

How big is big enough? Lessons from China about globalization

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Rachel E. Stern and Su Li, *The Outpost Office: How International Law Firms Approach the China Market*, **Law & Social Inquiry** (forthcoming, 2015), available at [SSRN](#).

Size matters—in the legal profession as elsewhere. It is a common element in research on law firms, legal practice and lawyers' careers, and it often is assumed to be associated with success—in many instances, accurately. The largest U.S. law firms in terms of headcount also are among those that generate the most revenue and profits per partner, for example. Law firms in the category affectionately known as “BigLaw” account for an important segment of the most sought-after positions for new law graduates, in no small part because they offer the highest starting salaries and the promise of more for those who succeed. These same firms represent the most significant businesses in their most important disputes and largest and thorniest transactions, and today also often are involved in notable pro bono activities. Bigger is correlated with success, whether size is measured in headcount, number of offices, revenue, profits or compensation.

The assumption that size matters underlies the thoughtful analysis of [Rachel Stern](#) and [Su Li](#) about the growth of global law firms in China. Their article, *The Outpost Office: How International Law Firms Approach the China Market*, explores why growth seems to have stalled in the China offices of international law firms. Stern and Li draw on data gathered in interviews (conducted in 2013-2014) with lawyers practicing in the China offices of 50 international law firms. ((In addition, they interviewed lawyers working in China in settings other than international law firms, and also with lawyers practicing in the Hong Kong offices of a number of international law firms.)) The firms have home bases in 18 different countries; this variety allows Stern and Li to consider how home country shapes global growth. ((While they did not report a difference in size based on home country, they found that home country related to differences in the way lawyers described their firm's “market niche”: “Lawyers at most of the Anglo-American firms in our sample talked about a practice area specialty, such as intellectual property or M&A. In contrast, lawyers from the vast majority of firms from continental Europe, Asia, and Latin America defined their market niche as handling work from their home country or region.” (9) My research suggests that these differences in global strategy may extend beyond China; see Carole Silver, Nicole DeBruin Phelan and Mikaela Rabinowitz, [Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Global](#), 22 **Georgetown Journal of Legal Ethics** 1431 (2009).))

It is no surprise that interest in China has been strong among international law firms, reflecting the activities of their clients. Between 1992 and 2012, “an average of twelve new international law firms per year opened China offices” according to Stern and Li. (P. 2.) But these offices have not developed into full-service entities. Their average size is only 11 lawyers. Small offices are not able to offer the variety of services available in “full service” offices, nor can they advise on certain highly sophisticated matters that require more “boots on the ground.” (P. 10.) Of course, even a small outpost may generate work that is performed by lawyers situated elsewhere in the firm, and in this way may contribute to the firm's overall profitability as well as reputation. ((This was typical of firms' overseas efforts in the 1980s, for example. See Carole Silver, [Globalization and the U.S. Market in Legal Services—Shifting Identities](#), 31 **Journal of Law & Policy in International Business** 1093 (2000).)) But Stern and Li report that the revenue generated from the China offices has failed to meet firms' expectations: “The bottom line is

that China is a marginal part of nearly every international law firm's business. For more than eighty percent of the law firms in our sample, lawyers reported that Mainland China generates less than five percent of global revenue." (P. 13.) And the continuing small size of offices in China stands in contrast with average office size (by lawyer headcount) in other jurisdictions. ((Based on my ongoing research into the overseas offices of U.S.-based large law firms, office size in terms of lawyer-headcount increased in Beijing offices slightly more than 40% between 2005/2006 and 2011/2012, while office size in Shanghai offices during the same period increased approximately 14%; in each city there were fewer than 10 lawyers on average per office. In contrast, London offices of the same firms grew approximately 25% during this period to an average office size of nearly 68 lawyers, and Hong Kong offices increased over 80% to an average of slightly more than 30 lawyers per office. In terms of number of lawyers, China offices in 2011/2012 were smaller than offices in other major commercial centers. See Silver, Phelan and Rabinowitz, *supra* n. 2 (regarding the 2005/2006 period).))

The aim of their research was to investigate why the promise of China had not materialized for international law firms. They considered the role of regulation, certain characteristics of international firms and the influence of organizational structure, among other things. Each of these factors offers important insight.

Regulation in China limits the scope of the firms' work by preventing them from engaging in local practice, among other things. In contrast, in many jurisdictions where regulatory barriers are less stringent, law firms expand their overseas offices by hiring local lawyers who in many cases develop local practices. (P. 17.) As Stern and Li explain, "Government regulations tend to produce coercive isomorphism, or convergence on a single way of doing business in response to similar rules, and the ban on practicing Chinese law has clearly shaped China's market for foreign legal services." (P. 16.) In addition, they suggest that the regulatory barrier also may serve as a sort of "authoritarian logic" aimed at preventing foreign lawyers from "infect[ing] China in some way that will lead to a coup, a revolution, whatever." (P. 8.) Apart from regulation of lawyers, uncertainty in the regulatory environment may stall growth, particularly for foreign businesses, and also undermine the importance of lawyers' roles in China. But healthy growth among China-based elite law firms suggests that Stern and Li's focus on distinctions between domestic and foreign law firms is appropriate. ((For information on growth among China-based elite law firms, see "[China Elite 2014: A report on the PRC legal market](#)," **The Lawyer** (2014).))

Stern and Li also analyzed six characteristics of international law firms and their China offices to investigate their predictive value with regard to size. They found several significant predictors of larger offices, including how long a firm has been in China (a "first mover advantage" (P. 14.)), and the "global reach" of a firm related to the number of other offices supported outside of the home country. Additionally, they found "localization" to be important—meaning how many lawyers have a personal connection to China. However, they could not determine whether offices with more lawyers with local connections were better at generating business or whether "bigger firms [were] better at attracting this sought-after group". (P. 15.)

Their data also offer insight into the ways in which offices' failure to thrive might relate to the overall structure of law firms. By "looking at politics inside law firms" they were able to learn that "arguments for expansion often struggle to attract champions." (19) Generally, since overseas offices are part of organizations in which profits are shared across a single structure, it is common for firms to have an "isolationist wing of partners who see local business thriving and dislike the idea of overseas adventures. In their view, every dime spent overseas is a far-fetched business proposition that reduces the profit pool." ((It would be interesting to learn whether vereins—in which profits are not shared across the firm—are different.)) (P. 18.)

One of the most interesting parts of the article is more directly about failure. They ask, why don't more firms close their China offices? Their answer is fear: according to one lawyer, "'Firms don't close ... because they figure if they close, they'll never be able to get back in [because of] licensing and the cost to their reputation. And they are right.'" (P. 21.) The result is that offices are closed surreptitiously. Stern and Li visited five offices in their efforts to interview lawyers, for example, that were "deserted ..., all locked and dark with piles of mail visible inside the door. In all five cases, workers in neighboring offices told us that lawyers at the deserted office live abroad and only occasionally stop by to pay bills and meet clients." (P. 5, n. 11.) The reluctance to close reflects the symbolic and option value of the offices: even a superficial presence serves as a "symbol[] of global commitment and a bet on future gains." As Stern and Li explain, "A China presence can be a defensive play for firms unsure about the future, in other words, as well as an active effort to make money in the present. Nor does maintaining a financially marginal outpost office seem strange when so many other firms are doing it too." (P. 21.)

What Stern and Li's research shows is that at the moment, one size does not fit all in the market for elite corporate-focused legal services in China. Rather, in China, "outpost offices can be a persistent organization form, rather than a way station encountered en route to a vigorous international presence." (P. 22.) But this is not the last word and we can expect the imbalance between domestic and global firms to shift—globalization is nothing if not dynamic, after all.

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