3    *Tuogou*: Law Firms and Their Unhooking from the State

The Soviet *advokatura* served as the predominant model guiding the revival of lawyers in post-Mao China. Since then, however, the situation has diverged dramatically, approaching something more closely resembling the American model. The history of lawyers in post-Mao China is characterized by groping, experimentation, selective mimicry, innovation, and a multiplicity of organizational forms that eventually converged toward the American partnership model. A great irony of this process is that the adoption of a model based on independence and autonomy has had the perverse effect of heightening lawyer insecurity and vulnerability. The "unhooking and privatization" campaign (*tuogou gaizhi*) launched in 2000 was the culmination of over ten years of incremental privatization in the bar. The role of lawyers and their relationship with the state had been debated, largely in ideological terms, for over a decade. The harassment, obstruction, and abuse of Chinese lawyers has been a problem from the beginning, as we will see in Chapter 4. Their "unhooking" from the state, however, has only exacerbated the problem, a theme that runs throughout this dissertation. Before entering the private sector, their official membership status in the state administration provided meaningful protection. Leaving the shelter of government employment has exposed lawyers to heightened vulnerability, especially in criminal defense practice.

*Lawyers as "State Legal Workers": The State-Owned Law Office*

The first sentence of the 1980 *Provisional Regulations on Lawyers* defines lawyers as "state legal workers" (Article 1). In the 1996 *Lawyers Law*, lawyers came to be defined as "professionals providing legal services to society." It had taken over fifteen years to nail down in the legal code the status of lawyers as being outside the state (cf. Lubman 1999: ...
Before this, rhetoric of lawyers as "free professionals" (ziyou zhiyezhe) had been harshly condemned (Peerenboom 2002: 351; Zheng 1988: 502). The suppression of the "free professionals" rhetoric was in part a thorough rejection of Republican-era lawyers who invented this term—or who borrowed it from the German tradition—to describe themselves (Xu 2001: 1–2, 38, 122) and in part a thorough rejection of lawyers as businesspeople making profits. Indeed, from the time of their revival through the late 1990s law firms were officially described as either non-profit entities or entities "not motivated by profits" working for the benefit of society, in the spirit of public service. The idea that privately owned, for-profit law firms represented the embracement of capitalism and a rejection of socialism remained the dominant line, successfully defeating the opposing idea that privately owned, for-profit law firms upheld the fundamental principles of the "reform and opening-up" (gaige kaifang) launched by Deng Xiaoping. The "socialism vs. capitalism" debate that gripped China as a whole also stalled the development of lawyers (Jia and Cui 1999). The development of lawyers was also stalled for financial reasons: putting lawyers in slots in the state personnel allocation system (bianzhi) put severe constraints on the number of lawyers who could be admitted to the bar (Guo 2000: 101).

The great irony and tragedy in the later "emancipation" of lawyers—the rejection of their official status as "state legal workers"—is the elimination a protection lawyers had enjoyed; as state workers, their official status was similar if not equal to that of judges, procurators, and public security officers. As a former government official told me in a personal interview, "First they [lawyers] were administrative officials, just like police officers. The status of police officers is very high, no?" (em28). The fusion of lawyers with other workers in the judicial system was symbolically affirmed in official uniforms that resembled those of police officers (Guo 2000: 101).
From the time of their revival in 1979 until the end of 1986, lawyers were treated as administrative cadres and assigned administrative ranks according to the complex *nomenklatura* system of civil service grades (Luo 1998: 2). They were granted this official status expressly to offset their socialist marginalization and provide a real measure of protection against official harassment and political persecution (Guo 2000: 101). At this time they worked in "legal advisory offices" (*faliu gawen chu*) modeled after the Soviet law offices (cf. Zhang 1999: 63; Gelatt 1990–91: 761; Zheng 1988: 490; Feinerman 1987: 120; Xiao 2000a). In his study of the Moscow bar, Rand (1991) calls these offices "legal consultation bureaus." In the state administrative system, law offices enjoyed the official status of *guojia shiye danwei* (alternately translated as public organizations, service institutions, or non-profit organizations), a category that includes state educational, health, and research organizations (Zhang 1999: 64). Like other state cadres, lawyers "ate imperial grain" (*chi huang liang*) (Dai and Zhu 1994). As administrative officials, they were assigned individual administrative ranks according to the administrative rank of their office and their individual position within this office. According to a research informant, "In the beginning, when the legal consulting offices were established, personnel were allocated slots [*bianzhi*] as state civil servants, as state employees. They [the offices] were accordingly administered as state administrative units. You were classified as division level [*ke ji*] or section level [*chu ji*]" (em16).

Administrative rank determines salary and perks and fringe benefits. According to Lieberthal and Oksenberg (1988: 145), "Each official rank for individuals carries with it specific perquisites—such as access to cars, standards of housing accommodations, and fare at banquets—as well as a certain degree of prestige, and thus differences in these personal position-based ranks can be important." According to another research informant:
At that time you could be assigned a rank as high as section-chief lawyer [chuzhang lishi]. All the lawyers in a firm of this rank were of the division-chief rank [kezhang] or higher. Lawyers belonging to the Ministry of Justice could be promoted to a rank as high as department chief [ting ji] or bureau chief [ju ji]. That is to say, a lawyer in a unit of this rank could be a department chief and qualify for soft-sleeper train tickets and other benefits like certain medical care privileges. They all had ranks. At the time they got all kinds of special privileges which we now look at as being absurd. At the time it was really like that. (em28)

Privilege and status are not measured in monetary terms as much as in terms of such perks and benefits: "In socialist China there are no classes; instead you have hard-seat, hard-sleeper, soft-seat and soft-sleeper" (Cummings and Storey 1991: 165).

More importantly, administrative rank determines access to other units. To gain access to state organization X typically requires making contact through a higher-level overseeing unit that will consider requests only from units of the same rank as organization X (Lieberthal and Oksenberg 1988: 143). Thus, in the words of a research informant, "In the 1980s a lot of importance was attached to rank and level, which unit was of a higher rank than other units" (em08). Individual rank correspondingly determined access to individual cadres (Lieberthal and Oksenberg 1988: 147). Naturally, being outside the civil service system undermines lawyers' access to important players and encourages other means of access.

**The Early Stages of "Emancipation"**

In 1987 the *Provisional Regulations on Lawyer Duties* redefined lawyers as technical personnel. At this time the official status of lawyers was the same as that of professors, engineers, and other scientific personnel (Gelatt 1990–91: 766). Lawyers were assigned ranks according to this separate system. "First-rank lawyers" were equivalent to professors in terms of status, salary, and benefits; "second-rank lawyers" were equivalent to associate professors; "third-rank lawyers" were equivalent to lecturers; entry-level lawyers were assigned "fourth-rank" status (em16 and em28). However this new ranking system did not supercede the administrative ranks of lawyers and their firms. They
coexisted formally until 1993, although in practice firm-level administrative ranks lingered to a limited extent until 2000 when firms under the authority of the MOJ were relinquished to the authority of the Beijing Municipal Bureau of Justice.¹ Even today directors and deputy directors of state-owned law firms have been able to retain their individual ranks until the privatization of their firms is finalized.

Government leaders realized that financially supporting the legal profession was becoming an excessive burden, especially in light of the official goal of licensing 150,000 lawyers by the turn of the century (Alford 1995: 23). There would simply be too many lawyers to put on the state payroll, especially after the establishment of the national unified bar examination in 1986 promised to accelerate the expansion of the bar (Zhang 1999: Chapter 4).

In the past China's government gave money to law firms according to the number of slots they had in the state personnel allocation system [bianzhi]. If there were thirty people in the firm, then the government allocated a budget according to thirty personnel. The money lawyers billed was first given to the government. The firm's income had to be given to the government to guarantee the salaries of the firm's personnel. Later it was realized that this was too bureaucratic and an obstacle to the development of the system of lawyers. (em28)

This was the rationale behind the abolishment of state subsidies and the imposition of self-reliance—the transition from unified accounting (tong shou tong zhi) to self-accounting (zi shou zi zhi).

By 1984 the name "legal advisory office" had already been changed to "law firm" (although in reality the name "law firm" had already been adopted in parts of southern

¹ Given how administrative ranks govern authority relationships between state-sector organizations in China, law firms established by units ranked higher than Bureau-level technically could not fall under the authority of the Beijing Municipal Bureau of Justice. Examples of such firms include the Zhongxin Law Firm and the Huanqiu Law firm, established by the China International Trust and Investment Corporation and the China Council for the Promotion of International Trade respectively, both of which were Ministry-level units directly under the State Council. Their law firms were therefore of equal rank to the Beijing Municipal Bureau of Justice and by definition could not fall under its authority (em08).
China by 1983) (Zhang 1999: 63). By 1986 the majority of law firms had been cut off financially from the state (Bao 1996; em08). The "emancipation" of lawyers from the state sector had begun. These developments paralleled national reforms, the beginning of the dismantlement of the unified job allocation system in the late 1980s and of official calls for self-reliance in the private sector (Tsui 2002: 516). A landmark institutional innovation was unveiled in 1988—the cooperative law firm. The main difference between cooperative and state-owned firms was that the former were self-accounting and could hire and fire lawyers freely—they were not part of the state personnel allocation system (guojia bianzhi). But in name their assets remained owned by the state; all profits in principle belonged to the state. Cooperative firms were therefore analogous to "collective enterprises"; they operated quite autonomously but retained "socialist characteristics" in terms of property rights. After its initial appearance, however, the development of the cooperative firm was stalled by the political tensions that gripped the entire country following the events of 1989.

**Unveiling the Partnership Firm**

The high-tide in the development of lawyers began with Deng Xiaoping's Southern Tour [Nan Xun] in 1992. In his famous speeches on this tour he renewed the call for economic reform, accelerated privatization, greater openness to the outside world, and the deepening of the legal reforms. The calls for greater privatization also accelerated law firm reforms (Zhang 1999: 64; Dai and Zhu 1994). In the spirit of Deng Xiaoping's Southern Tour speeches, the MOJ circulated a directive in 1993 (ratified by the State Council in the same year) entitled *Plan Regarding Deepening the Reform of Lawyers' Work* that effectively stripped the bar of its former civil service character. The status of law firms and lawyers as state personnel with administrative ranks was formally abolished (Zheng 1999: 72; Bao 1996; Yuan 1998; Liu Guiming 2002). Instead, the
relationship between law firms and the state was defined according to the principle known as the "two don'ts and four selves" (liangbusizi): (1) don't occupy a place in the state personnel system (bianzhi) and (2) don't accept state funding; be (1) self-accounting, (2) self-responsible for profits and losses, (3) self-developing, and (4) self-disciplining (yueshu). State-owned firms that were operationally independent from the state came to be called "liangbusizi suo" ("two don'ts and four selves firms") to distinguish themselves from the state-owned firms that remained dependent on state funds. The 1993 directive also formally sanctioned the partnership law firm. In contrast to cooperative firms, which ultimately remain state property and whose liabilities are limited to its assets, partners of partnership firms bear unlimited liability jointly and severally (Zhang 1999: Chapter 4; Lawyers Law, Articles 17 and 18).

The erosion of the civil service character of the bar was further affirmed when law firms were defined as "intermediary organizations" (zhongjie zuzhi) at the 14th and 15th National Congresses of the Chinese Communist Party in 1993 and 1997 respectively (Yuan 1998; Liu Guiming 2002). After 1993, from both fiscal and organizational standpoints, state-owned law firms became virtually indistinguishable from their private-sector counterparts. Most were operationally and fiscally autonomous. The significance of membership in the state sector had become less about property and fiscal dependence on the state and more about support from and access to other state organizations. In Beijing the proportion of cooperative law firms exploded from 9 percent to 43 percent between 1990 and 1993. Then as partnerships started taking off, cooperative firms lost popularity, ultimately declining to 2 percent by 2002 (see Table M.2).

The process of lawyer "emancipation" culminated with the tuoguo ("unhook") privatization drive of 2000. This was a campaign mandated by the State Council and carried out by the MOJ and local Bureaus of Justice to convert all remaining state-owned law firms to partnerships. By the end of 2001 there was only one state-owned firm
remaining in Beijing, and by 2002 Beijing was completely free of state-owned firms (see Table M.2). Nationwide the unhooking has been slower and more difficult. According to official figures, in 1991, the year before Deng Xiaoping’s Southern Tour, 98 percent of law firms nationwide were state-owned. By 1997 this number had dropped dramatically to 65 percent. By the first quarter of 2000, the year of the "unhook from the state" campaign, 56 percent were state-owned. Only 9 months later, by the end of 2000, 43 percent were state-owned (Gu 2000: 4). By the end of 2001, 23 percent of law firms nationally were still state-owned (see Table M.4). By the first half of 2002, 22 percent remained state-owned. Of these remaining state-owned firms, 32 percent (or 7 percent of all law firms in China) are ostensibly fiscally autonomous "liangbusizi" firms operating like private firms (Liu Guiming 2002). These are the remaining targets of privatization. Unhooking law firms from the state has been more difficult in the less developed parts of China where demand for lawyer services is lower and law firms are more reliant on support from the local government (em08 and em22).

**Other Firm Categories and Ownership Forms**

The foregoing makes clear that there is significant organizational diversity among firms in the "state-owned" category. During the heyday of the state-owned firm there was a corresponding diversity with respect to the names used to classify law firms in this category. "Part-time firms" (jianzhi suo) referred to law firms attached to institutions of higher education—mostly law schools—and correspondingly staffed by part-time lawyers who teach at the institutions to which the law firms are attached (see Liu 1999). "Specially-appointed firms" (teyao suo) are staffed by former officials in the gongjianfa and other state judicial offices, such as judges and procurators. Two such firms appear in the Lawyer and Law Office of China (1989). Established in 1995 to provide legal counsel to various municipal government bureaus and commissions, the "public law firm"
(gongzhi suo) operates under the authority of the Beijing Municipal Legal Affairs Office (Fazhi Ban) and is the type of firm in the "state-owned" category with the fewest numbers (Cui 1999). The public law firm has since spread outside of Beijing and into the several provincial governments, including Guangdong and Fujian (Li 2003; Wu 2003).

In 1999, of Beijing's 62 state-owned firms (see Table M.2), 23 were classified as part-time, 6 were classified as specially-appointed, and 1 was classified as public (Zhang Zaixuan 2000).

A now-defunct category of state-owned firm is the so-called "sign-hanging firm" (guapai suo). This type of firm refers to law offices established by basic-level bureaus of justice (sifa ke) within urban district and subdistrict governments. These offices were rice-roots law offices (falü shiwusuo) (cf. Alford 2002) staffed largely by non-lawyer practitioners serving local residents, but were allowed to hang "law firm" signs; hence the term "sign-hanging firm" (lfi16). This kind of firm was abolished with the 1996 Lawyers Law. With the passage of the Lawyers Law, these firms typically split into separate state-owned rice-roots law offices and privately-owned law firms.

In addition to these various categories of state-owned firms, there are several categories of private law firms. In addition to cooperative and partnership firms described above, there are individually-owned firms, group firms, and cooperative shareholding firms. Consistent with the prohibition on solo practice, individually-owned firms remain a small minority, numbering only 163 nationally and 5 in Beijing in the year 2000 (see Tables M.2 and M.4). According to Zhang (1999: 67–8), the first individually-owned law firm was established in Shenzhen in 1989 and later moved to Hainan. By 1995 there were over 50 such firms nationally. But the first bone fide solo-practice firms emerged only in 2002 in urban residential areas in Beijing on an experimental basis. The five solo practitioners granted firm licenses have at least six years of experience, compared with the three years normally required (Liu Li 2002).
The conglomerate (or group) firm is modeled after industrial and commercial groups (jituan). The first such law firm conglomerate was unveiled in 1998 on an experimental basis with a cooperative agreement between Beijing's Zhang Yongtao Law Firm (which incidentally was the first individually-owned law firm in Beijing, established in 1994), Shanghai's Wanguo Law Firm, and Shenzhen's Tangren Law Firm. As with conglomerates elsewhere, the purpose of joining forces was to spread liability risk and benefit from economies of scale and national and international branding. With a combined size of 150 employees, it became China's largest firm when it first came into existence. The manner in which this conglomerate has been celebrated reflects the obsession with "getting on track with the international community" (yu guoji jiegui) by expanding the scale of law firms and by developing "name-brand" (pinpai) firms (Qian 1998).

Finally, there are a few scattered instances of cooperative shareholding law firms. The purpose of adopting this form of organization is to bring greater stability to the firm by using stock option (qigu) incentives to reduce employee turnover (Li 2001). Given the tremendous turbulence and turnover in the Chinese bar described in Chapter 8, the adoption of such measures is not difficult to understand.

**Establishing a Law Firm**

At the root of differences in firm ownership form is debt liability. According to the 1997 *Methods for the Administration of Law Firm Registration*, all law firms require assets of at least 100,000 yuan to qualify for license registration and renewal. Also, with the exception of the experimental sole-practitioner law firm, a minimum of three lawyers is required for every form of law firm. However, from where the assets come, who is ultimately responsible for maintaining the assets, who is ultimately responsible for debts, and who the three lawyers in the firm are vary by ownership form.
With respect to state-owned firms, there must be a minimum of three full-time licensed lawyers (Methods for the Administration of State-Funded Law Firms, Article 8). The assets may be a one-time investment or an on-going investment; lawyers and other personnel may or may not be allocated a slot in the state personnel system (bianzhi); and expenses may or may not be paid by the relevant state organization. State-owned firms established with one-time investments, that are self-accounting, and that are responsible for profits and losses are considered liangbusizi firms. In all cases, however, state-owned firms were established by a relevant bureau of justice that bears limited debt liability—limited to the value of the firm's assets (Article 3). Also of significance, state-owned firm directors are appointed by the relevant bureau of justice (Article 14).

In the case of cooperative law firms, there are no specific rules about the origin of asset investments. However, there should be at least three "sponsors" or "initiators" (faqi ren) (Methods for the Administration of Cooperative Law Firms, Article 7). Investors enjoy limited debt liability—limited to the value of the firm's assets (Article 2). All lawyers in the firm are "collaborators" (hezuo ren) of equal status (Article 8) and are expected to be remunerated according to a floating wage system designed to reward age, seniority, and productivity (Article 16). Cooperative firms are far more popular in Shanghai than in Beijing. By the end of 2002, 208 of Shanghai's 500 law firms were cooperative (and of the remaining 292 firms, 285 were partnerships) (SSJ 2002a). Cooperative firms represent 42 percent of all firms in Shanghai compared to only 2 percent in Beijing. This likely has to do with the fact that the privatization process began earlier in Shanghai. In 1998 alone, 101 state-owned law firms were privatized to either partnership or cooperative firms (SSJ 2002b).

Finally, in the case of partnerships, at least three partners are required to invest and maintain a minimum of 100,000 yuan in assets (Methods for the Administration of Partnership Law Firms, Article 7). Each partner must have worked as a licensed lawyer
for at least three years, work full-time in the firm, and be of good moral character (*pinxing lianghao*) (Articles 10 and 11). A partnership agreement that details the division of asset investments and how profits are divided is also required (Articles 7 and 8). Of perhaps the greatest significance, all partners bear unlimited debt liability jointly and severally (Article 2).

In sum, the law firm—and in particular the partnership law firm—represents a radical new form of organization in contemporary China. It represents the official encouragement of entrepreneurship and risk-taking. After passing the lawyers examination, the remaining entry barriers are essentially financial. Virtually anyone who passes the lawyers examination and has the requisite start-up capital can set up a law firm. In contrast to other types of organizations in China, there are no obvious political barriers to establishing a law firm. As Wang and Gao (2000: 5) put it: "Three full-time lawyers can open a law firm, but three journalists cannot open a news agency. This vast space for development is undoubtedly extremely attractive to young people."

**Law Firm Names**

The twists and turns, the trial-and-error groping and inventing that has characterized the revival of lawyers since 1979, and the bar's radical break from the Soviet model is revealed in the names of law firms. The emulated model is no longer the Soviet legal consultation bureau, but rather the large corporate American law firm. Lawyers have explicit global considerations in the construction and presentation of themselves. They are self-consciously "getting on track with the international community."

According to the *Lawyer and Law Office of China* [sic] (1989), most law firms were still "legal advisory offices" (*falu guwen chu*) in the late 1980s. And among the "law firms," several were still carrying Soviet-style numbered names (e.g., Beijing No. 1 Law
Firm through Beijing No. 7 Law Firm).\(^2\) The 1995 roster published in the *Zhongguo Lüshi Bao* (China Lawyer News) (on file with author) contains the No. 8, No. 9, and No. 10 Law Firms. This was the last year numbered law firms appeared on official Beijing lawyer rosters. However, in my multi-city sample, four firms specified their former numbered names (e.g., "Guo Da, formerly No. 1"; "Huan Cheng, formerly No. 6"; and "Tian Bai, formerly No. 2").\(^3\)

Lawyers now have significant latitude in the choice of names for their law firms. According to the *Methods for the Administration of Law Firm Names*, prohibitions with respect to the naming of law firms include: names that are against the interests of the state and of society; names of foreign countries and international organizations; names of Party, government, military, and social organizations; names that contain the words "China," "National," "International" (guoji) and "Center" (zhongxin); and names that refer to fields of practice, such as "foreign-related" (shewai), "economic," "finance," "real estate," and so on (also see Wang 1998: 117–8). The vast majority of law firm names contain two Chinese characters followed by "law firm" (lüshi shiwusuo) and often prefixed by the name of the province (or city under the direct jurisdiction of the central government). Many provinces require such a prefix not only to help distinguish firms with the same name in different locations, but also "to adapt to the unification of the

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\(^2\) Rand (1991) studied "Law Office Number Twenty-one" and "Number Six" in Moscow. A cursory scan of job titles presented in Appendix J reveals a large number of work organizations (schools and factories in particular) with numbered names (e.g., No. 37 Middle School, No. 2 Wool Mill, and so on), a legacy of the Soviet-influenced planned economic system. During the time I conducted my field work in 1999–2001, I lived down the street from the Beijing No. 2 Light Bulb Factory. Of course numbered names are not limited to socialist societies, but are creatures of public sectors more generally. In the United States firehouses, police stations, and public schools, to name a few examples, are often numbered, and post offices are often named with letters of the alphabet.

\(^3\) One reason law firms use their former names is so former clients can still find them (Zhang Rui 2001). Another reason may be that state-sector organizations in general are associated with low prices and trustworthiness as opposed to the popular image of the profit-driven, fly-by-night private-sector business. Hence the ubiquity of signs advertising "state-owned" on vendor stalls and motels surrounding train stations, for example, in order to gain the trust of outsiders who can rely on no other signals of reputation.
global economy" (Zhang Rui 2001). Firms named after individuals may have three names (if the individual's name has three characters). Firms established from the merger of two firms may have four characters (the combination of the two firms' original names).

At the current time there are five predominant themes with respect to law firm names. The first theme connotes a sense of scale and grandeur. The most common Chinese characters used to convey the magnitude of law firms (either real or wishful) include da (great), guo (kingdom), tian (sky), hai (ocean), bo (vast), and yu (universe). In terms of grandeur, characters that convey a sense of wealth and prosperity are often chosen, including jin (gold) and xin (triple-gold, or prosperous). Characters connoting power and strength are also common: Beijing has firms named Shuangli (double-power), Shuangqiang (double-strength), and Jianfeng (sharp sword). The second theme, and related to the first, connotes a sense of omnipresence, an all-reaching, all-extending, and ever-present quality. Here the most commonly chosen characters include fang (place), huan (encircle), and heng (everlasting). In Beijing there are firms named Jingwei (longtitude-latitude), Zongheng (vertical-horizontal), Sifang (four directions), Sihai (four oceans), Huanzhong (encompass China), Huanya (encompass Asia), and Huanqiu (encompass the world). The third theme connotes a sense of success and achievement with respect to the task at hand. Commonly used characters include cheng (success or achievement), shi (to realize), and da (to reach or to attain). Beijing firm names that belong to this theme include Butian ("ascend to the sky in one step") and Dacheng ("big achievement" or "big success"). It is significant that a convenient homonym for "success" is "honesty" (both are pronounced cheng with the same tone). The fourth theme connotes a sense of togetherness, of being united. Firms conveying this meaning often use zhong (multitudes of people), he (joined, combined), and lian (united) in their names. Finally, the theme of justice is prominent in law firm names. The characters zheng (upright, correct), de (virtue), and yi (justice, righteousness) are very popular choices. Among
Beijing law firms are included *Fuzheng* (supporting uprightness), *Weiyi* (protecting justice), and *Xinyi* (trust in justice).


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4 A search for all lawyers in China yielded 1,746 results on June 24, 2003 (http://www.martindale-hubbell.com), some of whom are foreign lawyers in the representative offices of foreign law firms.
The Globalization of Law Firms and Legal Practice

Domestic branch offices are quite common. In the Beijing sample, 16 firms report branch offices (or being a branch office), 9 of which have offices in Shanghai, 9 of which have offices in Shenzhen, 4 of which have offices in Dalian, and 3 of which have offices in Haikou. (The remaining cities include Tianjin, Guangzhou, Chengdu, Xi'an, Shijiazhuang, Shenyang, Nanjing, Fuzhou, Hangzhou, Qingdao, and Baoding.) In the multi-city sample, 8 law firms reported branch offices (or being a branch office), 4 of which report offices in Beijing. (The remaining cities include Shanghai, Shenzhen, Zhengzhou, Nanning, Dalian, Guilin, Nanjing, Xuzhou, and Beihai.)

International branch offices are far less common but enjoy great media exposure. According to a 2001 article, the Beijing Yue Cheng Law Firm was planning to set up branch offices in the United States, Germany, and Korea (Liu Shouzhen 2001). (As I have failed to find any subsequent mention of them, apparently these plans have yet to come to fruition.) Junhe has a branch office in New York (established in 1993); the Shanghai Development Law Firm set up a branch office in Canada (Wang Jiajun 2001); and Dalian's East Asia Law Firm set up a branch office in Chicago in 2002 (Hou 2002). According to my survey data, the Gonghe Law Firm has a branch office in Seattle and the Jingwei Law Firm has an office in Chicago.

Global legal practice is manifested to a greater extent in a foreign legal presence in China. In 2001 China was host to 103 representative offices of law firms from 16 countries. In addition, there were 28 firms from Hong Kong with branches in Beijing, Shanghai, and other major cities (Huang 2001). Since foreign lawyers are disqualified from admission to the bar and licensing, and are therefore not authorized to practice law in China, foreign representative offices subcontract a substantial volume of legal work to local law firms. This is an important nexus of contact and exposure. To further facilitate the global integration of lawyers, the ACLA joined an international bar association, the
Inter-Pacific Bar Association, in 2002 (ACLA 2002b). Since China's accession to the WTO, the restrictions on foreign law firms in China have been loosening rapidly (Xiao 2000b). The main issues have been about foreigners sitting for the Chinese lawyers examination, about hiring Chinese lawyers without requiring them to relinquish their licenses, and about setting up multiple representative offices.

In the Beijing sample, 25 percent of lawyers reported traveling abroad. Among lawyers with gross annual incomes less than 25,000 yuan per year, this proportion drops to 14 percent, and among those making 125,000 yuan or more, this increases to 59 percent. In the lowest income category, 7 (of 132) lawyers reporting traveling abroad for vacations, while in the highest income group, 19 (of 69) reported traveling abroad for this reason. In the multi-city sample, 15 percent of lawyers reported traveling abroad. Among lawyers making less than 5,000 yuan, this drops to 3 percent, and among lawyers making over 50,000 yuan, this increases to 27 percent. In the lowest income category, 0 (of 79) lawyers reported traveling abroad for vacations, while in the highest income group, 24 (of 120) reported traveling abroad for this reason. In the Beijing and multi-city samples, 20 and 4 lawyers respectively reported studying abroad, and 94 and 56 respectively reported traveling abroad for work reasons. Not surprisingly, lawyers traveling abroad for work reasons are disproportionately likely to specialize in international law—24 percent of lawyers specializing in international law reported traveling abroad for work reasons versus 7 percent of lawyers who did not report this specialization.5

**Explaining Variation in Firm Ownership**

The prevalence of state-owned firms is highly variable and significantly determined by local economic conditions. Partnership firms are far more sensitive than are state-owned

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5 Specializing in international law is defined as at least 10 percent of billings deriving from international trade and international investment work.
firms to market conditions, a pattern that emerges throughout this dissertation. In relatively poor cities with weaker demand for legal services, state-owned firms survive with local government assistance and support. In smaller markets, there is less room for new entrants, especially if they are financially self-reliant. As markets for legal services expand and develop, lawyers enter in greater numbers.

The local population of lawyers, economic development, and the prevalence of state-owned firms are all highly correlated. Without controlling for the lawyer population, economic development is significantly correlated with the prevalence of state-owned firms. On average, for each 50-percent increase the strength of the service sector, the proportion of law firms in the state sector diminishes by 25 percentage points (based on a bivariate regression model not presented, adjusted $R^2 = .422$). However, this relationship is spurious, explained away by the size of the local lawyer population, which itself is a function of economic development (as we will see in Chapter 5, Figure 5.1). On average, a doubling of the lawyer population in a city reduces the proportion of state-owned firms by 23 percentage points (based on a regression model not presented with two independent variables, adjusted $R^2 = .683$). In Figure 3.1 we can see the strength of the bivariate relationship between the prevalence of state-owned law firms and the local lawyer population.

The timing of law firm entry confirms the relationship between markets and the prevalence of state-owned firms. Partnership law firms in less developed cities have emerged much later than both their state-owned predecessors and partnership firms in more developed cities. In Figure 3.2 we can see that the average time lag between the entry of partnership firms and the entry of state-owned firms is 14 years (1999 versus 1985 respectively) in cities where per capita GDP was less than 5,000 yuan in 1998. In cities where per capita GDP was between 5,000 and 10,000 yuan, the lag drops to 5 years (1995 versus 1990). And in the most developed cities, the lag essentially disappears,
diminishing to 1 year (1994 versus 1993). These findings clearly show that (1) partnership firms emerged significantly earlier in the more developed parts of China and that (2) the weak markets in the less developed cities have more difficulty supporting new entrants.

The patterns in Figures 3.1 and 3.2 support the conclusion that, in China's relatively poor cities, the law firms established in the 1980s remained essentially the only law firms on the scene until the administrative reforms of 1998 forced state-owned law firms to start privatizing. In the wealthier cities, on the other hand, stronger markets and greater demand for legal services encouraged earlier privatization, the earlier entry of partnership firms, and the entry of partnership law firms in greater numbers.
Figure 3.1. Dominance of State-Owned Law Firms by Local Lawyer Population

NOTE: n=283 law firms (28.6 percent of which are state-owned). Pearson’s r=−.827 with analytic weights for city sample size (r=−.704 without weights). This figure excludes 7 city samples with only one form of firm ownership, an obviously impossible situation. If we include these 7 cities by making the untenable assumption that samples with only partnership firms accurately reflect the absence of partnership firms in that city and, correspondingly, that the samples with only state-owned firms accurately reflect the absence of state-owned firms in that city, the correlation remains high at r=−.607 with weights for city sample size (r=−.379 [p<.06] without weights). With the exception of Beijing, the number of lawyers in each city was calculated according to estimates provided by local lawyer informants. Multiple estimates were solicited in each city, and the mean of these estimates serves as the city-level lawyer population. This number was divided by the prefecture-level population for 1998 and multiplied by 100,000 to arrive at the figure for “lawyers per 100,000 population.” The number of lawyers in Beijing is publicly available information (see Appendix M).
The importance of historical timing and local development emerges again in individual-level regression models of membership in a partnership firm. As we can see in Table 3.1, older lawyers are significantly more likely to be in state-owned firms, clearly a result of the timing of their entry. Similarly, lawyers for whom their current position in their current firm is their first and only job are significantly less likely to be in partnership firms (and therefore more likely to be in state-owned firms). Lawyers who have moved between firms are significantly more likely to be in partnership firms, providing evidence that the typical inter-firm transition is from state-owned to partnership firms. Lawyers with degrees from more prestigious universities are more likely to be in partnership firms, providing evidence of different patterns of recruiting between state and private sectors.
Finally, as we saw in Figures 3.1 and 3.2, economic development increases the probability of membership in a partnership firm: a doubling of per capita GDP increases the probability of being in a partnership firm by 17 percentage points (ln(2)×.249=17.3 percent).

Table 3.1. Determinants of Membership in a Partnership Firm Membership, Marginal Effects from Probit Models

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDIVIDUAL DETERMINANTS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>female</td>
<td>-.045</td>
<td>-.033</td>
<td>-.020</td>
</tr>
<tr>
<td>age (logged)</td>
<td>-.277**</td>
<td>-.224*</td>
<td></td>
</tr>
<tr>
<td>degree from Renmin University of China</td>
<td>.325***</td>
<td>.232*</td>
<td></td>
</tr>
<tr>
<td>degree from CUPL</td>
<td>.161*</td>
<td>.121</td>
<td></td>
</tr>
<tr>
<td>degree from regional UPL</td>
<td>.269***</td>
<td>.256***</td>
<td></td>
</tr>
<tr>
<td>all educational data missing</td>
<td>-.089</td>
<td>-.086</td>
<td></td>
</tr>
<tr>
<td>prior law firm experience</td>
<td>.134*</td>
<td>.141*</td>
<td></td>
</tr>
<tr>
<td>current position is first and only job</td>
<td>-.321***</td>
<td>-.298***</td>
<td></td>
</tr>
<tr>
<td>all career data missing</td>
<td>-.010</td>
<td>.009</td>
<td></td>
</tr>
<tr>
<td><strong>CITY DETERMINANTS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>per capita GDP (logged)</td>
<td></td>
<td>.249*</td>
<td></td>
</tr>
<tr>
<td>predicted probability (all variables at means)</td>
<td>.597</td>
<td>.606</td>
<td>.608</td>
</tr>
<tr>
<td>n</td>
<td>867</td>
<td></td>
<td></td>
</tr>
<tr>
<td>strata</td>
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</tr>
<tr>
<td>PSUs</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>population size</td>
<td>100,013</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** * p<.10  ** p<.05  *** p<.01, two-tailed. Probit coefficients were converted to marginal effects (i.e., change in probability) with STATA’s *mfx* command. Lawyers in firms other than state-owned and partnerships are excluded. Marginal effects refer to changes in the probability of membership in a partnership firm for each unit change in each variable, holding all other variables constant at their means. Original probit coefficients calculated using STATA’s commands for survey data that adjust standard errors for sampling designs in which observations are clustered within strata (cities) and primary sampling units (firms), and in which sample weights are applied (see Appendix C). Neither years of practice nor CCP membership exerts an effect on the likelihood of being in a partnership firm. The length of tenure in current firm was statistically significant until age was introduced. No interaction terms were statistically significant. "CUPL" refers to "China University of Political Science and Law." "regional UPL" refers to the Southwest, the South-Central, or the Northwest University of Political Science and Law. The local lawyer population is statistically significant at p<.10 when per capita GDP is excluded; the two variables exhibit clear multicollinearity. See Table L.1 for variable descriptives.
The Significance of the Tuogou

Basically, the unhooking of law firms from the state, by pushing lawyers into the private sector, has stripped lawyers of their state-sector membership and with it the protection and access to other state units accorded such membership. In many instances this unhooking was coercive, against the will of lawyers. While not quite invoking "paradise lost" and "fall from grace" rhetoric, it is nevertheless clear that lawyers, to varying degrees, lament privatization. As one lawyer posted on an internet bulletin board for lawyers, "In reality this is collective, involuntary resignation from our posts, but without any form of unemployment compensation." ^6

Owing to their new insecurities, lawyers complain that their collective status is no better than that of private-sector entrepreneurs. A popular and somewhat derogatory and self-deprecating professional nickname captures their plight: "getihu [individual businesspeople] with legal knowledge" (dong falü de getihu) (em14 and em18; lfi13). It is self-deprecating because getihu are popularly regarded as a highly marginalized social group, resorting to entrepreneurial activity for a lack of better options. Many are laid-off workers, former convicts, or rural migrants (Wu and Xie 2002). Indeed, the official status of lawyers closely resembles that of getihu. In 1997, law firms became recognized by the State Price Bureau as business units rather than units of public administration (Liu Bin 2001). From a tax collection standpoint, lawyers, getihu, and private enterprises (siying qiye) are all of identical status (em14). A 2002 directive entitled State Administration of Taxation Notice Regarding Strengthening the Levying and Auditing of the Personal Taxes of Investors in Law Firms and Other Intermediary Organizations makes it clear that lawyers fall under the scope of the same tax regulations that govern the private

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^6 Posted on February 21, 2003 to http://www.chineselawyer.com.cn. I would like to thank Sida Liu for drawing this to my attention.
economy. Lawyers pay personal income tax at a progressive rate of 5–45 percent as if they were independent entrepreneurs or freelancers. In addition to a personal income tax, they also have to pay an enterprise tax (qiye shui) of 33 percent and a separate business tax (yingye shui). Some localities also charge a stamp tax (yinhua shui), municipal construction and maintenance tax, educational tax, and so on. On top of all this, law firms are taxed according to their gross receipts at a progressive rate ranging from 40 to 60 percent in order to contribute to various municipal funds (Ma 2001). In reality tax regulations are in constant flux, varying greatly over time and by geography in terms of content and level of enforcement. As one informant summarized, "Lawyers are getihu, just like those who set up stalls on the side of the road, like getihu who sell fruit" (em14).

The point is that lawyers are riding the tide together with private entrepreneurs. Lawyers, like business entrepreneurs, are situated "outside the system" (tizhi wai), while the actors on whom they rely, most notably, the police, prosecutors, and judges—the gongjianfa—are "inside the system" (tizhi nei).

It is important to reiterate how changes in the bar cannot be divorced from more general changes in China; the bar's trajectory parallels that of China's enterprise reforms more generally. The development of cooperative firms in 1988 paralleled the emergence of the siying qiye, "private enterprises" with more than seven people (Young 1994: 107). Private entrepreneurs had adopted the "red hat" strategy of operating private businesses under state-sector status as a risk-avoidance strategy of minimizing the uncertainty and vulnerability associated with private-sector membership (Solinger 1992: 126–8; Parris 1999: 268–9; Wank 1999b; Tsai 2002). The development of partnership law firms in 1992–93 was in response to Deng Xiaoping's calls during his Southern Tour for broader privatization and were a clear effort to force firms that in practice were already operating as private firms to "take off their red hats." Finally, the unhooking of the remaining state-owned law firms starting in 2000 reflects the broader mandate under the 1998
administrative reforms to cut 50 percent of staff nationwide occupying slots in the state personnel system (bianzhi) (cf. Brødsgaard 2002).

The old Deng-era debate about whether "the surname [of an enterprise] is Socialism or Capitalism" (xing She haishi xing Zi) is part of the ideological backdrop to the vicissitudes of the reform and privatization process and continues to adversely impact the work of lawyers (Jia and Cui 1999). Lawyers in China are neither fish nor fowl. They neither enjoy meaningful membership in the state sector nor are they granted space and autonomy to represent their clients free of control and harassment from state agencies. According Liu Guiming (2002), the editor-in-chief of Chinese Lawyer, the official journal of the ACLA, the unresolved status of lawyers is the most gnawing problem in the bar (also cf. Lubman 1999:157–9).