sup> acting as reputational intermediaries to reduce information asymmetries,<sup>30</sup> and reducing regulatory costs.<sup>31</sup> The upshot is that clients expect their law firm to provide them with a full menu of legal services, and U.S. law firms are structured to provide this range.<sup>32</sup>

In addition to the abovementioned factors, the rise of large international law firms, especially those from the Anglo-American legal systems, owes special thanks to the fact that contracts have become a kind of private lawmaking system in the “movement toward a relatively uniform global contract and commercial law.”<sup>33</sup> Advantages of common law is that the contract creates a system of private ordering where lawyers can create their own legal structures.<sup>34</sup> In this way, the state is symbolically invoked but is obscured in regard to actual conduct.<sup>35</sup> In contrast, the civil law systems are known for their well-developed legal structures at the level of the nation states, meaning that lawyers largely have to maneuver themselves through these existing frameworks. This leads to an increase in the importance of lawyers in comparison to civilian legal systems.<sup>36</sup> As a result, the pragmatism of common law and Anglo-American jurisprudence, as well as the receptivity of common law to contract and commercial innovation, have also contributed to the successful colonization of Anglo-American law firms in the world of global law.<sup>37</sup>

An important question is how such dominant influences of common law become interwoven with influences from multiple other legal traditions. Previous research has examined this question through different angles. In their comparative study of the growth and internationalization of big English and German law firms, Morgan & Quack (2005) find that despite the distinctive institutional legacies between them, entrepreneurial and commercial orientations, and international reach, which are particularly persistent among business law firms, have emerged as a strong force to modify the historical paths.<sup>38</sup> Quack (2007) focuses on transnational lawmaking and submits that “in the face of weak or ‘loose’ government at the international level, the development of transnational legal norms often follows a pattern of dispersed rule setting.”<sup>39</sup> Led by legal practitioners in

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29. See Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 *YALE L. J.* 239, 243–44, 302 (1984).

30. See Karl S. Okamoto, *Reputation and the Value of Lawyers*, 74 *OR. L. REV.* 15, 4–5 (1995); See also Larry E. Ribstein, *The Death of Big Law*, 3 *WIS. L. REV.* 749, 753 (2010).

31. Steven L. Schwarcz, *Explaining the Value of Transactional Lawyering*, 12 *STAN. J. L., BUS. & FIN.* 486, 486 (2007).

32. Flood, *supra* note 1, at 51.

33. Shapiro, *supra* note 4, at 38.

34. *Id.* at 38–39.

35. See generally *id.* note 4.

36. Flood & Sosa, *supra* note 27, at 494.

37. See Shapiro, *supra* note 4, at 38.

38. Morgan & Quack, *supra* note 9, at 1780.

39. Quack, *Legal Professionals and Transnational Law-Making*, *supra* note 7, at 644.

large law firms and an internationalized legal profession, this process is eclectically combined with common law traditions and also under the influence of other national heritages depending on their specific appropriateness or expertise.<sup>40</sup> In contrast, Sako (2015) focuses on the strategic decisions of outsourcing and offshoring of professional services to reconfigure their organizational activities and found that both strategies have changed the structures of the professional service industry and the capabilities of professional service firms (PSFs).<sup>41</sup> What remains unanswered, is whether or not offshoring, i.e., internationalizing into overseas markets, either through the back office or direct service provision to clients, would challenge the dominance of the Anglo-American pattern of professionalization along with globalization, and would the globalization of law firms lead to more dispersed nationalities amongst the top PSFs.<sup>42</sup>

Among the possible local forces, an important one is a part played by the state in the interaction and competition with the globalizing common law and Anglo-American law firms. Following the reasoning of Flood (2007), the stabilizing expectations created by law firms can be especially valuable when the state is weak because they help supplement the state in providing solutions or support structures.<sup>43</sup> According to Kelemen & Sibbitt (2004), fragmentation of political power is one of the key reasons explaining the globalization of the American legal style.<sup>44</sup> In their logic, the increasing fragmentation will make assembling the political coalitions necessary to rein in the bureaucracy more difficult, thus rendering the (American) adversarial and litigious approach more attractive to the end of implementing and enforcing of regulatory policy.<sup>45</sup> While these arguments do make sense endogenously, the prerequisite on which they are based, however, is not necessarily accurate everywhere. Thus, what will happen when the government is a rather very strong one, like that of China? Will law firms feel obliged to adapt their way of advising clients to maintain a good relationship with the government and to woo the gigantic SOEs and gain business from them?

## B. CLIENTS' CHOICE OF LEGAL COUNSEL AND POTENTIAL INFLUENCE ON LAWYERS' WORK

Despite the recent buzz in the media that the Chinese government may cast indirect influence and control through the overseas investments of Chinese businesses, empirical evidence in this regard is still lacking in general. Existing research has generated mixed findings. The term client

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40. See *id.* at 644-45.

41. See generally Mari Sako, *Outsourcing and Offshoring in Professional Services*, in OXFORD HANDBOOK OF PROFESSIONAL SERVICE FIRMS 327 (Laura Empson, et al. eds., 2015).

42. *Id.*

43. Flood, *supra* note 1, at 57.

44. Kelemen & Sibbitt, *supra* note 5, at 104.

45. *Id.* at 110.

capture is coined to refer to the degrees that clients can control or influence the process of production of a professional service, including its costs, timing, and delivery.<sup>46</sup> In their study, Hitt et al. (2006) find that two types of clients are especially important for international expansion by professional service firms: large corporations and foreign governments.<sup>47</sup> In particular, representing a government client effectively demands a law firm to make client-specific investments to learn the government's needs and idiosyncratic characteristics (e.g., culture and home legal system).<sup>48</sup> By doing so, the law firm will be able to develop generalizable knowledge for dealing with different regulatory and cultural environments, thus enriching its relational capital.<sup>49</sup> This is similar to the findings of Li (2017) in a study about the outbound investments of China Investment Corporation (CIC), China's sovereign wealth fund.<sup>50</sup> It is shown that, although CIC acclaims itself being a passive financial investor, it tends to own a minority but significant equity stake in its overseas portfolio companies.<sup>51</sup> This may arguably leave room for potential indirect control, in a sense that companies may want to maintain a relationship with the government investment fund in China as a stake for gambling for future gains in the Chinese market and regulatory favorable treatment.<sup>52</sup>

More specifically, Liu (2006) finds that Chinese elite corporate lawyers display distinct behaviors when dealing with the three types of clients, namely, SOEs, foreign companies, and private firms.<sup>53</sup> Given their divergent cultural and political backgrounds, these clients constitute a rather heterogeneous environment for the corporate legal services providers in China.<sup>54</sup> Among them, managers from SOEs are particularly likely to influence or even direct the work of lawyers because of their powerful government connections, whereas the private enterprise representatives are more modest and defer to the lawyers' opinions in most situations.<sup>55</sup> After all, the state ownership and control typically means that SOEs, in contrast to "normal" business firms, do carry political and social objectives in addition

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46. KEVIN LEICHT & MARY LOUISE FENNELL, *PROFESSIONAL WORK: A SOCIOLOGICAL APPROACH* 105-06 (Malden: Blackwell 2001); see also RONIT DINOVTITZER, ET AL., *Professional Ethics: Origins, Applications, and Developments*, in OXFORD HANDBOOK OF PROFESSIONAL SERVICE FIRMS 113-34 (Laura Empson, et al. eds., 2015).

47. Michael A Hitt, et al., *The Importance of Resources in the Internationalization of Professional Service Firms: The Good, the Bad, and the Ugly*, 49 ACAD. MGMT. J. 1137, 1141 (2006).

48. *Id.*

49. *Id.*

50. See Jing Li, *Investment Terms and Level of Control of China's Sovereign Wealth Fund in Its Portfolio Firms*, in OXFORD HANDBOOK SOVEREIGN WEALTH FUNDS 367-432 (Douglas J. Cumming, et al. eds., 2017).

51. *Id.*

52. *Id.*

53. Sida Liu, *Client Influence and the Contingency of Professionalism: The Work of Elite Corporate Lawyers in China*, 40 L. & SOC'Y REV. 751, 752 (2006).

54. *Id.* at 763.

55. *Id.* at 762.



to economic ones,<sup>56</sup> and thus need to balance both commercial and non-commercial purposes.<sup>57</sup>

Above being said, it is worth noting that the findings of Liu (2006) are generated from the interviews of Chinese corporate law firms.<sup>58</sup> One may question whether SOEs are still able to influence the work of legal professionals in outbound business transactions to the same extent as in their home country. Such doubt is based on sound reasons because it is still unclear (a) whether these SOEs may select Chinese law firms to advice their transactions in the first place; and (b) whether they are able to do so to the same magnitude when they hire foreign law firms. Based on the insights of Li & Zhang (2019), who made the first effort to probe into SOEs' demand for legal services and interaction with legal professionals in the United States, the answer seems negative.<sup>59</sup> They find that, due to the centralized bureaucratic control, heightened institutional pressure, and the acute agency problem, Chinese SOEs pay particular attention to legal fees, lawyers' governmental backgrounds, and recommendations from headquarters when they select their lawyers in the United States.<sup>60</sup> Contrary to Liu (2006), who finds that Chinese clients tend to undervalue high-quality legal services,<sup>61</sup> the evidence of Li & Zhang (2019) rather highlights an image of outbound Chinese SOEs being rational foreign investors adapting to multiple institutions, including the host country's legal environment.<sup>62</sup>

Due to the nature of their data (survey results), the strength of Li & Zhang (2019) lies in the in-depth analysis of the inter-company variations among Chinese clients investing in the United States.<sup>63</sup> As such, although their findings are certainly very illustrative, they are based on U.S. data and confined to Chinese companies looking for U.S. lawyers.<sup>64</sup> True, the United States and China are the world's biggest two economies, and there are heavy cross-border trades and investments between them.<sup>65</sup> In this sense, a case study covering them is arguably already more demonstrative than a study about any other country in the world. This said, the authors also admit themselves that the United States and China see very wide political, institutional, and legal differences between them. Given that they are both

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56. Feng Liu & Linlin Zhang, *Executive Turnover in China's State-Owned Enterprises: Government-Oriented or Market-Oriented?*, 11 CHINA J. ACCT. RSCH. 129, 130 (2018); See also Justin Yifu Lin, et al., *Competition, Policy Burdens, and State-Owned Enterprise Reform*, 88 AM. ECON. REV. 422, 422 (1998).

57. Hans Christiansen, *Balancing Commercial and Non-Commercial Priorities of State-Owned Enterprises* 8 (OECD Corporate Governance, Working Paper No. 6, 2013).

58. Liu, *Client Influence and the Contingency of Professionalism*, *supra* note 53, at 751.

59. Ji Li & Wei Zhang, *What Do Chinese Clients Want?*, 15 UNIV. PA. ASIAN L. REV. 86, 130 (2019).

60. *Id.* at 96, 120–21.

61. Liu, *Client Influence and the Contingency of Professionalism*, *supra* note 53, at 763.

62. Li & Zhang, *supra* note 59, at 124.

63. *Id.* at 88.

64. *Id.* at 98.

65. *Id.* at 86.

superpowers, and that they are even caught in the crossfire of the trade war, there are reasons to assume that the U.S. government and regulatory authorities are likely to impose even stricter, if not hostile, scrutiny particularly upon investments coming from China.<sup>66</sup> Along this line, one may doubt the findings of the United States will remain the same if expanded to other parts of the world, because Chinese SOEs may have acted extra rationally and prudently in order to navigate themselves in the United States<sup>67</sup>, which is essentially the leader of the “adversarial camp.” In contrast, this article uses a much larger dataset covering the entire globe, based on which it focuses upon the interaction and competition between the force of common law as diffused through the Anglo-American law firms, and state power as exercised by Chinese companies in engaging their legal counsel. Therefore, it not only expands the research of Li & Zhang (2019), but also examines important questions that are beyond their scope.

## II. Method and Sample Overview

In terms of methods, existing studies on the topic of globalization of commercial law have shown drawbacks primarily in two aspects. In the direction of exportation, the influence of common law and Anglo-American law firms in the global markets is usually measured by the (increasing) numbers of their overseas offices and the lawyers therein.<sup>68</sup> In reality, however, much legal work is often not only done through international offices but also require significant support from the offices in the home markets of these law firms.<sup>69</sup> Furthermore, focusing only on overseas offices may miss important but less organic and prominent internationalization efforts, which are nonetheless often downplayed as a strategic response from law firms to the mixed pressures of rankings, prestige, and pragmatism.<sup>70</sup> In other words, having foreign offices or not alone is neither a complete nor a very accurate benchmark of the cross-border influence of law firms.

In the direction of importation, the interaction with and the adaption by local institutional forces are examined from two angles. On the one hand, researchers have focused on the staffing of law firms’ overseas offices. Beaverstock (2004)<sup>71</sup> identifies that London-based transnational law firms use a combination of expatriated lawyers and locally qualified staff in their overseas offices, while the demarcation between the expatriates and locals

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66. *Id.* at 87.

67. *Id.* at 120.

68. Kelemen & Sibbitt, *supra* note 5, at 113.

69. *Id.* at 114.

70. See Jing Li, *All Roads Lead to Rome: Internationalization Strategies of Chinese Law Firms*, 6 J. PROS. & ORG. 156, 156–78 (2019); Carole Silver, *Global Rankings of Global Firms and the Distance between Formality and Reality*, JOTWELL 1, 2 (Oct. 24, 2019), <https://legalpro.jotwell.com/global-rankings-of-global-firms-and-the-distance-between-formality-and-reality/>.

71. See Johnathan Beaverstock, *Managing Across Borders: Knowledge Management and Expatriation in Professional Service Legal Firms*, 4 J. ECON. GEOGRAPHY 157, 157–79 (2004).

shows different patterns in Asian vs. European and North American offices.<sup>72</sup> Alternatively, scholars have also used data on the bar admissions and law degrees of the lawyers to posit the rise of a “glocal” approach in replacement of the pure diffusion of U.S. legal style.<sup>73</sup> The problem with these approaches is that while local legal education and qualifications are crucial factors of localization, they are only one of the many aspects of the local institutional contexts. Moreover, given that local law firms can and do also hire talents that have overseas education especially from the common law countries, they also actively engage in competition with the U.S. and U.K. law firms.<sup>74</sup> While we can infer from these phenomena that the common law is spreading across borders, the mere knowledge of the proportion of U.S./U.K. lawyers vs. local lawyers alone still does not tell us how exactly U.S. and U.K. legal style competes with local legal counsel for clients. On the other hand, scholars in recent years have strived to acquire a more insightful understanding of the combined effect of local institutions.<sup>75</sup> To that end, more specific and detailed studies are conducted to supplement archival data, typically through interviewing lawyers and other key stakeholders in the legal profession, to reveal the dynamic issues and challenges that local regulations, norms, and cultural frameworks may bring to foreign law firms who try to affect the reproduction of home country practices.<sup>76</sup> The depth and richness of such an approach, however, does come at a cost of sacrificed width and comprehensiveness, thus somehow falls anecdotal.

Having discussed the strengths and weaknesses of the methods used by existing research, this article endeavors to take a more direct approach by focusing on a particular case of China, from the perspective of how business firms select their legal counsel in cross-border transactions. After all, a foreign law firm needs to be first retained and used by clients in advising business transactions to start with influencing local business law practices and potentially even transferring law across borders. Such transactions go both ways thanks to China’s global position as a gigantic inward investment recipient and an outward investor at the same time. As such, two datasets are formed for this article from the database Zephyr. For both samples, I collect all mergers, acquisitions, and joint venture transactions that have been announced and/or completed within the time window of January 1, 2010, to December 31, 2018. One dataset composes of all cross-border transactions where a Chinese firm is the “acquirer” (Outbound Dataset) and (at least one of) the target firm(s) is located in a foreign country. The other

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72. *Id.* at 173.

73. See, e.g., Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 *IND. J. GLOB. LEGAL STUD.* 67, 67–90 (2007); Carole Silver, et al., *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Global*, 22 *GEO. J. LEGAL ETHICS* 1431, 1431–71 (2009); see also Quack, *Recombining National Variety*, *supra* note 2, at 154–74.

74. See generally Silver, et al., *supra* note 73, at 1448–53.

75. See Muzio & Faulconbridge, *supra* note 10.

76. *Id.* at 897.

dataset looks at the reversed direction, which consists of cross-border transactions where a Chinese firm is the “target” (Inbound Dataset), while (at least one of) the acquirer(s) is from a foreign country. A transaction is recorded to the extent that at least one identifiable legal counsel (law firm) has advised a party thereto, be it the target, the acquirer, and/or the vendor. Following these rules, a total of 1,393 transactions are collected, within which 681 are in the Inbound Dataset, and 712 in the Outbound Dataset. An overview of the data is presented in Table 1 below.

**Table 1: Overview of Cross-Border Transactions with Chinese Firm as a Party and Information of Legal Counsel Identifiable (2010-2018)**

	Outbound Dataset	Inbound Dataset
Total Number of Transactions	712	681
Number of Transactions with Information on Acquirer Counsel	515	451
Number of Transactions with Information on Target Counsel	239	223
Number of Transactions with Information on Vendor Counsel	194	87
Total Number of Company Countries	74	62
Total Number of Legal Counsel Countries	40	23
Top 5 Countries of the Targets in the Outbound Dataset:	United States (15.8%), Cayman Islands (10%), China (9.3%), <sup>77</sup> Hong Kong (9.3%), and Germany (6.4%)	
Top 5 Countries of the Acquirers in the Inbound Dataset:	China (35.1%), <sup>78</sup> United States (14.4%), Hong Kong (14.0%), Cayman Islands (9.5%), and Singapore (3.7%)	

There are several issues with the data in Zephyr. Firstly, the data there capture only the records of legal counsel in cross-border transactions, and not the choices of law firms as a client’s long-term outside corporate counsel. As such, the data discussed here, which are collected from Zephyr,

77. This is because there are situations where the foreign target has subsidiaries in China, and the Chinese buyer is buying out both the foreign target and its Chinese operations.

78. This is because there are situations where a group of acquirers, consisting of both Chinese and foreign buyers, form a consortium to acquire a Chinese target firm.

also do not touch the issues of long-term legal counsel choices, which is beyond the scope of this article. Secondly, while Zephyr's data do provide which client hires which counsel in a transaction, they do not tell what role the counsel exactly plays in a transaction, such as deal counsel (leading and engineering the entire transaction) versus local counsel (providing an ancillary role regarding the local law of a jurisdiction involved in the transaction). Finally, the country of a client is recorded in Zephyr as the jurisdiction of registration, and the client is recorded as the immediate party that is involved in the transaction. As a result, it is often a group company or even special purpose vehicle that is registered as a party to a particular transaction, and it is not always directly visible who is actually behind the transaction. This may carry two-folded implications. On the one hand, this may result in an imprecise picture of the distribution of client countries in the sample because of, for example, *de facto* domestic transactions being recorded as cross-border transactions. A Chinese company may have an overseas holding company for many practical reasons but is still a Chinese company as its main operations are located in China. Most typically, this is seen among the Chinese Internet companies, which usually have one or more overseas holding companies in tax havens like the Cayman Islands for convenience purposes such as and tax planning, circumventing restrictive sectoral foreign investment regulations, and also attracting foreign venture capital investors.<sup>79</sup> On the other hand, despite the domestic nature, these transactions are indeed structured cross-borders technically and involve advising laws about different jurisdictions. As such, it is arguably more reasonable to keep them as they are, instead of trying to correct them, which will surely lead to potential misses and errors.

### III. Key Findings

#### A. THE DOMINANCE OF ANGLO-AMERICAN LAW FIRMS

I first want to show the distribution of the countries of the law firms acting as legal counsel, and see which ones dominate the market. A client may hire the same law firm in different transactions. A law firm may also serve more than one client in one transaction, for example by representing a consortium or related group companies as a whole. In both of these cases, I count each such representations as a separate entry. Following these rules, and combining the representations of targets, acquirers, and vendors altogether, the Outbound Dataset consists of a total of 1,294 different representations and the Inbound Database of 885. The findings are presented in Table 2. Apparently, for both the inbound and outbound markets, U.S. and U.K. law firms, and more broadly, law firms from common law jurisdictions still dominate; the only exception are the Chinese

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79. See Jing Li, *Venture Capital Investments in China: The Use of Offshore Financing Structures and Corporate Relocations*, 1 MICH. J. PRIV. EQUITY & VENTURE CAP. L. 1, 1 (2012).

law firms themselves, having heavy connection with China, the object of the study.

**Table 2: Top 5 Countries of Law Firms and Clients in Cross-Border Transactions in and out of China**

Outbound Dataset				Inbound Dataset				
	Counsel Country	Percent	Client Country	Percent	Counsel Country	Percent	Client Country	Percent
1	U.S.	43.5%	China	50.2%	U.S.	51.8%	China	34.7%
2	Gr. Brit.	19.1%	U.S.	12.6%	China	22.4%	U.S.	16.0%
3	China	10.0%	Cayman Is.	5.8%	Gr. Brit.	14.2%	H.K.	9.9%
4	Aus.	4.5%	Gr. Brit.	4.0%	H.K.	2.1%	Cayman Is.	9.2%
5	H.K.	3.9%	Aus.	3.0%	Aus.	1.8%	Japan	4.3%
	Total Top Five	81.0%	Total Top Five	75.5%	Total Top Five	92.3%	Total Top Five	74.1%
	Total Number of Representations	1,294	Total Number of Representations*	1,213	Total Number of Representations	885	Total Number of Representations*	877

\* Zephyr does not specify information about the countries of every client. This is the case, for example, for some individual and family clients, some special purpose vehicles, as well as non-specific clients such as “management,” “shareholders,” etc. As such, I do not count the countries of individual and family clients at all, and the total numbers of representations here only record those where the country of the client is specified.

Table 3 goes on to present the most active clients and law firms in both datasets. Along this rank, the first Chinese law firm on the list is Grandall Law Firm for both datasets. It served twelve different clients in fifteen different transactions in the Inbound Dataset, ranking at the fifteenth; and fifteen clients in nineteen transactions in the Outbound dataset, ranking at the sixteenth (thus is not presented in Table 3).

**Table 3: Top Ten Most Active Law Firms in Cross-Border Transactions in and out of China**

	Outbound Dataset				Inbound Dataset			
	Name	Country	Number of Different Transactions Served*	Number of Different Clients Served**	Name	Country	Number of Different Transactions Served*	Number of Different Clients Served**
1	Skadden Arps Slate Meagher & Flom	U.S.	50	43	O'Melveny & Myers LLP	U.S.	45	38
2	King & Wood Mallesons	H.K.	44	37	DLA Piper	U.S.	41	37
3	O'Melveny & Myers LLP	U.S.	43	44	Jones Day	U.S.	39	41
4	Simpson Thacher & Bartlett LLP	U.S.	37	28	Skadden Arps Slate Meagher & Flom	U.S.	39	34
5	Jones Day	U.S.	35	33	Clifford Chance	Gr. Brit.	34	30
6	Freshfields Bruckhaus Deringer	Gr. Brit.	30	31	Paul Weiss Rifkind Wharton & Garrison LLP	U.S.	34	14
7	DLA Piper	U.S.	30	27	Simpson Thacher & Bartlett LLP	U.S.	31	25
8	Latham & Watkins LLP	U.S.	28	26	Freshfields Bruckhaus Deringer	Gr. Brit.	27	27
9	Allen & Overy	Gr. Brit.	26	26	Davis Polk & Wardwell LLP	U.S.	25	19
10	Clifford Chance	Gr. Brit.	25	28	Allen & Overy	Gr. Brit.	23	24

\* The numbers are not corrected for related transactions – thus they may include transactions that are different but related to each other.

\*\* Different group companies of a client are considered the same client.

## B. THE RISE OF CHINESE LAW FIRMS

This Section looks particularly into the use of Chinese law firms. For the transactions in the Inbound Dataset, the reason for hiring Chinese law firms is obvious: clients need advice on Chinese law. While foreign law firms can hire Chinese lawyers to match up the law part, competitive advantages of Chinese law firms arguably go beyond just legal expertise. Compared to their foreign counterparts, Chinese law firms stand out in terms of their

experience and knowhow on dealing with China's governmental and regulatory authorities, as well as their culture savviness. After all, in China's business environment, the law is often secondary to power and connections.<sup>80</sup> Such tacit knowledge can be very hard for a foreign law firm to replicate.<sup>81</sup> In the meantime, Chinese law firms have been able to acquire and sharpen their expertise on foreign-related legal work, not only through years of cooperating and learning from foreign law firms,<sup>82</sup> but also through hiring talents with international legal education experience, mostly from the United States and the United Kingdom.<sup>83</sup> Moreover, Chinese law firms are typically known for charging lower fees, although the rates have been rapidly rising in the recent years.<sup>84</sup> It is based on these factors that Li & Liu (2012) argue that the balance of power in the Chinese corporate legal market is already shifting towards the increasing dominance of elite, big Chinese law firms.<sup>85</sup>

For outbound investments, the need for Chinese law expertise will be much less compelling. Technically, Chinese law firms are most likely to be hired out of the necessity of having a local law counsel to deal with the relevant Chinese law issues. But can they also be of any relevance in situations beyond this? Arguably, this question can be motivated by the "homophily principle," which means that similarity breeds and structures personal networks and social connections, and contact between similar people occurs at a higher rate than among dissimilar people.<sup>86</sup> This also holds true for the formation of client-attorney relationship. For example, it is observed that law firms take the effort to create some resemblance with their clients because clients prefer dealing with law firms where the lawyers have similar profiles.<sup>87</sup> On a more general note, in analyzing the legal profession's historical development, Hanlon (2004) points out that the similarities between clients and lawyers help to build reputational capital, firm status and trust.<sup>88</sup> In this light, a Chinese law firm may still appear attractive to a Chinese client, because of the same background that they share with each other. Such same background may mean, from a micro

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80. Li & Zhang, *supra* note 59, at 88.

81. Li, *All Roads Lead to Rome*, *supra* note 70.

82. Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 L. & SOC'Y REV. 771, 779 (2008); see also Liu, *Client Influence and the Contingency of Professionalism*, *supra* note 53, at 759.

83. Xueyao Li & Sida Liu, *The Learning Process of Globalization: How Chinese Law Firms Survived the Financial Crisis*, 80 FORDHAM L. REV. 2847, 2855 (2012).

84. *Id.* See also Sida Liu et al., *Mapping the Ecology of China's Corporate Legal Sector: Globalization and Its Impact on Lawyers and Society*, 3 ASIAN J. L. & SOC'Y 273, 282 (2016).

85. Li & Liu, *supra* note 83.

86. Miller McPherson, et al., *Birds of a Feather: Homophily in Social Networks*, 27 ANN. REV. SOCIO. 475 (2001).

87. Louise Ashley & Laura Empson, *Differentiation and Discrimination: Understanding Social Class and Social Exclusion in Leading Law Firms*, 66 HUM. REL. 219, 221 (2013).

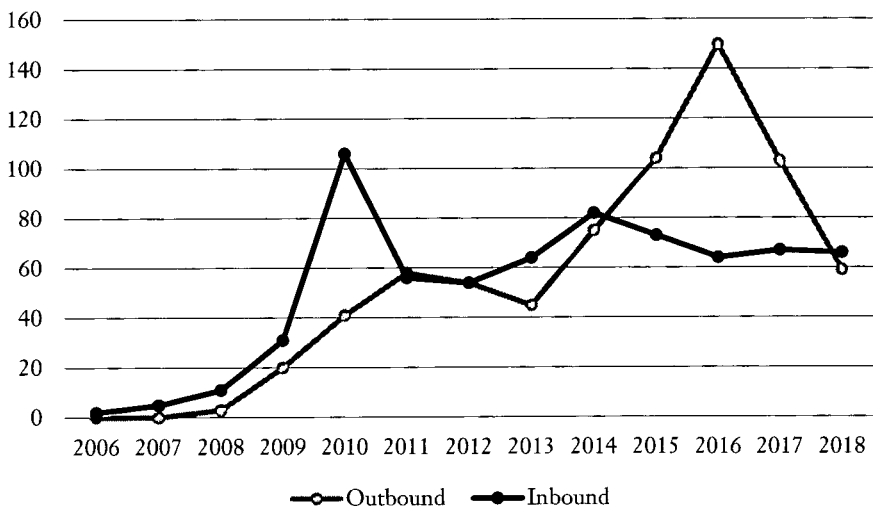
88. Gerald Hanlon, *Institutional Forms and Organizational Structures: Homology, Trust and Reputational Capital in Professional Service Firms*, 11 ORGANIZATION 187, 197 (2004).



perspective, that the lawyers there speak the Chinese language, which may be not only preferable but also necessary to some managers in multinational Chinese companies.<sup>89</sup> More broadly, hiring a Chinese law firm may also imply that for certain issues that are particular to the Chinese political, institutional, or cultural context, the legal counsel may be more able to feel, understand, and entertain the needs of a Chinese clients. For the same reason, a Chinese client may also prefer a lawyer team with ethnic Chinese lawyers, who may or may not be admitted to practice Chinese law.

Figures 1 shows the number of transactions in each of the years in both the Inbound Dataset and Outbound Dataset, counted based on the years of announcement. I further calculate the percentage of Chinese law firms being employed (regardless as counsel for target, acquirer, or vendor) vs. all the law firms in the complete database and plot them in Figure 2. It is obvious that overall, Chinese law firms turn out to have a bigger market share in serving clients in those cross-border investments heading into China. Comparatively, they appear less competitive in advising outbound investment transactions. Similar to Tables 2 and 3, these two figures show that market shares of Chinese law firms are not comparable with large Anglo-American law firms, which are the undoubted leaders in advising both inbound and outbound transactions.

**Figure 1: Transaction Years, Two Datasets Compared**



89. Li & Zhang, *supra* note 59.

**Figure 2: Percentage of Chinese Law Firms vs. All Law Firms, Two Databases Compared**

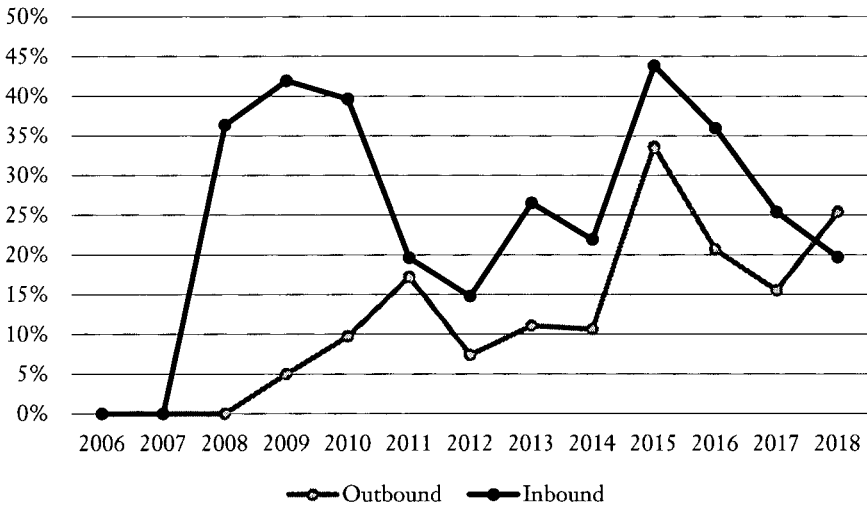


Table 4 compares two related but different situations: namely, the breakdown of the top five countries of the legal counsel hired by Chinese clients, versus the top five sources of Chinese law firms' clients. Impressively, the discrepancy between the two is quite large in the Outbound Dataset, while it becomes much smaller in the Inbound Dataset, yet the mismatch is still there. Put simply, Chinese law firms significantly rely on Chinese clients for their business, while it is much less so when the situation is reversed. Based on the information about the staffing, lawyer qualifications, and expertise of Chinese law firms' overseas offices, Li (2019a) finds that although many of these offices do have talents that are qualified to practice the law of the foreign host country, these offices are generally too small to be able to handle big complex cross-border transactions.<sup>90</sup> This thus prevents the Chinese clients from engaging them in these deals. Such findings are now supported with direct data on the choice of legal counsel here. Overall, it is thus justified to argue that despite the force of homophily, Chinese law firms cannot compete, at least until now, with large U.S. and U.K. law firms in advising outbound cross-border transactions. The fact that they have talents with foreign law qualifications does not seem to change this fact on a general basis.

90. Li, *All Roads Lead to Rome*, *supra* note 70, at 167.

**Table 4: Top Five Law Firms Hired by Chinese Clients vs. the Clients of Chinese Law Firms**

Outbound Dataset				Inbound Dataset				
	Country of Law Firms Hired by Chinese Clients	Percent	Country of Chinese Law Firms' Clients	Percent	Country of Law Firms Hired by Chinese Clients	Percent	Country of Chinese Law Firms' Clients	Percent
1	U.S.	37.7%	<b>China.</b>	<b>82.2%</b>	<b>China</b>	<b>53.3%</b>	<b>China</b>	<b>81.8%</b>
2	Gr. Brit.	18.2%	Cayman Is.	6.2%	U.S.	35.9%	H.K.	6.1%
3	<b>China.</b>	17.2%	U.S.	3.1%	Gr. Brit.	5.3%	U.S.	3.0%
4	H.K.	5.7%	H.K.	1.6%	H.K.	2.7%	Cayman Is.	1.5%
5	Aus.	4.4%	Neth.	1.6%	Aus.	1.3%	Berm.	1.0%
	Total Number of Representations	610	Total Number of Representations	129*	Total Number of Representations	304	Total Number of Representations	198*

\* Including four representations of individual clients, whose countries are not specified in Zephyr.

\*\* Including one representation of a shareholder group, whose countries are not specified in Zephyr.

I now turn to the breakdown of the Chinese law firms. For this purpose, I use the Chambers & Partners China rankings (2019), which focus on the law firms of the People's Republic of China (the PRC, thus excluding Hong Kong, Macau, and Taiwan). Chambers ranks law firms based on different practice areas.<sup>91</sup> Given that the transactions recorded in my datasets are primarily cross-border acquisitions and joint ventures, I designate Corporate/M&A (PRC Firms) (including its regional rankings) as the practice area. Generally, the Chambers China ranking classifies PRC law firms into four different bands, where Band 1 represents the highest recognition and Band 4 the lowest.<sup>92</sup> Additionally, Chambers also maintains a separate "Recognized Practitioner" group, which is intended to cover those law firms that have handled notable matters and/or have received some recommendation, but not yet achieved such high level as to be included in a band. Based on the Chambers ranking system, a law firm in my datasets could have one of the following positions, from most to least reputational:

- Appears in one of national bands 1, 2, 3, or 4;
- Appears in a regional ranking of Corporate/M&A practice. Positions in different bands under a regional ranking are disregarded and all combined into this entry;
- Is a practitioner recognized by Chambers in the Corporate/M&A practice, but does not appear in a national or regional band;
- Is ranked or recognized by Chambers in other practice area(s), but not in this particular practice area; or
- Is not mentioned by Chambers at all.

The following Figure 3 plots the proportions of the number of representations of the law firms that fall into each of these segments relative to the total number of transactions that hired Chinese law firms. When

91. See CHAMBERS & PARTNERS, [www.chambers.com](http://www.chambers.com) (last visited Aug. 26, 2020) (select the region and practice area to see the relevant rankings).

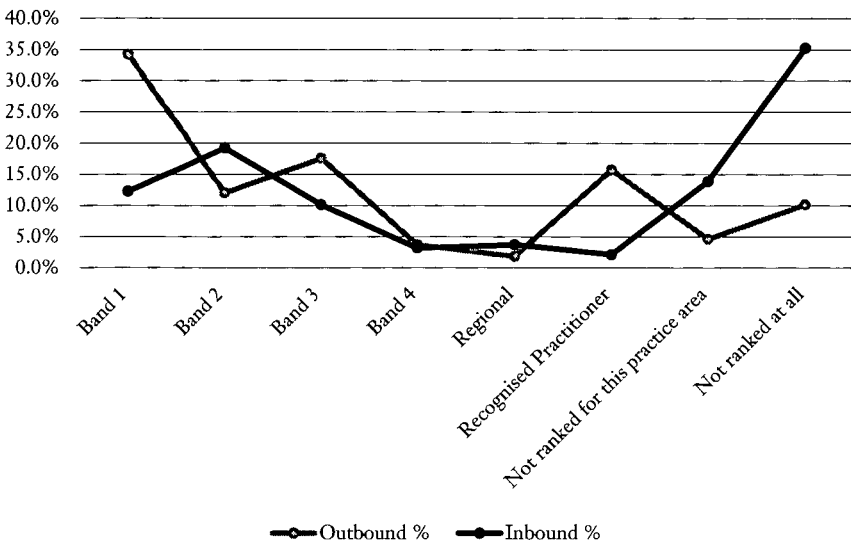
92. *Id.*

counting the numbers here, I subtract the repetitions from same transactions (a law firm representing a firm’s subsidiary and parent in exactly the same transaction) and related transactions. Two or more transactions are regarded as related to each other and thus recorded as one transaction when:

- They are announced on the same date and involving the same client, but the counterparties of the transactions are different. For example, the same acquirer proposes to acquire different targets, or a vendor sells different targets to different acquirers. Because they are announced on the same day, it is reasonable to contemplate that they constitute an entire business deal that serve a strategic purpose, meaning that it is logical for the same client to hire one law firm to manage and advice these transactions. This said, I typically do not assume the transactions are related if the client is an investment fund; or
- They are announced on different dates but between or among exactly same parties. This is typically the case when, for example, an acquirer gradually increases or reduces its equity stake in the same target. Again, the client would normally hire the same law firm to advice transactions like these.

After doing so, there are 108 representations in the Outbound Dataset and 187 in the Inbound Dataset. From Figure 3, it is obvious that the law firms that dominate the two markets come from quite different bands. While lower ranking firms are indeed growing and serving Chinese clients in inward cross-border transactions, they generally lack the competence to compete with top tier law firms in the outbound market, who are the most active group in serving clients in investments going outside China.

**Figure 3: Chambers Rankings of Chinese Law Firms Compared**



### C. SOE CLIENTS

In order to test how the state powers compete with the globalizing trend of common law, I focus on the clients that are SOEs and see what legal counsel they retain in cross-border transactions. To this end, I check the global ultimate owner (GUO) of every client in the Zephyr database. A firm is regarded as a Chinese SOE when the GUO is recorded as the state of China, or the State-Owned Assets Supervision & Administration Commission or any of its local authorities. Moreover, I select only those SOE clients that are located in China, otherwise it is highly probable that the state ownership of a foreign company could have been resulted from it being purchased by a Chinese SOE, because the ownership information of a firm in Zephyr only reflects its latest state. Given these stringent selection criteria, the total numbers of observations of SOE clients are small for both markets overall.<sup>93</sup>

**Table 5: Law Firms Hired by Chinese SOEs vs. by All Chinese Clients**

Outbound Dataset				Inbound Dataset			
Countries of Law Firms Hired by Chinese SOEs	Percent	Countries of Law Firms Hired by All Chinese Clients	Percent	Countries of Law Firms Hired by Chinese SOEs	Percent	Countries of Law Firms Hired by All Chinese Clients	Percent
Gr. Brit.	34.7%	U.S.	37.7%	U.S.	52.9%	China	53.3%
U.S.	28.0%	Gr. Brit.	18.2%	China	35.3%	U.S.	35.9%
China	14.7%	China	17.2%	Gr. Brit.	11.8%	Gr. Brit.	5.3%
Aus.	5.3%	H.K.	5.7%			H.K.	2.7%
Ger.	4.0%	Aus.	4.4%			Aus.	1.3%
Total Percent Top Five	86.7%	Total Percent Top Five	83.3%	Total Percent Top Five	100%	Total Percent Top Five	98.4%
Total Number of Representations	75	Total Number of Representations	610	Total Number of Representations	34	Total Number of Representations	304

93. The small numbers may be at first sight surprising. However, many of the Chinese companies in the sample, despite the anecdotal reports about their indirect or historical background or connections with the government, are in fact not controlled by the state or its competent authorities according to official disclosures. A well-known example illustrating this point is HNA Group. Another example is Bank of Beijing (BoB). While its name might leave people with the impression that it should be an SOE, in fact its largest shareholder is the Dutch bank ING (13.03%). Bank of Beijing Co., Ltd., *2018 Annual Report*, at 46 (Apr. 2019), <http://www.bankofbeijing.com.cn/upload/2019/4/%E5%8C%97%E4%BA%AC%E9%93%B6%E8%A1%8C%E8%82%A1%E4%BB%BD%E6%9C%89%E9%99%90%E5%85%AC%E5%8F%B82018%E5%B9%B4%E5%BA%A6%E6%8A%A5%E5%91%8A%E5%85%A8%E6%96%87.pdf>. ING has been holding its minority stake in bank already since 2005. *Id.* Among the four controlling shareholders, two are state agencies, which collectively hold 17.22%. *Id.* Based on such an equity structure, it would be hard to classify it as being state-owned.

**Table 6: Law Firms Hired by Chinese SOEs vs. Countries of Counterparties**

Outbound			Inbound		
Countries of Law Firms	Number of Representations*	Among Which, Number of Representations* Where the Target or Vendor Is Located in the Same Country as the Law Firm	Countries of Law Firms	Number of Representations*	Among Which, Number of Representations* Where the Acquirer or Vendor Is Located in the Same Country as the Law Firm
Gr. Brit.	26	2	U.S.	18	5 (all had consortium of mixed U.S. and other investors)
U.S.	21	4	China	12	1 (Chinese law firm only served as acquirer's counsel in one transaction, where several acquirers, consisting of both Chinese and foreign parties, formed a consortium)
China	11	10	Gr. Brit.	4	0
Aus.	4	4			
Ger.	3	2			
It.	3	3			
Fr.	2	2			
H.K.	2	0			
Can.	2	2			
Neth.	1	0			
Total	75		Total	34**	

\* The numbers here are not corrected for related transactions.

\*\* Among the 34 representations in the Inbound Dataset, the SOEs in 11 acted as acquirers (typically an overseas group company of an SOE buys a target located in China), 2 acted as vendors, and in the remaining 21 they acted as the target.

Looking at Table 5 alone, it seems that state ownership alone does not enhance the probability of a Chinese client hiring a Chinese law firm. It is worth noting that, even for the Inbound Dataset, SOEs as a separate group have still hired Chinese law firms less than all the Chinese clients as a whole. Given the very small number of observations for the SOE clients, one should be careful in deriving definitive conclusions. A possible explanation might be that given their heavy governmental background, political connections, which can be a rare and precious strategic asset to foreign clients in China, matter much less to these already embedded SOE clients. As such, their main focus thus shifts to the ability of transnational

transaction planning and management, which is among the key strength of Anglo-American law firms.

In order to obtain further insights of the choices of legal counsel by Chinese SOEs, I go on to examine the countries of the counterparties of the SOEs in the transactions and present these in Table 6. For the Outbound Dataset, it is interesting to note that Chinese law firms have been retained almost exclusively in those transactions where the targets are located in overseas tax havens. Out of the eleven transactions, eight target companies are located in Hong Kong, one in Bermuda, one in British Virgin Islands, and only one in the United States. These transactions generally fall into two categories: (a) group restructuring activities, where an SOE acquirer reshuffles its holdings among its own overseas group companies; or (b) a SOE acquirer buys equity stakes in overseas group companies of another Chinese company. Essentially, these transactions are still among Chinese parties despite that they are technically across borders. As such, except for one case where King & Wood was retained by Beijing E-Town International Investment Development Co., Ltd. in 2010 to advise its capital increase in UTStarcom, the U.S. target company, Chinese law firms hired by SOE clients in the Outbound Dataset all served *de facto* Chinese transactions. Even in this only exception, UTStarcom was in fact founded by a Chinese entrepreneur and thus has a heavy Chinese background. Altogether, these findings confirm the point that the knowledge of Chinese law is not the main legal expertise a Chinese acquirer seeks when investing abroad. This being said, the clients did not simply go out and hire the local law firms from the jurisdictions where the targets or vendors are located. Instead, it is the Anglo-American law firms that stand out as the most frequent options, which were often retained in the transactions that happened outside the United Kingdom or the United States.

This being so, one may argue that even if an SOE does not retain a Chinese law firm from the outset, it may still exercise client control through the professionals working for it. After all, given the homophily principle, one may continue to hypothesize that SOEs might, compared to Chinese clients in general, attach even higher level of preference to ethnic Chinese lawyers, who should be more able and likely to apprehend their needs and concerns relative to foreigners. Following this line of reasoning, I use Chinese family names as a proxy for the ethnicity of lawyers. The findings for all clients are presented against those for SOE clients in Table 7. It is worth noting that Zephyr does not identify the titles of, or the roles played by the lawyers in a transaction. As such, it is not possible to know which ones were partners and thus have led the whole team and which ones were just associates. As such, for those mixed teams, the focus is that there was at least a Chinese lawyer present, and not whether it was a team led by Chinese or foreign lawyers.

**Table 7: Composition of Lawyers Team Serving Chinese SOEs vs. All Chinese Clients**

	Outbound			Inbound		
	All Clients	All Chinese Clients	Chinese SOE Clients	All Clients	All Chinese Clients	Chinese SOE Clients
Percent of Representations with All Foreign Lawyers Team	50.6%	31.7%	23.9%	20.4%	4.5%	5.6%
Percent of Representations with Mixed Lawyers Team	27.8%	34.6%	54.4%	28.7%	17.9%	33.4%
Percent of Representations with All Chinese Lawyers Team	21.6%	33.7%	21.8%	50.9%	77.6%	61.1%
Number of Representations Where Lawyers' Names Are Available	719	338	46	530	134	18

It can be seen from Table 7 that slightly more representations in the Outbound Dataset are served without ethnic Chinese lawyers, while in the Inbound Dataset, nearly eighty percent of the representations have been served by teams with at least one Chinese lawyer. In particular, it is interesting to note that out of the 270 all-Chinese-lawyer representations in the Inbound Dataset, only 104 are for Chinese clients. In other words, this means that when investing in China, a foreign client will be very likely served by a professional team with ethnic Chinese lawyers, even if the legal counsel hired by the client is actually a foreign law firm. Among the transactions that engaged top U.S. and U.K. law firms, it is actually quite recurring that the entire team of lawyers are all Chinese judged by their family names. This is vivid evidence of the active localization of foreign law firms in China. As already noted in previous research,<sup>94</sup> the relevant regulatory restrictions in China effectively prohibit foreign lawyers to practice Chinese law. Therefore, the ethnic Chinese lawyers in foreign law

94. Liu, *Client Influence and the Contingency of Professionalism*, *supra* note 53; Jing Li, *The Legal Profession of China in a Globalized World: Innovations and New Challenges*, 26 INT'L J. LEGAL PRO. 217, 227 (2019).



firms are officially not practicing Chinese law, but the law of relevant foreign jurisdictions. Nevertheless, foreign law firms operating in China still make the effort of keeping and using ethnic Chinese professionals.<sup>95</sup> The reasons for doing so are twofold. On the one hand, there are many alternatives with which practitioners manage to circumvent the restriction and substantively give Chinese law advices through more informal manners.<sup>96</sup> After all, many of the ethnic Chinese lawyers working in foreign law firms do have a license to practice Chinese law, it is just that they need to temporarily suspend it during their employment by foreign law firms.<sup>97</sup> On the other hand, and more importantly, this also shows that pure knowledge on Chinese law per se is not the only thing that clients are after when they enter into China. In this respect, having locals working for you may make things overall easier for a foreign investor.

When Chinese clients are examined specifically, 68.3 percent of them in the Outbound Dataset were served with a professional team where there was at least one Chinese lawyer. Comparatively, this number for SOEs is 76.2 percent, which is somewhat higher. Looking at this alone, it may be argued that SOE clients tend to attach more appreciation to teams with “similar people” in there. But if we look at the proportions of all-Chinese-lawyers teams, the percentages for SOE clients are smaller than those for Chinese clients as a whole in both the Inbound and Outbound datasets.

In addition to directly hiring Chinese law firms and/or using ethnic Chinese lawyers, one may also assume that SOEs may be able to influence their legal consultants by maintaining a long-term relationship with them. Historically, clients of knowledge-intensive firms have tended to retain those service providers with which they have experience, in order to reduce uncertainty and anxiety.<sup>98</sup> Client relationship is clearly an essential strategic asset to a law firm, as the ability of developing, maintaining, and managing client relationships not only directly affects a firm’s survival and performance, but also reflects its overall competitive strategy.<sup>99</sup> Therefore, the continuity of a relationship has been identified as one indicator of the quality of the relationship between client and provider.<sup>100</sup> For example, when all else being equal, law firms are more likely to lower their prices for corporate clients with whom they have continuing ties because of the trust developed over time and norms of reciprocity.<sup>101</sup> Moreover, Gunz & Gunz

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95. *Id.*

96. Liu, *Client Influence and the Contingency of Professionalism*, *supra* note 53.

97. *Id.*

98. Mats Alvesson, *Knowledge Work: Ambiguity, Image and Identity*, 54 HUM. REL. 863, 874 (2001).

99. See Joseph P. Broschak, *Client Relationships in Professional Service Firms*, in OXFORD HANDBOOK OF PRO. SERV. FIRMS 304 (Laura Empson et al. eds., 2015).

100. P. A. Saporito et al., *The Role of Relational Trust in Bank Small Firm Relationships*, 47 ACAD. MGMT. J. 400, 402–03 (2004).

101. See Brian Uzzi & Ryon Lancaster, *Embeddedness and Price Formation in the Corporate Law Market*, 69 AM. SOC. R. 319 (2004); Mark Granovetter, *The Impact of Social Structure on Economic Outcomes*, 19 J. OF ECON. PERSP. 33 (2005).

(2008) show that legal professionals generally attach great importance to the clients that have (potential) long-term relationships with their firm, and are willing to find ways to render the level of service that they need even at very busy times.<sup>102</sup> As such, is it possible that this leaves room for potential subtle influences from a long-term SOE client?

To test this to the extent allowed by the data, I start with the clients that have been involved in more than one transaction.<sup>103</sup> Out of them, I further filter the instances in which they hired the same law firm for at least two times in not related transactions. After doing so, it is found that the clients in 117 transactions from the Inbound Database and in eighty-nine transactions from the Outbound Database have hired their legal counsel for more than once. Table 8 presents, within the boundary of these two datasets, all the law firms that have been employed by the same client at least three times—a frequency that arguably may lead to a long-term client-attorney relationship. The findings do not, however, support the hypothesis because SOEs are not identified to show a long-term devotion to their legal counsel in the first place. In the list, there is simply no client that is controlled by the Chinese state (or its competent state asset holding authorities), although one may be aware of the anecdotes recording the elusive and/or historical ties that, for example, HNA Group and Shandong Ruyi, have with the Chinese government.

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102. Hugh P. Gunz & Sally P. Gunz, *Client Capture and the Professional Service Firm*, 45 AM. BUS. L. J. 685, 713 (2008).

103. Alternatively, another proxy for a lasting client-attorney relationship would be the case where a client retains the law firm that it has used in a transaction as long-term outside corporate counsel to advise future big corporate transactions. But using this proxy is not possible based on the data of this article, which do not contain information about companies' long-term legal counsel.

**Table 8: Law Firms Repetitively Retained for at least Three Times by the Same Client**

Outbound					Inbound				
Name	Country	Client	Country	Number of Deals Served*	Name	Country	Client	Country	Number of Deals Served*
Simpson Thacher & Bartlett LLP	U.S.	Ant Financial	China	10	Paul Weiss Rifkind Wharton & Garrison LLP	U.S.	General Atlantic	U.S.	7
Rittershaus Rechtsanwaelte Partnerschaftsgesellschaft mbB	Ger.	Zhongding Group	China	5	Paul Weiss Rifkind Wharton & Garrison LLP	U.S.	Tencent	Cayman Is.	7
Jones Day	U.S.	AGIC Industrial Promotion Capital	China	3	Simpson Thacher & Bartlett LLP	U.S.	Alibaba	Cayman Is.	4
Hogan Lovells	Gr. Brit.	HNA Group	China	3	Skadden Arps Slate Meagher & Flom	U.S.	Baidu	Cayman Is.	4
O'Melveny & Myers LLP	U.S.	Keytone Ventures	China	3	Paul Weiss Rifkind Wharton & Garrison LLP	U.S.	GIC	Sing.	4
O'Melveny & Myers LLP	U.S.	Ping An Dingchuang Equity Investment Management	China	3	Clifford Chance	Gr. Brit.	International Finance Corporation	Inc'l	4
Latham & Watkins LLP	U.S.	Shandong Ruyi	China	3	Paul Weiss Rifkind Wharton & Garrison LLP	U.S.	KKR	U.S.	4
Morrison & Foerster	U.S.	Toshiba	Japan	3	O'Melveny & Myers LLP	U.S.	Northern Light Venture Capital	U.S.	4
Simpson Thacher & Bartlett LLP	U.S.	Yunfeng Capital	China	3	Skadden Arps Slate Meagher & Flom	U.S.	58.com	Cayman Is.	3
					O'Melveny & Myers LLP	U.S.	ASSA Abloy AB	Swed.	3
					O'Melveny & Myers LLP	U.S.	Axiom Asia Private Capital	U.S.	3
					Davis Polk & Wardwell LLP	U.S.	Baidu	Cayman Is.	3
					Simpson Thacher & Bartlett LLP	U.S.	KKR	U.S.	3
					Clifford Chance	Gr. Brit.	Temasek Holdings	Sing.	3
					Davis Polk & Wardwell LLP	U.S.	Unitas Capital	U.S.	3

\* Numbers are corrected to remove different but related transactions.

To the extent of the SOE clients, I also did a cross check between the Inbound and Outbound Datasets to see if a company has used the same law firm in advising both inward and outward transactions. If so, it can be interpreted as evidence for the existence of a long lasting client-attorney relationship, such that the client had been satisfied with its lawyer from the last transaction and was thus willing to hire it again in another one, despite that the client acted different roles in the transactions. In total, seven law firms have appeared in both the inbound and outbound datasets, all from the United States (5) and United Kingdom (2). But there is no record that an SOE client has used a law firm in different non-related transactions for more than once. In general, it may be argued that the lack of continuing long-term ties between clients and law firms may be rather typical in an international business setting. Faced with the specific business needs from their clients, lawyers usually act as providers for sophisticated technical solutions, and legal services tend to have less normative (public protection) dimensions. As a result, the client-attorney relationship is arguably less relational.

#### D. WHAT ABOUT OTHERS?

In order to complement the findings so far, I focus in this Section on the legal consultants from jurisdictions other than the United States, United Kingdom, and China. In particular, I want to find out what role they play in advising clients in the international business arena in competition with the dominant U.S. and U.K. players. In doing so, I exclude the law firms from the so-called tax haven jurisdictions—to the extent of my sample, they are Bermuda, British Virgin Islands, Cayman Islands, Hong Kong, and Luxemburg. The reason for such exclusions are straightforward. Given their special nature, a foreign client is unlikely to have any substantive connection with them other than being governed by their laws, which apply on some of the client's overseas holding companies registered there. While Hong Kong apparently has more substantive value as an international financial center than the other tax havens, things are very much still the same. To the extent of the data sample discussed in this article, the clients of the H.K. law firms consist almost entirely of Chinese companies (and their overseas holding companies). Only less than eight percent of their representations are from clients located in the United Kingdom and Australia; but in all of these cases, the clients retained King & Wood Mallesons, which is a *verein* headquartered in H.K. but created from a merger of a Chinese, an Australian, and a U.K. law firm.

**Table 9: Law Firms from Other Jurisdictions**

	Outbound Dataset	Inbound Dataset
Total Number of Representations	279	78
Number of Law Firms' Countries	33	17
Top 5 Countries of Most Frequently Used Law Firms	Aus., Ger., Can., It., Neth.	Aus., Fr., Japan, Kor., Ger.
Percent of Representations Where the Client and the Law Firm Are from the Same Jurisdiction	40.2%	62.8%
Percent of Representations Where There Is Certain Connection Between the Transaction and the Law Firm's Jurisdiction	49.8%	17.9%
Percent of Representations Where There Is No Identifiable Connection with the Law Firm's Jurisdiction	10.1%	19.2%

Once again, the leading positions of large Anglo-American law firms in the competition for international corporate legal service market are reinforced in Table 9. From Tables 2 and 6, one can see that there are big discrepancies between the numbers of U.S. and U.K. law firms' representations, and the numbers of representations from U.S. and U.K. clients. This means that law firms from these two jurisdictions are heavily retained by clients beyond these countries. Comparatively, law firms from other jurisdictions are hired, in most of the times, because they are of the same jurisdictions as the clients, otherwise their jurisdictions are then often somehow connected to the transactions. These findings confirm that for law firms from jurisdictions beyond the United States and the United Kingdom, their market niche is largely still limited to handling the legal work from their own country or region.<sup>104</sup>

#### IV. Discussions and Future Research

##### A. IMPLICATIONS FOR PRACTITIONERS

Nowadays, legal education is globalized and legal talents travel across the world to obtain foreign legal degrees, especially the LLM degrees from the United States, the United Kingdom, and other key common law countries.<sup>105</sup> For example, Silver (2007) finds a significant presence of LLM

104. Rachel Stern & Su Li, *The Outpost Office: How International Law Firms Approach the China Market*, 41 L. & SOC. INQUIRY 1, 8 (2016).

105. See generally Silver, *supra* note 73.

graduates in the local law firms that must compete with the overseas offices of U.S. law firms.<sup>106</sup> In response, U.S. law firms have also actively brought in local lawyers to work for them or even bought out local law firms, so as to enrich their local practices and maintain their role as the intermediary between the local counsel and clients.<sup>107</sup> Given such intensified competition, talents that are qualified in dual-or-multi jurisdictions tend to be placed within no time because they are always wanted by the market.<sup>108</sup> In this regard, while the legal education profiles of the professionals in law firms are certainly relevant in showcasing the diffusion of common law across borders, they are still secondary in nature. Comparatively, the international transmission and globalization of law usually first starts with the interaction with clients, who are direct purchasers of legal services.

In this light, the evidence here may have important implications for practitioners. According to the findings presented in Section III, big U.S. and U.K. law firms remain the top choices of Chinese companies investing abroad. This holds true even for Chinese SOEs, which have, in most of the times, chosen for these law firms despite that the targets of their investments are often located in other countries than the United States or United Kingdom. Such popularity thus shows that there is a vast overseas market beyond their home countries. A pure expatriation strategy focusing on serving only the overseas operations of their existing U.S. and U.K. multinational company clients, which the law firms adopted during the first years of their internationalization, is proven to be insufficient.<sup>109</sup> To the end of maintaining and reinforcing their leading position, it would be a worthwhile move for large Anglo-American law firms to promote diversity in their professional team, so as to create some cultural and sociodemographic similarities with their foreign clients.<sup>110</sup> This includes not only hiring foreign lawyers in their international offices,<sup>111</sup> but also promoting senior lawyers from different ethnic backgrounds in home offices.<sup>112</sup>

Comparatively, Chinese law firms in general do not come close to the prominent position of large U.S. and U.K. law firms in advising international business transactions, even when the transactions involve Chinese parties. As such, while Chinese law firms can do the same by hiring talents with overseas common law degrees and try to win over non-Chinese clients, their focus should be placed upon the niche market, which is advising the Chinese law issues for the inbound business transactions into China. After all, it has been argued that overseas returners, especially those with U.S. and U.K. law degrees, may help a local law firm to boost its

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106. *Id.*

107. *Id.*

108. Stern & Li, *supra* note 104.

109. *See generally* Silver, *supra* note 73; Silver et al., *supra* note 73.

110. *Id.*

111. *Id.*

112. Li & Zhang, *supra* note 59, at 99.

competitiveness to the U.S. and U.K. clients.<sup>113</sup> Moreover, law firms may also increasingly get access to and make use of legal documentation that resemble the prototypes used by elite Anglo-American law firms.<sup>114</sup> According to the data, such efforts, combined with the natural familiarity with and embeddedness in the Chinese market, seem to be paying off. Compared to the outbound transactions segment, Chinese law firms in the inbound segment not only have a greater market share, but also manage to diffuse the ability of advising transactions with international elements beyond the top tiers. Arguably, these achievements would not have taken place with only China-trained lawyers.

## B. SOES AS CLIENTS IN INTERNATIONAL BUSINESS TRANSACTIONS

Li (2019a) finds that the Chinese government is able to exercise its influence in the design and implementation of the globalization path of Chinese law firms, which is realized by coining a roadmap under its ambitious Belt & Road umbrella and encouraging law firms to follow it.<sup>115</sup> In practice, however, law firms have adopted “a very pragmatic attitude” to conform to the roadmap on different levels in order to gain legitimacy, based on careful calculations of the potential benefits of such initiative to their practical needs.<sup>116</sup> Fundamentally, this is because internationalization of Chinese law firms usually bears more symbolic than substantive value.<sup>117</sup> Instead of directly imposing its powers on law firms, the nation state thus needs to interact and compete with the pragmatism and reputational motivations of private players.

In addition to these, this article exposes another important, but often overlooked dimension relevant to the power of the state vis-à-vis legal professionals in the international context. Cross-border business transactions involve parties from different jurisdictions. It is already a widely accepted rule in modern commercial law that parties may choose the governing law for their contract, which does not need to be the law of the jurisdictions with substantive connections with the transaction.<sup>118</sup> Therefore, agreeing on the applicable law is also an important part of the transaction negotiation, and parties need to have a mutually acceptable choice. Given the high level of respect and willingness of the common law to enforce private ordering in contracts, and also the long-established quality and reputation of the United States (especially the State of New York) and

113. Silver, *supra* note 73.

114. Daniel D. Sokol, *Globalization of Law Firms: A Survey of the Literature and a Research Agenda for Further Study*, 14 *IND. J. GLOB. LEGAL STUD.* 5 (2007).

115. Li, *All Roads Lead to Rome*, *supra* note 70.

116. *Id.*

117. See generally Sida Liu & Hongqi Wu, *The Ecology of Organizational Growth: Chinese Law Firms in the Age of Globalization*, 122 *AM. J. SOC.* 798, 807 (2016); Li, *All Roads Lead to Rome*, *supra* note 70.

118. ROY GOODE ET AL., *TRANSNATIONAL COMMERCIAL LAW: TEXTS, CASES AND MATERIALS* 60-62 (2nd ed. Oxford: Oxford Univ. Press 2015).

United Kingdom as jurisdictions, it is no surprise that U.S. and U.K. laws have become highly marketable products in international business transactions.<sup>119</sup> By practicing them, Anglo-American law firms are essentially selling these products to clients, and thus have been able to proliferate their way of lawyering worldwide. Such strengths, which are missing in Chinese law, are further reinforced by the informational advantage that they have acquired from the experience in frequent international deals and litigations.<sup>120</sup>

As such, the reason for Chinese clients to engage in many cases the U.S. and U.K. law firms, instead of law firms from China or other jurisdictions, is very likely that the transaction is governed by U.S. or English law. Such choice by the parties, especially when the transaction does not take place in or otherwise substantively connect with the two jurisdictions, may reflect the possible concern of the counterparty to be potentially bound by Chinese law and/or stand in front of a Chinese court when dealing with a Chinese party. Such concern may even augment when the Chinese party is an entity deeply entrenched in the power of the state apparatus, which may make the counterparty worry about the potential loss of an equal footing with it. This might be a reasonable explanation for the phenomenon that, as a particular group, SOE companies make even less use of Chinese law firms in their transactions than all Chinese clients as a whole; although admittedly the number of observations for SOEs is small.<sup>121</sup> Therefore, in order for the state to transcend through SOEs its influence across borders, it must encounter and compete with the bargaining power of the counterparties. Thus far, the data seem to show that the latter has won—after all, the merits and convenience of common law, and the dominance of Anglo-American law firms, both of which are already long honored by the time in the international business venue, are not that easily challenged. Such findings offer a new dimension to the argument that the spread of common law conditions upon a weak or fragmented power regime of the recipient state. While the Chinese government certainly plays an overarching role in the domestic economy, its influence is very much restrained in cross-border transactions, where the U.S. and English law still managed to take the upper hand based on the data analyzed in this article. This being said, what if the balancing power of the counterparty no longer exists, after the transaction is completed and the Chinese investor settles in the host country? Further research should thus look into Chinese companies' choices of long-term legal counsel in foreign jurisdictions, in order to find out if they are able to exercise more control upon lawyers in a less arms-length, more trust-based attorney-client relationship.

Should host countries be alarmed about the investments by Chinese SOEs, and the impending state power behind them? Following the reasoning from

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119. James R. Faulconbridge et al., *Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work*, 28 *Nw. J. INT'L L. & BUS.* 455, 457 (2008).

120. Sokol, *supra* note 114.

121. *See supra* Section III.C.



Li & Zhang (2019), the examination of clients' engagement of legal professionals when they enter a host market can serve as a useful angle to approach this very broad question.<sup>122</sup> This is because an important task on the shoulder of lawyers is to act as gatekeepers to guard against potential misconduct of corporate clients.<sup>123</sup> From the U.S. data, Li & Zhang (2019) thus conclude that Chinese companies are mindful of the importance of professional legal services and do not just presumptuously try to apply home country practices into a different institutional setting.<sup>124</sup> Rather, their lawyer selection preferences reflect their rational efforts to maneuver through the vast institutional and regulatory gaps between China and the United States.<sup>125</sup> Going beyond the U.S. market, the global data discussed here offer mixed support to such conclusion. Concurring with Li & Zhang (2019), the image of Chinese companies as rational outbound investors is confirmed. Despite the heavy governmental intervention into SOEs' operations within China, such state control does not appear to be particularly striking in the choices of legal counsel when SOEs are investing abroad. In general, Chinese SOEs do not act very differently from ordinary Chinese clients. Although SOEs were served in more cases by teams containing ethnic Chinese lawyers than ordinary Chinese clients, the percentage of full-Chinese teams is nevertheless smaller for SOE clients.<sup>126</sup> What is different, however, is that while the choices for legal counsel are well-considered, such careful consideration is not particular to a country with vast ideological and institutional differences from China, like the United States. In fact, Chinese companies heavily rely on expensive leading Anglo-American law firms to advise their overseas transactions, even when the targets are often located in some jurisdictions other than the United States or the United Kingdom.<sup>127</sup> Picking up the gatekeeper argument, the state power behind the Chinese SOEs are thus curbed by the overall prevalence of common law, especially the domination of the U.S. and U.K. law firms in the global business market.

## V. Conclusion

Given the globalization of markets and cross-border business practices of the multinational corporations, large international law firms, especially those from the United States and the United Kingdom, have played an important role in diffusing Anglo-American common law internationally. Against this background, an important question is how such influences of common law interact and compete with influences from various local institutions, among which a key one is the state. While existing literature seems to converge on

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122. Li & Zhang, *supra* note 59.

123. Fred Zacharias, *Lawyers as Gatekeepers*, 41 SAN DIEGO L. R. 1387, 1389 (2004).

124. Li & Zhang, *supra* note 59, at 120.

125. *Id.* at 87.

126. *See supra* Section III.C.

127. *See supra* Sections III.A & III.C.

an implicit assumption of a weak or even absent role of the nation states, China is an outstanding counterexample for such assumption. The strong power of the Chinese government is embodied in, among other things, the deep political embeddedness of the legal profession in the state bureaucracy, and also the frequently secondary role of law relative to political connections.

Using a sample of 1,393 cross-border transactions into and out from China dated between 2010 and 2018, this article empirically sheds light on this question from the perspective of legal counsel choices in these transactions. This is because the transmission and globalization of law usually first starts with the dealings with clients, who are direct purchasers of legal services. It is found that in general, Anglo-American law firms take up an unmatched leading position in the international corporate transactions market. In both the inward and outward directions, they have served the majority of the deals, despite that the transactions often do not come from, take place in, or have other substantive connections with the United States or the United Kingdom. Comparatively, Chinese law firms only represent a small fraction of all the legal counsel hired in the transactions. This being said, their share in the inbound market is much bigger relative to the outbound market. Moreover, Chinese law firms with secondary or lower reputation are identified considerably more often in inbound transactions into China than in outbound transaction from Chinese investors. Given these observations, it can thus be argued that although Chinese law firms are not yet up to the bar to challenge the dominance of the United States and United Kingdom law firms, they are nevertheless catching up in the niche market of serving inbound cross-border investments into China.

For Chinese SOEs in particular, they do not seem to show a very different pattern in their choices of legal counsel than ordinary Chinese clients. The fact that these government-controlled entities often carry political and social objectives, other than economic ones, does not increase the likelihood of them hiring Chinese law firms or lawyers. In fact, the percentages of them engaging Anglo-American law firms in their transactions are actually greater than those of Chinese clients in general. Such results may reflect an augmented reluctance of the counterparties of Chinese SOEs to be bound by the Chinese law, in the fear that doing so will result in them being dwarfed by the strong political power entrenched in these state-owned entities. If the retaining and interaction with legal counsel is seen as the very first gateway to the entry of a foreign county, then the SOEs need to encounter and compete with the bargaining power of the counterparties when trying to pass it. In such light, host countries may not need to be over alarmed about the investments by Chinese SOEs and the potential cross-border transcendence of state power, which so far do not constitute a counterforce to the globalization of Anglo-American common law.

