Globalization as Boundary-Blurring:

International and Local Law Firms in China’s Corporate Law Market

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ABSTRACT

The worldwide expansion of international law firms has generated regulatory battles and workplace conflicts in advanced market economies as well as developing countries. This paper uses the case of China to explore the changing global-local relationship in the globalization of the legal profession and the role of the government in constituting the corporate law market. The author argues that the globalization of the Chinese corporate law market is a process of boundary-blurring and hybridization, by which local firms become global-looking and foreign firms get localized. Boundary-blurring occurs in law firms’ workplaces, in lawyers’ career trajectories, and in state regulatory policies. It has produced a localized expertise that can be diffused conversely from local firms to global firms and has partially changed their relationship from collaboration to competition. Consequently, it becomes increasingly difficult for the government to make or enforce any substantive policy to clarify the market boundary between the two types of law firms.

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The worldwide expansion of international law firms has been one of the most remarkable developments for the legal profession in recent decades. As these mega-law firms from the Anglo-American countries land upon the territories of Europe, Latin America, and East Asia, we have witnessed large-scale mergers with local firms and massive breakdowns of national barriers of legal practice. Not surprisingly, hails of the emergence of a global legal services market have become the dominant voice both within the profession and among outside observers. This seemingly easy triumph of transnational law practice, however, involves a complex process of boundary-blurring. Regulatory battles have been fought to defend the turfs of national law, and workplace conflicts have persisted in the practice of local and international law offices. These conflicts and battles find one of its most salient representations in the contemporary Chinese corporate law market.

In April 2006, the Shanghai Lawyers Association (SLA) published a news brief that blazingly condemned the illegal behavior of foreign law firms in China’s corporate law market (Shanghai Lawyers Association 2006). Though without any formal government support, this brief was widely reported in the international media and quickly generated fear and concerns among foreign lawyers working in China. One commentator from Hong Kong even described it as “a brewing revolution against foreign law firms in China” (Prieur 2006). The revolution did not happen – to the relief of many practitioners and observers, no government action against foreign law firms followed the brief. Nevertheless, the publication of the brief and all the subsequent discussions around it strongly indicate the severe conflicts between local and foreign
law firms in China.

It is the main task of this paper to explore the changing global-local relationship in the globalization of the legal profession and the role of the government in constituting the corporate law market. Since 1992, the year the Chinese government formally permitted foreign law firms to establish representative offices in mainland China, more than two hundred law firms have rushed into this lucrative market and set up offices in major cities like Beijing and Shanghai. The vast majority of these law firms come from the United States, Britain, France, Germany, Japan, Australia and other developed countries. Until the present day, however, foreign law firms are still forbidden to practice Chinese law or to employ licensed Chinese lawyers. This regulatory burden on foreign law firms has generated interesting dynamics in the development of both foreign and local law firms in China, characterized by the enduring existence of a blurred boundary between them.

The dramatic incident from Shanghai symbolizes three central empirical questions of the present paper. First, during the formation of the Chinese corporate law market, why do foreign and local law firms increasingly conceive each other as business competitors rather than collaborators? Secondly, why does the Chinese government, usually quite active in its regulatory policies, choose to keep silent facing the vehement market competition? And, finally, what are the consequences of this ongoing turf battle to the workplace practice and career patterns of individual Chinese corporate lawyers?

To explain these questions, I will develop a theory of boundary-blurring that originates
from cultural sociology and relocate it to the globalization of the legal profession. I argue that, when formal government regulation on transnational law practice is ambiguous, the de facto market boundary between foreign and local law firms is constructed through a series of boundary-blurring processes, by which local firms become global-looking and foreign firms get localized. These micro-level processes have produced a localized expertise and partially changed the relationship between foreign and local firms from collaboration to competition. As a result, it becomes increasingly difficult for the government to make or enforce any substantive policy to clarify the market boundary between the two types of law firms.

**Global Market Construction as Boundary-Blurring**

The practice of transnational corporate lawyers lies in the key theoretical juncture between the globalization of professions and the globalization of law. On the one hand, these high-status commercial lawyers, along with economists, accountants and business consultants, are described by sociologists of professions as aggressive vanguards in the global diffusion of professional services beyond national boundaries (Fourcade 2006; Dezalay and Garth 1996, 2002a; Hanlon 1994, 1999). On the other hand, they are also perceived by sociologists of law as active agents in the creation and transplantation of legal institutions from advanced market economies to developing countries (Halliday and Osinsky 2006; Braithwaite and Drahos 2000; Dezalay and Garth 2002b; Halliday and Carruthers 2007). Sharing similar educational backgrounds, economic interests, and professional values, members of these new global elite appear to be highly
homogeneous and disembedded from the localities of their legal practice (Tamanaha 2001).

A common feature of these various accounts of global market construction is their emphasis on the mechanism of *isomorphism*, a sociological concept originally proposed by the population ecologists (Hawley 1968, 1986; Hannan and Freeman 1977) and made popular by the neo-institutionalists (Meyer and Rowan 1977; DiMaggio and Powell 1983). As Hawley (1968) defines it, isomorphism is a constraining process that forces one unit in a population to resemble other units in the same ecological environment. DiMaggio and Powell (1983) identify three types of isomorphism, i.e., coercive, mimetic and normative. Among them, normative isomorphism characterizes the process of professionalization, in which formal education, professional networks, and personnel flows all play important roles in spreading new professional models (DiMaggio and Powell 1983: 152-53).

Focusing on formal organizations, the neo-institutionalists have paid little attention to the state in their theory. However, when students of globalization apply the neo-institutional theory to the global markets, nation-states immediately become a crucial actor in mediating the process of isomorphism. Despite the ordinary perception that globalization erodes the sovereign power of nation-states, nation-states are nevertheless the most important gatekeepers in the process of globalization because of their monopoly in admitting, channeling or resisting global norms and institutions. In particular, the state’s monopoly over professional licensing often presents a major barrier in the constitution of the global professional services market. When professionals and their firms are divided into two categories according to the practice licenses they possess, an
unsettled jurisdictional area comes into being in the ecological field of the professions. The dynamics of interaction in this area cannot be well characterized by the single concept of normative isomorphism; instead, it is a complex ecological process between market and politics. To fully understand the micro-level constitution of a global professional services market, therefore, we need to replace the concepts of diffusion and isomorphism with a more dynamic theory of boundary-blurring and hybridization that (1) takes into account the power of the nation-state in defining the professional field; and, (2) captures the interaction between different types of firms and individual professionals in the unsettled area produced by the national barrier.

The central theoretical issue here, arguably, is how a profession’s jurisdictional boundary is constituted in global market construction. In the sociology of professions, the boundary issue has traditionally been theorized as either market closure or jurisdictional conflict. The market closure approach maintains that a profession achieves its market monopoly by controlling its licensing, professional training, and production of services, thus distinguishing itself from lay practitioners (Larson 1977; Berlant 1975; Abel 1988, 1989). The jurisdictional conflict approach, in comparison, conceives professions doing similar work as an international system and argues that each profession develops through its conflicts with other professions regarding their jurisdictions over work (Abbott 1988). Despite their distinct theoretical assumptions, both perspectives conceive the production of a profession’s jurisdictional boundary as a process of self-distinction, or what I call *boundary-making*.

This tendency in emphasizing boundary-making is also found in the broader sociological
literature on boundary-work. Originating from the sociology of science (Gieryn 1983),

*boundary-work* refers to the cultural process by which a social actor defines the boundary of its location vis-à-vis the locations of other social actors. While this concept has been applied to various research areas in sociology (see Lamont and Molnár 2002 for a review), its meaning has almost been uniformly restricted to boundary-making. Nevertheless, it is a false assumption that all social actors seek to distinguish themselves from other actors. In reality, interactions between social actors often take the form of *boundary-blurring*, in which one actor or both seek to mimic the other and blur the spatial or cultural boundary between them. The idea of Multi-Disciplinary Practice (MDP) that accountants actively promote in recent years is a good case in point for the boundary-blurring between commercial law and accountancy. For the construction of a global market, this process of boundary-blurring is particularly salient because, by definition, globalization implies the gradual convergence between national and transnational institutions and normative orders.

But boundary-blurring is not merely a synonym of isomorphism. In the context of globalization, isomorphism emphasizes the diffusion of new institutional models from the “core countries” of the global market to the “periphery,” during which the institutional forms largely remain the same. In comparison, boundary-blurring is not about institutional diffusion, but a process of *hybridization* in which local actors become global-looking while global actors get localized. The outcome of boundary-blurring in the global professional services market is the production of a *localized expertise* for the profession beneath its global outlook, which echoes
the “decoupling” effect that the neo-institutionalists proposed (Meyer and Rowan 1977).

For the legal profession, localized expertise is not merely the technical knowledge of local law, but an experience-based and culturally-sensitive expertise that grows from day-to-day legal practice. As much of the law and society literature shows, legal practice is full of uncertainty, inconsistency, and unintended consequences, thus in their work lawyers must emphasize insider access and local connections rather than the formal image of law (Merry 1990; Sarat and Felstiner 1995; Ewick and Silbey 1998). Although the work of corporate lawyers contains relatively high professional purity (Abbott 1981), experience and creativity in dealing with the market, political, and cultural contexts in which their work is embedded is still a central component of their professionalism (Liu 2006). This localized expertise cannot be easily diffused from one social context to another, but in a given locality of legal practice, it can be diffused conversely from local firms to global firms with work collaboration and exchange of personnel.

Boundary-blurring processes occur in multiple sites. For the Chinese corporate law market, these sites include law firms’ workplaces, lawyers’ career trajectories, and state regulatory policies. First, in law firms’ workplaces, a series of techniques are developed to magnify their professional expertise beyond their jurisdiction in order to attract clients and expand business. On the one hand, local law firms strongly emphasize their English skills, document styles, and the ability to take on complicated projects and international transactions. On the other hand, foreign law firms actively brand their expertise in PRC legal affairs despite the restrictions on practicing Chinese law and employing Chinese lawyers. As a result, the work style and service
quality of both types of firms are converging quickly, and a localized expertise is produced in the workplace.

Second, for the career trajectories of individual lawyers, working in local or foreign law firms have become increasingly irrelevant for the development of their expertise. In either type of firm, localized expertise, or experience in practicing corporate law in China, is now deemed preferable and necessary. In recent years, while senior associates in foreign firms continue to return to local firms and become partners, junior associates in local firms with the PRC lawyer license and 3-5 years of experience have become the primary recruiting targets of foreign firms. The personnel flow between the two types of firms has changed from one direction to both directions, which further erodes the market boundary between them.

Finally, boundary-blurring is also evident in the Chinese government’s regulatory policies toward the corporate law market. The administrative regulations on foreign law offices contain a considerable amount of ambiguity regarding their practice scope, namely, foreign law offices cannot “represent China legal affairs” but, in the meantime, are permitted to “provide information concerning the impact of China’s legal environment” (State Administration of Industry and Commerce and Ministry of Justice 1992; State Council 2001). This leaves a gray area of government regulation that can be manipulated by the justice bureaus to adapt to the changing national economic policies and political interests in different time periods. Nevertheless, the continual existence of this gray area also weakens the regulatory authority of the state and strengthens the boundary-blurring process by the market actors.
Overall, the interaction between local and foreign law firms in China’s corporate law market is characterized by the boundary-blurring in the workplace, in personnel flow, and in state regulation. It has partially transformed the nature of this market relationship from collaboration to competition, changed the inter-firm personnel flow from one-way to both ways, and kept a persistent gray area in state regulation. The result is neither the complete adoption of global models nor the resistance of institutional diffusion, but rather hybridization, i.e., the production of a localized expertise underneath the outlook of a global legal profession.

**Early Years of the Chinese Corporate Law Market**

Along with the nature of business law, foreign law firms first came to China following their clients. As early as 1978-79, a few American law firms already started to represent globalizing American companies like Coca Cola in foreign investment negotiations with Chinese enterprises (IN07207). At that time, there was no concept of commercial lawyering in China, and the Chinese legal profession was only formally revived in 1980, with most lawyers doing criminal and non-commercial civil work. Until the late 1980s, all Chinese lawyers worked in “legal advisory divisions” (fälü guwen chu) or state-owned law firms that were affiliated with different levels of state administrative agencies and work units (Michelson 2003). Not surprisingly, none of the foreign law firms entering China was allowed to establish a formal office¹ – they had to

¹ According to the 1981 Joint Notice on Forbidding Foreign Lawyers to Practice in China (Ministry of Justice, State Bureau of Foreign Experts, and Ministry of Foreign Affairs 1981), foreign lawyers were only permitted to “provide legal advice and legal help on foreign legal issues and to give lectures and talks on foreign law.” Foreign lawyers retained by government agencies or work units should be called “legal expert” instead of “legal counsel.”
do their daily work in some major hotels in Beijing and Shanghai (IN07201; IN07207). And the number of lawyers working in these foreign law firms remained quite limited. Nevertheless, because of the non-existence of local corporate lawyers and the urgency of attracting foreign investment, the small number of foreign lawyers played a vitally important role in the first decade of China’s market reform and opening up.

For widely-known political reasons, the steady flow of foreign capital to China halted in a sudden in 1989. Most foreign law firms, including major American firms like Baker & McKenzie and Sherman & Sterling, relocated their business to Hong Kong. Coincidentally, it was in the same year that Jun He, one of the first Chinese corporate law firms specializing in foreign-related work, was established in Beijing by a few Chinese lawyers trained abroad. This new type of “cooperative law firms” was created as an experimental form in the transition of Chinese law firms from state-owned firms to partnerships. The primary goal of this transition, as a founding partner of Jun He explained, was precisely to embrace the demands of incoming foreign investment, because few foreign investors would trust a state-owned law firm regarding their commercial secrets (IN04217).

The period of early 1990s was a difficult time for the newly born Chinese corporate law firms. By 1992, in the eve before partnership was permitted, the Beijing Bureau of Justice (BOJ) had only certified ten cooperative law firms. These Chinese firms rarely had any foreign clients, and their primary business was to represent state-owned Chinese enterprises to deal with foreign investors in joint ventures (IN06233). The firms were doing everything they could to survive,
sometimes even having to combine high-end corporate transactions with obscure tasks like visa and adoption (IN07201). This difficult situation continued to 1994-95, when most of these firms were reorganized into partnerships.

In the meantime, soon after Deng Xiaoping’s southern tour in 1992, the Ministry of Justice (MOJ) began an experiment of permitting foreign and Hong Kong law firms to establish offices in mainland China. Due to the lack of expertise in regulating foreign law offices, the first draft of the Interim Regulation on the Establishment of Foreign Law Offices in China (hereinafter the “1992 Interim Regulation”) made by the MOJ and the State Administration of Industry and Commerce (SAIC) contained many problems and it was heavily criticized by some foreign lawyers working in China. According to a former partner of Coudert Brothers, one of the first foreign law firms entering the Chinese market, much of the final version of the 1992 Interim Regulation was actually revised by their staff (IN07207). In December 1992, the MOJ certified 12 foreign law firms (including eight Hong Kong firms) to set up offices in Beijing, Shanghai, and Guangzhou. As Table 1 shows, by 1995, the number of foreign law offices had increased to 32 (including 11 Hong Kong firms).

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The reappearance of foreign capital and foreign law firms in China turned out to be a big blessing for the development of local corporate law firms. According to Article 16 of the 1992
Interim Regulation, foreign law offices in China were not permitted to “represent Chinese legal affairs,” to “interpret Chinese law,” or to “employ Chinese lawyers.” Hence, when the legal project needed formal legal opinions or court representation, the foreign firm had no choice but to collaborate with a local law firm. Almost none of the local firms, however, had adequate expertise in corporate projects like foreign direct investments (FDIs) or mergers & acquisitions (M&As) at that time. Consequently, foreign law firms often chose to draft the entire legal opinions by themselves and then merely let their Chinese collaborators sign the documents (IN07208). In other words, the Chinese firms were used as “rubber stamps” that did little work but assumed all the responsibilities and risks associated with the legal documents. Although the amount of billings that foreign firms transferred to their “rubber-stamp” local firms was quite modest, usually a few thousand dollars and sometimes as low as $500 (IN07201), it was the first barrel of gold for many Chinese corporate law firms.

As the Chinese economy boomed in the 1990s, the corporate law market was developing at a stunning speed. From 1990 to 2000, China drew in over $300 billion in utilized FDIs and made a few hundred thousand joint ventures (Huang 2005; Gallagher 2005; IN06214), which generated abundant business opportunities for both foreign and local law firms. Besides FDI and M&A deals, initial public offerings (IPOs) became another major type of business for the corporate law firms, with local stock markets opened up and large Chinese state-owned enterprises and banks started to be listed abroad. Furthermore, the burgeoning real estate market in major Chinese cities also began to attract a large amount of foreign capital. Accordingly, a few
leading Chinese law firms became relatively specialized in their practice, focusing exclusively on high-end corporate work like FDIs, IPOs, real estate, or financial projects (IN06233).

By the late 1990s, both the structure and personnel of the local corporate law firms had changed dramatically. All the major firms in Beijing and Shanghai had been reorganized into partnerships, and some Chinese lawyers trained and worked abroad came back and became partners in leading local firms (IN04207; IN06219; IN07208). These partners were generally fluent in English, and they brought back valuable experiences in complex corporate transactions. As a result, the expertise of local law firms in foreign-related projects significantly increased (IN04217; IN06206). Accordingly, some leading firms refused to be the “rubber stamps” of their foreign collaborators anymore – they started to assume a substantive part of the corporate legal projects, e.g., conducting due diligence, drafting legal opinions, etc. And some foreign firms also preferred to outsource some of their low-end work to local firms to reduce costs and minimize risks.

Therefore, by the turn of the century, the collaboration between local and foreign law firms had become more substantive and interdependent. A good symbiotic relationship was formed in this gray area of legal practice. However, this situation did not last long – China’s entry into the WTO in 2001 accelerated the globalization of the legal services market and the entrance of foreign law firms (see Table 1). By early 2007, 169 foreign law firms and 72 Hong Kong law firms had been permitted to practice in China (Liu Aijun 2007). In Beijing alone, there were 90
foreign law offices with 603 employees in January 2007. This development has significantly broken the balance of competition in the Chinese corporate law market.

While foreign law firms are rushing into the Chinese market, in 2001 the State Council promulgated the Administrative Regulation on the Representative Offices of Foreign Law Firms (hereinafter the “2001 Regulation”), which ironically permits foreign law offices to “provide information concerning the impact of China’s legal environment” but not including “Chinese legal affairs” (Article 15). In recent years, this 2001 Regulation has generated endless debates and conflicts among practitioners on both sides of the blurred jurisdictional boundary. The following discussion, therefore, will focus on the dynamics of boundary-blurring in the corporate law market since the WTO entry and the 2001 Regulation, starting from the workplace and then proceeding to personnel flow and state regulation.

The Gray Area of Practicing Chinese Law

The conflict between foreign and local law firms in the workplace focuses on the issue of practicing Chinese law. While both the 1992 Interim Regulation and the 2001 Regulation explicitly leave a gray area for the foreign firms, to what extent can they go into or even beyond this area, or how the gray area is constituted in the actual legal practice, is still an empirical question. In their work, four different strategies are adopted by foreign firms: (1) compliance: strictly following the regulation and providing no service related to Chinese law; (2) competition:

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2 Data from the online database of the Beijing BOJ, http://www.bjsf.gov.cn/zwgk/xzgg/P020070118395117192667.doc.
providing services of Chinese law but not collaborating with local firms; (3) *symbolic collaboration*: providing services of Chinese law and only using small local firms or “puppet firms” as “rubber stamps”; and, (4) *substantive collaboration*: providing services of Chinese law and collaborating with major local firms.

The choices of firms among these four strategies first depend on their areas of practice. In IPO projects, for example, there is a clear division of labor with regard to jurisdiction – foreign firms only provide services concerning Hong Kong law (for H-share) or New York law (for N-share), while the preceding reorganization part of the deal, which involves almost exclusively Chinese law, is conducted by Chinese firms (IN04203; IN06204; IN06206; IN07203). Although foreign and local firms often exchange comments regarding the legal documents, there is rarely any jurisdictional conflict between them. The compliance rate is the highest in this area of practice.

In contrast, in FDI and M&A projects, workplace boundaries between the two types of firms are much more complex and ambiguous. By definition, FDIs and M&As are inbound transactions within mainland China and are mainly concerned with Chinese law. Moreover, a distinctive feature of these projects is that sometimes no formal legal opinion is required in providing the legal services; instead, lawyers only need to do due diligence, contract negotiation and then write memos for the clients (IN06210; IN07207). In this case, the foreign firm could either handle the entire project by themselves or subcontract some work to a local firm. i.e., it would face a choice between competition and collaboration.
But then what determines the different choices of foreign firms in similar types of projects like FDIs or M&As? My interviews suggest that the crucial factor is financial cost – whereas top-tier firms with higher billing rates tend to outsource the low-end work (e.g., due diligence) to local firms and focus on the high-end structuring designs of the project, lower-tier firms, especially newcomers that entered the Chinese market in recent years, are much more likely to handle most of the work by themselves. Compare the following four comments from lawyers working in different types of firms:

We have lots of collaborations with local firms. For example, many due diligence work need to be done by local firms, including issues of facts, property, etc. Of course, when doing it we restrict the scope and direct their work. … Sometimes the client would consider the issue of cost. The billing rates of local firms are lower. But the work we do is of different levels, and the level of local firms is lower. … Our work is basically on big strategic issues, such as designing the investment structure, which most local firms are not capable. (Lawyer from a top-tier French firm, Beijing, IN06212)

Firms like ours certainly have collaborations with all famous local firms. Generally speaking, if a local firm is involved, we would not do the due diligence. Although we also send some people there, they [local lawyers] would write the due diligence report. Of course we would draft the final legal document, but some of our partners are not willing to do due diligence, because it takes a long time. We are particularly not willing to do it when the project has a restriction on the lawyer fee. Also, when it requires a legal opinion, we would also go to a local firm. (Lawyer from a top-tier British firm, Beijing, IN07204)

We have local agents to handle filings, but we usually do not collaborate with local law firms, excepting for some technical matters in real estate projects or for evaluating litigation. We use filing companies. The reason is that the cost structure is much better than hiring local law firms. Local law firms cost much higher. (Lawyer from a third-tier American firm, Shanghai, IN06232)

We always do our own business by ourselves, never collaborating with Chinese firms,
because FDI is mainly about negotiation, writing contract, and writing memos, not about [legal] opinions. … In IPO projects collaboration with Chinese firms is required, but not for FDIs. The boundary between Chinese firms and foreign firms will gradually become blurred. (Lawyer from a second-tier British firm, Beijing, IN07207)

It is clear from these quotes that top-tier foreign firms are more willing to outsource their work because their high billing rates (usually above $500/hr) make due diligence and other low-end work unpalatable, and sometimes their clients would also prefer to use local firms to reduce costs. On the other hand, for the second-tier or third-tier firms whose hourly rates ($300-400/hr) are not much higher than the rates of local firms ($200-350/hr), subcontracting the work is economically undesirable because of the transaction cost (Williamson 1981). Another common concern that these firms have is that local firms would steal their clients afterwards – in other words, they perceive Chinese firms as their business competitors rather than collaborators (ININ06204; IN06206; IN07208). The managing partner of an American law office in Shanghai elaborated on this issue:

We did not want to outsource our work to local law firms, because from 2001-2002, local firms became competitors. Before that they were not a threat to the practice of foreign firms, but with a lot of lawyers going back from abroad and from foreign firms, they’ve had the capability to produce high quality legal documents. So collaboration between us and local firms is very difficult, because we would not outsource our business to a competitor. Otherwise they would take our clients. Actually I made some strategic talks with local lawyers at the time, but then we found out that they were in fact competing with us. (IN06231)

In fact, this concern of losing clients to local firms is shared by most foreign firms

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3 Needless to say, this is a general statement that has its exceptions. For instance, a distinguished Chicago-based American firm is identified by several interviewees as famous for not subcontracting their work to local firms (IN06209; IN06233).
practicing in China. Even the most prestigious firms would tightly control the work process when they outsource work to local firms, by making the client information anonymous, closely coordinating the work procedure, or keeping the crucial part of the work for themselves (IN06209; IN06212; IN06217). And some firms would avoid collaborating with major local firms at all – they prefer to use smaller firms or the so-called “puppet firms” (IN06218; IN06219; IN06233; IN07201; IN07210). These puppet firms often merely sign the legal opinions written by foreign firms and deal with issues of government inspection without doing any substantive legal work. Some of them were even established or directly controlled by foreign firms or foreign investors (IN06209; IN07201; IN07210). Not surprisingly, the existence of puppet firms generates a great deal of condemnations and complaints from major local law firms. A senior partner from a leading local firm in Beijing explains the situation:

Originally they [foreign firms] just threw a piece of bone for you to chew – you could not eat up the big meat anyway. Then they are afraid that the clients would become so comfortable in cooperating with us, so they go to the small firms, give you the biggest risks, but limited revenue. This is a poison for Chinese firms, a fatal lure. It appears easy, but in fact they just complete deals with many ambiguous issues under Chinese law left unresolved. When something happens, they would say “the Chinese lawyer said there was no problem.” Although Chinese law is a gray area, as long as they have the opinions of Chinese lawyers, they can totally avoid their responsibilities. … The behavior of not using major Chinese firms is very narrow-minded, for although you can avoid your risks, you cannot avoid the risks of the project. … Every foreign firm must make a balance between project interests and maintaining clients. (IN07208)

Many partners of local firms are frustrated by the frequent collaborations between foreign firms and puppet firms, yet they have little capacity in changing the status quo. One fundamental
reason is that foreign investors generally do not trust Chinese law firms when seeking legal services. This is particularly true for companies newly coming to China – for them the comfort level in using a foreign firm is much higher than using a local firm (IN06231; IN07202). Although a few leading local firms have accumulated certain reputation and trust from foreign clients over the years (IN06206; IN06219), in general it is still difficult for any local firm to get abundant business without the referral of foreign firms. In other words, their transformation from collaborators to competitors of foreign law firms is far from complete.

Besides the variation by firm types, another interesting pattern in collaborating with local firms is the variation by country. For example, several senior partners in local firms all indicate that American and Japanese firms are more aggressive than British, French or Australian firms and often do not collaborate with them in their projects (e.g., IN06209; IN06219; IN06233). A partial explanation for this phenomenon is that the vast majority of clients that American and Japanese law offices in China serve are from their own countries, whereas the client bases for European firms are more diverse (IN06212; IN06219). Client loyalty makes it less likely for the law firm to subcontract the work.

The aggressiveness of some foreign firms is not only reflected in their reluctance in collaborating with local firms, but also in the scope of their practice. Despite the common understanding that litigation work is beyond the gray area, in practice many foreign firms still seek to control the litigation process. Although they have to use local lawyers to appear in court, some firms would actively participate in file preparation and the design of courtroom strategies
Accordingly, the Chinese lawyers who appear in court would merely get a small percentage of the lawyer fee (IN06233).

The problem is even trickier in the area of commercial arbitration. The MOJ’s interpretive regulation on the 2001 Regulation defines representation in arbitration as a type of “Chinese legal affairs” (Ministry of Justice 2002: Article 32), which generated many complaints and protests by foreign lawyers (IN06214; IN06217; IN06230). As the managing partner of an American firm puts it:

Everybody could do arbitration, even foreigners without a lawyer license anywhere, but the Ministry of Justice’s restriction was only on foreign firm employees in China. This is ridiculous. (IN06217)

Although the MOJ never actively implemented the restriction, in 2005, right before Coudert Brothers dissolved globally, the firm’s managing partner in Beijing and his assistant were sanctioned by the Beijing BOJ for representing clients in an arbitration case (Beijing Bureau of Justice 2005). Although the sanction had little actual effect after the firm’s dissolution, it suggests that arbitration is still considered by the government to be a sensitive area of practice.

To summarize, I have examined in this section how the existence of the gray area of practicing Chinese law has influenced the dynamics of competition and collaboration between foreign and local firms. The various strategies that foreign firms adopted in their projects are not only passive adaptations to the ambiguous prescriptions in the law, but also an aggressive force that contests the blurred market boundary. Local firms, on the other hand, have few stakes in
constituting the gray area because of their inferior market positions. Yet their hope lies in the increasing localized expertise and experiences of doing corporate legal projects in China, which, as the next section will demonstrate, have become a vitally important element for the success in this market.

**Boundary-Work and the Production of Localized Expertise**

The blurred boundary between foreign and local law firms is produced not only in their competition and collaboration at the firm level, but also in the day-to-day work of individual lawyers. Separated by the barrier of practicing Chinese law, how do lawyers working in foreign and local firms perceive each other’s work? And how do these mutual perceptions lead to the boundary-making and boundary-blurring processes in the workplace? This section will focus on these questions and observe the micro-level interactions that constitute the global-local boundary.

When asked about their impression of the work style of lawyers in local firms, lawyers in foreign firms are often engaged in boundary-making by displaying a notable sense of superiority. For many of them, particularly those who came to China in recent years, Chinese lawyers in local firms are not of the same species as themselves, i.e., they are not professional enough and sometimes lack of creative thinking (IN04207; IN06208; IN06213; IN06217). For example, a lawyer who worked in California for many years and recently came back to China to manage an American law office in Beijing describes his impression of local lawyers:
When I work with local firms I always feel they are in the secondary position, often not proactive enough and only work passively. Also, they still have some gaps in the experience of international transactions, not standard enough. Sometimes they are obsessed with some minor issues, argue harshly on some purely legal problems, but overlook the interest of the client. They don’t know what the client wants, no creative thinking, because the lawyer’s job is not just to interpret the law, but to solve business problems for the client. (IN06213)

Interestingly, this complaint on the professional expertise of Chinese lawyers is rarely found for respondents who have practiced in China for a relatively long time. Although these lawyers also indicate certain frustrations in dealing with local firms, they usually attribute the problem to the legal environment that their Chinese colleagues are embedded in. As one lawyer comments, “Chinese law is not complicated, but the ‘conditions’ of Chinese law are extremely complicated” (IN06203). The complexity lies in both the client and the government. On the one hand, the client types of elite Chinese law firms are much more diversified than that of foreign law offices, including foreign investors, large state-owned enterprises, and private enterprises. Hence lawyers have to use distinct strategies to accommodate different demands of the clients (Liu 2006). On the other hand, Chinese corporate lawyers constantly deal with government agencies in their work, and the logic of bureaucracy makes a lot of things unpredictable. Two associates working in large local firms in Beijing give very good examples:

I often go to those a few government agencies, mainly the CSRC (China Securities Regulatory Commission), the MofCom (Ministry of Commerce), the SDRC (State Development and Reform Commission), and the SASAC (State-owned Assets Supervision and Administration Commission). For example, that M&A Regulation by the MofCom, I did the first approval after it is implemented. … Part of the deal was in Hubei
Province, and one agency there had not approved it until the MofCom’s system was closed on September 7th. Then I went to the MofCom at 8am in the morning of the 8th to wait at the door of their division chief. But they said “we have some activity at 8am, you come back at 10:30am.” I came back at 10:30am and [they] said “Our 8am activity was moved to 10:30am, so you come back in the afternoon.” Then I had to go there again in the afternoon and got the thing done. (IN06216)

The American way of doing things is different from ours. For example, [American] clients often require us to have a schedule, and the schedule is made two or three weeks in advance. But those [government] agencies and people you’re dealing with have no schedule, how could we lawyers have a schedule? (IN06222)

Both the two lawyers emphasize the lack of schedule in Chinese government agencies, which leads to the lack of rationality in their own work style. In other words, the work of local lawyers appears less “standard” or “professional” in the Western sense precisely because they have to adapt to the Chinese social and political contexts to a deeper degree than their colleagues in foreign law offices. Sometimes this adaptation also requires sophisticated thinking. A partner in a top-tier American firm explains how his project collaborator, a prominent security lawyer in China, uses a “Chinese” way to handle a problem:

The work style of Chinese lawyers is not the same as ours. They must adapt very often and cannot make a rigid application of Chinese law. The most important thing of being a lawyer in China is not legal codes, but creativity. In America we just apply the law and the conclusion is often that the deal is not possible. Chinese lawyers are different. I give you an example. When a large state-owned bank was to be listed, it had to be separated into two companies. But according to the Corporation Law, the two companies must assume mutual responsibilities, so the listed company has to assume responsibilities for those credit unions that do not make money. At that time my collaborator thought of an idea. He found an interpretation of the Contract Law, which was in conflict with the Corporation Law, but he argued that Contract Law and Corporation Law were at the same level, so we could follow the Contract Law. But for some other issues we also followed
the Corporation Law. This actually has a problem, but to list the company we had no other choice. For this issue we asked many people. Of course the best would be for the NPC (National People’s Congress) to make a legislative interpretation, but the NPC could not do it in time. Then we contacted the Supreme Court, still could not do it. Finally we organized a symposium of legal experts through the Ministry of Finance and produced a symposium memo, so that it could become a basis in case there would be a problem later. Things like that American lawyers cannot do, but this is not to say my collaborator is a bad lawyer when he did it. In fact, it shows he is a very good lawyer. (IN06206)

This example is in sharp contrast to the earlier comment made by other less experienced foreign lawyers, that Chinese lawyers are lack of creative thinking. What we see here is a distinctive type of professional expertise that fits the Chinese context well and also meets the goal of the client. Because listing the state-owned bank in the stock exchange was an important part of the national economic policy, the lawyer tried to mobilize several central government agencies to fix the legal obstacle and eventually made the deal. It may seem an odd solution to an American corporate lawyer, but this is precisely how professional expertise works in the social context of China, where government agencies control much of the national economy. It is a perfect example of the localized expertise that Chinese corporate lawyers have developed in their day-to-day legal practice.

The possession of localized expertise does not make local firms content with their practice. Instead, almost all leading local firms in Beijing and Shanghai actively seek to imitate the work style and business model of foreign firms. From minor issues like document settings and website design to more substantive aspects like billing method and management structure, these Chinese law firms want to look similar to the Anglo-American mega-law firms in almost every way, even
the firm size. In the past a few years, the sizes of all the large Beijing law firms have grown substantially, with the biggest firm, King & Wood⁴, already has over 600 lawyers in 11 offices, including overseas offices in Hong Kong, Tokyo, and Silicon Valley. Even some partners in foreign law offices agree that the Chinese firms are quickly catching up (IN06230; IN07207), though they still have reservations on the substantive effect that these formal changes would generate. As a very experienced managing partner of a British firm comments:

The quality of lawyers in Chinese firms varies a lot, but many partners there returned from foreign firms. There are more and more such exchanges, so the boundary between Chinese firms and foreign firms will gradually get blurred. Some people may disagree, but I think the Chinese firms are making progress very fast. They copy our documents, exchange personnel with us, and some firms even copy our fax titles. This is like those newly rich people, they get better tastes for dressing, but the internal mechanisms, quality, and genes are hard to say. (IN07207)

Indeed, although the outlook of local firms has changed dramatically over the years, their work style largely remained the same. Business referrals and cooperation among partners are not common, and the majority of projects are still carried out by partner teams rather than project teams (Liu 2006). In other words, the growth in firm size has not brought about any fundamental change in the manners that the legal work is conducted – this is precisely the decoupling effect of institutional diffusion (Meyer and Rowan 1977). Another experienced managing partner of an American firm describes the difference in the organization of work for Chinese and foreign law firms.

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⁴ The Chinese name of King & Wood is Jin Du, which symbolizes gold, wood, and soil, three of the five basic elements of nature in Chinese ancient philosophy. And the firm’s logo is in red and blue, symbolizing fire and water, the other two elements. However, this deep cultural root is almost completely invisible from its English name, King & Wood. This firm name itself is a good example of the hybridization between the global and the local in the process of globalization.
firms:

Chinese law firms are not operating as firms, but as individual partners. Just like a boutique. This would generate big problems when the transaction involves multiple offices. Even if a Chinese firm has offices in both Beijing and Shanghai, one partner would never give the business to another partner, especially in a different city. They cannot divide the money. This is not the case for us – we always put the client’s needs as our first priority, and we trust the work quality of every office. If the partners in one office were not trustworthy, then that office would be closed down. (IN06217)

In addition to the lack of cooperation among partners, lawyers’ training is another major problem for local firms. As many partners in these Chinese firms began their practice during the economic boom of the 1990s, they were able to make partners and get rich in a relatively short time and often without solid professional training. Accordingly, when they train their associates, they also tend to expose the associates to clients and government agencies at an early stage. This is in sharp contrast to the training method of foreign law firms, where associates would focus on legal research for several years before meeting clients. A senior partner of a leading Chinese law firms who had long time work experience in foreign firms elaborated on this issue:

You come to our firm to have a look, how many partners are staying in their offices and doing research, making or transferring products? All day long they are jammed with conferences, dinners…those kinds of stuff. Why is it like this? Because in the training of Chinese lawyers we do not teach how to make products, most partners did not receive such training, how could you expect them to train others? Once you become a partner, you cannot receive training anymore. … Another reason is the pressure of getting revenue. Partners have to use all their skills, no time for such training at all. Even the associates need to run outside and attract clients. [They] do not stay in the office, too short-sighted. (IN04207)
What this partner said is verified by the descriptions of their work from other interviewees, particularly associates and junior partners in local firms. They all indicate that the production of their legal documents is often not as careful and full inspected as in foreign firms (e.g., IN06205; IN06222; IN06229; IN07204). For instance, in foreign firms, memos and documents to the clients usually need several rounds of inspection, from the assistant all the way to the managing partner, sometimes even requiring the revision of professional translators (IN06229). In local firms, in comparison, it is not uncommon for an associate to send her memo directly to the client without any inspection of the partner, because almost no Chinese client would take legal action against the law firm in case of negligence (IN06203; IN06204). Besides legal research, associates in local firms also frequently attend phone conferences, meet clients, and deal with government agencies in their work. The on-site training they receive in the workplace is far more complicated than the pure legal training the senior partner refers to in the previous quote. A senior associate in a leading local firm explains the difference:

The exposure in local firms is very good. We can handle clients very early, and also have close relationship with the government. It is good for personal development. This difference is mainly determined by the market. Foreign firms can manage to do this because their [market] pressure is not as big as ours. If only third or fourth-year associates in our firm could meet clients, then the partners would be exhausted. We are short of people, though the firm is so big, still short of people. You look at her [a junior associate], she’s only been here for more than a year and already started to answer phone calls from clients. And partners’ work is just to have dinners and social activities with clients. The range of our work is different from that of foreign firms. For them, the work from second-year associate to partner are all different; for us, basically the same. And
many of their partners indeed do not know Chinese law at all. (IN06204)

Paradoxically, this seemingly “unprofessional” way of training associates is crucial for the production of localized expertise in the Chinese context. Precisely because associates in local firms are exposed to clients and government agencies at an earlier stage of their career than associates in foreign firms, their experiences in the Chinese legal environment also get mature much earlier. For example, a fifth-year associate in a prestigious Chinese firm who will become partner in a few months describes his work as the following:

I improve much faster than those people in foreign firms. They basically still do due diligence and write memos every day, but I can already handle projects independently. We have a girl just coming back from a French firm, and she doesn’t even dare to write a document. She told me in her firm only Of Counsel could write that kind of documents. Now I handle more than ten projects at the same time. I almost do not do due diligence anymore. I thought about it the other day, perhaps haven’t done any in two years. I like meetings, business trips, attending wine parties, dealing with people. They say I’m an air-flying man in the firm, travelling all around. Actually I can improve faster this way, because the people I’m in touch with are all high-level managers in companies, investment banks, and counsel from foreign firms. I can learn a lot from them. And these are nice people. They don’t have the sense of hierarchy. Their credentials are all similar to my partner, but all become friends of mine. (IN06203)

This way of life is hard for a fifth-year associate in the foreign law offices to imagine. Most of them are still buried in the routine legal research and due diligence work at this stage of their career. Furthermore, as most foreign firms offer no partnership track to their Chinese associates, they often pay little attention to nurturing their other professional skills besides pure legal research and English (IN06212: IN06226). Therefore, although many partners in foreign
firms look down upon the quality of legal training in Chinese firms, their own training system is also not perfect – it is not well directed to the complex legal environment in China and thus disadvantageous in producing localized expertise in comparison to the training system in Chinese firms. Sometimes this could lead to serious problems, because clients do need localized legal expertise to support them. In recent years, some foreign firms begin to adapt to this by employing more Chinese lawyers and branding the expertise in Chinese law to their clients. A third-year associate who moved from a large local firm to an American law office in Beijing gives an example:

I think sometimes our firm is doing too much. We tell our clients all our people are Chinese lawyers, not even claiming we’re an international firm, but emphasizing the strength of our local practice. This is very strange. It was not like this before. I guess perhaps it is because nowadays clients understand our business better, and they know foreigners indeed do not know Chinese law. Only Chinese lawyers could work. Another reason is whether our counterpart company would accept. For example, in a project the client first went to a large American firm, but the counterpart company refused to cooperate with it, saying that we could not communicate with those American lawyers, and we would quit the deal if you still use American lawyers. Then [the client] came to us, the counterpart first see us as another American firm, but then discovered that we’re all Chinese and we had good communication, so the deal was made. (IN06222)

Arguably, branding the foreign firm as qualified in Chinese law and staffed with Chinese lawyers significantly blurs the workplace boundary between foreign and local firms. While local firms seek to imitate foreign firms in their practice, some foreign firms are also trying to get localized to win more clients in the fierce competition among foreign firms. Therefore, although boundary-making exists in foreign and local lawyers’ talk of each other, it is boundary-blurring
that prevails in their workplaces. Moreover, beneath the firms’ converging outlook, a localized expertise has grown from the workplace of local firms and then been spread to foreign firms with personnel flow. As the next section will demonstrate, this recent trend of employing Chinese lawyers and branding localized expertise has changed the personnel and practice of both foreign and local firms profoundly.

The Employment Dilemma of Chinese Lawyers

Foreign law firms’ massive employment of Chinese lawyers is a relatively recent phenomenon. Before China’s WTO entry in 2001, few foreign law offices in mainland China would recruit lawyers from local firms. Instead, they preferred to use either recent graduates from elite Chinese law schools or lawyers with law degree and practice experience abroad (IN06214; IN06217). The formal government restriction on employing licensed Chinese lawyers presented no de facto barrier in practice, because the employed lawyer could simply return their PRC lawyer license to the BOJ and stop registration.⁵ A more important reason is that partners in foreign firms had little trust in the professional expertise or English skills of local corporate lawyers at that time. Indeed, in the 1990s few lawyers in Chinese law firms could speak good English or write high-quality legal documents, because they merely assumed a complementary role in the collaboration with foreign firms. As a senior partner who has worked in both foreign and local firms since the 1990s vividly comments:

⁵ In China, there is a distinction between lawyers’ qualification license (zige zheng) and practice license (zhiye zheng). When returning their practice license to the BOJ, the lawyer would not lose her qualification.
Let me make an analogy. Most Chinese lawyers are scholars of literature, but not writers. But foreign lawyers are both scholars and writers. What’s the meaning? Usually foreign lawyers write legal documents, and Chinese lawyers make comments. But people who make comments cannot write literature themselves. (IN04207)

While foreign firms had no intention to employ local lawyers, local firms were desperate to attract talents from both foreign firms and abroad ever since the mid-1990s. And their efforts have been gradually paid off over the years. For example, in Jun He, almost half of the partners have years of education and work experiences in the United States, Britain or other developed countries, and about 70% of their associates above third-year have at least a foreign law degree (IN04217; IN06233). The personnel compositions in King & Wood, Zhong Lun or other leading local firms are not dissimilar (IN04222; IN06219; IN07208). Many of these lawyers worked in the China offices of foreign law firms as associates and then returned to local firms because foreign firms offered no partnership track (IN06226; IN06232). In other words, in the first decade (1992-2001) of the coexistence of foreign and local law firms, the personnel flow was basically one-directional, i.e., only senior associates returned from foreign firms to local firms and became partners, but not vice versa.

From 2001 to 2007, over a hundred new foreign and Hong Kong law offices have been set up in Beijing and Shanghai (Table 1). This no only increases the competition for legal projects among the firms, but also greatly intensifies their competition for legal talents. While newcomers were busy setting up their offices, the total numbers of lawyers in many existing foreign law
offices were also doubled or even tripled in less than five years (IN06225). Where did all these foreign firms find so many qualified lawyers in such a short period of time? Apparently, they had to recruit a large number of lawyers from local firms in addition to returning lawyers and new graduates.

With the continual flow of personnel from foreign to local firms, the professional expertise of local firms was substantially improved – they have become both “scholars” and “writers” of legal documents (IN04207; IN06217). This is not merely an appropriation of legal technologies from foreign firms, as many foreigners believe (IN06225), but the creation of a localized expertise that adapts to the unique legal environment in China. As the previous section has shown, many foreign firms also started to appreciate the importance of this localized expertise to their business, thus they began to actively recruit experienced lawyers from local firms. One common recruiting method that foreign firms use is to find candidates through headhunting firms, and the quick expansion of foreign law offices in both Beijing and Shanghai even produced a few headhunting firms specializing in recruiting lawyers. The CEO of a Shanghai-based headhunting firm, for example, explains the criteria for selecting candidates for foreign firms:

Of all the requirements of foreign firms in recruiting Chinese lawyers, the first is good English. People with good English would have a 40-50% advantage. The second is good experience, in general, more than 3 years of experience in King & Wood or Jun He. Then we look at law school background and the Chinese and foreign bars. … Partners in foreign firms are all foreigners, so people who have bad English would never pass the interview. Although they don’t normally say this, English is certainly the primary criterion. (IN06226)
This overwhelming emphasis in English is confirmed by several senior partners in foreign firms (IN06230; IN09231; IN06232), which even causes gender imbalance in many firms, as female lawyers usually have better language skills. Besides English, the most crucial criterion is the lawyer’s practice experiences in mainland China, or the localized expertise. Ideally speaking, all foreign firms would prefer senior associates or junior partners to junior associates, yet experienced lawyers are often not easy to find. Because foreign law firms rarely offer a partnership track to their Chinese employees, few promising senior associates or junior partners in local firms would want to switch to a foreign firm. Consequently, in practice most foreign firms are targeting at local firm associates with 3-5 years of experience. The managing partner of a Shanghai-based American law office describes their recruitment strategy:

Some people say now the competition for talent is very severe, but it depends on what seniority level you’re talking about. For seventh-year experienced lawyers, there are very few choices. It is unrealistic for us to get them. So our strategy is to get some very smart and highly qualified junior lawyers. When recruiting lawyers, we give them an English test to see whether their English has reached a certain level. We also pay attention to their international experience, for example, whether they have a LL.M. or J.D. degree. … But it is true that there is no hope in becoming partner in foreign law firms. It is the same thing with women and racially minority lawyers in the U.S. You’re not the powerful group in the organization. (IN06232)

Foreign firms’ concentration in recruiting middle-level associates has caused some devastating consequences to the leading local firms. For example, the Beijing office of a leading local firm lost 27 associates in 14 months, all of whom are of this level of experience (IN06208;
IN06211; IN06221). It significantly reduced the work quality of the firm, as a senior associate explains:

Recently our firm has been in a chaos. This summer many people left, all third-year or fourth-year. Almost everybody who was capable to work left the firm, because the income in foreign firms is basically twice as much as ours. Now when lawyers in our firm chat together, we only discuss who went where. A few foreign firms stole many people from us. Our partners are also holding meetings to discuss how to solve the problem. … The impact of losing so many people is tremendous, because the newcomers could not work at once, and the partners would not interfere, so sometimes documents written by interns were directly sent out. It decreased the quality of our products, also damaged our reputation. Last year there was a client referred by a foreign firm. Just because all our capable people left, the client was very dissatisfied with the product, and they said Chinese firms were not good enough. (IN06211)

Another associate in the same firm also indicates that, when these experienced associates left and were replaced by associates from other local firms, it even changed the culture in the workplace – she could not feel the same collegiality among lawyers anymore (IN06221). And, more seriously, when partners in local firms realize that their best associates would leave the firm in a few years, they would tend to invest much less in their training (IN06201).

----- Table 2 about here -----

Why would middle-level associates in local firms want to switch to a foreign firm? The obvious answer is income. Table 2 presents the results of a salary survey published by LawInn, a Shanghai-based legal consulting firm. According to the survey results, for junior associates
without a foreign law degree, the average salaries in foreign and local firms are quite similar; for middle-level “legal consultants”\(^6\) (no foreign bar), the average salary in foreign firms is about 1.4 times of associates in local firms; for middle-level associates (with foreign bar), the average salary in foreign firms is more than twice of that in local firms; for senior associates, the difference is even more salient. Therefore, it is very tempting for middle-level associates in local firms to go abroad to get a foreign law degree and then join a foreign firm. Or, in case they do not want to study abroad, they could still directly join a foreign firm as a “legal consultant” and earn a better salary.

Besides the advantage of income, another important reason for associates to choose foreign firms is to gain a different style of legal training (IN06209; IN06217). However, several interviewees who switched from local to foreign firms all indicate that they are somewhat disappointed by the training system there (IN06215; IN06222; IN07204). Yet working in a foreign firm still could bring good experiences, as the CEO of the Shanghai-based headhunting firm explains:

Many people went to foreign firms because it looks good on the resume, and some thought the training would be better. Actually when they got there they found there was little training. Foreign firms have no localized training program, and it needs a lot of changes to apply an Anglo-American training system to a civil law country, also problems of language and culture. Of course your income would increase a lot in foreign firms, and your language skills would also improve a lot. Another important aspect is on-the-job training. Although the things you can handle become less, only do due

\(^6\) Because of the government restriction on foreign law firms’ employment of licensed Chinese lawyers, if a lawyer with the PRC license but no foreign license join a foreign law firm, her title would be “PRC legal consultant” or “China advisor” instead of “associate.”
diligence, but you can watch how partners handle clients, because partners in foreign firms are much better than partners in local firms. … You can watch the exchanges between the firm and the clients. Even those internal emails would be helpful. Also, foreign firms have better firm structures – they have office managers, giving you a secretary, improving your business sense. (IN06226)

Nonetheless, the biggest disadvantage of working in foreign firms is the lack of partnership track. For instance, until today, most American law offices in China would only promote expatriates or Chinese nationals with long time overseas practice experience to partners. Without such experiences, the highest position that a home-grown Chinese associate could expect is Of Counsel, even if she obtained a U.S. law degree and passed the New York bar exam (IN06215; IN06226). Facing this situation, when Chinese associates decide to join foreign law firms, most of them are already prepared to leave the firm in a few years – the common options include partners in local firms, in-house counsel, or simply exiting the legal profession altogether (IN06212; IN07206).

The increasingly large number of returning associates from foreign firms has also changed the promotion patterns in local firms. Because returning lawyers usually have better English and closer connections with foreign firms and foreign clients, which would generate more business opportunities for local firms specializing in foreign-related work, these firms are more inclined to make them partners than promoting their own associates (IN04219; IN06209). Meanwhile, some leading local firms also choose to promote their best associates in a relatively short time (e.g., five years) to prevent them from being “stolen” by foreign firms (IN06203; IN06208). But in general, in local firms there are still more “airborne” partners coming back from foreign firms.
than “indigenous” partners growing up in the local firms.

Therefore, as Figure 1 demonstrates, the typical career path of young Chinese corporate lawyers becomes a broken trajectory: working in a leading local firm for three or four years, getting a LL.M. from an American or British law school, and then switching to a foreign firm, with the expectation of returning to a local firm or becoming in-house counsel in a few years. Neither foreign nor local firms could provide them a continuous and stable career trajectory. At the partner level, exchange of personnel is not as frequent as associates, though in recent years a few senior partners in leading local firms started to become managing partners of new foreign law offices (IN07202). Needless to say, most of these partners had previous work experiences in foreign firms.

**Managing the Blurred Boundary: State Regulation of the Corporate Law Market**

Arguably, the increasing personnel flow between foreign and local law firms further aggravates the blurred boundary between them. In particular, foreign firms’ large scale employment of Chinese lawyers generated concerns from both local firms and the BOJs. According to several interviewees, the 2006 SLA brief was exactly triggered by the heavy loss of associates in a few major local firms in Shanghai (IN06223; IN06226; IN06227). The brief listed
eight “illegal business activities” conducted by foreign law firms in China, including (1) hiring licensed Chinese lawyers, (2) drafting Chinese legal documents, (3) conducting due diligence, (4) engaging in litigation and arbitration, (5) handling registration, application and filing with government agencies, (6) controlling Chinese law firms; (7) using misleading propaganda, and (8) avoiding Chinese taxes and foreign currency controls (Shanghai Lawyers Association 2006).

To many foreign lawyers practicing in China, these accusations are difficult to accept. Although such practices do exist and, from a statutory point of view, could be interpreted as violations of the government regulation on foreign law offices, they are still in the gray area and have been connived by the BOJs for a long time. For example, an experienced managing partner of an American law office in Beijing makes the following comment:

The SLA brief has eight arguments regarding the practice of foreign law firms, but some of them are very silly. For example, they say we use high wages to attract their associates, but what’s wrong with that? Also, the MOJ’s restriction on arbitration work has already been abolished after our protest, but they still list it as one of the problems. … For the tax problem, I’m sure foreign law firms are generally more compliant to the PRC tax rules than Chinese law firms. As for local firms controlled by foreigners, I don’t think 10-20% foreigners in the management committee would make a big difference. For those local firms established by foreigners, if they feel bad, then go ahead and do something about it. Those firms are not the best firms, so we don’t care. (IN06217)

Despite the indifferent attitudes many foreign firm partners displayed during the interviews (IN06217; IN06231; IN07202; IN07207), the SLA brief had a real impact after it was widely reported by foreign media in May 2006. The American Chamber of Commerce (AmCham) immediately held a meeting of foreign lawyers and in-house counsel in foreign companies, and
they all agreed to keep silent in front of the media and the potential BOJ investigation (IN06230; IN06232; IN06509). Some foreign firms changed the titles for their Chinese associates, some adjusted the contents of their websites, some added a disclaimer to all their emails and legal documents\(^7\), and some even stopped employing new Chinese associates until it was clear that no government action would follow (IN06201; IN06202; IN06226). Even more troublesome were the rumors being circulated around the brief. A senior partner in the Shanghai Office of a major American firm describes his experience at that time:

I think the SLA brief was a very unfriendly action. We were shocked when we heard the news. And we heard about it much later, about a month after it came out in April, when people told us to look at the SLA’s website. They didn’t give any notice to us, and the media played a very negative role, both domestically and internationally. I got many requests for media interviews at that time, but what can I say on an issue like this? We learned that we were still being treated as guests in China, so as guests, you must behave very carefully and friendly. We have no idea who was behind this memo, although certain lawyers and firms had more exposure in the media. There were all kinds of rumors at that time, some said it was no big deal, and others said this was the first step of a large campaign against foreign law firms. For a while we were really afraid that foreign law firms would be kicked out of China. Then nothing happened until now, but I have no idea what will happen in the future. To be honest with you, now we really have to find out who our friends are and who would throw a knife at our back. This is not to say it has become a friend or foe situation, but we have to be very careful about some firms. (IN06230)

Apparently, the SLA brief substantially heightened the conflicts between foreign and local firms. Many lawyers, including some senior partners in local firms, expressed the concern that it

\(^7\) A typical disclaimer looks like this: “The advice above is based on our experience as international counsel representing clients in their business activities in China. As is the case for all international law firms licensed in China, we are authorized to provide information concerning the effect of the Chinese legal environment, however we are not permitted to engage in Chinese legal affairs in the capacity of a domestic law firm. Should the services of such a firm be required we would be glad to recommend one.” (Author’s field notes, November 7, 2007)
might produce negative effects on their business (IN06209; IN06212; IN06227), because local firms still depend on the referral of foreign firms for a substantial proportion of their revenue. In the meantime, some lawyers also believed that the SLA brief was merely an indication that a few local firms could not bear the heated competition from foreign firms (IN06231; IN07202; IN07204). In fact, both the two main Shanghai firms behind the SLA brief experienced notable business decline and personnel loss in recent years, which, as some informants argue, was the true underlying reason for their radical action (IN06226). However, in the opinions of many foreign firm lawyers, these local firms in Shanghai cannot really compete with them, because they occupy completely different market niches (IN06230; IN07201).

Interestingly, leading local firms in Beijing appear to be much less radical than the Shanghai firms. Many interviewees on both sides all indicate that such an incident would never happen in Beijing (e.g., IN06205; IN06206; IN06209; IN06217; IN07202). This, however, does not imply that competitive pressures from foreign firms are less severe there. As the previous section has shown, leading Beijing firms also experienced heavy loss of associates around the same time. Nevertheless, the firm size and business diversity of these Beijing firms are very different from their Shanghai counterparts, as one partner from a leading Beijing firm explains:

For the SLA problem, the situation in Beijing is similar, but the business of Beijing firms is across the whole country, not just FDIs, but also other fields like securities and venture capitals. Local firms in Shanghai have very narrow service range, only foreign investments around the Yangtze Delta area, so of course their relationship with foreign firms is a matter of life and death. … Except for a few branch offices of Beijing firms,
most law firms in Shanghai are small firms. (IN06205)

This partner’s comment is also confirmed by other interviewees, including some senior partners in Shanghai (IN06206; IN06227; IN06233). Beijing firms are less radical in their attitudes toward foreign firms because they have more collaboration with them in a variety of legal fields, including many large-scale IPO projects. In addition, the large sizes of leading Beijing firms also make their business less vulnerable to the competition from foreign law offices, which usually have merely less than fifty lawyers and staff.

Why are Beijing firms generally bigger, stronger, and more profitable than Shanghai firms? Some lawyers emphasize the cultural or historical reasons, e.g., law firms in Shanghai had always been small boutique firms even before the PRC, and Shanghai business people are more individualistic and do not share the same collegial culture as the northerners (IN06227; IN06233). However, more important is the ecological reason, i.e., almost all central government agencies and headquarters of large state-owned enterprises are located in Beijing, thus it is much easier for Beijing firms to get access to both the largest local clients and the most important state agencies through formal and informal connections (IN06228; IN07204). In fact, many founding partners of leading Beijing firms used to work in central government agencies, and some firms even keep a number of retired officials from central agencies or relatives of high-rank officials to facilitate exchanges with the state (IN06205; IN06227). This ecological position not only gives the Beijing firms market advantages over the Shanghai firms, but also provides them better stakes in the relationship with foreign firms.
Foreign firms, however, are not totally distant from powerful central government agencies like the Ministry of Commerce (MofCom) or the State Development and Reform Commission (SDRC). Several senior partners in foreign firms all indicate that these government agencies are becoming very sophisticated in their regulatory policies (IN06217; IN06230; IN06231). Because these policies often directly shape the flow of foreign capital, foreign firms also seek to use official channels and personal connections to influence their policy-making (IN06217). On the one hand, diplomatic agencies such as the AmCham provide a good platform for foreign law firms and their clients to negotiate with the Chinese government. On the other hand, many foreign firms also employ some well-connected lawyers or even a few “government specialists” to facilitate their exchange with government agencies (IN06205; IN06217). Yet there are still limits in their government relations comparing to local firms. For instance, an associate who worked in a local firm and then switched to an American firm explains the difference:

Dealing with the government is very often in both this firm and my previous firm. Both need to make phone calls to the MofCom, the SDRC and other agencies to ask all kinds of procedural issues. Some government agencies have really annoying work styles, not predictable at all. We have to be anonymous when making these phone calls, but local firms can directly go to their contacts there, treating dinners and giving gifts are all very common. Now our partner also started to understand this, sometimes also asking us to find contacts, but he would never agree to use the firm’s money to treat people dinners. So dealing with government is more difficult for us than for local firms. Usually we can only influence the government through the AmCham. (IN06222)

The close connections between law firms (both foreign and local) and powerful central state agencies make the MOJ’s regulation on the corporate law market particularly difficult.
Although the MOJ officials are well aware of the boundary-blurring behaviors of foreign firms, they also understand that the issue of regulating foreign firms is closely related to the broader commercial and foreign policies of the Chinese government as well as the interests of several other central agencies, all of which are more powerful than the MOJ (IN06215; IN06217; IN07202). As an experienced managing partner of an American firm explains:

The MOJ regulation on foreign law firms is about protectionism, which is very clear, but it is also about politics. This is not just the lobbying of local firms, but the politics within the government. The MOJ regulation is poorly implemented because if it were well implemented, then it would cause severe restriction to foreign investment. That would be very bad for the country. The MOJ is a powerless state ministry, and it has to consult with other ministries when making its policies. But if the MOJ consults the MofCom regarding restricting foreign law firms, the MofCom would certainly disagree, so the regulation could never be implemented. The regulation on foreign law firms ultimately depends on the larger business environment in China. (IN06217)

A junior partner of a leading local firm who used to attend relevant meetings of the Beijing BOJ also refers to the same dilemma of the MOJ:

The MOJ’s policies are always changing, which is related to the bigger environment of the whole market. Actually, whether or not to restrict foreign firms is related to the question of whether to restrict foreign capital or to encourage foreign capital. When the country needs foreign capital, it would be looser for them, when [the country] needs to restrict foreign capital, it would be tighter for them. This is not simply an issue of illegal or not. As you know, the MOJ is a very weak ministry among the Chinese ministries, and for issues like this, they must listen to the opinions of those agencies like the MofCom or the SASAC, and see what the country’s broad economic policies are, so their attitude is always ambivalent, often swaying back and forth. (IN06215)

What these two partners suggest is a subtle process of boundary maintenance by which the
MOJ keeps the blurred boundary on purpose to leave enough flexibility for adapting to changes in the business environment and in other ministries’ policies. It leads to a long time inaction regarding the corporate law market – even the vehement SLA memo did not produce any subsequent government action from the MOJ. Nevertheless, this seemingly clever strategy of keeping a “Sword of Damocles” (IN07207) also significantly reduces the regulatory authority of the MOJ over the corporate law market and, as a result, most law firms pay much more attention to the policies of the MofCom or the SDRC than the policies of the MOJ (IN06213; IN06218). In other words, the inaction of the MOJ further marginalizes its position in the state regulatory structure.

Besides these larger political concerns, the MOJ and the BOJs also face some procedural obstacles in regulating the corporate law market. For example, to sanction any illegal behavior of foreign law firms, the local BOJ must collect specific and conclusive evidences for individual cases (IN06509; IN07505), but no law firm would provide such evidences to the BOJ. Even those local firms who are “victims” of the competition are reluctant to issue complaint files to the government, as a senior partner of a leading local firm in Beijing explains:

You must have heard of the SLA incident earlier this year. No subsequent action followed, and they [Shanghai lawyers] are lack of resources. Because the BOJ’s sanction needs someone to report, but no lawyer would want to take the risk to report. Many businesses are done by foreign firms, whether or not to provide legal opinions only depends on their discretion. Of course they have many daily advices on Chinese law, but enforcement is difficult. All these phenomena exist and most lawyers know them, but we must consider the relationship with foreign firms, it would be bad to make it cold. Those gray areas are
certainly not right, but compared to Shanghai, the attitude of Beijing firms is more rational, or more practical. We have considered the impossibility of enforcement. How could the MOJ regulate? It needs complaint files. (IN06209)

It is clear from this quote that the collaboration between local and foreign firms becomes an important source of protection for foreign firms’ aggressive behavior in the gray area of legal practice. Without evidences from local firms or clients, the BOJ’s “Sword of Damocles” is simply useless. In fact, the SLA brief was also a result of this regulatory dilemma. An informant from the Shanghai Lawyers Association tells why the brief was produced and what happened afterwards:

Many media reported on our April brief. Actually, regulating foreign law firms is the BOJ’s job, and the lawyers association has no power on this. But because this problem had an impact on lawyers, and many lawyers expressed concerns on this, and it accumulated for a long time, so we made the report. … But nobody makes complaints on this problem, so we do not have evidence and can only search for the illegal stuff from the foreign firms’ websites. Honestly speaking, it is very hard to take evidence. … We wrote a report to the BOJ, and they did not make any sanction mainly because there was no evidence. … Our association leaders think this problem is the work emphasis of this round of lawyers association, it is the primary task, but I guess it would take time to resolve, and right now we do not have any further action or plan. (IN06509)

In a sense, the powerlessness of the BOJs is also a tempting encouragement for some foreign law firms that hope to expand their businesses in China. In January 2007, McDermott Will & Emery (MWE), a Chicago-headquartered law firm with 14 offices in the United States and Europe, opened its first China office in Shanghai, which was reported on the Wall Street Journal (Koppel and Batson 2007). The fundamental difference of this office from other foreign
law offices in China is that it was established as an independent Chinese law firm, with an “exclusive strategic alliance” with MWE. This means that MWE cannot share the profits of this China office, but all its China projects will be exclusively conducted by this office. The two founding partners of the MWE China office used to work in Allbright, the largest Chinese law firm in Shanghai. To them, this new form of alliance is not a violation of the 2001 Regulation, but many other lawyers and MOJ officials seem to disagree (IN07202; IN07207; IN07208; IN07505). When being interviewed in March 2007, an official from the MOJ Lawyers and Notary Work Guidance Office indicates that they considered this alliance to be illegal and were making serious investigation (IN07505). However, until today, the MWE China office is still operating in Shanghai, and nobody could tell whether it is a Chinese or a foreign law firm.

Is the emergence of this blurred organizational form between local and foreign firms a harbinger of the further opening of the Chinese corporate law market in the near future? Nobody knows. When asked about their predictions of the future, the interviewees gave a huge variety of answers. Some say that large-scale reorganizations would take place if the market is opened up (e.g., IN06203; IN06210; IN06217; IN06232), yet others believe only a few major local firms would be merged (e.g., IN06230; IN06231; IN07206). In fact, around the time of the WTO entry, there were already private merger negotiations between a few major foreign and local firms, but none of them worked out because of different interests and demands (IN07202; IN07203; IN07208). When the leading local law firms have expanded into mega-firms of hundreds of lawyers, their senior partners have also become more cynical in their attitudes toward merging
with foreign firms (IN04216; IN04217; IN04222; IN06219; IN07208). Needless to say, their opinions have a direct influence on the MOJ’s policy-making. In contrast, most associates in both local and foreign firms are very positive about opening up the legal services market, because this would provide them a better work environment and an unbroken career path (IN04203; IN06203; IN06212). Nevertheless, most interviewees agree that there would not be any significant change in the next 5-10 years, and the blurred boundary will continue to exist.

Conclusion

The globalization of the legal profession is a process of boundary-blurring. In the development of the Chinese corporate law market, the relationship between foreign and local law firms has been transformed profoundly. From “rubber stamps” to collaborators and then to competitors of their foreign colleagues, Chinese law firms have grown into important players in this globalizing market. Meanwhile, foreign law offices have also greatly expanded in number and size since China’s WTO entry, and some are actively employing Chinese lawyers and getting localized. The jurisdictional boundary between them is becoming increasingly blurred and business competition in the market is significantly intensified.

However, this transformation from collaboration to competition is far from complete. In spite of their efforts to converge with each other, local firms are constrained by their loose firm structure and limited access to high-end clients, while foreign firms are restricted by the persisting regulatory burden from the state. In this gray area defined and strengthened by the
ambiguous government regulation, few law firms could survive by themselves, and their main competitors are still other firms in the same market niche. Most local firms still more or less depend on foreign firms for business referrals, and most foreign firms also rely on local firms in dealing with government agencies and major local clients. In this sense, boundary-blurring is not equal to institutional diffusion or structural isomorphism; it is rather an imperfect hybridization between the global and the local.

What is the outcome of this hybridization? It is the production of a localized expertise that is experience-based and highly adaptive to the local political and social environment in which these global-looking corporate lawyers are embedded. For the Chinese case, the nature of localized expertise is not only a matter of insider status and local connections as important everywhere (Sarat and Felstiner 1995), but also includes the sophisticated techniques that these corporate lawyers deal with the government and the big variety of clients (Liu 2006). The main production sites of this expertise are the local corporate law firms, where globally trained partners and their associates constantly interact with local clients and government agencies. As these lawyers start to move from local to foreign firms, they also bring their localized expertise to the service of global firms and foreign investors.

This process, if not unexpected, is intriguing to theories on the globalization of law and professions, because it suggests that the cultural content of law and professionalism is not only decoupled from its adopted formal structure, but also diffused conversely to the global force that seeks to penetrate the local barrier. After all, compared to economics or accountancy (Fourcade
2006; Hanlon 1993), law is a much more politically and culturally sensitive professional field – it embodies both the wills of a sovereign state and the cultural traditions of a people. Therefore, the construction of a global legal profession is simultaneously the rebirth of a localized expertise that adapts to the nature of law in different social contexts. In this boundary-blurring process, the structural barriers of legal practice might be gradually removed, but the cultural content of this expertise would never disappear.
References


Table 1. Growth of Foreign and Hong Kong Law Offices in Mainland China.

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Table 2. Average Annual Salaries of Associates (in KRMB), 2006.

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<th>Position</th>
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<td></td>
<td>Associate</td>
<td>Legal Consultant</td>
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<tr>
<td>Senior (6-10)</td>
<td>2,025</td>
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<td>Junior (1-2)</td>
<td>1,030</td>
<td>604</td>
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Notes: The survey data was published by LawInn HR Consulting Co. in 2006. The sample size is 183 lawyers working in both foreign and local law firms. In the original survey, foreign firms are divided into two groups: (A) US, UK or Australian headquartered firms with global reach and multiple locations; and, (B) European and East Asian headquartered regional firms with a limited number of offices. Because (B) type firms usually do not distinguish between associates and legal consultants, in this table only the results of (A) type firms are presented. Local firms include both large leading firms and smaller but not less prestigious boutique firms.
Figure 1. A Broken Career Path for Chinese Corporate Lawyers.