

MS319 Review

This is one of better articles I have read on the legal profession in China. Although the number of interviews (24) and the number of firms (6, all in Beijing) is limited, the results strike me as reasonable for the relatively small number of elite corporate firms in China, which in any event probably does not exceed 10 major, 10 medium, and a few specialist firms. Of course, the nature of the work, the billing rates and system and the practice more generally may be, and indeed is, very different in firms that are not part of this corporate elite.

Methodologically, however, there are a few issues. Why China? As the author notes, the legal profession and law firm practice is still very much in the formative stage, and very fluid. Client demands, expectations and levels of sophistication are also changing, especially in SOEs and some private enterprises, generally in the direction of a greater appreciation of the value of legal services.

There is also a big difference even within these elite firms between lawyers who have worked in foreign firms or been trained largely abroad and those who have not. There are also considerable differences across practice areas in terms of clients, background of lawyers (few litigators have training in foreign firms and will have more domestic clients than lawyers who specialize in FDI).

Also, why Chinese lawyers? The author should have also interviewed and drawn comparisons to foreign lawyers in foreign firms in China, Chinese lawyers in foreign firms and foreign lawyers in Chinese firms.

p. 26. Issue is not just culture or imperfection of legal system in China but differences between civil and common law, particularly for US lawyers. Also, many foreign clients are quite sophisticated and knowledgeable about China, and have done many projects here over the years. Similarly, some SOEs have people who do know law. The author or her interviewees make it seem like all clients are ignorant in one way or the other, which is clearly not the case.

A more general point is that Chinese lawyers, like anyone else, operate with their set of biases and stereotypes. Once systematic empirical evidence is obtained, you find out they are often wrong about a number of issues. Accordingly, the author is safest when presenting lawyers' views on what they are most knowledgeable about. Also, the author should where possible cite multiple references, and use the views expressed by a single lawyer with caution. While there are surely many things most lawyers would agree on, lawyers have a lot of different opinions on a lot of issues.

Similarly, it is hard to generalize about what lawyers would do in writing opinions. Some PRC lawyers may be more willing to take risks for long time clients or when the amount of payment is large. Others will only issue very tight opinions, or expressly qualify any statements insisted on by clients where there is uncertainty.

To cite one more example, had the author more experience, s/he would have pressed the interviews to provide a basis for some claims or to perhaps qualify them. For instance, in n34 she cites two partners for the proposition that SOEs don't care about legal conclusions because of their connections to government. This is highly unlikely given that they are after all asking for legal advice, and given that many SOEs do lose legal cases and end up paying significant damages. Thus, *some* SOEs may feel they are beyond the reach of the law, but certainly not all, and indeed not even most.

p. 34-35. Again, I think it is fairly obvious to anyone who has practiced law in another country or who deals with foreign clients that the interaction between lawyer and client will differ. Clients may expect advice in different form. Lawyers will need to provide more or less background, explain laws in greater detail or not, etc. Some of these differences may be cultural based in the sense that most German or US clients prefer a certain style of reason and analysis, whereas clients from some Asian countries may be content with less formalistic analysis, and may lawyers to opine more on the likely outcome and non-legal factors that might effect the outcome. However, one must be careful about these kinds of broad cultural generalizations, as different clients from the same country or culture often have different needs.

pp. 36-45. The Ns are just too small to do any meaningful statistical work and draw any conclusions regarding differences between lawyers and associates, across practice areas, etc., especially since it is often hard to clearly categorize the answer of particular lawyers : eg, the partner says he handles all clients in the same way and then says how they differ. As noted, many partners only have experience in one practice area, so there comments are less authoritative about other areas (though they surely have picked up something from being in the firm). There are also differences between partners and associates, but this section lacks adequate support to generalize.

This section also suffers from the problem about relying on Chinese law firms. One of the distinctive features of these firms is that because of the newness of the profession, many of the top partners are actually the least qualified and knowledgeable about law. Their main asset is often their network of connections.

Conversely, associates often receive little training, and tend to leave these major firms after a few years or be prematurely advanced to partner, often some type of salary partner. Hence, there are few of the highly trained associates with 4-9 years experience that one finds in foreign firms.

Conclusion. Why assume the same dynamic will apply in academics or medicine. What is distinctive about this area of law is foreign training and foreign clients. Doctors, even if trained abroad, are more likely to treat Chinese citizens. Academics, even if trained abroad, will usually be promoted to tenure based on publication in Chinese journals.

As the author suggests, I, like many readers, don't feel it is appropriate to generalize from the China example to other countries. At least, I think one should do comparative empirical work if one wants to do that. On the other hand, I tend to think the author has

overstated the cultural aspect in some cases. Some of the problems and responses are generic issues that arise in dealing with foreign clients.

The section on foreign law firms should be deleted. The author apparently does not know much about foreign law firms in practice, the nature of their practice, the diversification, their hiring practices (many have in effect localized by hiring mainly Chinese lawyers), or the issues facing them. She has not referenced works on foreign law firms in China. As it turns out, a few foreign firms are highly profitable. Most are not. Many are now localizing. Most are specializing, staking out niche markets. More generally, foreign law firms have dominated corporate law in China until recently, and still retain the majority of the market for high-end FDI, M&A, project finance work, etc. The author makes it seem like Chinese firms are in the lead, rather than playing catch-up.