1 Introduction: The Scope of the Study and Theoretical Issues

The danger of conducting research on any aspect of contemporary Chinese society is that it will be out of date by the time it is completed. With bodies of laws and regulations being promulgated and revised on what seems like a daily basis, this danger is particularly acute in the study of China's legal reforms. This dissertation is certainly not immune to this danger. Indeed, the main theme of this dissertation—the division between the state-owned and private segments of the Chinese bar—is already largely the stuff of history. This study captures Chinese lawyers at a critical historical moment since their first appearance in 1979, at a watershed that is now behind the overwhelming majority of lawyers. As we will see, the Chinese bar is no longer divided by ownership sector—membership in the state sector versus membership in the private sector. Although a substantial chunk of the bar belonged to the public sector at the time I conducted my field research from 1999 to 2001, at the time of writing, two years later, almost all Chinese lawyers belonged to the private sector.

The main goal of this dissertation is twofold: (1) to identify and describe the challenges and difficulties faced by lawyers in contemporary China, and (2) to explain the causes of these challenges and difficulties. I argue that the marginalization of lawyers and the attendant difficulties they experience derive in large part, but not exclusively, from their new official status as self-reliant, financially autonomous, entrepreneurial members of the private sector. The significance of the public-private divide did not disappear as the Chinese bar privatized; it has just became more difficult to observe. When Chinese lawyers were divided between state and private sectors, the effects of membership could be observed, measured, and tested. Following the privatization of the
bar, the determinants of professional survival and success have become increasingly opaque. In short, this study is inextricably bound to a particular moment in history; it captures volatile institutions at a transition point. At the same time, from methodological and theory-building standpoints, the timing of my field work was supremely fortuitous.

But owing to the newness of Chinese lawyers and the corresponding dearth of reliable information about them, the goals of this dissertation are far more ambitious. As this is the first large-scale, systematic empirical study of Chinese lawyers, it represents baseline research, a comprehensive, descriptive point of reference for future, more refined research. Much of this dissertation is devoted to historical background, classification and description, and comparative context. In the course of my field research and subsequent writing, I used to joke with people who asked about my dissertation that it was about "everything you ever wanted to know about Chinese lawyers but were afraid to ask." Although it undoubtedly falls short of this lofty goal, it has nevertheless been my hope and motivation to fill such a major scholarly need.

Owing to the precarious nature of conducting research in China, I adopted a strategy of diversifying risk. Instead of putting all my eggs in the basket of a single survey, I simultaneously launched two surveys, one in Beijing and one in 24 smaller cities in 16 provinces, hedging my bets against getting shut down by the relevant authorities and of insurmountable hostility from my target respondents. In case both surveys failed, I organized an intensive, six-month ethnography of a single law firm in Beijing. Much to my amazement, all three research projects were resounding successes. The cost of this success has been the inordinate amount of time and effort devoted to processing, analyzing, and interpreting a veritable mountain of data.

A few disclaimers are in order. Although this study is about many things, it is also deficient in several areas. This study does adequately assess the historical influence of the Chinese lawyer's imperial predecessor—the so-called "litigation master" (songshi) (cf.
Macauley 1998)—on the practices, organization, and self-identity of contemporary lawyers. Instead, my focus is on the deleterious influence of the *songshi* on the public image of the contemporary lawyer. Similarly, I devote very little space to a consideration of the influence of Republican-era (1911–1949) lawyers. Finally, the ultimate subject of inquiry, what falls within the scope of the term "lawyer," is the Chinese *lüshi*, the individual practicing law in a law firm (*lüshi shiwusuo*) under the name "lawyer," almost always possessing lawyer certification and a lawyer license (the exceptions being interning lawyers who qualify for licensing after their one-year internship). This lawyer category does not include prosecutors, judges, the so-called rice-roots legal workers (*faliü gongzuozhe*) unqualified to do trial work, lawyers in legal aid clinics and centers, non-practicing law school faculty, and the Chinese and foreign lawyers employed in the over one hundred representative offices of foreign law firms operating in China.

**Lawyers in a Context of Rapid Change: Marginalization, Insecurity, Vulnerability, and a Poor Public Image**

It is important to appreciate that Chinese lawyers are in no way unique in their marginalization, insecurity, vulnerability, and poor public image. Such a state of affairs is common to lawyers throughout the world and throughout history. Incipience, especially where a lawyer tradition is lacking, produces growing pains, manifested in terms of low public trust, an immature market for legal services, and excessive competition and commercialism. The insecurity of lawyers is compounded by political change. Lawyers and politics are inextricably bound together; when political regimes change, lawyers are often the first to go. In comparative and historical perspective, it is not uncommon for government leaders to feel politically threatened by lawyers, to test their loyalty, and to purge elements deemed unreliable.
But even well-established bars experience image problems and bouts of insecurity. The heightened financial insecurity and entrepreneurialism of a large segment of the American legal profession is a major theme in current scholarship. New forms of competition are threatening lawyers everywhere as they are thrown into a global market for legal services. Thus, the theme of self-invention, experimentation, groping, and innovation in the Chinese bar is a theme common to lawyers facing change and crisis everywhere.

The early Japanese bar offers an instructive parallel. From the end of the nineteenth century to the 1930s, Japanese lawyers suffered from a weak official status vis-à-vis court officials, intense competition, and financial insecurity caused by severe economic pressure. As Rabinowitz (1956: 73) writes, many lawyers "considered the profession to be in a state of acute crisis."

The number of lawyers had increased sharply during the twenties, and a survey undertaken by the Japan Bar Association indicated that the profession was in truly alarming economic circumstances. According to this survey, more than 2,400 lawyers out of 4,100 reporting indicated that they failed to meet living expenses, and 240 had not even managed to pay ordinary office expenses....It was asserted that unethical and criminal acts were being committed under the pressure of economic need. Some felt the problem was caused by high fees. Others asserted that fees were too low. There was only one point on which all were agreed: the status of the lawyer was gravely endangered. (pp.73–4)

This is the historical backdrop to the adoption of measures to prevent unauthorized practice, the imposition of strict limits on admission to the bar (and the very few licensed lawyers, bengoshi, in contemporary Japan), and the liberation of the bar from the grips of the Ministry of Justice.

Perhaps the Indonesian bar offers an even closer parallel. While judges, prosecutors, and police all enjoy official status stipulated by state law, lawyers in Indonesia lack an official status (Kadafi 2002: 4): "the judicial system does not necessarily recognize the status and role of the professional lawyer."
They frequently meet abasements, restrictions and other impediments on the day-
to-day work [sic], particularly once they begin to encounter judicial institutions and other parts of the legal apparatus of the State. Thus far, the fault has been imputed to problems in the judicial system. The reality of the situation is simply that the rights that are required by the professional lawyers to properly fulfill their professional responsibilities are often neglected. As a result, the rights of defendants to obtain proper legal assistance are also simultaneously abandoned. (p. 6)

How different is the American case? The scholarship on American lawyers privileges big-city large-firm corporate practice (e.g., Heinz and Laumann 1994; Nelson 1988; Galanter and Palay 1992), helping perpetuate the popular and somewhat misleading image of the wealthy corporate lawyer. Studies of small-town lawyers (e.g., Landon 1990; Shapiro 2002; Van Hoy 1997) have not affected this predominant scholarly focus. A more balanced picture would show the ways in which American lawyers resemble their colleagues all over the world, how a sizeable portion of the bar occupies only a marginal position in the legal system, a system that they are ostensibly making more accessible to people with legal needs.

Operating in the shadow of the large American law firm are the extremely financially insecure solo practitioners, who for the sake of economic survival are sometimes forced to engage in behavior on the margins of the law. Their practice depends on regular encounters with the courts, which frequently entails gift-giving and bribes (Carlin 1962: 157). Much of their financial insecurity stems from competition from lay practitioners (p. 142). The upshot is a "pattern of dependence-involvement with the business brokers, the ethically questionable arrangements and tactics for getting business and handling matters, the favors, gifts, fee splitting—the emphasis, in short, on business-getting and institutional manipulative skills. All these factors contribute to viewing the practice of law as a business and not a profession, to the conviction that everything depends on connections and favors, and the feeling of being looked down
upon, of enjoying little regard or prestige from the lay public, of being parasites—in short, of not being real lawyers at all" (p. 192).

Since the time of Carlin's classic Chicago study, the plight of a large segment of the American bar remains unchanged. Daniels and Martin (2001) describe the precarious nature of the practice of Texas plaintiffs' lawyers and the imperative to adopt entrepreneurial strategies in their highly competitive, volatile marketplace. These are the issues that animate not only the Chinese bar, but bars elsewhere in time and place.

**Social Connections in the Legal System: The Guanxi Debate**

Professional skills in the Chinese bar can be reduced—not entirely, but to a considerable extent—to relationship skills. Lawyers are producers, peddlers, and consumers of *guanxi* (social connections, personal relationships); their effectiveness depends on access to state agents with discretionary power over information and favorable decisions. Indeed, they are typically hired on the basis of such access (Peerenboom 2001: 301–2; Xie 1994). This challenges the idea that lawyers and formal laws and procedures weaken informal, *guanxi*-driven behavior. Of course China is not unique in this regard. Wherever they are found, lawyers help reproduce relational practices (cf. Dezalay and Garth 1997, Jones 1994, and Potter 2002). Gandhi (1982), for example, reveals how lawyers in India organize their practice according to personalistic relationships with brokers or middlemen ("touts")—their own relations with touts, the relationships between touts and clients, and the relationships between touts and court personnel. The complex brokerage relationships involving finder's fees in the Indian bar are very similar to how Carlin (1962) described relationships between American solo lawyers and realtors, bankers, and other business agents in Chicago, and to how Blumberg (1973) describes American criminal defense lawyers' dependence on court personnel for case referrals.
Doug Guthrie is one of the more prominent proponents of the idea that the returns to mobilizing *guanxi* have been in decline in China since the late 1980s (Guthrie 1998, 1999, 2002). The linchpin of Guthrie's argument about the declining significance of *guanxi* is the development of a legal system that promotes rational, fixed procedures to replace the less certain, more idiosyncratic administrative procedures that often fell hostage to *guanxi* practices. In short, Guthrie pins his theoretical claims to China's legal reform efforts; theoretical vindication hinges on the fate of the legal reforms. However, it is unclear why legal institutions are endowed with immunity to the infection of *guanxi* so chronic in other government agencies in China and other legal systems elsewhere in time and place. In this study I consider the possibility that the development of legal institutions is a major force not suppressing, but rather pushing *guanxi* into the new millennium.

According to Guthrie (1998), particularistic connections to people in government agencies responsible for approving projects or issuing permits, for example, have been declining in importance as rational-legal procedures have been rising in importance. The argument is about the institutional preconditions for capitalism: the development of capitalist organizations in China has been supported by the development of a rational-legal system at the state level. It is interesting that this framework does not incorporate the lessons of the Law and Society debate on the relationship (or lack thereof) between capitalism and rational law in East Asia (e.g., Jones 1994; Winn 1994). Indeed, Dezalay and Garth (1997) argue more generally that the relational practices of lawyers everywhere, carefully obscured and legitimated by symbols of technical knowledge, are partially responsible for the global expansion of capitalism. Taking the production of new bodies of law—which I grant are impressive both in terms of speed and volume—as *prima facie* evidence of the development of rational-legal institutions and behavior, Guthrie (1998, 1999) regards the development of a rational-legal system in China as a given with little in the way of evidence. Perhaps nowhere is the traditional Law and
Society call for separating the law in action from the law in the books more urgent than in contemporary China. This is a more general critique of New Institutionalism's tendency towards Legal Formalism in its treatment of legal systems: "by treating law as authoritative, institutional theory obscures the extent to which law is, in reality, malleable, contested, and socially constructed"; "by treating law as coercive, institutional theory obscures the extent to which law is, in reality, symbolic, discursive, and constitutive" (Suchman and Edelman 1996: 929). Once we look behind the impressive collection of laws and regulations in China, we see that the formal institutions of law are some of the last places one can find the certainty, calculability, and predictability capitalism ostensibly demands of a rational legal state, at least according to the most common reading of Weber (cf. Weber 1981, Collins 1980, Sterling and Moore 1987; also see North 1981; for a critique, see Rudolph and Rudolph 1979). Indeed, beyond the case of East Asia, Weber's theory of law and capitalism has been debated in the Law and Society literature for decades on both empirical and theoretical grounds (e.g., Trubek 1972, 1986; Ewing 1987).

Guthrie is correct to point out that in the wake of the shrinking Chinese state, the courts and other institutions are taking over a growing array of governmental functions. To be sure, the courts are handling an increasing volume of matters formerly handled by administrative agencies. Even if the shift from government regulation to court regulation of social and economic transactions does diminish the significance of mobilizing guanxi in government offices, it does not logically follow that this should lead to a more general decline in the mobilization of guanxi. What Guthrie does not consider is the possibility that as the functions of courts grow, the arena in which guanxi plays out has concomitantly shifted from government offices to the courts. Insofar as legal institutions are becoming gatekeepers to valuable opportunities and outcomes, Guthrie argues that the utility of lining up connections at government agencies is diminishing. Even if we grant
this argument, why is it beyond the realm of possibility that legal institutions, the new
gatekeepers, are becoming the new targets of guanxi practices?

Many legal scholars, funding agencies, financial institutions, and non-
governmental organizations in the West have vested tremendous hope in Chinese lawyers
and legal institutions, attributing to them the ability to promote the standardization of
procedures and transactions as well as the ability to improve China's human rights
situation without much in the way of empirical support (DeLisle 1999; Alford 2002;
Clarke 2003). This study suggests that we must resist the temptation to regard the
construction of legal institutions as a quick-fix to the "rule of relationships" in China. The
limited empirical evidence gathered elsewhere is not encouraging to the legal reform
optimists. For example, Dezalay and Garth (1997) argue persuasively that legal
professions in many other parts of the world serve as vehicles exploited by administrative
officials to convert their political capital into economic capital. Indeed, as we will see in
this dissertation, so far the legal reforms in China seem to have done more to reinforce
existing practices and institutions—albeit in a new setting—than to introduce new ones.

The guanxi strategies deployed by Chinese lawyers may fit the narrow definition
(i.e., reciprocal obligation), or the looser definition that includes bribery and other forms
of corruption that lubricate relationships. As with Yang (2002), I do not think this
distinction is helpful or important. One form of guanxi easily shades into the other.
Guanxi of the narrow type can be utilized for corrupt ends; corruption can just as easily
be used to build guanxi based on reciprocal obligation. As Wank (1999a: 251) puts it, the
mix of money guanxi and emotive guanxi is fluid and overlapping. In any case, whether
we limit our analysis to the narrow definition of sentiment, emotion, and reciprocal
obligation or choose to adopt the broader definition and include guanxi practice driven
by self-interest, the point is that formal rules and procedures are being evaded and that a
variety of forms of guanxi are being mobilized to substitute for administrative and
ideological exclusion from state power. More than this, guanxi is just one of a larger repertoire of substitutes for formal access to state agencies, a repertoire that includes reputation, name recognition, and organizational affiliation.

Ironically, this is precisely the argument Guthrie (2002) invokes in an attempt to reconcile his findings from the state sector with a growing body of evidence to the contrary from the private sector. Those closer to the state have less need to resort to guanxi practice because they already have routinized, institutionalized access to state power. What ultimately determines the prevalence and utility of guanxi practice is structural position with respect to state administrative power (Guthrie 1999: 191; 2002: 53–4). Thus we learn more about the institutions of socialism than about the institutions of capitalism. We learn more about patronage, formal institutional support, and administrative rules of access in the socialist state hierarchy than about the rule of law and its effects on firm behavior.

An important implication of the theory I advance in this dissertation (and that Guthrie inadvertently supports) is that even after lawyers completely privatize, which is likely to happen within a few years of writing this dissertation, the public-private divide will remain of fundamental salience. Access to the state will remain a highly prized and unequally distributed asset so long as the official status of lawyers, and of the private sector more generally, is poorly defined and weakly protected. After the bar is completely privatized, access to the state will no longer be possible on the basis of ascriptive membership. When ascriptive membership completely disappears, other means of access, including but not limited to guanxi and guanxi practice, will become even more important.

But dependence is not unidirectional. State officials, particularly those in judicial organs, are also dependent on lawyers. Their low salaries encourage the extraction of rents from lawyers in exchange for cooperation, support, and favorable outcomes. The
case of lawyers demonstrates that state officials will seek and cultivate financially rewarding relationships with any occupational group with a revenue stream perceived to be high, not merely with those who desire secure property rights. Whereas access to state officials through *guanxi* is a way entrepreneurs "produce property rights" (Wank 1999a) under a weak property rights regime, such *guanxi*-based access is a way lawyers produce status and rights under conditions in which their status and rights are poorly defined and weakly protected. Mutual dependence or symbiosis reinforces and reproduces *guanxi practice*. One of the social costs, however, is favoritism and gross injustice in the legal system. I therefore have reservations about Potter's (2002) argument about the complementarity of *guanxi* in the legal system.

**Post-Socialist Transitions**

The durability, indeed the apparent growing importance, of *guanxi* makes sense in the socialist transition context. One goal of this dissertation is to contribute to a theory of institutional change that has emerged from studies of China's private sector. So long as they remain structurally comparable to business entrepreneurs, subordinate to and dependent on the state, lawyers can be subsumed by a more general theory of institutional change. To the extent that their official status is unclear, their rights weakly protected, and their access to and support from the state agencies on which they depend for their success difficult and costly, it makes little sense to theorize emergent occupational groups, including lawyers, as unique and separate social entities. The plight of the lawyer is essentially the same as the plight of the business entrepreneur. The adaptive responses of lawyers are essentially the same as the adaptive responses of business entrepreneurs. And the institutional innovations that this plight has spawned are essentially the same in the two groups.
According to the "two hemispheres theory" of legal professions (Heinz and Laumann 1994), the bar is animated less by black-letter law than by social divisions. The status and prestige of lawyers, the way they organize their work, and the social networks in which they are embedded significantly determine and are significantly determined by client type—individual clients versus corporate clients. In the case of China, however, not only is the basis of division different, but its applicability is far from limited to the bar. I argue that the two hemispheres are the public and private sectors, that the essential divide is between the state sector and the private sector. Furthermore, this public-private hemispheric divide is not limited to lawyers, but cross-cuts Chinese society more generally as it undergoes the transition from socialism. Under hybrid ownership conditions, where emergent private property forms coexist with socialist ownership and socialist state administration, status and rights in the private sector are poorly defined and weakly protected. It follows that the two hemispheres described in this dissertation are transitional themselves, salient only to the extent that the private sector, which includes lawyers, endures the challenges associated with low status and weak rights vis-à-vis incumbents in the state sector. But even after the complete unhooking of state-sector lawyers, the effects of membership in the state-sector will take time to wear off. The distinction will be no longer be between state-sector and private-sector membership, but rather between former state-sector membership and having never enjoyed state-sector membership.

Under central planning, status and resources are allocated by the state. Rights, protections, and preferential treatment are enjoyed disproportionately by incumbents in the state sector. During the transition from socialism, a power asymmetry, an imbalance in terms of status, recognition, and protection granted by the state and its agents, becomes apparent between state-sector incumbents and new private-sector challengers. Particularistic, informal relationship-based institutions are among the adaptive responses
that emerge and spread to compensate for the uncertainty and vulnerability generated by structural distance from state agencies and state-owned organizations with enduring power and preferential status (Parish and Michelson 1996: 1043–4; Xin and Pearce 1996). This is essentially a theory of institutional substitutes for rights. In its most bare-bones formulation, the theory posits that under socialism rights are ascribed by state-sector membership, and, in the transition away from socialism, actors, especially those excluded from the state-sector, produce rights by alternative means of state-sector access and support secured through guanxi, renqing (doing favors), guanxi practice (the active cultivation of guanxi), organizational affiliations, and reputation and credibility (cf. Wank 1999a: 251–2).

The entrepreneurs in Wank’s (1999b: 70–1, 89–90) study depend on access to local state agencies for support, protection, and security. Owing to their structural marginalization outside the state system, they resort to informal means of access. Patron-client ties develop between entrepreneurs and state agents not only to facilitate business activity but, more importantly, to prevent harassment, obstruction, and the predatory levying of rents from other agents (Wank 1999b: 84). The costs of gifts, bribes, and kickbacks associated with cultivating a solid relationship with a powerful state official are a rational business investment. Similarly, the private entrepreneurs in Tsai’s (2002) study are essentially blocked from access to state loans. As an adaptive response, they have invented alternative, informal relationship-based financial institutions completely outside the state system.

My basic thesis is that isolation from state power heightens lawyers' insecurity and vulnerability, what I refer to in this dissertation generally as "professional difficulty." Such difficulties range from low levels of respect from clients to police obstructing access to criminal defense clients; from judges refusing to listen to arguments made by lawyers in court to state agencies' failure to cooperate with lawyers (e.g., refusing to
share relevant evidence); and from police tampering of evidence and intimidation of
witnesses to outright harassment and abuse, including beating, kidnapping, and illegal
detention. Chinese lawyers describe these difficulties with the words *zu'ai* (obstruction),
ganyu (interference), *fubai* (corruption), *saorao* (harassment), *baohu zhuyi* (protectionism), *wuru* (insults and abuse), and even *kuxing* (torture).

Lawyers in transitional societies represent an ideal case for testing the returns to
state-sector membership. The majority of Chinese lawyers belong to the private sector,
providing a chance to measure the extent of their insecurity and vulnerability. At the
same time, until recently, lawyers across China were divided—and remain divided in
some areas—between public and private sectors, between state-owned firms and
privately-owned firms, providing a chance to identify factors associated with greater and
lesser degrees of insecurity and vulnerability. The survey data on which this study is
based were gathered in the summer of 2000 on the eve of a state-mandated privatization
campaign that has since pushed almost all remaining state-owned law firms into the
private sector. Our ability to generalize about institutional change and innovation in the
post-socialist transition by studying either the state sector alone (e.g., Guthrie 1999;
Steinfeld 1999) or the private sector alone (e.g., Wank 1999) is severely limited. Xin and
Pearce's (1996) study represents a rare (if not the only) comparison of institutional
support and its substitutes across both state and private sectors. However, the study of a
single group spanning the public-private divide (as opposed to comparing different
groups, some of which are in the state sector and some of which are in the private sector)
offers even better control conditions not available to other studies.

Lawyers, to a much greater extent than business entrepreneurs, depend on access
to state agencies. Any lawyer who depends to any degree on court decisions (i.e., almost
all lawyers) faces the problem of administrative obstruction faced by the entrepreneurs
documented in many studies from the 1980s (cf. Solinger 1992: 138n17) through the
1990s (Young 1994; Parris 1999; Wank 1999b; Tsai 2002). Any lawyer with any volume of criminal defense work (i.e., the majority of lawyers), not only depends on the criminal courts, but also on cooperation from public security organs (which gather evidence and detain criminal suspects) and the procuracy (which prosecutes criminal suspects), again introducing the challenges and dilemmas caused by dependence on state agencies. The growing number of lawyers who despair of the difficulties working with the police, procuracy, and courts (lumped together in common parlance as the gongjianfa) and exit criminal defense practice cannot exit completely from the system and avoid state agencies without abandoning law altogether. As we would expect anywhere in the world, the specter of state administration is inescapable in the practice of law in China. The fundamental stickler in China's post-socialist transition is that state agencies have little incentive or felt obligation to cooperate with outsiders for free when they can demand rents.

Furthermore, the difficulties of administrative interference and obstruction among privately-owned businesses seem to be limited to the entrepreneurs themselves—the owners, investors, and managers. To be sure, private-sector employees have their own problems—harsher working conditions, longer hours, and fewer social security benefits, and so on—that can make state-sector employment appear highly attractive. Among these problems, however, are not included the kinds of administrative difficulties their bosses are forced to navigate on a daily basis. Lawyers, on the other hand—employees and leaders, junior lawyers and partners, salaried lawyers and commission-based lawyers alike—are all exposed to such difficulties.

For self-evident reasons, lawyers are better suited than perhaps any other social group to test a theory of rules versus relationships. Despite mounting theoretical and empirical opposition (e.g., Yang 2002; Wank 2002), Guthrie (1998, 1999a, 1999, 2002) remains the optimist in his insistence that the spread of formal rules and procedures is
reducing the utility of social connections in the Chinese business world. In his (2002: 52) words, "And as the state constructs a rational-legal system of new laws and institutions, industrial organizations are constructing internal bureaucracies that reflect these new institutions. As a result, managerial behavior and attitudes toward informal systems and *guanxi*’s pull toward reciprocal obligation and 'backdoor' practices are changing in radical ways." If a theory premised on the growing importance of state law does not pass the minimum benchmark with the case of lawyers, we must seriously question the plausibility of the theory. When it comes to testing such a theory, the behavior of lawyers—how often and why they follow formal procedures as opposed to relying on informal, extra-legal personal relationships—is an even better place than industrial organizations to start looking. Why would managers of industrial organizations be more willing and able than lawyers to dispense with relationship-based transactions and turn to formal legal institutions?

**A Poor Public Image**

Not surprisingly, lawyers in China struggle against a rather unsavory reputation traceable not only to their pettifogger predecessors in imperial China, but also to the Gang of Four trials in 1980 during which lawyers, who as an occupation had been revived only in 1979, were showcased speaking on behalf of the alleged organizers of the Cultural Revolution, those responsible for the destruction of millions of lives and the hampering of the development of China. It is also true that lawyers are getting a bum rap for the weakness of China's nascent legal system more generally. Mentioning the word "law" to an ordinary person is likely to trigger a seemingly knee-jerk response of eerie uniformity: "China's legal system is very incomplete" (*Zhongguo de fazhi hen bu jianquan*). When this statement is unpacked we hear allegations of judicial corruption that include abuse of power, bribery, favoritism, and government interference that are not just widespread but
the prevailing *modus operandi*. These allegations are typically embellished with the ubiquitous adage, "Litigation is a matter of pulling connections" (*da guansi jiu shi da guanxi*). Cronyism is a major theme in portrayals of lawyers as money-hungry investors in the cultivation of relationships with judges through expensive gifts and lavish meals at fancy restaurants, investments that pay dividends in favorable court decisions. The ordinary person often concludes with another statement echoed throughout China with uncanny uniformity: "There is no law in China" (*Zhongguo meiyou falü*).\(^1\)

This popular discourse of legal impropriety is not limited to ordinary people; it is mirrored by official rhetoric. In an interview published in the *Gongren Ribao* (Worker's Daily) on March 2, 2002, the chief of the Supreme People's Court, Xiao Yang, talked about the public image [*xingxiang*] problem of China's court personnel: "...for a long time now judges have been treated administratively as civil servants, violating the requirements of this special profession and causing a very uneven moral quality among the ranks of judges. Some without the qualifications to become a judge enter the profession through various channels, resulting in violations of discipline and the perversion of justice in verdicts and rulings to occur. This negatively affects the public image of the People's Courts and the People's Procuracy" (Gai 2002). The *South China Morning Post* published an abstract of this interview, summarizing Xiao Yang's concern as one with "public anger" over "the low quality of many judges and legal officers," some of whom "lacked professional knowledge and had no morality" (O'Neill 2002).

This statement is significant in at least two ways. First, the highest ranking official of the court system is acknowledging widespread judicial corruption. Second, he attributes this problem to the fact that judges are embedded in the state system, aligning

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\(^1\) Another common expression is "China's law is an elastic jump rope [*Zhongguo de falü shi yi ge houpijin'r*]," referring not only to its stretchability, but also to its game-like quality.
their interests with state interests. He points to the lack of judicial autonomy as a source of ethical problems in the courts and their concomitant negative effect on the public image of the judicial system. As we will see, the power asymmetry and the income asymmetry between lawyers and judges also contribute to the rocky relationship between members of these two groups and the prevalence of judicial corruption. The power asymmetry refers to the weak official status of lawyers vis-à-vis their counterparts in the courts, procuracy, and public security apparatus. The income asymmetry refers to the low salaries of judges relative to lawyer incomes. The combination of these asymmetries leads to the exchange of one for the other—the buying and selling of influence—and the development and mobilization of *guanxi* (personal connections) in the Chinese legal system. Highly demanding clients in an intensely competitive environment further encourage *guanxi* practices.

As the chief of the Supreme People's Procuracy from 1990 to 1992 and as the Minister of Justice between 1993 and 1998, Xiao Yang has long been pushing the importance of the public image of judicial workers. Before turning to judges, he admonished lawyers for their poor public image. He was quoted in the official report of the 2000 China Lawyers Conference commemorating the 20-year anniversary of the revival of lawyers: "Chinese lawyers should influence the public through their own behavior of respecting and obeying the law; they should erect a positive social image and not place the core of their work into personally profiting from the results of litigation (or non-litigation) by evading or even overstepping the bounds of the law" (Gu 2000). About five years earlier, in the concluding chapter of a report on the experience of lawyer administration in Beijing, Xiao Yang wrote, "In the wake of the continuous development of lawyers and law firms and the continuous deepening of the reforms of the system of lawyers, administration lags far behind, forming a problem in urgent need of resolution: no development and no administration, or limited administration, threatens to ruin the
achievements of lawyer reforms. So many years of painstaking effort would have been exerted in vain. The struggles of several generations of leaders would be wasted" (Liu 1996). The public image of lawyers is described as "a matter of life and death for the thriving development of the legal profession." For this reason Guangdong Province initiated a special "embrace our lawyers, establish a good public image" campaign in 1996 (Liu 1996).² Chinese leaders recognize that public perceptions of the fairness of legal institutions matter. Xiao Yang is not the only major public figure concerned with the public image of lawyers; Jiang Ping, the former president of the China University of Political Science and Law and deputy to the National People's Congress (NPC) has also written publicly on the problem of the public image of Chinese lawyers (Jiang 1997), as have other prominent academics (see Jiang and Yi 1997).

According to the *Ci Hai* (1989: 903), the ultimate authority on Chinese etymology, the word "lawyer" appeared in print for the first time in the 1910 Criminal and Civil Code of the Great Qing (also see Xu 2001: 39; Cui, Zhang, and Xiao 1999: 215, who date this body of law at 1906). But lawyers never had a chance to practice law before the 1911 Republican Revolution and the establishment of the Chinese Republic in 1912. The Chinese Republic promulgated regulations on lawyers in 1912; after their emergence in this year, lawyers remained a consistent presence, numbering about 3,000 nationally and between two and three hundred in Beijing (Cui, Zhang, and Xiao 1999: 215–7; Conner 1994: 216), and further developed after the establishment of the Nationalist government in Nanjing in 1927 both in terms of numbers and solidarity, becoming a self-conscious "professional community sharing similar professional values and interests" (Xu 2001: 122). By 1935 there were over 10,000 lawyers nationally (Chen

² The eagerness with which Guangdong Province incorporated the spirit of Xiao Yang's message is clearly related to his coming from Guangdong; in the 1980s he served as the chief of the Guangdong Supreme People's Procuracy.
1989, also cited in Conner 1994: 230). Yet Republican-era lawyers do not exert a major influence either on how contemporary lawyers think and talk about themselves or on contemporary lawyers in the popular imagination. Their legacy seems largely to have disappeared. Lawyers in the contemporary West and the litigation masters of the Chinese late dynastic era are far more influential.

The public image with which lawyers currently contend has very deep roots. Lawyer-bashing has been a great tradition in China since the Qing Dynasty (1644–1911); back then they were called "litigation masters" (songshi). In popular discourse, however, they were called "litigation tricksters" (songgun) (see Macauley 1998).³ The songgun discourse has reemerged in public discussions of lawyers in contemporary China (e.g., Liu Wujun 2001). Articulating a view echoed throughout Chinese society, a law professor at the Zhongnan University of Economics and Law devoted an entire article in the highly respected Nanfang Zhoumo (Southern Weekend) newspaper to his polemic that contemporary lawyers are no different from their songgun predecessors (Qiao 2001).

The official concern with public image is also reflected in the organization of the Beijing Lawyers Association (BLA), which explicitly includes work aimed at improving the public image of lawyers. One of the official mandates of Association is "public image propaganda" (BJFZRB 2001b). This "image propaganda work" was helped by a survey on the public image of lawyers commissioned by the Beijing Bureau of Justice (BJJ) and conducted by Horizon Research (Lingdian Diaocha) on this topic. Findings were published in an internally circulated (neibu) volume (Bai Xuesong 1999: 187–98).⁴

³ According to the revised edition of the Xiandai Hanyu Cidian (Modern Chinese Dictionary) (1996: 1200), the definition of songgun is: "Bad people in old society who derive profit from instigating others into litigation." It is typically translated in Chinese-English dictionaries as "pettifogger."

⁴ This is a largely unrevealing survey that asked about various levels of knowledge about lawyers, where that knowledge comes from, prestige rankings of various professions (on which lawyers, not surprisingly given the loaded question wording, ranked very highly), and so on.
Popular consternation and hostility toward lawyers in China is embodied most strongly in a very influential book entitled *Human Misfortune: Exposing the Inside Secret Schemes of Contemporary Chinese Lawyers* (Yang 1999). During a scholarly seminar in August 2000, a prominent legal scholar at the Chinese Academy of Social Sciences commented specifically on the deleterious effect this book has independently exerted on the public image of lawyers. This book was subsequently banned in 2001 and unavailable for sale. To show the tenor of this book, it is worth reproducing the table of contents in its entirety:

Chapter 1. Illiterates: Illiterates aren't illiterate about the law. I'm constantly playing word games. As opposed to illiterates, I, Lawyer Gao, can recognize the words on big-character posters. To tell the truth, I simply don't want to deal with matters of basic right and wrong. Basic right and wrong is as easy as 1 + 2. Boring. The logic of people is not mathematical logic.

Chapter 2: Criminals: Who doesn't know about the crime of bribing judges? Who knows a party to litigation who doesn't want to "buy" a judge? Our "lawyers" simply do what the rest of us would like to do but are unable to do.

Chapter 3. Gamblers: "Life is a gamble." Our "lawyers" are no different. Winning or losing a law suit depends on power, and variations in power are not constant. Different adversaries have different amount of power: money and guanxi.

Chapter 4: Swindlers: Is it alright not to swindle? A billion people know that a "lawyer" like this is useless. The question is not whether or not to swindle. It's about whether swindling is done in a reasonable and legal manner, whether swindling is done in a supremely refined, perfectly clean manner.

Chapter 5. Bullies: The difference between worthless people and bullies is that worthless people aren't born bad. Our "lawyers" are different. They are bad to the bone, intelligently bad, methodically bad. If everyone agrees I'm bad, I'd still like to avoid the kind of person I'm describing.

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Chapter 6. Scoundrels: To be a scoundrel is to be persistent. Our "lawyers" have eyes like eagles; once they spot you, don't even think you can escape. Once they get their hold on you, don't even think you can wriggle away. Not only will you have to litigate, but you'll have to hire me do it. Settling out of court is not out of the question, but that depends on whether you keep me in the picture.

Chapter 7: Bitches: They are different from whores who sell their flesh. To be a bitch "lawyer" is far more noble: first acquire a nice image, add to this a fine education, and then you can "sell" yourself with pleasure. Whores only need to sell flesh, but bitch "lawyers" need to sell the spirit of "knowledge." Not everyone is born with the desire to sell. There are sellers only because there are buyers.

Chapter 8. Thieves: In this day and age hints don't get you anywhere. There are only demands. Everyone's like this. If you're reserved, people will call you phony. If you demand, people will call you a thief. Relatively speaking I prefer the latter kind of person, he's a little more "honest."

Chapter 9. Perverts: "Only after liberating oneself can humanity be liberated." Some people call me a pervert. Actually I have no idea what a pervert is. I just think I live life more fully, pushing the limits.

Chapter 10. Henchmen: I truly want to become a certified "legal henchman." The problem is that my "boss" is constantly changing. Different parties to litigation have different legal needs, so being a "henchman" isn't easy. Only after becoming a lawyer did I understand what it means to endure humiliation.

In short, the widespread perception that lawyers' obsession with making money trumps their interest in judicial propriety is rooted in the China's songgun tradition (Ma 2001; Wang and Gao 2000: 5–13). This perception is important not only in and of itself, but also insofar as actual behavior is consistent with these negative perceptions and insofar as encounters with legal institutions either reinforce or alleviate this perception. As we will see, the structural reasons for judicial corruption include competition, both from other lawyers and from unauthorized practitioners, and the concomitant economic pressure and financial insecurity of lawyers, the weak status of lawyers outside the state system relative to judges and prosecutors inside the state system, and the low salaries of judges who, as a result, hold grudges against lawyers for the conspicuous imbalance between power and economic status.
We will also see that lawyers' poor public image stems to some measure from the nature of their work, most notably from their overwhelming dependence on debt collection work. American lawyers in the aftermath of the Revolution suffered from an abysmal public reputation—reflected in names such as pettifoggers, spellbinders, sharpers, banditti, blood-suckers, pick-pockets, wind-bags, and smooth-tongued rogues—for the concentration of their efforts on "clean-up work" that included the collection of debt, foreclosure, insolvency, and recovery of property, and the resultant popular perception that lawyers were thriving financially from the misery and poverty of ordinary people (Chroust 1965, also cited in Galanter 1998: 810–1). In the upheaval of China's current economic transition in which organizations are privatizing, reorganizing, merging, liquidating, and laying off millions of employees, lawyers are participating in the inevitable clean-up work, and the tarnishment of their public image is undoubtedly related.

This social upheaval contributes to a more general distrust of legal institutions. Many individuals are forced to approach legal institutions for the resolution of problems that formerly fell under the jurisdiction of work or community organizations that are now weakened or defunct. As China embraces market principles and dispenses with the "socialist social contract" (Tang and Parish 2001)—what Tsui (2002: 519–20) refers to generally as the "socialist employment system"—many individuals have lost the security of lifetime employment, housing, healthcare, and other benefits promised by the socialist state. A widespread sense of abandonment and betrayal by the state has followed this social and economic dislocation. Large numbers of individuals are approaching lawyers and the courts for the redress of violations of the socialist social contract. Yet invoking rights and entitlements granted by the socialist social contract in state legal institutions typically brings disappointment, as the courts and lawyers inform disgruntled individuals that socialist entitlements are not recognized by the law. The clash between competing
systems of rights—the lag of the legitimacy of rights granted by the legal system behind socialist rights consciousness—is an important source of the poor public image of the legal system in general and of lawyers in particular in societies undergoing the transition from socialism.

A corollary of the reform-era social and economic upheaval—in which individuals are increasingly mobile and less constrained by multiplex relations with neighbors and co-workers—is a decline in interpersonal trust, which both benefits lawyers and damages their public image. In the United States, declining interpersonal trust over the course of the second half of the twentieth century has been accompanied by increasing public resentment of lawyers, who are often perceived to be stimulating and profiteering from this eroding trust (Galanter 1998: 807).

**Whose Tradition? Which Tradition?**

Although the Soviet system is the most obvious model guiding the revival of lawyers, relevant Japanese laws have also served as influential models. The privileging of practical experience over education and examinations, for example, was the case in Japan (Sun 1988; Rabinowitz 1956: 80) and also in the Republican bar (Conner 1994: 219), which was significantly influenced by the Japanese model. Following in this tradition, the 1980 *Provisional Regulations on Lawyers* does not require an examination of legal knowledge to qualify for admission to the bar. This was the rationale for the specially-appointed lawyer (*teyao lúshi*), the retired official from the court system or procuracy admitted to the bar on the basis of his or her legal experience to help meet the demand for qualified lawyers. Anyone with at least a junior college (*da zhuan*) education in law and at least two years of work experience in a law-related job such as a law school teacher; anyone with legal training and work experience in the courts or procuracy; or anyone with a university degree in any subject who underwent legal training and was able to
demonstrate legal ability was eligible for admission to the bar (Article 8). Only with the passage of the 1996 Lawyers Law did passing the national lawyers examination become a requirement for licensing (Article 6).

Herein lies a great historical irony: the fact that Japan's regulations on lawyers were the main model for China's Republican-era regulations on lawyers (Xu 2001: 108–9) reveals that despite the purging of Republican-era "black lawyers" in the 1949–52 period, they actually share much in common. Commonalities notwithstanding, it is also clear that contemporary Chinese lawyers turn to their Western counterparts for models to emulate. Yet which models from the West are they emulating? Are they adopting the "medieval cartel" model or the "modern factory" model (Posner 1995)? Are they adopting the model of the main-street lawyer hanging out a shingle, passively waiting for work, and shunning direct solicitation and other competitive practices, or the model of the entrepreneurial, transactional lawyer operating under extreme competitive pressure? Are they adopting the nineteenth century European "free professionals" model or the contemporary Wall Street organization model (Smigel 1964: 293)? Or are they inventing their own model?

Chinese lawyers emerged and developed at exactly the moment legal professions around the world were shaken by fundamental changes in the character of the business firm, namely its growth both in size through mergers and acquisitions and in its global reach. Many scholars studying lawyers have documented a global trend starting in the mid-1970s towards the commercialization of legal practice that accompanied the explosive growth of business litigation (Abel 1989; Heinz et al. 1998; Karpik 1995). The ethical and professional implications have similarly been explored (e.g., Nelson, Trubek, and Solomon 1992; Kritzer 1999). This shakeup in the corporate world not only further concentrated lawyers' efforts on corporate clients, but also produced greater volatility in client markets and greater competition between law firms by replacing "relational" legal
practice (stable, long-term lawyer-client relationships) with "transactional" legal services (services provided and billed by the transaction; more one-off relationships).

Furthermore, as large law firms secured control over the corporate-client market, smaller law firms and solo practitioners were left to fight over shrinking individual-client and small business-client markets. The competition within the bar that resulted from this transformation was intensified by an overproduction of lawyers (Michelson et al. 2000).

The upshot is that lawyers around the world have become highly entrepreneurial and increasingly adaptive market actors (e.g., Seron 1996; Karpik 1995).

This is the backdrop to the stage on which Chinese lawyers appeared in the late 1970s and early 1980s. Chinese lawyers have only been exposed to marketized, post-relational legal professions; they missed the "golden age" of legal professions in which anti-competitive taboos prevented lawyers from demeaning the profession by engaging in market behavior such as direct solicitation, competitive bidding, and so on. Moreover, they have been subject to the same competitive pressures that wrought transformations in legal professions elsewhere. Consequently, like lawyers elsewhere, Chinese lawyers are widely criticized for dispensing with the defense of individual rights as they focus their attention overwhelmingly on developing corporate-client markets (e.g., Ma 2001).

**The Symbolic Significance of Lawyers**

The Chinese legal reforms in general and the development of the legal profession in particular have been characterized by a combination of experimentation, mimicry, and innovation. An understanding of the reform process that has moved away from Soviet models and closer toward American models can benefit enormously from the New Institutionalism in organizational analysis. Dubbed "neo-Weberian" owing to its premise that legitimacy structures much of social life, New Institutionalism regards organizational structures as loosely coupled with actual organizational behavior, instead reflecting the
widely shared understandings, taken-for-granted nature of what organizations should look like. Organizations are socially constructed rather than rationally derived; they are shaped by myths more than by technical imperatives (Meyer and Rowan 1977). According to Tolbert and Zucker (1983: 26), reform typically has no effect on the actual operation of the organization, and "fulfills symbolic rather than task-related requirements." DiMaggio and Powell (1983) and Fligstein (1991) are perhaps the most prominent advocates of the idea that organizations mimic structures and institutionalize them for purposes of legitimacy more than for technical reasons. New Institutionalism can help us reconcile the appearance of rational-legal bureaucracy with the messy reality of organizational behavior in the Chinese legal system—indeed, in any legal system (Suchman and Edelman 1996). It points to the symbolic significance of the Chinese legal reforms, how the legal reforms at least in part are responses to global cues about the proper appearance of a rational-legal system in a process that Dezalay and Garth (1997) term "symbolic imperialism."

China has made a tremendous investment in symbolic measures not only to help resolve a growing public opinion problem at the local level, but also to promote investor confidence and political legitimacy at the global level. The massive promulgation of laws can be seen as a symbolic measure aimed at legitimacy in the eyes of foreign investors and governments in China's ongoing efforts to be a major player on the world political stage and in the global economy. The legal-institutional pressures brought by China's long-term efforts to enter and its ultimate accession to the World Trade Organization in November 2001 should not be downplayed. Other examples of this "ceremonial conformity" (Meyer and Rowan 1977: 341) include new uniforms for police officers (as of October 1, 2000) and judges (as of May 1, 2001) that are designed explicitly to conform to Western standards (police in blue uniforms and judges in black robes) and to display symbolically the separation of judges from other government personnel and the
separation of police from military personnel (who wear green uniforms). Intermediate and High-Level People's Court judges wear black robes, while judges in Basic-Level People's Courts wear Western suits. In an interesting contrast between competing symbols, the Western suit jackets don four gold-colored buttons that represent, in descending order, loyalty to the Party, the People, Truth, and Law (Cai 2000; RMRB 2001).6

The global pressures brought by China's bid for the 2008 summer Olympics clearly factored into the decision not only to change police uniforms, but to add the English word "Police" to the uniform (BJCB 2001). With the Supreme People's Court's issuing in mid-January 2002 of the Provisional Regulations of the People's Courts on the Use of the Gavel, which became effective June 1, 2002, judges are required to use the gavel in court (Shen 2002). This is a particularly revealing institutional development insofar as the gavel remains largely a symbolic representation of rule of law even in the West.7 Perhaps the most rancorous and polarizing debate among lawyers throughout 2001 and 2002 was the issue of lawyers' wearing robes in court. The naysayers ultimately lost the battle and the Methods for the Administration of Lawyers' Use of Uniforms in Court Appearances was passed in March, 2002, requiring lawyers to wear black robes with white shirts and red scarf-ties starting January 1, 2003. For a major press event on

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6 Uniforms are similarly significant in other socialist contexts. Rand (1991: 70) describes the Soviet prosecutor's uniform: "The state prosecutor appeared determined and confidence, and she was dressed accordingly. Gone were the civilian clothes she had worn yesterday, today she had donned the uniform of the procuracy: a stark, two-piece, dark blue suit with a swath of black velvet on each collar. Two gold stars and the gold emblem of the state prosecutor's office were attached to each velvet band. It was a no-nonsense outfit that demanded attention and obedience."

7 The largely symbolic nature of the judge's robe in the United States is articulated most poignantly in Justice Jerome Frank's (1949: 256) polemic on "the cult of the robe": "An American President or Senator has no garment to betoken dignity; if he has true dignity, all will know it. So of the man on the bench: If he deserves respect, he will receive it, although be dressed in a business suit. But, unfortunately, the bigoted judge, the ignorant judge, can often effect a false show of dignity. Become a judge, the mediocre lawyer can avail himself of the robe to conceal his incompetence: The robe will cover up the man. Worse, his false pomp often nourishes pomposity, and he browbeats the laymen who appear before him."
January 2, 2003, the first lawyer in Beijing to sport the new uniform for a formal court appearance also wore a badge reading "Chinese Lawyer" in both English and Chinese, just to be sure there was no confusion about on whom journalists and photographers should focus their attention (RMRB 2003).

A prominent legal scholar in China who has written extensively on Chinese lawyers and who served on the drafting team of the 1997 Lawyers Law argues explicitly that laws and lawyers were developed in the early years of China's reform period to create the institutional appearance of a rational legal system necessary to attract foreign investment:

In the beginning, after the Eleventh Party Congress [in 1979], China built special economic zones. These special economic zones were built to attract investment from foreign enterprises and enterprises outside the boundaries of mainland China, including foreign investment from enterprises in Hong Kong and Taiwan. However, in the early 1980s many people came to look, but very few actually invested. The state thought it was very strange because in China at the time the price of labor was the cheapest in the world and there were special tax discounts—at the time the first three years were tax free. Later there were even more tax breaks; there were wonderful discounts at the time. And a lot of money could be saved on raw materials. At the time the thinking of the central government was that if they just opened the nation's gates, foreign enterprises would come flooding in. Only later did they realize that this was not the case. So they conducted some investigations to find out why it wasn't the case. I recall that at the time some officials from the China Merchants Shekou Industrial Zone in Shenzhen [the first "open industrial zone" in China] told the central government that it was very strange. Many managers and bosses of foreign enterprises came to look around. They'd look at the investment environment and ask about investment policies. There were never any problems about this. But then they asked, does China have law? Are there any lawyers? At the time, in 1980, or actually in 1979, Deng Xiaoping said we should revive lawyers. So in 1980 there were lawyers. So
you say there are lawyers. How come I don't see any on the street? Why are there no signs for law firms? Well, our lawyers belong to the Bureau of Justice. At the time we didn't call them law firms; they were called legal advisory offices and were departments within the Bureau of Justice. We said this is where our lawyers work. Later people studied China's lawyers and concluded that this system was unacceptable. Why? These lawyers of yours are state legal workers, right? These lawyers are on the state payroll. So, when I run into a legal dispute and need to file a court petition, you're all part of the state, your companies are all state-owned companies, your lawyers are state legal workers. So who will represent our foreign interests? Who will speak on our behalf? So foreigners didn't dare invest. Only then did China realize that if they want to attract foreign investment, they need to consider more than whether or not money can be made.8 (em27)

In short, by placing an excessive premium on the law in the books, the theoretical and empirical debate surrounding the fate of guanxi suffers from an inadequate separation of legal institutional behavior from the legitimacy-serving appearance of legal institutions.

**Similarities and Differences**

Thus far I seem to have been arguing that despite a convergence of appearances, the substance of Chinese legal institutions remains unique. This is partially my argument, but not my entire argument. I do assert that an understanding of the Chinese bar and its difficulties must come from an understanding of socialist and post-socialist institutions. But I also argue Chinese lawyer share a lot in common with lawyers elsewhere. Here I return briefly to the themes I introduced in the first section of this chapter in which I suggested that lawyers everywhere, to greater and lesser extents, suffer similar professional difficulties. In this dissertation we will see a lot that is familiar to students of legal professions. The power-dependence relations between lawyers, on the one side, and judges and prosecutors, on the other side, and the attendant difficulties stemming from

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8 This statement was an answer to a question I asked not about the symbolic significance of lawyers, but rather about the relative importance of lawyers' economic and criminal defense functions in the formative years of the Chinese bar. Thus, the argument about the importance of lawyers' appearance emerged spontaneously.
this asymmetry is certainly not unique to China. Nor is the entrepreneurial imperative and
concomitant commercialization of legal services unique to China (cf. Daniels and Martin
2001). The micro-level rhetorical strategies lawyers adopt in meetings with clients and
prospective clients to secure business and reproduce professional power, where power
stems from the ability to define the problem as legal or non-legal (cf. Merry 1990), also
follow familiar patterns (cf. Sarat and Felstiner 1995). The durability of patriarchy, which
manifests itself in the form of gender inequality in the bar, is also a theme of universal