Hooked, Unhooked, Still Hooked:

Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism*

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ABSTRACT

The unclear and weakly protected status of Chinese lawyers is manifested in the same array of difficulties—difficulties already well documented—that private business entrepreneurs in China have learned to negotiate, including routine administrative interference, official rent-seeking, and police harassment and intimidation. Insofar as the plight of lawyers mirrors that of private business entrepreneurs, so too do their adaptive responses. In contrast to other research findings suggesting that legal reforms are responsible for a decline in the relative value of political connections, evidence from a 25-city survey of Chinese lawyers suggests—in a twist of irony—that lawyers' dependence on key gatekeepers and decision-makers in government agencies, including judges, prosecutors, and police, has reinforced the importance of political embeddedness as a basis for professional survival and success inside the very institutions that have been attributed with obviating the need for the mobilization of political connections. Chinese lawyers tell us at least as much about the enduring legacy of socialist institutions as they do about incipient capitalist and "rule of law" institutions.

Legal practice for many Chinese lawyers is fraught with difficulties and dangers. The challenges they routinely face include various forms of obstruction, harassment, and intimidation, and even physical abuse, often at the hands of personnel in the public security administration (the police system), the procuracy (the public prosecutor's office), and courts—lumped together in common parlance as the *gongjianfa*. Surviving and even thriving in their hostile institutional environment demands formal and informal ties to the state bureaucracy. Using data from a survey carried out in the year 2000 of almost 1,000 lawyers in 25 cities in China, I demonstrate in this paper that ties to the state provided protection against various forms of institutionalized, state-sponsored harassment and rent-seeking. Lawyers more deeply embedded in the state reported fewer professional aggravations. Lawyers with weaker political connections, in contrast, reported more difficulties in the course of carrying out their professional duties. As we will see, political connections are resources both reflecting and alleviating an enduring socialist institutional logic antithetical to the interests of lawyers in contemporary China.

The story of Chinese lawyers is the story of barriers and bridges. Since their revival in 1979, Chinese lawyers have tried to surmount the meso- and macro-level institutional barriers stymieing their work by building micro-level bridges to the public actors who control the resources on which they depend. They have mobilized personal, particularistic relations, or *guanxi*, in their efforts to find refuge from the troubles that plague their work, and to gain access to public actors inside the judiciary and elsewhere in the state bureaucracy who can expedite, facilitate, and simplify their work. Guanxi comes in many forms. Public actors oblige overtures from needy lawyers owing to their preexisting, affective relations, often to help out an old friend or colleague. But they also oblige lawyers in exchange for rents, as part of their instrumental money-influence exchange relations with lawyers. But valuable ties to the state come in other forms besides individual political connections. Lawyers affiliated with organizations embedded in the state bureaucracy, too, enjoy shelter from the predatory behavior of—and privileged access and support from—state actors. In short, the guanxi on which lawyers rely in their everyday work includes a diverse portfolio of direct and indirect, individual and organizational ties to the state that should be conceptualized more generally as *political embeddedness*.

In a little over one decade the Chinese bar completed an about-face from a fully public profession to an almost fully private profession. In the process of "unhooking and privatizing" (*tuogou gaizhi* or *tuogou zhuanzhi*), as lawyers began to lose the formal support that came with

formal state-sector membership, the guanxi imperative intensified. As they unhooked from the state at a macro level, lawyers found ways to stay hooked and to rehook by mobilizing micro-level political connections. Insofar as legal reform is commonly theorized as eroding the value of ties to political officeholders, lawyers' mobilization of political connections is a theoretically important, albeit it ironic, strategy for navigating their hostile institutional terrain.

Because of the unusual amount of "local knowledge" required to understand the complex story of Chinese lawyers, the bulk of which has never appeared in English-language print, the space in this paper devoted to setting the stage through the exposition of historical background is (embarrassingly) greater than most readers normally tolerate. Before presenting my historical and descriptive overview of Chinese lawyers, I first introduce theoretical debates about guanxi's decline and sketch an alternative institutional theory of guanxi's persistence. While empirical support for my theoretical propositions comes primarily from my survey data, along the way I also draw liberally from comparative cases in the secondary literature for additional empirical support.

Theoretical Issues and Debates: Decline or Persistence of Guanxi?

Formal laws and regulations are at the center of the new institutional economics (e.g., North 1981, 1990; Williamson 1975, 1995; Olson 1982; Soto 2000). In this theoretical framework which has also been labeled "rational choice institutionalism" (Campbell 2004), legal protections and legal constraints shape the micro-level incentives structuring social life. Grounded in this tradition, the *market transition theory* predicts a decline in the relative value of political capital as markets with legally defined and legally protected property rights supply incentives stimulating investments in human capital and entrepreneurship. In short, know-how comes to eclipse know-who as regulatory institutions supporting and protecting know-how develop and mature (Nee 1989, 1991, 1992, 1996; Nee and Matthews 1996; Cao and Nee 1999, 2000). Similarly, a theory of the *declining significance of guanxi* posits the diminishing importance of guanxi as a means of getting things done in the state bureaucracy. According to this complementary theory, over the course of institutional reform in China, universalistic and contractual relations have come to trump the mobilization of particularistic relations (Guthrie 1998, 1999, 2002; for a similar position, see Kennedy [2005]). Guthrie (1999:186) asserts that the development of a rational-legal system is obviating the need to pull strings to get things done:

"the major force in the diminishing importance of *guanxi practice* is the rational-legal system that is being constructed at the state level" (emphasis in original). (For similar statements, see Guthrie [1999:20, 177, 178, 185, 196]; Guthrie [2002:52].)

Theoretical predictions of guanxi's decline are stymied by three conceptual limitations: a conceptual definition of *institutions* that privileges official laws and regulations; a conceptual definition of *law* that privileges the law on the books; and a conceptual definition of guanxi limited to an overly narrow subset of practices. In short, these theories prescribe searching for the wrong thing in the wrong places.

First, we must disaggregate institutions. Following Scott (2001), I define institutions as highly durable social structures composed of (1) formal rules and regulations, (2) informal norms, and (3) cognitive schema, that is, of the "three pillars" that pattern, constrain, and facilitate social action and that give meaning to social life. At play are not merely formal rules and procedures (the regulative pillar of institutions), but also enduring habits and taken-for-granted assumptions about how things *should be* and how things *are* (the normative and cognitive pillars of institutions). I define the institutional environment as the broader context in which institutions are situated and that supply the regulatory, normative, and cognitive material that give shape to institutions. Institutional environments are composed of multiple and contradictory institutional logics shaping the meanings and guiding the actions of individuals and organizations (Friedland and Alford 1991).

Second, we must disaggregate law. Through empirical scrutiny of legal processes, this paper contributes to Suchman and Edelman's (1996) critique of the "naive Legal Formalism" implicit in many accounts of institutional change in which law is assumed to operate as a transparently and predictably enforceable set of rules to which all parties are equally constrained. It has become a banal truism in law and society scholarship that the law on the books tells us little about the law in action. Institutional form and institutional substance are loosely coupled or altogether decoupled. Largely ritualistic and ceremonial conformity to standardized models belies enormous local variation in on-the-ground behavior and meaning within organizations (Meyer and Rowan 1977; DiMaggio and Powell 1983). The formal appearance of law tells us little about its substance.

Third, we must disaggregate guanxi. To limit the conceptual scope of guanxi to affective, emotive relations of reciprocal obligation (Guthrie 1998) is to obscure or ignore the wide array

of concrete strategies and resources individual and organizational actors develop and mobilize in response to contextually-specific constraints and challenges posed by contextually-specific institutions. Ties to the state include both *individual guanxi* and *organizational guanxi*. Individual guanxi includes friendships and other direct and indirect personal connections that may belong to the category of *emotive guanxi* of the narrow, cultural type or to the category of *instrumental guanxi* that includes money-influence exchange. Organizational guanxi includes *administrative guanxi* and other forms of formal institutional support. Not only are these multiple forms of guanxi overlapping and difficult to disentangle empirically (Walder 1986:179; Shi 1997:69; also see Karklins [2002]), but one form of guanxi can be expressed idiomatically to obscure another form of guanxi (Wank 1999). At a more general level, the advantages that accrue from being embedded in social networks that bridge institutional outsiders (such as lawyers) to institutional insiders (such as members of the gongjianfa) can be conceptualized as the benefits of *political embeddedness*.

By overcoming these three conceptual limitations, this paper contributes to an alternative literature on the resilience of guanxi in urban China (e.g., Gold 1985; Yang 1994, 2002; Wank 1999; Bian 1997, 2001; Bian et al. 2005). Lawyers' mobilization of formal and informal ties to state actors in the legal system represents a critical case for testing theories of guanxi. In theories predicting the declining value of political connections, law remains a central but *unobserved proximate cause*, an assumed yet unobserved independent variable. Never is the law in action observed and measured; law remains an unobserved, untested mechanism to explain the purportedly diminishing value of political and other connections. 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 utility of the theory. Conversely, if we find evidence from the legal system in support of the persistence of guanxi, we are likely to find similar evidence in other institutional contexts.

To be sure, China's legal reforms are entirely consistent with neoinstitutionalist expectations of isomorphic convergence, of the ubiquitous isomorphic adoption of the formal trappings of standardized global legal models (Boyle and Meyer 1998; Frank and McEneaney 1999; Boyle 2003). However, this is merely one of many—often contradictory—institutional logics at play. To use superficial changes in institutional appearance as evidence of the rise of American-style adversarial legalism, including institutionalized limits on state authority

(Kelemen and Sibbitt 2004; Gilley 2004:76), or of the rise of a "rational-legal system at the state level" (Guthrie 1999:183), is to succumb to what Alford calls the "tasseled loafers" syndrome (1995): "the tendency of some observers to mistake appearances for substance" (2002:200n31). Just as a dragon sporting a three-piece suit may still feel and act like dragon, a Leninist state sporting a legal system may still feel and act like a Leninist state. Over four decades ago it was observed, "Law can be—and in recent decades frequently has been—made by political commanders neither trained in nor concerned with law as a disciplined science or ideology. Political dictators, social revolutionaries, technocrats, all these may make the laws by political fiat" (Friedmann 1963/64:181).

There is no theoretical reason why formal adherence to the global institutional logic of "rule of law" must necessarily supplant contradictory institutional logics including the logic of authoritarian control and the logic of guanxi as a means of bridging and reconciling the needs of the market with the needs of authoritarian control. Nor is there theoretical justification for the argument that political connections remain valuable only to the extent that institutional reform is "partial" and "incomplete," or for the argument that a "tipping point" for the sudden and irrevocable decline in the value of political connections is on the horizon (Cao and Nee 2000; Nee and Cao 2002, 2004). In this paper I make no such assumptions of teleological convergence. Insofar as "rule-of-law" institutions are only loosely coupled with contradictory institutional logics and practices, they can buttress and reproduce as well as erode existing power structures. The power of law includes the power to obscure the persistence of contradictory institutional logics (e.g., Bourdieu 1987; Nader 1990; Dezalay and Garth 2002; Santos 2000; Arthurs 2001; Michelson 2006). As we will see, Chinese lawyers tells us at least as much about the enduring legacy of socialist institutions as they do about the incipient institutions of capitalism.

Elements of a Theory of Guanxi's Persistence

Much empirical research highlights the enduring importance of social relationships in China's legal system (Cheng and Rosett 1991; Jones 1995; Winn 1994; Dezalay and Garth 1997; Potter 2002; Schramm and Taube 2002; Alford 2002:184; Appelbaum 1998; Wank 1999:115). A comparative look elsewhere in time and place shows that lawyers in a variety of contexts mobilize direct and indirect connections to judicial insiders, for example, in the United States (Black 1976:45; Black 1989:16-17; Galanter 1974:99; Sarat and Felstiner 1995:101-2; Kritzer

1998:16, 196; Parikh and Garth 2005:297), in Mexico (Lomnitz and Salazar 2002), and in India (Gandhi 1982). While it is the general case that lawyers everywhere depend to an important measure on social connections, this paper attempts to identify contextually-specific institutions and institutional logics giving value to contextually-specific forms of capital (Bourdieu 1986; Friedland and Alford 1991), including guanxi.

Power-dependence (Emerson 1962; Blau 1964) is one concrete condition giving rise to the guanxi imperative. In the process of collecting evidence, Chinese lawyers depend on access to information and documents controlled by government agencies and other public organizations. Any lawyer who does any amount of trial work (i.e., almost all lawyers) depends on resources controlled by the courts. 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). Chinese lawyers who despair of the difficulties working with the gongjianfa—i.e., with the police, procuracy, and courts—and exit criminal defense practice cannot avoid state agencies without exiting the system altogether and abandoning the practice of law. As we would expect anywhere in the world, the specter of state administration is inescapable in the practice of law in China. There is no viable substitute for the gongjianfa—the public security, the procuracy, and the courts—and other parts of the state bureaucracy. If lawyers have trouble getting in through the front door, they try the back door. But they must gain access somehow, "by hook or by crook."

In the Chinese context, two additional properties of lawyers' institutional environment continue to valorize political connections above and beyond the general case: First, the judiciary remains fused to the state, embedded in and subordinated to the rest of the government bureaucracy (i.e., there is no meaningful separation of powers or judicial autonomy) (Cohen 1997; Potter 1999; Lubman 1999; Woo 1999; Liu 2006). Second, as we will see in greater detail below, lawyers face enduring institutional discrimination that relegates them to a marginal status of outside interloper.

Because these very conditions help explain the enduring value of guanxi in the private economy, we can also gain valuable theoretical purchase from the comparative experience of business entrepreneurs. Indeed, the plight of Chinese lawyers parallels the plight of Chinese business entrepreneurs. And the adaptive responses of lawyers parallel the adaptive responses of

business entrepreneurs. Like lawyers in the wake of their "unhooking and privatization," private entrepreneurs are situated "outside the system" (*tizhi wai*) while actors on whom they rely are "inside the system" (*tizhi nei*). Extensive research on Chinese entrepreneurs reveals that, owing to their collective status as marginal outsiders, as "people who do not have formal positions at any state- or collective-owned work unit" (Yang 1994:160), they are routinely exposed to an array of difficulties including irregular fines, fees, and taxes levied by local state authorities, police extortion, and other problems with regulatory agencies (Gold 1990:167-8; Young 1994; Parris 1999; Tsai 2002:x; He 2003:78; X. He 2005; Mood 2005:230).

In response to their heightened exposure to institutionalized forms of harassment, business entrepreneurs turn to informal solutions; they adopt informal substitutes for formal institutional support. A consequence of institutional barriers to institutional outsiders such as entrepreneurs is the development of micro-level bridging strategies that give enduring value to political capital. They embed themselves deeply in clientelist networks spanning public and private spheres, connecting themselves directly and indirectly to government officials as a coping strategy, as a means of gaining informal access and support (Yang 1994:161; X. He 2005:540; Xin and Pearce 1996). In what Solinger (1992) calls the "merger of state and society," public and private spheres have become symbiotically linked through micro-level behavior (Wank 1999). Entrepreneurs find patrons in the state to protect their interests. In return, these patron-guardians expect and receive financial rewards. This mutually beneficial coping strategy that has developed in a contextually-specific institutional environment has been labeled *symbiotic clientelism* (Wank 1999). So (2005) argues that such networks represent the emergence of a "cadre-capitalist class" in China formed through a mutually beneficial patron-client partnership of government officials and business entrepreneurs.

Entrepreneurs in Russia, too, use informal political connections as a form of protection against the same money-draining difficulties (Vinogradova 2004, 2005). Here the market success of both small-scale entrepreneurs and large-scale business enterprises relies to an important measure on informal connections (known as *blat*) (Ledeneva 1998; Lovell et al. 2000; Dinello 1998; Guseva and Róna-Tas 2001; Hendley 1997; Hendley et al. 2000; Yang 1994:103).

In addition to conceptualizing guanxi as a means of engaging in corrupt practices, of circumventing, bending, and breaking legal rules and procedures (Guthrie 1999:177), guanxi must also be understood as a means of fending off corrupt practices. To be sure, business

entrepreneurs survive and thrive by developing relationships, often through bribes and kickbacks, with personnel in the Industry and Commerce Administration, with sanitation inspectors, and with tax authorities, for example. But business entrepreneurs endowed with political connections are also better equipped than those without such social resources to avoid various forms of unlawful rent-seeking. Political connections improve the market success of entrepreneurs not only by enhancing their ability to secure bureaucratically distributed resources such as licenses and permits, and not only by helping them sway and circumvent official procedures, but also by sheltering them from predatory state agents.

Before deriving more concrete hypotheses, however, it is necessary first to set the stage, to provide some comparative perspective and historical background on the meso- and macro-level "social and institutional situations" that shape the micro-level responses of lawyers.

Lawyers' Political Embeddedness in Comparative Perspective

China enjoys a monopoly neither on aggrieved lawyers nor on lawyers' mobilization of political connections as shelter from their grievances and as a source of professional advantage. Power-dependence characterizes lawyers' relationship with the state and the judiciary in many other contexts, including the United States. Research conducted on American lawyers in the first half of the twentieth century found that

> defense attorneys who have close ties to the local court community take advantage of their personal relationships with judges and prosecutors as well as their "political connections" to obtain maximum consideration for their clients. These ties are their stock-in-trade since, according to this view, they are sorely lacking in professional skills and knowledge. In return for the favorable treatment they receive, these attorneys are expected to make campaign contributions to individual judges, or the local party, and/or distribute graft among the various public actors in the system. (Nardulli 1986:382)

In a study of solo-practice lawyers in Chicago, Carlin (1962:157) illustrates what Nardulli (1986:384) characterizes, on the basis of his own study of Chicago lawyers, as the "symbiotic nature" of informal relations between private lawyers and public actors in the court system by exposing the prevalence and importance of gift-giving and bribes: despite official prohibitions in the Canons of Professional Ethics, "the use of personal influence and the trading or buying of favors become an almost indispensable part of the individual lawyer's job, especially for those

lawyers with more than occasional contact with the courts and administrative agencies." Power-dependence likewise drives the imperative to mobilize connections in the American criminal defense bar. Blumberg (1973:68) writes that American criminal defense lawyers are

> visible politically, with clubhouse ties reaching into judicial chambers and the prosecutor's office. The [lawyer] regulars make no effort to conceal their dependence upon police, bondsmen, jail personnel, as well as bailiffs, stenographers, prosecutors, and judges. These informal relations are essential to maintaining and building a practice. Some lawyers are almost entirely dependent on such contacts to find clients, and a few even rely on an "in" with judges to obtain state-paid appointments which become the backbone of their practice.

As I have already discussed, Chinese lawyers represent an extreme case of power-dependence owing to two institutional properties above and beyond the general case of power-dependence: the fusion of the legal system to the rest of the state bureaucracy and the low status of lawyers vis-à-vis the public actors on whom they depend. Elsewhere in the world, where judiciaries also serve to buttress more than to limit state authority, and where lawyers are relegated to a similar outsider status, lawyers are similarly aggrieved and resort to similar coping strategies. In Indonesia, for example, "the judicial system does not necessarily recognize the status and role of the professional lawyer." Here lawyers "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." Judges regard lawyers as "secondary figures who are merely private sector actors because the requisite status is normally derived from the governmental positions [sic]" (Kadafi 2002:4, 6, 7). Data from a survey of Indonesian lawyers reveals widespread obstructionism from judges, prosecutors, and police (Kadafi 2002:8). As Lev (2000:311) describes, "Criminal defense was treacherous, filled with abusive police, corrupt and extortionate prosecutors, bureaucratically minded judges who favored prosecutors as colleagues and regarded defense attorneys as interlopers." "In a society in which advantage inheres in official status many advocates have long been troubled by their lack of it" (p.311n8). In the civil law world more generally, of which China and Indonesia are parts, lawyers in private practice are distinguished from and have lower levels of status and prestige than legal practitioners employed by the state (Abel 1988). In Indonesia, lawyers resort to bribery, often at the demands of institutional insiders, as a way to bridge the institutional barriers

that separate them from the resources on which they depend (Kadafi 2002:8, 10). Bribery and other instrumental forms of bridge-building are

> just about the only terms on which advocates could claim something more than pro-forma membership in the judicial system. For the most part they were kept at a distance, as outsiders, for which they and their clients suffered. Most (not all) judges resented advocates as well-off, self-serving, unofficial, private intruders upon public authority. Not only were the courts inefficient and expensive, because of extraordinary fees, and execution of judgments highly uncertain, but advocates were often treated contemptuously, ignored by judges, obstructed, and occasionally even forbidden to enter courtrooms. (Lev 2000:310-1)

Now I turn to a descriptive overview and institutional history of Chinese lawyers' woes. In the following I draw on documentary sources as well as interviews I and my research assistants conducted between 1999 and 2001.[1]

Socialist Lawyers' Marginalization Vis-à-vis Judicial Insiders

Chinese lawyers' woes have been more prominently documented in the press than in the scholarly literature (but see Yu [2002], Sheng [2003, 2004], and Cai and Yang [2005]). For their reports published in *The New York Times* on "ragged justice" in China, in which lawyers' abrasive relationship with the state is featured prominently, journalists Joseph Kahn and Jim Yardley won the 2006 Pulitzer Prize (Kahn 2005a, 2005b, 2005c, 2005d; Yardley 2005a, 2005b, 2005c, 2005d). This particular series, however, is merely an extension of an established genre of English-language media reports on the challenges Chinese lawyers face in their day-to-day practice (e.g., Becker 2000; Rosenthal 2000; Eckholm 2001, 2002; Pomfret 2002a, 2002b).

Chinese-language reports on the same subject are equally prominent. In March 2006 a lawyer from Beijing was allegedly beaten and choked by a judge in Tianjin (Cai 2006; also see Chan [2006]). In December 2004 a lawyer in Guangzhou was chased and beaten by two men in police uniforms who used police clubs to break his leg (Liu and Xiang 2005). On January 23, 2004, in recognition of the severity and ubiquity of lawyers' persecution, President Hu Jintao explicitly articulated the need to "improve lawyers' professional environment" (Lin 2004). The so-called "three difficulties" (*san nan*) that plague Chinese lawyers include: (1) the difficulty

[1] Interviews denoted with an "a" were conducted by me. Interviews denoted with a "b" were conducted by my research assistants.

collecting evidence (*quzheng nan*), (2) the difficulty meeting with clients (*huijian dangshiren nan* or *huijian beigao nan*), and (3) the difficulty reading and photocopying documents (*yue juan fuyin nan*). At the 2005 meeting of the Beijing Municipal People's Congress, Liu Hongyu, a lawyer delegate who collected comments, concerns, and suggestions from lawyers, said that lawyers' single greatest complaint was the difficulty collecting evidence. In response to the opinion of one lawyer that a motion be passed giving lawyers equal rights as gongjianfa officials to investigate cases, she publicly appealed for organizations and individuals to abide by their duty to assist lawyers' investigative work (*Beijing Chenbao* 2005).

Of all 79 cases regarding lawyers' rights investigated by the All-China Lawyers Association (ACLA) between 1999 and 2001, 21 were related to the unlawful imprisonment, detention, or prosecution of lawyers or to the taking of lawyers as hostages, the kidnapping of lawyers, and the beating of lawyers, and 31 were related to the obstruction of lawyers' work. These cases represent only the relatively few cases reported to and investigated by the ACLA, and thus exclude an undoubtedly far greater volume of similar cases brought to local bar associations or not reported to or investigated by any organizational entity (Wang 2004).

Although a similar difficulty securing the assistance and cooperation (*xiezhu, peihe*) of state actors afflicts lawyers in business fields of practice (Li 2002), lawyers in the field of criminal defense are at particular risk (but see Fu [2006]). The majority of the lawyers who participated in a 2002 survey commissioned by the Beijing Municipal Bureau of Justice were "unsatisfied" with the level of support from gongjianfa; 16% said they were "very unsatisfied." Lawyers with at least 10 years of experience reported higher levels of satisfaction than lawyers with 5 years or less experience. Consistent with findings I report later in this paper, the authors of the report speculate that the relationship between satisfaction and years of practice had to do with lawyers' accumulated stock of guanxi with the relevant parts of the legal system. The majority of lawyers surveyed (60%) said they believed their rights in litigation work received no guarantees (ACLA 2002). Such difficulties ranged from low levels of respect from clients to police obstruction of access to criminal defendants; 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.

According to the 2002 survey cited above, 21% of lawyers reported that they frequently received unfair treatment from judicial organs in the process of carrying out criminal defense work, 77% said public security organs made it difficult for them to gain access to clients, and over 50% said such access had never been granted (ACLA 2002). As one lawyer put it, "When you go to the public security and ask to see the criminal suspect, it would be easier to climb up to the heavens [*bi deng tian dou nan*]....We simply can't get access to our clients" (interview a11).[2] At a conference for lawyers held on September 1, 2001 in Beijing, a participant proclaimed:

> It is difficult for lawyers to defend clients [*lüshi bianhu nan*]. Li Peng, Chairman of the Standing Committee [of the National People's Congress from 1998 to 2003] has even raised this problem. Mainly it's the difficulty collecting evidence. Access to defendants is difficult. Last time I was at the intermediary court I tried to gain access six times. In the end only after slamming my fist on the table did I finally get access. (Conference notes on file with author.)

Not surprisingly, lawyers have expressed reluctance to perform criminal defense work (interviews b4, b13, a11, and a33). According to He S. (2005), two popular mottos reportedly reflect the plight of criminal defense lawyers in Shenzhen: (1) "Many lawyers are unwilling to take criminal defense cases." (2) "I can only selectively take criminal defense cases." In the southern city of Shenzhen, six government agencies (the Intermediate People's Court, the Municipal Procuratorate, the Public Security Bureau, the Bureau of Justice, the Customs and Anti-Smuggling Bureau, and the State Security Bureau) jointly drafted and circulated a set of regulations titled, "Several Regulations On Guaranteeing the Professional Rights of Lawyers in Criminal Litigation (Draft)." At the Sixth Congress of the All-China Lawyers Association in 2005, a resolution proposal titled, "Regarding a Request that the Ministry of Public Security Revise the 'Standards for the Architectural Design of Prisoner Detention Centers' and Remove the Partitions in Meeting Rooms" was supported by 31 delegations and signed by over 100 lawyers (He S. 2005).

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[2] Access to clients is characterized as the "big brother of all difficulties" (*laoda nan*) in criminal litigation. This difficulty is subdivided into four specific difficulties: (1) As pretexts for refusing to arrange any meeting or for failing to adhere to the scheduled meeting time, the public security may claim the person in charge is out of town on business or at a meeting. (2) Meetings are often limited to 30 minutes, an amount of time insufficient to become knowledgeable about the case. (3) Public security officers may restrict the contents of meetings by limiting the scope of the lawyer's questions or the defendant's answers. (4) The physical conditions of the meeting rooms (e.g., the lack of light, excessive heat, physical partitions, or the lack of chairs) hamper communication with the client or the taking of notes. (See Lin [2004].)

The foregoing difficulties faced by Chinese lawyers in general and Chinese criminal defense lawyers in particular reflect the marginal status of lawyers in the broader socialist context. "Socialist legality," legal institutions governed by the principle that law is a political tool fundamentally serving the interests of the state (Potter 1999; Markovitz 1996:2295; Petrova 1996:543), produces at least two kinds of difficulties for lawyers. First, insofar as lawyers' ultimate allegiance is to the state, not to her client (Friedman and Zile 1964: 35-6; Feinerman 1987:120-1; Zheng 1988:500-1; Michalowski 1995), socialist legality generates a conflict of interest for lawyers. Second, socialist legality reduces lawyers to a status of outside annoyance, a thorn in the side of the gongjianfa. As a lawyer in Beijing put it, "In actuality, the gongjianfa are in opposition to lawyers [*duili de*]" (interview b12). Another lawyer referred to the "adversarial character [*duili jumian*] of the relationship between lawyers and the gongjianfa" (interview b21). In the Soviet Union, *advokatura* were "quasi-private agents with no official status, no official power or prestige." "Procutators and judges were hand in glove on every level...members of the same team. But the lawyers didn't make the team. They were, so to speak, in a separate league, a minor one" (Feifer 1964, cited in Burrage [1993:581]).

Lawyers' current-day difficulties also reflect the historical durability of this marginal status, the remarkable institutional continuity of lawyers' outsider status vis-à-vis the actors who control the resources on which lawyers depend. Reports of the harassment and intimation of lawyers and of the interference and obstruction of their work are almost as old as the post-Mao system of lawyers itself. First revived in 1979, the same year that saw the restoration of the Ministry of Justice and the passage of revised versions of the Criminal Law and the Criminal Procedure Law, lawyers were needed to represent the defendants in the Gang of Four trials. The Gang of Four trials in 1980 represent both the beginning of and a contributing reason for the revival of the legal system. A major showcase for the revived and revamped legal system, these trials of Mao Zedong's wife, Jiang Qing, and her alleged co-conspirators for masterminding the Cultural Revolution were a high-profile political lustration exercise broadcast live on television across the nation.

Evidence of lawyers' woes inflicted by the gongjianfa emerges during the first national Strike Hard anti-crime campaign of 1983 (see Tanner 1999). In 1983 the Supreme People's Court wrote a letter to the Hunan Provincial Supreme People's Court to criticize this court and an intermediate court for writing into the official decisions of a rape case and a murder case

denunciations of the defense lawyers simply for defending their clients (Mao and Li 1992:37). But elsewhere in the country officials in the gongjianfa were routinely carrying out similar denunciations of defense lawyers: A 1983 report states, "...some comrades, including some cadre leaders who, unable to look upon the work of lawyers correctly, blame and denounce lawyers, even placing blame on the lawyers' defense for their own past failures to strike criminal elements, instilling fear in the hearts of lawyers, causing them not to dare carry out defense work according to the law" (cited in Li [1997:717]). The report continues:

> 1. The Belief that Lawyers Absolve Criminal Elements of their Criminal Liability
>
> In Baoding City in Hebei Province, a comrade in charge exclaimed in a meeting: Is anyone here from your law committee (referring to the legal advisory office)? Are you taking the side of the proletariat? You've overturned death sentences. You've used your defense work to turn heavy punishment into light punishment. Do not take the side of the bourgeoisie.
>
> In Xuchang City in Henan Province a comrade in charge, in a meeting of officers of the municipal gongjianfa and of leaders from bureaus and departments under the city government, said: In order to strike criminals, lawyers should no longer be defendants. Some lawyers take people's money and eat people's food, babble a bunch of nonsense as their defense in court [*hu bian ba bian*], and then, when the courts accept their opinions, become cozy with the defendants.
>
> In Hunan Province, an official in the Chinese Communist Party Committee of a prefecture said: I have no interest in lawyers. Another person in charge continued: Lawyers are merely conniving pettifoggers [*guibian*]. In a prefecture-level city, a comrade in charge even said, "The situation of crime is bad because lawyers have disturbed the water [*ba shui jiao hun*]."
>
> In Liaoyuan City in Jilin Province, at an August 19 mobilization meeting attended by judicial officers and party secretaries of major factories, mines, and enterprises, a Public Security Bureau comrade in charge said: In the past we didn't strike hard enough, our crime situation is bad. This is all the product of lawyers. If we ever arrest Rightists again, mark my words, we will definitely strike down on lawyers as Rightists. Immediately after this meeting ten lawyers at the Liaoyuan City Legal Advisory Office offered their collective resignation. Lawyers in a neighboring county, upon hearing that Liaoyuan City was going to strike down on Rightists, also resigned.[3]
>
> A leader in Jixi City in Anhui Province, at meeting of county bureau and section chiefs, said: The main reason we failed to strike hard enough against criminal elements in the past is because lawyers speak on behalf of bad people. We don't want lawyers anymore. Whoever seeks the representation of a lawyer will get two years in prison for a crime that calls for one year in prison.

[3] A county party secretary reportedly told lawyers, "You must remember the lesson of 1957! [the year of the anti-Rightist campaign]" (Li 1997:469). Not uncoincidentally, one-third of all lawyers in Jilin Province quit their jobs in the two years spanning 1984 and 1985 (Li 1997:726).

2. The Belief that Lawyers Are Troublemakers Who “Sing Opposing Operas” (*Chang Duitai Xi*) With the Gongjianfa

In Wuhu City in Anhui Province, at a judicial work meeting, a comrade in charge said: In the past when lawyers did criminal defense work, they always tried to defeat the courts. Now we don’t want lawyers to defend criminals anymore. Now you [judicial personnel] can unflinchingly carry out your work. The two levels of lower courts in this city have over 80 criminal cases in the dockets for which defense lawyers should be assigned. Because comrade leaders said we don’t want lawyers to defend criminals anymore, the legal advisory offices can only refuse representation.

In Qinghai Province comrades from the [local People’s Congress] standing committees of several places said: The system of lawyers is not suitable for China’s national situation. I don’t understand at all: In a socialist court there are actually lawyers who sing opposing operas with the gongjianfa. In a county in this province, at a meeting of the chiefs of the gongjianfa and the Bureau of Justice on the division of their work, the chief of police openly recommended “abolishing lawyers.” The chief procurator immediately thrust up both hands in approval. The Haixizhou Court not only fails to notify lawyers about the status of cases, but also forbids lawyers to read documents and advised the prisoner detention center not to permit lawyers to meet with defendants without court approval.

A procurator in a county procuracy in Henan Province said: now that there’s no one to make a stink, I don’t even bother drafting criminal charges anymore.

Judges in the courts of some parts of Henan Province openly blocked defense lawyers appointed by defendants and their families. Some mocked the lawyers to their faces: now you must feel good, let’s see if you still speak for the bad guys.

The Jianxi District Court of Luoyang City in Henan Province, in a trial on October 19, using “exception circumstances,” “severity and swiftness” [*cong zhong cong kuai*], and “the guidance of higher levels” as pretexts, did not respect the lawyers’ lawful opinions, and then ordered the bailiff forcibly to throw out of court the four lawyers who were carrying out their professional responsibilities. (Li 1997:717-9)

In a manner consistent with the forgoing statements recorded over twenty years earlier, the Tianjin judge who in March 2006 allegedly beat and choked a Beijing lawyer who was trying to file a case was quoted as proclaiming, “I am the court, the court is me. If I say the case will not be filed, the case will not be filed” (Cai 2006). At a 1983 meeting in Wuhan on strengthening the legal system, the following problems were raised: “...some people discriminate against lawyers and even use punishment, job transfers, and other means of exacting revenge” (Li 1997:457). A *Legal Daily* article published in 1985, after reporting that the People’s Procuracy of Pujiang County in Fujian Province approved the illegal imprisonment of a lawyer, continues:

> ...owing to the powerful influence of "Leftist" thinking and old habits that make light of the legal system, there is still a minority of cadres, including a few judicial cadres, who are in the habit of substituting the law with power and substituting law with speech, who look down on lawyers, who say the system of lawyers' defense work is "taking the wrong side" and "speaking on behalf of bad people," who even deliberately harass and obstruct [*diaonan*], abuse [*ruma*], shackle and unlawfully lock up lawyers. (cited in Li [1997:723])

In 1984, in response to these problems, Hu Yaobang, General Secretary of the Chinese Communist Party (CCP) from 1980 to 1987, issued a memorandum stating, "The problems of lawyers must be taken seriously, otherwise there will be no way to implement the legal system" (Li 1997:467, 722). A report published in the *Legal Daily* in 1986 attributes an apparent trend of lawyer resignations to the enduring "influence of Leftist thought." "Some people attack lawyers for speaking on behalf of bad people, striking fear in the hearts of lawyers, and causing them to leave the ranks of lawyers for fear of taking any risks" (cited in Li [1997:727]). Later that year, the *People's Daily* reported that

> in recent years, in some places, incidents of striking down on and persecuting lawyers, obstructing and interfering with lawyers' lawful practice have sometimes occurred. In some places lawyers have even been chased out of court or unlawfully detained or arrested. According to partial statistics, in the past two years there have been over 30 incidents of striking against and persecuting lawyers and of interfering in their handling of cases. (Huang 1986)

In 1988 the Deputy General Secretary of the All-China Lawyers Association stated,

> Lawyers have been scorned and treated with contempt, mostly because of their criminal defense work. In the past few years this problem has been frequently exposed in the media. I have also acquired a lot of materials: Some lawyers, for doing criminal defense work, have been dismissed from their jobs or expelled from the party. Some lawyers have been driven out of court or even handcuffed, shackled, or beaten. (*Fazhi Ribao* 1988)

According to incomplete information reported in 1990 from 16 provinces and cities under central jurisdiction, in the prior few years there had been 93 incidents of "serious violations of the rights of lawyers to carry out their professional duties." These included 15 incidents of lawyers getting

unreasonably ejected from court, 15 beating incidents, and 11 incidents of unlawful detention, arrest, and criminal punishment (Jin 1990). For illustrations from the 1990s showing the uninterrupted plight of Chinese lawyers from the time of their revival to the present, see Du and Li (1997:261-91).

Lawyers are under pressure not only from the gongjianfa, but also from their clients and prospective clients. In addition to the foregoing troubles they inflict on lawyers, officials in the judiciary have also developed an assortment of techniques for extracting rents from lawyers (Alford 1995:33; Ma 2001), rents on which the operation of gongjianfa are increasingly dependent. Pretenses or euphemisms for rents include "file retrieval fees" (*cha dang fei*) and "service fees" (*fuwu fei*) (Wang and Gao 2000:8). Rents are also exacted in the form of kickbacks from lawyer fees for referrals from judges (Wang and Gao 2000:7), sometimes euphemistically called "cash cases" (*jinqian an*) or "friendship cases" (*renqing an*) (Cai 2006). Lawyers tire of the heavy "extra-legal" investments demanded by trial work (interview a33). At the same time, however, ordinary people with legal needs often hire lawyers according to their stock of guanxi with judges and other important members of the gongjianfa (Xie 1994). As a consequence, lawyers interviewed in Wuhan "universally acknowledged the importance of connecting [*goutong*] and cultivating guanxi [*gaohao guanxi*] with judges" (Wang and Gao 2000:10). Indeed, lawyers even used to advertise their special insider connections.[4]

Political Embeddedness as a Source of Protection: "Lawyers with Chinese Characteristics"

Deng Xiaoping, China's paramount leader from the late 1970s until the early 1990s, proclaimed in 1980 that "the ranks of lawyers must expand, to fail to create this legal system is unacceptable" (Li 1997:467, 722; Du and Li 1997:170). Given the precarious history of lawyers, however, few people were brave enough or desperate enough to enter the bar. The socialist history of lawyers did not inspire confidence among those who were called upon to staff the revived bar.

After the system of lawyers that prevailed during the Republican period (1911-49) was formally abolished in September 1949 (Cui et al. 1999:219), Republican lawyers were labeled "black lawyers" and purged in 1949-50 (Guo 2000:99). According to an investigation into the

[4] For example an advertisement on page 22 of the February 3, 2000 issue of the *Beijing Youth Daily* states, "worked in procuracy for many years, Ph.D. in law, solid know-how in criminal matters." Such advertising was prohibited by the later that year by the 2000 Beijing Municipal Methods for the Administration of Law Firm Advertising (Lin 2001).

fate of “old lawyers” published in 1956, of 308 lawyers who registered in Beijing in the final year of the Republican state, 36 were confirmed dead, 6 were in prison, 13 had left Beijing, 102 were still in Beijing, and the fates of the remaining 151 were unknown (Cui et al. 1999:221-2). In 1954 a new system of lawyers modeled after the Soviet system was developed on an experimental basis in several cities including Beijing, Tianjin, Chongqing, and Shenyang. The new system was formally established in 1955, the same year in which the Beijing Bureau of Justice was established. Following the 1956 Hundred Flowers Campaign in which many lawyers sympathized and participated with intellectuals who harshly criticized the new government, lawyers were branded “Rightists” and purged in 1957 (Guo 2000:99-100; Lubman 1999:77-8). In 1957, 30% lawyers in Beijing were classified as “Rightists” (Cui et al. 1999:223).

In light of this history, the people who were called upon to serve as lawyers in the late 1970s and early 1980s were understandably skittish. Part of the official strategy to attract and retain people to the practice of law included giving lawyers civil service slots in the state personnel system. This was an official status bestowed to lawyers expressly to offset their socialist marginalization, to provide a real measure of protection against official harassment, and to assuage fears of political persecution (Guo 2000:101). For the first decade following their revival in 1979 after the Third Plenum of the Eleventh Party Congress in 1978, lawyers remained “hooked” to the state; they remained embedded in, an inexorable part of, the state bureaucracy. Without such an institutionalized safeguard against persecution, lawyering was widely perceived as little less than suicidal:

> At the time a lot of people were scared by all the earlier political campaigns. As a result, in 1979 and 1980 no one dared work as a lawyer. They were under the pressure of political fear because they had to sing opposing melodies [*chang fan diao*] with the courts, sing opposing melodies with the government, and defend people arrested by the government. So various measures were adopted. The Organization Department of the Party Central Committee issued a directive in 1979 stating that lawyers must be respected as civil servants, that they were government officials. (interview a28)

Guo (2000:101) reaffirms the institutional logic behind lawyers’ official status:

> To enable lawyers to perform their work without the threat of being accused as ‘accomplices’ of the suspects, it was necessary to make them State legal workers, which was at a similar level to judges and public prosecutors. At a certain moment, the Supreme People’s Court even issued circulars to criticise

certain judges for their critical attitude towards lawyers. In order to make lawyers look like part of the government establishment, China went so far as to create a police-style uniform clothing for lawyers.

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; Ma 1996). The first sentence of the 1980 Provisional Regulations on Lawyers defined lawyers as "state legal workers" (Article 1). Like other state cadres, lawyers "ate imperial grain" (*chi huang liang*) (Dai and Zhu 1994). A lawyer I interviewed said that lawyers at the time "were allocated slots [*bianzhi*] as state civil servants, as state employees" (interview a16). As administrative officials, they were assigned individual administrative ranks according to the administrative ranks of their offices and their individual positions within these offices.

An additional measure adopted to satisfy the needs of the expanding legal system and to enhance lawyers' safety in the process of carrying out their work the active recruitment of lawyers from the very sources of their plight. "Lawyers came primarily from personnel in government agencies and public organizations, especially from cadres carefully selected from central and regional party and government organs; some were selected from the ranks of decommissioned military officers" (Li 1997:471). Such politically-connected lawyers who had already retired from their former posts were given a new official label in 1984: "specially-appointed lawyer" (*teyao lüshi*). In response to a request for guidance from Jilin Province's Bureau of Justice, the Supreme People's Court (in its 1984 Written Reply Regarding Permission to Take In as Specially-Appointed Lawyers Retired Personnel Who Meet the Standards of Lawyers), stated that retired personnel from judicial and other organs in good health and who meet the conditions stipulated by the Provisional Regulations on Lawyers and other requirements set by Ministry of Justice documents were qualified to work as specially-appointed lawyers. In Beijing the first "Specially-Appointed Law Firms" were established in the same year (BBJ 2001a:103-4).

> When the system of lawyers was revived, it was devoid of skilled lawyers. So, at the time, some people, for example, judges from the courts, procurators from the procuracy, as well as some other personnel who had retired from their posts and who were still in good health resolved this problem by bringing into play their functions and allowing them to work as lawyers. (interview a28).

Specially-appointed lawyers were "...expert legal personnel who, after retiring from judicial agencies, legal teaching, or scientific or other units, bring into play their post-retirement energies by becoming lawyers" (Zhu 1988). Together with other lawyers who had prior careers, they are sometimes called lawyers who "become monks in mid-life" (*banlu chujia*), an expression that refers to people who switch careers in their 40s or 50s. Specially-appointed lawyers were "old cadres" (BBJ 2001a:101), likened to "old doctors" for their wealth of experience and comfort they bring to people who relied on their expertise (Zhu 1988). They were "old comrades who have been retired for at least two years after working as judges in the People's Court, as procurators in the People's Procuracy, as preadjudication personnel in a public security organ, or after performing some other kind of judicial work for at least 10 years" (BBJ 2001a:105).

Entry from the gongjianfa did not require formal educational certification or sitting for the bar examination. From a comparative standpoint, the formal privileging of practical experience over education and examinations was not unprecedented, but was also the case, for example, in Japan (Sun 1988; Rabinowitz 1956:80) and in the Republican bar (Conner 1994:219), which had been modeled after the Japanese bar. Anyone with at least a junior college (*da zhuan*) degree 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 of the Provisional Regulations on Lawyers). Only with the passage of the 1996 Law on Lawyers did passing the national lawyers examination become a requirement for licensing (Article 6). The informal path of mobility from the judiciary into private practice also replicates a Republican-era pattern: "Not a few lawyers left judgeships or other official positions to enter practice, citing their past experience as a valuable qualification" (Conner 1994:234).

Specially-appointed lawyers' special insider connections to their old friends in the gongjianfa—their political embeddedness—shielded them from the kinds of problems routinely suffered by lawyers at the hands of gongjianfa personnel. To be sure, it is the general case that political officeholders and other government employees everywhere, including the United States, often put their accumulated connections to good use in private practice. But the special case of institutionalized discrimination against lawyers and the institutional fusion of the legal system to

the state bureaucracy gives special value to political connections above and beyond the general case. In the words of one lawyer I interviewed, "Lawyers who used to work in the gongjianfa have an absolute advantage. There's no comparison. That they use their prior guanxi in their current practice is a one hundred percent certainty" (interview a13). Because of their insider advantages, specially-appointed lawyers—who might also be labeled "specially-advantaged lawyers"—were particularly well suited to lawyers' hostile institutional environment: "...they had personally weathered the storms of China's many political struggles" (Zhu 1988).

> Another advantage of specially-appointed lawyers is that the majority of them come from judicial organs, and many had been the backbones of their organizations. After transferring into the ranks of lawyers, their experiences have been unmatched. Among lawyers with the same case, specially-appointed lawyers have a different foothold and a different angle. They can use this kind of experience and understanding to help educate people inside government agencies and inside units with a mentality of looking lightly on the work of lawyers. By elevating people's recognition of the work of lawyers and people's respect and support for the work of lawyers, they can also help increase the quality of case processing in the gongjianfa. (Zhu 1988)

A lawyer interviewed for a newspaper report said, "'You might not believe it, but at the time [in the early 1980s] out-of-town lawyers coming to Beijing would actually wear police uniforms!' In the early days of the reform era, lawyers were recruited primarily from the ranks of cadres in the justice administration, gongjianfa personnel, demobilized military personnel, and former lawyers [from the 1950s]" (Ma 1996). The symbolic value of official state uniforms in legal practice remains salient in the present day. On February 3, 2003 a "legal worker" (*falü gongzuozhe*) in Anhui Province working in a "basic-level legal service office" (*falü fuwusuo*) within an urban district or subdistrict government, posted the following message to the official electronic message board of the All-China Lawyers Association: "When handing cases, especially when collecting evidence, I wear a judicial uniform to impersonate a government official in order to be able to carry out my investigative work smoothly. This 'special' status is even more convenient and useful than that of lawyers" (Message id#53549, http://www.acla.org.cn/forum/). In a separate discussion thread, a lawyer in Shandong Province posted the following message on April 23, 2003: "A few days ago I tried a case in a court in Linyi [City]. The counsel for the other side was a legal worker, but wore the uniform of judicial administrative personnel. At first I thought he was a bailiff. But, upon asking, I learned he was a

legal worker. When I asked him if legal workers have uniforms he said that the bureau of justice issued uniforms to facilitate the collection of evidence!" (Message id#127090, http://www.acla.org.cn/forum/).

Although in Beijing the last "Specially-Appointed Law Firms" were established in 1986, and although in 1988 they were forced to drop "Specially-Appointed" from the names of their firms (Luo 2004:35; BBJ 2001a:103-4), the ranks of specially-appointed lawyers continued to grow. At their peak in 1996 there were over 15,000 specially-appointed lawyers nationwide (18% of all lawyers). In Beijing their peak came in 1997 at about 1,300 (12% of all lawyers, although in 1989 and 1990 they, at about half their 1997 population, represented 23% of all lawyers in Beijing) (see Figures 1 and 2). Only a few years later this official category suddenly disappeared. In accordance with the 1999 Ministry of Justice Notice Regarding the Problem of Registering Specially-Invited Lawyers, starting in 2001, specially-invited lawyers were required either to pass the bar examination or to abandon practice (interview a8). Those who had acquired their lawyers' licenses prior to the 1997 passage of the Law on Lawyers were simply to be relabeled "full-time lawyers" (*zhuanzhi lüshi*). In 2000, after this directive was issued, the *China Law Yearbook* (ZFN) suddenly stopped reporting specially-appointed lawyers. Likewise, in 2000 the *Beijing Statistical Yearbook* stopped reporting specially-appointed lawyers.

In addition to specially-appointed lawyers, part-time lawyers (*jianzhi lüshi*) were also developed to help meet the growing demand for lawyers. Part-time lawyers are formally based at other work organizations (excluding the gongjianfa) and, from an official standpoint, only moonlight as lawyers. After 1989, only teaching and research personnel of law schools and other legal research units could work as part-time lawyers (interview a28). The formal institutional affiliation of a part-time lawyer is her law school or research unit, not her law firm. Beijing's first "Part-Time Law Firm" was established in 1984 by the China University of Politics and Law (BBJ 2001a:101). Part-time lawyers are thus, in most instances, teachers at educational institutions. Their firms are typically operated by their universities. For example, the Kehua Law Firm was established by the Chinese Academy of Social Sciences and the Dishi Law Firm was established by Renmin University of China. Because they are already members of prominent public organizations, part-time lawyers' political embeddedness in the state is self-evident. Moreover, as members of often prestigious institutions of higher learning, and in contrast to the

status of “full-time lawyers,” the high and unambiguous official status of part-time lawyers shields them from many of the difficulties that plague lawyers without this official status.

[FIGURE 1 ABOUT HERE]

[FIGURE 2 ABOUT HERE]

Figures 1 and 2 depict the changing population and composition of lawyers in China as a whole and in Beijing. Three patterns are worthy of note: First, until recently, specially-appointed and part-time lawyers accounted for a substantial portion of all lawyers. “China’s system of lawyers possessing special Chinese characteristics has been formed with full-time lawyers as the backbone and with specially-appointed and part-time lawyers as the two wings” (Zhu 1988). Second, full-time lawyers have always accounted for a smaller proportion of the lawyer population in Beijing than in China as a whole, undoubtedly because Beijing has the greatest concentration of universities and research institutes and the greatest concentration of government officials in China. Third, by 2004 the official category of full-time lawyers had come to account for almost all lawyers.

In the early years of the bar’s revival the official logic behind recruiting people into the categories of specially-appointed and part-time lawyers was also economic. As administrative cadres, full-time lawyers were an exceedingly heavy financial burden for the government. Specially-appointed lawyers, in contrast, because they had already retired and were already drawing retirement benefits from their former work units, imposed no incremental financial burden whatsoever to the state. As they did not occupy new slots in the state personnel system, they were “beneficial to breaking lawyers’ ‘iron rice bowl’” (Zhu 1988). Part-time lawyers likewise did not require new slots in the state personnel system because their salaries and benefits were supplied elsewhere. Although lawyers in these categories were essentially free from the financial standpoint of the state, the further expansion of the bar could not be sustained by these two categories of lawyers alone.

> In the past the Chinese government gave money to law firms according to the number of slots they had in the state personnel allocation system. 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. (interview a28)

The "unhooking and privatization" of law firms was inevitable. Indeed, an important part of the story of the evolution of Chinese law firms is the story of "growing out of the plan," to borrow the title of Naughton's (1993) book. When the bar was first revived, lawyers worked in "legal advisory offices" (*falü guwen chu*) modeled after Soviet law offices (cf. Zhang 1999:63; Gelatt 1990-91:761; Zheng 1988:490; Feinerman 1987:120). By 1984 the name "legal advisory office" had already been changed to "law firm" (*shiwusuo*), although in reality the name "law firm" had already been adopted in parts of China by 1983 (Zhang 1999:63; BBJ 2001a:91,94).

Much of the protection enjoyed by specially-appointed lawyers and part-time lawyers against the predatory behavior of people in the gongjianfa and elsewhere in the state derived from their personal connections to friends in high places, from their personal career backgrounds. However, they also derived protection from their law firms. That is, it is important conceptually and analytically to separate *individual political embeddedness* from *organizational political embeddedness*. As we saw above, individuals who, by donning official state uniforms, appear to be part of the state, even if they possess no individual connections to bureaucratic insiders, enjoy some degree of protection against harassment and obstructionism. A lawyer's organizational affiliation is of enormous consequence to her ability to avoid problems in legal practice. For this reason, when the names of legal advisory offices were changed to law firms, lawyers voiced intense opposition for fear it would erode what limited support they had from public officials. In a 1983 meeting in Wuhan on legal reform,

> The majority of comrades were opposed to the idea of changing the names of legal advisory offices to "law firms" for the following reasons: (1) "Advisory office" implies "official," whereas "law firm" smells like "private" [*min ban*]. Changing the name would lower the status of lawyers' work in the eyes of people. (2) Changing their name so soon after their establishment might mislead some people into believing the state's policy and attitude toward lawyers have changed. (Li 1997:459)

For the very same reasons, meeting participants were equally opposed to changing the official status of lawyers from "state legal workers" and to making the budgetary transition to a system

of “assuming sole responsibility for profits and loses” (*zifuyingkui*) (Li 1997:459-60). Such opinions notwithstanding, this is precisely the direction in which law firm reform unfolded.

In 1988 the first private law firm was unveiled under the label “cooperative” (*hezuo*) law firm. In contrast to state-owned firms, cooperative firms were self-accounting and could hire and fire lawyers freely; they were not part of the state personnel allocation system. But in name their assets remained owned by the state; in principle (although not always in practice) all profits belonged to the state. Insofar as the state relinquished control of the day-to-day management of operations but retained formal ownership, cooperative firms were analogous to “collective enterprises”: for most practical purposes they were private, but they possessed “socialist characteristics” in terms of property rights. The unhooking and expansion of the bar accelerated in 1992 following Deng Xiaoping’s call in his Southern Tour (*Nan Xun*) speeches for greater economic reform, accelerated privatization, greater openness to the outside world, and the deepening of the legal reforms (Zhang 1999: 64; Dai and Zhu 1994; BBJ 2001a:95). In the spirit of Deng’s exhortations for greater and faster reform, in 1993 the Ministry of Justice circulated a directive (Plan Regarding Deepening the Reform of Lawyers’ Work) ratified by the State Council in the same year that effectively stripped the bar of its former civil service character. The politically embedded status of law firms and lawyers as state personnel with administrative ranks was formally abolished (Zhang 1999:72). Even most state-owned law firms were on the road to operational and fiscal autonomy. 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 1999:62-93; Law on Lawyers, Articles 17 and 18). After 1993, from both fiscal and organizational standpoints, state-owned law firms became virtually indistinguishable from their private-sector counterparts.

By 1993 the significance of membership in the state sector had become less about property ownership by, and fiscal dependence on, the state and more about what I call *organizational prophylaxis*—the less tangible forms of support from and access to other state organizations that reduce the likelihood of encountering trouble in the course of legal practice. Members of state-owned firms remained “inside the system,” part of the state bureaucracy. Bureaucratic rules of access to other state organizations in general privilege people within the state bureaucracy and in particular privilege people in more highly-ranked state organizations.

According to the prevailing institutional norms and rules of China's socialist bureaucracy, to gain access to a given state organization typically required making contact through a higher-level overseeing unit that considered requests only from units of the same rank (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 [of law firms], which unit was of a higher rank than other units" (interview a8). Individual rank correspondingly determined access to individual cadres (Lieberthal and Oksenberg 1988:147). It follows that being outside the public bureaucracy has greatly undermined lawyers' access to state actors and has increased the likelihood of encountering recalcitrance, resistance, and obstructionism from state actors. To use an extreme case of political embeddedness to illustrate the concept of organizational prophylaxis, before it merged with the Jiawei Law firm in 2001, the Landun ("Blue Shield") Law Firm, which had been established and operated by the China People's Public Security University, would have offered to its lawyers unparalleled access to and protection against the police and other criminal justice personnel.

[FIGURE 3 ABOUT HERE]

[FIGURE 4 ABOUT HERE]

Figures 3 and 4 depict the changing population and ownership composition of law firms in China as a whole and in Beijing. Four patterns are worthy of note: First, no different from the population of lawyers, the population of law firms experienced rapid growth only after 1992. Second, in Beijing law firms unhooked from the state earlier than in the rest of China. Third, the year 2000 witnessed a major drive mandated by the State Council and carried out by the Ministry of Justice and local Bureaus of Justice to unhook and privatize all remaining state-owned law firms. Four, whereas in China as a whole 15% of law firms remained state-owned in 2004, in Beijing the process of unhooking was complete in 2001.

Even after unhooking, however, lawyers and law firms remain unequally endowed with political connections and institutional support. Despite unhooking from the state at a macro level, lawyers and law firms remain hooked to the state at a micro level to varying degrees. Although the category of specially-appointed lawyer is extinct in name, the content of this category

remains very much alive. Of all people who registered for the national judicial examination in 2005, 26% of were from the gongjianfa or the judicial administration (Chen and Wu 2005).[5]

Likewise, although the category of state-owned law firm is dead in Beijing and on the endangered species list elsewhere in China, firms' ties to the state remain highly variable. Compared to firms that were first established as partnerships, former state-owned firms retain stronger ties to the state. Moreover, other research has found that lawyers working on cases assigned by the state receive more cooperation and more protection than lawyers who develop their work independently: Legal aid lawyers in Guangzhou whose cases were assigned by local courts enjoyed an unusually high degree of cooperation from the gongjianfa, including relatively unfettered access to clients in police custody (Liebman 1999:226-7). A lawyer I interviewed in Beijing made the same point by describing the relatively great risk associated with criminal defense work handled on a private basis compared to criminal defense work assigned by the state (interview a11).

Hypotheses

From my theoretical arguments and historical overview I derive five sets of hypotheses:

HYPOTHESIS 1: AGGRIEVED LAWYERS

On the whole, Chinese lawyers vociferously voice grievances about administrative harassment and other kinds of institutionalized trouble from official sources that stymie their work.

H_{1a} *(general support)*: Lawyers complain generally about weak levels of support from government agencies.

H_{1b} *(criminal defense)*: Lawyers complain particularly about interference and obstructionism in the field of criminal defense.

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[5] In 2002 the three-in-one judicial examination (*sifa kaoshi*) for lawyers, judges, and procurators replaced the national lawyers examination established in 1986. On the one hand, it is impossible to know from registration figures how many of the examinees from the gongjianfa were planning to become lawyers and how many were actually admitted to the bar. On the other hand, after the implementation of a new requirement that all examinees have at least a university undergraduate degree, the high proportion of examinees with the same backgrounds as the specially-appointed lawyers of the past is striking.

HYPOTHESIS 2: THE GUANXI IMPERATIVE

Owing to their institutional marginalization vis-à-vis the public actors on whom they depend, lawyers resort to informal relational strategies of coping and getting ahead.

H_{2a} *(prevalence)*: Guanxi is a widely used strategy to gain access to and support from the gongjianfa.

H_{2b} *(significance)*: Lawyers perceive that guanxi matters in the judicial process, that the quantity and quality of their relations to judicial insiders makes a difference.

HYPOTHESIS 3: AGGRIEVED CRIMINAL DEFENSE LAWYERS

Whereas Hypotheses 1 and 2 concern opinions and assessments of lawyers in the aggregate, the remaining hypotheses concern variation in opinions and assessments. This hypothesis states that the gravity of lawyers' complaints is positively associated with exposure to trouble via specialization in criminal defense work.

H_3: Criminal defense work is associated with complaints about interference and obstructionism.

HYPOTHESIS 4: INDIVIDUAL PROPHYLAXIS

Individual-level political connections offer protection against grievances and thus reduce the probability of articulating grievances. I hypothesize that, compared to lawyers with weak political connections, lawyers with strong political connections enjoy relative immunity against administrative harassment and other complaints.

H_{4a} *(prior work in the gongjianfa)*: Lawyers with prior careers in the gongjianfa are relatively protected from the troubles to which lawyers without this special background are routinely exposed.

H_{4b} *(specially-appointed lawyers)*: Owing to their individual backgrounds in the gongjianfa, specially-appointed lawyers are relatively protected from the troubles to which lawyers without this special background are routinely exposed.

HYPOTHESIS 5: ORGANIZATIONAL PROPHYLAXIS

Organization-level political embeddedness offers protection against grievances and thus reduces the probability of articulating grievances. I hypothesize that, compared to lawyers with weak organizational support, lawyers with strong organizational support enjoy relative immunity against administrative harassment and other kinds of grievances about which lawyers complain.

H_{5a} (membership in state-owned firms): Because they enjoy privileged access to and support from the public actors on whom their work depends, lawyers in state-owned firms are relatively protected against the obstructionism that plagues lawyers without such formal affiliations.

H_{5b} (part-time lawyers): Owing to their formal institutional affiliations with universities, research institutes, and other public organizations, part-time lawyers enjoy privileged access to and support from the public actors on whom their work depends, and are consequently relatively protected against the obstructionism that plagues lawyers without such formal affiliations.

H_{5c} (case/client assignments from court): Lawyers who are assigned cases from courts enjoy privileged access to and support from the public actors on whom their work depends and are consequently relatively protected against the obstructionism that plagues lawyers without such affiliations.

Data and Methods

I test the above hypotheses with data from two surveys of lawyers I carried out in the summer of 2000 in Beijing (N=462) and 24 small and mid-sized cities in 16 provinces outside Beijing (N=518).[6] I cannot overstate the fortuitousness of the timing of my surveys. Had I conducted the surveys any later I would have missed most if not all state-owned firms and specially-appointed lawyers. Between 1999 and 2002, almost all state-owned firms shut down or privatized and specially-appointed lawyers, as an official registration status, entirely disappeared.

The design of the questionnaire was heavily influenced by the Chicago Lawyers Project at the American Bar Foundation (Heinz et al. 2005), but modified substantially according to the vastly different character of the Chinese bar. I modified the questionnaire in collaboration with legal scholars at the Chinese Academy of Social Sciences, the Tsinghua University School of Law, and the Peking University School of Law. Various iterations of the questionnaire were

[6] The 24 cities include 22 prefecture-level cities (in Hebei: Tangshan, Qinhuangdao, and Baoding; in Shanxi: Changzhi; in Inner Mongolia: Hohhot; in Liaoning: Dandong and Liaoyang; in Heilongjiang: Shuangyashan and Mudanjiang; in Zhejiang: Wenzhou; in Fujian: Quanzhou; in Jiangxi: Nanchang; in Henan: Anyang and Xinxiang; in Hubei: Yichang; in Hunan: Zhuzhou; in Guangxi: Guilin, Nanning, and Liuzhou; in Hainan: Haikou; in Qinghai: Xining; and in Ningxia: Yinchuan) and two county-level cities (Guangdong's Nanhai and Xinjiang's Changji).

pretested on over a dozen lawyers in Beijing before the survey was formally launched in the summer of 2000.

The multi-city sample includes lawyers in 24 cities with 2000 urban populations ranging from 48,000 (Nanhai) to 1.7 million (Tangshan). The 25 survey sites and the law firms within them were not selected randomly, but purposively. In Beijing I collected data from lawyers in 131 identifiable firms, representing 38% of all firms in 2000. The proportion of all firms accounted for by the 185 identifiable firms in my multi-city sample is harder to estimate given the absence of a comprehensive national law firm directory. However, in the 10 cities with local law firm directories available in either 2000 or 2001, I surveyed an average of 34% of all firms. Outside Beijing, the average number of firms surveyed per city was 7.5, and the maximum was 19 (Nanning).[7]

In Beijing all questionnaires were distributed and collected by 33 local undergraduate student research assistants, all female. Questionnaires were self-administered. Using a 1999 roster of Beijing law firms published in the *Zhongguo Lüshi Bao*, I randomly assigned Beijing law firms to the student research assistants. The multi-city questionnaires were distributed and collected by 26 research assistants hired in Beijing, 19 of whom were female. These assistants originated from the cities they surveyed and were going home for the summer holidays anyway. With the exception of Hohhot and Nanning, each of which had two assistants, each city survey was administered by one assistant. In Beijing, the firm-level refusal rate (e.g., receptionists' turning away interviewers and firm directors' refusing to permit lawyers' participation) was 23%. Information on refusals in the multi-city sample was not recorded. Information on individual-level refusals was recorded in neither sample. All indications, however, are that these are reasonably representative samples.

[TABLE 1 ABOUT HERE]

At the firm level, the proportion of firms in the state sector is precisely what we would expect on the basis of official government data (see Table 1). At the individual level, however,

[7] Of all 980 lawyers in the two samples, 963 belong to 310 identifiable law firms. An additional 11 lawyers in the Beijing sample belong to four law firms the identities of which are uncertain. The multivariate regression analyses performed for this paper include information from lawyers in these 314 law firms. The law firms of six lawyers in the multi-city sample were not recorded.

part-time lawyers are significantly underrepresented simply because they are rarely present at their law firms. Because their primary place of work is their university or research institute, most part-time lawyers were "missing in action" when the survey was conducted. Although the survey respondents are not perfectly representative of all categories of lawyers, the information they provided about other lawyers in their firms reaffirms that the law firms from which they were sampled are representative of all law firms (see Table 2).

[TABLE 2 ABOUT HERE]

I test my hypotheses by analyzing information on the nature and extent of lawyers' difficulties and the means by which lawyers alleviate their difficulties. A methodological problem faced by anyone doing survey research in China is political desirability bias: the reluctance of informants to provide "politically incorrect" information, either about their own behavior and opinions or about the government (Rosen 1987; Manion 1994). I therefore phrased questions about the status of lawyers, administrative obstruction, and guanxi strategies not in terms of respondents' personal behavior or experiences but rather in terms of their evaluations of the general prevalence of various problems in the bar as a whole or among other lawyers they have observed. The pretense of distance from the politically undesirable behavior about which respondents reported clearly enhanced their comfort answering politically sensitive questions. An additional measure I took was to repeat the substance of the same question but to phrase it in the opposite direction. If a respondent was reluctant to report high levels of a negative situation, she had another opportunity to report low levels of a positive situation. It is evident from the information they provided that respondents were remarkably forthright in reporting the severity of their plight and that they read questions carefully and answered them with great diligence. These questions about the marginal status of lawyers, about support and cooperation from government agencies, about obstructionism and other difficulties in criminal defense work, and about the importance of guanxi in legal practice are used as my dependent variables.

The explanatory variables I marshal to test my hypotheses concerning variation in the severity of lawyers' plight include exposure to hotbeds of trouble (criminal defense specialization) as well as individual-level and organizational-level measures of political embeddedness: career history information (prior work in the gongjianfa), lawyer registration

status (specially-appointed, part-time, or full-time), sources of cases (cases assigned by courts), and law firm ownership (state-owned).

Findings

My analytical strategy is divided into two steps. First, I consider the key bivariate relationships that address my hypotheses. Second, I perform regression analyses to ensure all bivariate patterns are robust to controls.

Specially-appointed and part-time lawyers' ties to the state are reflected in the ownership of the firms to which they belong. While the overall distribution of all lawyers reported by all respondents was 70% full-time, 24% part-time, and 6% specially-appointed (Table 2), in state-owned firms the distribution was 56% full-time, 33% part-time, and 11% specially-appointed. Although 27% of all lawyers and 22% of all full-time lawyers belonged to state-owned firms, a disproportionately high 39% and 51% of all part-time lawyers and specially-appointed lawyers respectively belonged to state-owned firms. Specially-appointed lawyers were over 60% more likely than average to belong to state-owned law firms (.47 versus .29) and two-thirds as likely to belong to partnerships (.43 versus .66) (Table 3). The distribution of lawyers among firms of different ownership forms not only reflects the unequal distribution of links to the state, but also that specially-appointed lawyers and part-time lawyers were recruited into partnership firms, undoubtedly for the advantages they brought to firms lacking formal institutionalized support. Specially-appointed and part-time lawyers also remained in state-owned firms that had privatized and registered as partnerships.

[TABLE 3 ABOUT HERE]

Specially-appointed and part-time lawyers were embedded in the state bureaucracy not only by virtue of their membership in state-owned law firms, but also by virtue of their personal backgrounds. As we can see in Table 3, the proportion of specially-appointed lawyers who were CCP members (.81) is more than double the overall average (.39), and part-time lawyers were 60% more likely than full-time lawyers to be CCP members (.57 versus .36). Almost 90% of specially-appointed lawyers were either CCP members or Communist Youth League members. Career background data also reveal the political embeddedness of specially-appointed and part-

time lawyers. Specially-appointed lawyers were far more likely than lawyers in the other two registration categories to have worked either in the courts or in the procuracy. However, specially-appointed lawyers were not significantly more likely than average (.07 versus .05 respectively) to have emerged from the public security administration (the "gong" in the gongjianfa). Compared to only 29% of all lawyers, 72% of specially-appointed lawyers reported prior careers in the government, gongjianfa, or military.[8] Also consistent with expectations, part-time lawyers, compared to the average lawyer, were almost four times more likely to report prior work as teaching faculty in institutions of higher learning (.50 versus .14 respectively) and 40% as likely to spend more than 40 hours per week working as a lawyer (.18 versus .45 respectively).

Owing to their prior careers in the courts and the procuracy, specially-appointed lawyers are far more likely than average to specialize in criminal defense work. Another indication of membership in and ties to the state is housing benefits, the socialist privilege of obtaining a state housing allocation. The proportion of specially-appointed lawyers with state housing (.56) is almost double the overall average (.31), and part-time lawyers were over 30% more likely than full-time lawyers to have state housing (.39 versus .29). This distribution of state housing is all the more remarkable given the 1998 housing reform that forced government units and public organizations to privatize their housing stock.

Because most specially-appointed lawyers were retired officials from the gongjianfa, specially-appointed lawyers were almost 20 years older than average (54 years versus 35 years respectively). Whereas only 14% of all lawyers in the samples were over 45 years of age, 72% of all specially-appointed lawyers were in this age category. Even more striking, whereas only 3% of all lawyers in the samples were 60 years of age or older, half of all specially-appointed lawyers were in this age category. Because lawyering is not their first career, and although their average age is almost two decades older than the overall average, their average tenure as lawyers is only 1½ years longer than the overall average and they have only been licensed as lawyers for about a year longer than average.

Table 4 shows lawyers' overwhelmingly negative assessments of their status, of the level of support (or the lack therefore) from government agencies extended to them, of their troubles

[8] Of the 8 specially-appointed lawyers (out of all 29 who provided prior career information) who did not report a prior career in the government, judicial system, public security system, or military, one reported prior work experience in house counsel and in an unspecified law-related job, one had been a teacher at a local college, one had worked at a legal advisory office, and one had worked as a high-ranking official in a variety of factories.

in criminal defense, and of the importance of guanxi in legal practice. Consistent with my "aggrieved lawyers" hypothesis (Hypothesis 1), only 6% of respondents agreed that lawyers' rights were sufficiently strong (by answering either "4" or "5" to Item G). Respondents supplied similarly negative assessments of the amount of support they receive in the process of gathering evidence. Consistent with my hypothesis (H_{1a}), lawyers complained more intensely about weak support from government agencies than they did about weak support from civil organizations (*jituan*) and individuals. Whereas 32% said it was "rare" to receive the full cooperation of civil organizations and individuals, 42% said it was "rare" to receive the full cooperation of government offices (by answering "0" or "1" to Items E and F respectively). As much as they complain about the foregoing problems, they complain even more vehemently about their criminal defense woes (H_{1b}): 66% of the respondents indicated that it was "prevalent" and only 8% that it was "rare" for police to obstruct lawyers' criminal defense investigations (Item A). At the same time exactly half of the respondents said it was "prevalent" and 14% that it was rare for lawyers to face discrimination vis-à-vis procurators (Item B).

[TABLE 4 ABOUT HERE]

Consistent with my "guanxi imperative" hypothesis (Hypothesis 2), survey respondents also reported the remarkable prevalence (H_{2a}) and disheartening consequences (H_{2b}) of guanxi in the legal system. Exactly half indicated observing that it was "prevalent" and only 11% said it was "rare" for lawyers to devote "a lot of time fostering personal relationships with judges" (Item C). At the same time, 44% said it was "prevalent" and only 16% said it was "rare" for the quality of a lawyer's relations with a judge to affect case dispositions (Item D).

I combine these seven items in three ways both to render more parsimonious the analyses that follow and to ensure the robustness of the empirical patterns that emerge therefrom. First, I analyze the average score of all seven items. In order to make the responses comparable across items worded in both positive and negative directions, the mean score was calculated after reversing the order of the response categories of negatively worded questions. Thus, higher mean scores reflect more positive assessments of lawyers' institutional environment and lower scores reflect greater despair of their woes. Cronbach's alpha for all seven items is .65, meaning they can be meaningfully combined into an aggregate scale of vexation with their institutional

environment. This measure ranges from 0 to 5. Second, I analyze counts of negative responses and counts of positive responses. A positive response is defined as a response of "4" or "5" (or "prevalent") to a positively worded question (Items D, E, F, and G) or as a response of "0" or "1" (or "rare") to a negatively worded question (Items A, B, and C). Likewise, a negative response is defined as a response of "4" or "5" to a negatively worded question or as a response of "0" or "1" to a positively worded question. These measures range from 0 to 7. Third, I analyze the proportion of respondents who, in response to the seven questions, chose any positive response and who chose any negative response. These measures range from 0 to 1.

[TABLE 5 ABOUT HERE]

If lawyers' opinions about their institutional environment were equally distributed, the average score of all seven items would be 2.5, the midpoint on the 0-5 scale of responses. In fact the average score is almost a full point lower. After reversing the response categories of negatively worded items, the mean and median scores are 1.712 and 1.714 respectively, and the mode is 1.286. While not a single respondent chose the most positive response category ("5") for all seven items, eight respondents chose the most negative response category ("0") for all seven items. Likewise, whereas only one respondent chose one of the two most positive response categories for all seven items, 48 respondents (or 5%) chose one of the two most negative response categories for all seven items. Table 5 demonstrates the full extent of Chinese lawyers' acerbity. The average number of negative responses was over 4 times greater than the average number of positive responses (3.4 versus .8). Whereas 48% of respondents supplied at least one positive response, 92% of respondents supplied at least one negative response. Finally, whereas only 8% of respondents supplied at least three positive responses, 66% of respondents supplied at least three negative responses. Differences between the Beijing and multi-city samples are not statistically significant (see Appendix, Table A3).

To simplify the presentation of evidence, in the text that follows I report whether and how much these three aggregate measures differ between groups of lawyers with varying ties to the state bureaucracy. Full details on between-group differences for each of all seven items are reported in the Appendix.

Not only were lawyers on the whole remarkably acerbic, but the extent of their acerbity, as I hypothesized, varied according both to their exposure to risk and to the strength of their political ties to the state. In Table 6 we can see that, consistent with Hypothesis 3, lawyers specializing in criminal defense took greater umbrage about their institutional environment than did their non-specialist counterparts.

[TABLE 6 ABOUT HERE]

A lawyer's ability to succeed in her practice area was facilitated and constrained by her particular stock of social capital, which includes political connections. It is the general case that people everywhere choose their vocations, and specific fields of practice within their vocations, in no small part according to the social resources upon which they can draw for support. A lawyer I interviewed who specializes in tax work emerged from the Ministry of Taxation, where he worked for the sole purpose of accumulating the social capital necessary for his subsequent legal practice. He explained that many lawyers first pay their dues for a few years to a government bureau for precisely this reason (interview a24). Lawyers in my survey samples who formerly worked in banks derived a dramatically greater percentage of billings from "finance and banking" than lawyers without this background. Former government officials were dramatically more likely than lawyers without this background to cite "administrative law" and "government counsel" as their specializations. Almost half of all lawyers who reported real estate as their primary specialty also reported emerging from government bureaus including the State Land Management Bureau, the Construction Commission, and the Environmental Resources Bureau. However, the fusion of China's legal system to the rest of the state bureaucracy and the marginal status of Chinese lawyers valorize political connections above and beyond the general case.

In support of my "individual prophylaxis" hypothesis (Hypothesis 4), Table 7 shows that lawyers who reported prior careers in the court system (H_{4a}) expressed more positive assessments of their institutional environment. Because of the advantages they derive from their special backgrounds in the gongjianfa, specially-appointed lawyers, compared to their full-time counterparts, are far more sanguine and far less cynical about their institutional environment

(H_{4b}). As we can see in Table 8, specially-appointed lawyers were almost 75% more likely than full-time lawyers to supply at least one positive response (.78 versus .47).

[TABLE 7 ABOUT HERE]

[TABLE 8 ABOUT HERE]

Evidence in support of my "organizational prophylaxis" hypothesis (Hypothesis 5) is equally strong. Table 9 demonstrates that, compared to their counterparts in partnership firms, lawyers in state-owned firms average more positive responses and fewer negative responses (H_{5a}). At the same time, lawyers in state-owned firms are 30% more likely than their counterparts in partnership firms to supply at least one positive response (.58 versus .44 respectively). As we saw in Table 8, compared to their full-time counterparts, part-time lawyers, who as teaching and research faculty of universities and research institutes enjoy formal membership in the state bureaucracy, are far more sanguine and supply far fewer negative responses about their institutional environment (H_{5b}). Finally, Table 10 reveals that lawyers who are assigned cases from courts are significantly more positive and significantly less negative about the troubles afflicting the bar as a whole (H_{5c}).

[TABLE 9 ABOUT HERE]

[TABLE 10 ABOUT HERE]

I have completed the first step in my analytical strategy, the presentation of relevant bivariate relationships. The second step in my analytical strategy is to test whether these relationships hold up under the rigors of multivariate analysis. It is important to test whether membership in a state-owned firm, for example, explains either the effect of being a part-time lawyer or the effect of being a specially-appointed lawyer. Or perhaps the reverse is true, that being a part-time lawyer or a specially-appointed lawyer explains away the effect of being a member of a state-owned firm. Insofar as part-time lawyers *ipso facto* are less exposed to the problems about which lawyers complain, it is important to test whether the effect of being a part-

time lawyer disappears when controlling for the number of hours per week they work as lawyers. Similarly, it is important to test whether the effect of being a specially-appointed lawyer, who was likely to be considerably older than average, drops out when controlling for age.

Before presenting the results of the regression analysis I should first make three disclosures. First, in no multiple regression model was CCP membership or prior work in the public security administration statistically significant. Second, the patterns that emerged from the multiple regression models are remarkably consistent across Beijing and multi-city samples. For this reason it was unnecessary to calculate separate regression models for each sample or to test for regional or city interaction effects. Third, I took special methodological precautions to ensure that the regression results are conservative. In every regression model I control for city sample by including 24 dummy variables (with Beijing being the omitted reference group). Not surprisingly, insofar as assessments of lawyers' institutional environment exhibit some measure of regional variation, the inclusion of city control variables reduces the effects of the some of the variables of theoretical importance. An additional precaution I took to ensure my results are conservative is the use of Stata's commands for survey data that calculate design-based standard errors that also adjust for nonindependence within cities and within law firms. Descriptive characteristics of all variables included in the analyses are presented in the Appendix, Table A11.

Regression results are presented in Tables 11 and 12. With respect to my "aggrieved criminal defense lawyer" hypothesis (Hypothesis 3), specialization in criminal defense significantly increases the rate of supplying negative responses (Table 11, Model 8). However, this hypothesis is not supported either by the analysis of positive responses in Table 11 or by the analysis of average scores in Table 12.

[TABLE 11 ABOUT HERE]

With respect to my "individual prophylaxis" hypothesis (Hypothesis 4), prior work in a court (H_{4a}) significantly increased the number of positive responses to questions about lawyers' institutional environment. In Table 11, Model 2, among otherwise seemingly identical lawyers, those with this special background supplied positive responses at a rate 41% greater than those without this special background. However, Model 3 shows that this effect is explained away by other characteristics of lawyers' backgrounds and fields of practice. All else being equal, the rate

at which specially-appointed lawyers (H_{4b}) supplied positive responses was more than double the rate at which full-time lawyers supplied positive responses (Table 11, Model 4), and the rate at which they supplied negative responses was almost 20% less than the rate at which full-time lawyers supplied negative responses (Table 11, Model 8). In the regression analysis of mean scores, among otherwise seemingly identical lawyers, the average score of specially-appointed lawyers was half a point greater than the average score of full-time lawyers on the six-point scale (ranging from 0 to 5) (Table 12, Model 4).

With respect to my "organizational prophylaxis" hypothesis (Hypothesis 5), among lawyers with otherwise seemingly identical characteristics, the rate at which lawyers who belonged to state-owned firms supplied positive responses (H_{5a}) was 22% higher than the rate at which lawyers in partnerships supplied positive responses (Table 11, Model 4), and the rate at which they supplied negative responses was almost 10% lower than the rate at which lawyers in partnerships supplied negative responses (Table 11, Model 8). All else being equal, the effect of membership in a state-owned firm, compared to membership in a partnership firm, also increased the mean score (in a positive direction) by a small but statistically significant .13 points (Table 12, Model 4). The effect of being a part-time lawyer (H_{5b}) is stronger than the effect of being in a state-owned firm. All else being equal, the rate at which part-time lawyers supplied positive responses was almost double the rate at which full-time lawyers supplied positive responses (Table 11, Model 4), and the rate at which they supplied negative responses was almost 20% lower than the rate at which full-time lawyers supplied negative responses (Table 11, Model 8). In the regression analysis of mean scores, among otherwise seemingly identical lawyers, the average score of specially-appointed lawyers was .42 points greater than the average score of full-time lawyers on the six-point scale (ranging from 0 to 5) (Table 12, Model 4).

Finally, as hypothesized (H_{5c}), case assignments from court increased positive assessments and reduced negative assessments. Among otherwise seemingly identical lawyers, those who were assigned cases from court supplied positive responses at a rate 20% greater than those without this source of cases (Table 11, Model 4). Among lawyers with otherwise seemingly identical characteristics, lawyers with cases assigned by courts supplied negative responses at a rate more than 10% lower than the rate at which of lawyers without this source of cases supplied negative assessments (Table 11, Model 8). In the regression analysis of mean scores, on the six-point scale (ranging from 0 to 5), all else being equal, the average score of

specially-appointed lawyers was .20 points greater than the average score of lawyers who received no cases from courts (Table 12, Model 4). The foregoing results are replicated by logistics regression models of the choice of *any* positive response and of the choice of *any* negative response (Appendix, Table A12).

[TABLE 12 ABOUT HERE]

Simulations using hypothetical profiles of the characteristics of lawyers and their law firms offer an intuitive way to compare cumulative effects. After all, in the real world all else is not equal. For example, specially-appointed lawyers also tended to have emerged from the gongjianfa, and also tended to belong to state-owned firms. As a final demonstration of the effect of political embeddedness, I calculate predicted outcomes—predicted probabilities, or $\hat{p}$, from Table 11, Models 4 and 8, and predicted values, or $\hat{y}$, from Table 12, Model 4—for two hypothetical groups of lawyers. *Politically embedded lawyers* are defined as specially-appointed lawyers in state-owned law firms with prior work experience in the courts and with cases assigned by courts. *Politically disembedded lawyers* are defined as full-time lawyers in partnership law firms without prior work experience in the courts and with no cases assigned by courts.

Figures 5 and 6 contain the post-estimation results of the simulations. Figure 5A replicates the finding in Table 5 that lawyers are far more likely to supply negative responses than they to supply positive responses. However, Figures 5B and 5C reveal that lawyers' strongly negative assessments are an artifact of politically disembedded lawyers. Figure 5C shows that the rate at which strongly-connected lawyers supply negative responses is virtually identical to the rate at which they supply positive responses.

[FIGURE 5 ABOUT HERE]

Figure 6 shows that politically disembedded lawyers are almost 30 times more likely to supply three or more negative responses than they are to supply three or more positive responses (.715 versus .025). (They are seven times more likely to supply two or more negative responses than they are to supply two or more positive responses, and they are two times more likely to

supply at least one negative response than they are to supply at least one positive response.) Insofar as almost 40% of the respondents surveyed fit the characteristics of politically disembedded lawyers, to say that their acerbity is palpable is a vast understatement. Meanwhile, politically embedded lawyers' probabilities of supplying three or more negative responses and three or more positive responses are virtually identical (.390 versus .369). Politically disembedded lawyers are over 80% more likely than politically embedded lawyers to choose three or more negative responses (.715 versus .390 respectively). At the same time, politically embedded lawyers are 15 times more likely than politically disembedded lawyers to supply three or more positive responses (.369 versus .025). Finally, when all other variables are held constant at their means, politically embedded lawyers averaged almost one point higher on the six-point scale (ranging from 0 to 5) than did politically disembedded lawyers (2.4 versus 1.5 respectively).

[FIGURE 6 ABOUT HERE]

Conclusions and Implications

In this paper we have seen the enduring salience of the institutional legacy of socialist legality, the remarkable resilience of an institutional logic antithetical to the interests of lawyers. In response to the wide array of troubles they report, including obstructionism, harassment, threats, violence, and rent-seeking, lawyers have learned to cope by relying on formal and informal bridges to the state bureaucracy. Formal bridges include organizational ties through membership in law firms politically embedded in the state, through affiliations with public-sector universities and research institutes, and through connections to courts based on or strengthened by case assignments. Informal bridges include personal connections to old friends from prior careers in the judiciary.

My findings reflect a general case and a special case of the value of political embeddedness. It is the general case that, *ipso facto*, direct and indirect connections to government bureaucrats facilitate access to government bureaucracy. To paraphrase Jacob (1995:118), state cadres are gatekeepers to justice: they hold the keys that open and close the gates to the state bureaucracy. But the special case of China's institutionally undifferentiated character of law, the legal system's fusion to the state and to the CCP's political apparatus,

enhances their gatekeeping capacity and gives special advantages to bureaucratic insiders above and beyond the general case. While it is undoubtedly true that the institutionalization of judicial autonomy and the separation of powers would erode some of the political advantages I have documented in this paper, there is no necessary reason to believe China is on a track of teleological institutional convergence with liberal democratic countries. Indeed, my findings are consistent with existing research concluding that actors more deeply embedded in the state bureaucracy have less need to resort to guanxi practices (and thus report less of it) because they already have routinized, institutionalized access (Guthrie 1999:191; Guthrie 2002:53-4). Chinese lawyers appear to tell us at least as much about the institutional logics of socialism and their continuity as they do about the incipient institutional logics of capitalism and the rule of law. Lawyers reveal at least as much about institutional marginalization, patronage, formal institutional support, and administrative rules of access in the socialist state bureaucracy as they do about incipient capitalist and rule-of-law institutions.

But the story of Chinese lawyers is not only a story of institutional continuity. The unhooking of lawyers from the state reflects fundamental changes in institutional form consistent with neoinstitutionalist expectations of global isomorphic convergence. Specially-appointed lawyers, who best exemplify individual political embeddedness, have been purged from the bar, at least in name. To be sure, some former specially-appointed lawyers, by passing the judicial examination and obtaining lawyer licenses, remain in the bar under a different name. However, many have been forced out. Indeed, some specially-appointed lawyers have sued the Beijing Bureau of Justice (unsuccessfully) for the right to renew their licenses to practice as lawyers (Sun 2003; Yang 2003). Following the Ministry of Justice's circulation in 2003 of official directives on "cleaning up and consolidating" (*qingli zhengdun*) the bar, the population of part-time lawyers has been roughly halved, accelerating a more gradual decline in their numbers underway for a decade. Finally, amendments made in 2001 both to the Law on Judges and to the Law on Procurators include two provisions limiting the kinds of relational practices I have documented in this paper: a provision banning former judges and procurators from doing civil litigation or criminal defense work as a lawyer until two years after resigning or retiring and a

provision stipulating that judges and procurators are prohibited from handling cases represented by their spouses and children.[9]

However, these formal institutional changes obscure the deeper continuity of socialist institutional logics and the enduring importance of informal micro-level bridges to the state bureaucracy. Even following lawyers' unhooking from the state, the public-private divide remains of fundamental salience. So long as the official status of lawyers, and of the private sector more generally, remains poorly defined and weakly protected, access to the state will remain a highly prized and unequally distributed resource. The disappearance of specially-appointed lawyers and the decline of part-time lawyers as *formal categories* does not imply the diminishing significance of the *functions* of these defunct and soon-to-be-defunct formal categories. Likewise, the premium attached to informal ties to the legal system did not diminish simply because it is now forbidden to advertise them.

Political connections are not diminishing in significance; they are simply becoming more opaque. Political connections in the Chinese bar are now obscured by the labels "full-time lawyer" and "partnership firm" that make it easier "to see lawyers in the PRC as, in effect junior colleagues—cut from the same cloth as their American bretheren" (Alford 2002:189). The methodological implications of this conclusion include the need to develop more sensitive and creative measures of political embeddedness. We need to consider not only *current* position but also *former* position. We need to consider not only *current* ownership form but also *former* ownership form. It is likely that former state-owned law firms, even after they privatize, will continue to enjoy preferential access to and support from important public actors. A lawyer I interviewed in the year 2000 confirmed the enduring importance in the private bar of former public-sector membership:

> Behind some successful law firm partners are their "bosses," the ones who in actuality take the firm's profits. They aren't even lawyers, but people who wield guanxi resources. But on their business cards they print "high-level lawyer" because no one ever bothers to verify....What is this thing called "high-level

[9] Article 17 in the 2001 revised Law on Judges and Article 20 in the 2001 revised Law on Procurators. These amendments replicate a pattern from the Republican period. The common path of mobility from the bench to the bar "was obviously open to abuse, and this avenue was cut off or delayed for many when the Ministry of Justice issued an order barring judges or other court officials (including procurators and court clerks) from entering law practice in their former jurisdiction for three years after their resignation or retirement" (Conner 1994:234-5).

> lawyer"? Sometimes they are former bureau chiefs from the Bureau of Justice, or former deputy bureau chiefs, and after they retire they give themselves the "high-level lawyer" title. (interview a22)

But this quotation also points to another implication of lawyers' unhooking from the state, and of formal institutional changes more generally: the need to look for micro-level relational strategies outside the population of officially registered lawyers. If lawyers with lifelines to the state bureaucracy get squeezed out of the bar we should expect not the mitigation but rather the aggravation of the plight of lawyers. Recall that the fear of lawyers in the 1980s was that severing their formal links to the state would heighten their institutional marginalization and intensify their professional woes. Instead of purging politically embedded lawyers from the practice of law, recent reforms may have done more to push them into the realm of unauthorized legal practice. As they "clean up" the official, primary market for legal services, recent reforms may also be fueling the secondary, shadow market for legal services containing "black lawyers" (*hei lüshi*), "fake lawyers" (*jia lüshi*), and "underground lawyers" (*dixia lüshi*). By serving to expand the ranks of their unauthorized, unregulated competition, lawyers' unhooking from the state may be more of a shot in the foot than a shot in the arm with respect to efforts to advance their professional rights and status. Other post-socialist contexts in which official enforcement institutions are weak and unresponsive to people with legal needs and to the practitioners who staff them have witnessed the rise of private enforcement institutions containing and utilizing collusive ties to the state bureaucracy (e.g., Varese 2001).

It is perversely paradoxical that adherence to neoliberal models of privatization and to standardized global rule-of-law models may have done more to dash than to help realize lawyers' political and professional aspirations (compare to Halliday and Karpik [1997]). The lawyers with the fewest troubles and the greatest capacity to navigate their hostile institutional terrain are precisely the lawyers most folded into the state and the party. Insofar as they benefit from their privileged ties to bureaucratic insiders, the lawyers most adept at avoiding the sorts of troubles I have documented in this paper are precisely the ones with the greatest vested interest in the institutional status quo. Only by disaggregating institutions into their regulative, normative, and cognitive pillars (Scott 2001) can we reconcile the seemingly contradictory trends of institutional change and institutional continuity. By recognizing institutional change at the level of form and structure and institutional continuity at the level of norms, meaning, and practices, we can

recognize the concrete conditions under which legal institutions that, at one level, appear to conform to standardized global models function, at another level, as “anti-politics machines” (Ferguson 1994; Jones 1999) by reproducing local institutional logics incongruous with the institutional logic of political liberalism.

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Tables

Table 1. Law Firm Ownership, Percentage Non-State, Official Government Data and Survey Sample Data, China, 1999-2001

	Beijing		China	
	Official Sources	Beijing Sample	Official Sources	Multi-City Sample
1999	81%	—	43%	—
2000	83%	84%	57%	65%
2001	100%	—	81%	—

NOTE: Beijing N=131 firms; multi-city sample N=169 firms

SOURCE: Official sources for Beijing: 1999 data come from ZSXN (2000:63); 2000 data come from BBJ (2001b); and 2001 data come from BSB (2002) and a September 2001 interview with Cui Yuqi, director of the Lawyer Administration Section of the BBJ. Official sources for China: 1999 data come from Jia (2000); 2000 data come from Ma (2001); and 2001 data come from Jia (2003:168). Survey sample data: author's survey data.

Table 2. Distribution of Lawyer Positions, Official Government Data and Survey Sample Data, China, 2000

	Beijing			China		
		Beijing Sample			Multi-City Sample	
Registration Status	Official Sources	Information about Firms	Information about Respondents	Official Sources	Information about Firms	Information about Respondents
full-time	72%	71%	88%	74%	69%	91%
part-time	25%	24%	8%	19%	24%	6%
specially-appointed	4%	5%	4%	7%	7%	4%
Total	101%	100%	100%	100%	100%	101%
N (Lawyers)	4,414	2,205	401	84,982	2,283	484
N (Firms)	345	131	135	9,381	180	179

NOTE: Some totals do not equal 100 percent due to rounding error. The sum of these three categories does not equal the total population of lawyers: the total lawyer population for China was 117,260 for China and 5,495 for Beijing (see Figures 3 and 4). "Information about Firms" is information supplied by respondents about *all* the lawyers in their firms. When multiple respondents within the same firm reported contradictory information, the modal response was taken as the "true" number of lawyers of a given category within the firm. Thus, the 462 respondents in the Beijing sample reported the presence of 2,205 full-time, part-time, and specially-appointed lawyers in their firms.

SOURCE: Official sources for Beijing: BSB (2001). Official sources for China: Gu (2000:4). Survey sample data: author's survey data.

Table 3. Background Characteristics of Lawyers by Registration Status, 25 Cities, China, 2000

	Total	Full-Time	Part-Time	Specially-Appointed	Statistical Significance of Differences
Political Membership					
CCP membership	39%	36%	57%	81%	χ^2=33.448 (d.f.=2), p<.001
CCP or Youth League	55%	52%	71%	87%	χ^2=20.634 (d.f.=2), p<.001
(N)	(855)	(766)	(58)	(31)	
Prior Work Experience					
in government bureaucracy (excluding courts, procuracy, and public security)	13%	13%	2%	35%	χ^2=16.856 (d.f.=2), p<.001
in court	10%	9%	6%	45%	χ^2=40.612 (d.f.=2), p<.001
in procuracy	4%	4%	2%	17%	χ^2=14.090 (d.f.=2), p<.001
in any of the above, the police, or the military	29%	28%	12%	72%	χ^2=34.136 (d.f.=2), p<.001
as teacher	14%	12%	50%	3%	χ^2=60.516 (d.f.=2), p<.001
(N)	(776)	(697)	(50)	(29)	
Time Devoted to Work as a Lawyer					
more than 40 hours per week	45%	48%	18%	38%	χ^2=19.246 (d.f.=2), p<.001
(N)	(833)	(748)	(56)	(29)	
Specialization in Criminal Defense					
strong (≥25% of total billings)	6%	5%	3%	25%	χ^2=22.173 (d.f.=2), p<.001
moderate (≥10% of total billings)	19%	19%	12%	41%	χ^2=11.774 (d.f.=2), p<.003
(N)	(881)	(790)	(59)	(32)	
Housing					
possess state housing	31%	29%	39%	56%	χ^2=9.486 (d.f.=2), p<.001
(N)	(747)	(673)	(49)	(25)	
Age					full-time versus specially-appointed: t=-12.644,
mean	35	35	34	54	(d.f.=813), p<.001 (two-tailed)
21-30	37%	38%	39%	6%	
31-45	49%	50%	51%	22%	
46+	14%	12%	10%	72%	
total	100%	100%	100%	100%	χ^2=91.493 (d.f.=4), p<.001
(N)	(874)	(783)	(59)	(32)	
Years of Practice					
years working as a lawyer	7.0	7.0	6.5	8.5	full-time versus specially-appointed: t=-1.621,
(N)	(869)	(779)	(58)	(32)	(d.f.=809), p<.105 (two-tailed)
years licensed as lawyer	5.5	5.5	5.4	6.4	full-time versus specially-appointed: t=-1.032,
(N)	(873)	(784)	(58)	(31)	(d.f.=813), p<.302 (two-tailed)
Firm Ownership					
state-owned	29%	28%	33%	47%	χ^2=10.569 (d.f.=4), p<.032
partnership	66%	68%	58%	43%	
other	5%	5%	9%	10%	
total	100%	101%	100%	100%	
(N)	(843)	(756)	(57)	(30)	

NOTE: Prior work experience categories are not mutually exclusive; some lawyers report prior work experience in multiple categories. "Other" firm ownership forms include cooperative and group (*jituan*). Some totals do not equal 100 percent due to rounding error.

SOURCE: Author's survey data.

Table 4. Distributions of Lawyers' Evaluations of Their Institutional Environment, 25 Cities, China, 2000

		very rare					very prev-alent		
		0	1	2	3	4	5	Total	(N)
A.	"In criminal cases, public security organs always find ways to obstruct lawyers' investigation work."	1%	7%	11%	15%	23%	43%	100%	(962)
B.	"In criminal cases, the prosecution has an advantage over the defense; there is no equality to speak of between the prosecution and the defense."	4%	10%	17%	19%	17%	33%	100%	(964)
C.	"Lawyers I know about spend a lot of time fostering personal relationships [*gao hao geren guanxi*] with judges."	3%	8%	19%	20%	25%	25%	100%	(958)
D.	"The quality of a relationship [*geren guanxi*] between a lawyer and a judge will not influence how a court case is tried."	20%	24%	22%	17%	10%	7%	100%	(962)
E.	"In general, in the process of gather evidence lawyers get the full cooperation of related individuals and civil organizations."	8%	24%	29%	24%	12%	4%	101%	(961)
F.	"In general, in the process of gathering evidence lawyers get the full cooperation of the related government offices."	16%	26%	25%	20%	10%	3%	100%	(964)
G.	"Currently the laws concerning the rights of lawyers are sufficient to guarantee that lawyers' functions are brought into full play."	26%	35%	21%	12%	4%	2%	100%	(964)

NOTE: Listed in descending order of "very prevalent." Some totals do not equal 100 percent due to rounding error.
SOURCE: Author's survey data.

Table 5. Frequency Distributions and Means of Lawyers' Positive and Negative Assessments of Their Institutional Environment, 25 Cities, China, 2000

# responses	positive responses	negative responses
0	51.9%	8.0%
1	26.9%	10.5%
2	12.9%	15.4%
3	5.1%	17.1%
4	1.6%	18.1%
5	1.1%	15.6%
6	0.3%	10.5%
7	0.1%	4.9%
Total	99.9%	100.1%
mean # responses	.829	3.400
(N)	(975)	(975)

NOTE: Totals do not equal 100.0 percent due to rounding error. Difference of means t-test, t=-31.413 (d.f.=974), p<.001.
SOURCE: Author's survey data.

Table 6. Lawyers' Evaluations of Their Institutional Environment by Specialization in Criminal Defense, 25 Cities, China, 2000

	Total	strong specialization in criminal defense: no	yes	Statistical Significance of Differences
Positive Response to Any of the 7 Items	48%	48%	51%	χ^2=.176 (d.f.=1), p<.674
Negative Response to Any of the 7 Items	92%	92%	98%	χ^2=2.898 (d.f.=1), p<.090
Mean Number of Positive Responses	.83	.82	1.02	t=-1.267, (d.f.=966), p<.206 (two-tailed)
Mean Number of Negative Responses	3.40	3.38	3.85	t=-1.754, (d.f.=966), p<.080 (two-tailed)
Mean Score (Positive Scale)†	1.71	1.72	1.61	t=.984, (d.f.=966), p<.325 (two-tailed)
N	968	915	53	

NOTE: † In order to make the responses comparable across items worded in both positive and negative directions, the mean score was calculated after reversing the order of the response categories of negatively worded questions. That is, the response categories of Items A, B, and C in Table 1 were recoded as follows: 5=0, 4=1, 3=2, 2=3, 1=4, and 0=5. Thus, a higher score means a more positive assessment of lawyers' institutional environment.

Table 7. Lawyers' Evaluations of Their Institutional Environment by Prior Work Experience in the Court System, 25 Cities, China, 2000

	Total	prior work in court: no	yes	Statistical Significance of Differences
Positive Response to Any of the 7 Items	46%	45%	54%	χ^2=2.587 (d.f.=1), p<.108
Negative Response to Any of the 7 Items	93%	93%	90%	χ^2=1.034 (d.f.=1), p<.309
Mean Number of Positive Responses	.79	.76	1.08	t=-2.554, (d.f.=883), p<.011 (two-tailed)
Mean Number of Negative Responses	3.46	3.49	3.22	t=1.240, (d.f.=883), p<.216 (two-tailed)
Mean Score (Positive Scale)†	1.68	1.66	1.82	t=-1.825, (d.f.=883), p<.068 (two-tailed)
N	835	752	83	

NOTE: † See notes on Table 6.

Table 8. Lawyers' Evaluations of Their Institutional Environment by Registration Status Category, 25 Cities, China, 2000

	Total	Full-Time	Part-Time	Specially-Appointed	Statistical Significance of Differences
Positive Response to Any of the 7 Items	47%	45%	62%	78%	χ^2=19.041 (d.f.=2), p<.001
Negative Response to Any of the 7 Items	92%	93%	83%	84%	χ^2=9.082 (d.f.=2), p<.011
Mean Number of Positive Responses	.82	.74	1.38	1.75	full-time versus part-time: t=-4.448, (d.f.=847), p<.001 (two-tailed) full-time versus specially-appointed: t=-5.419, (d.f.=819), p<.001 (two-tailed)
Mean Number of Negative Responses	3.42	3.51	2.67	2.81	full-time versus part-time: t=3.308, (d.f.=847), p<.001 (two-tailed) full-time versus specially-appointed: t=2.030, (d.f.=819), p<.043 (two-tailed)
Mean Score (Positive Scale)†	1.70	1.65	2.13	2.18	full-time versus part-time: t=-4.821, (d.f.=847), p<.001 (two-tailed) full-time versus specially-appointed: t=-3.968, (d.f.=819), p<.001 (two-tailed)
N	881	789	60	32	

NOTE: † See notes on Table 6.

Table 9. Lawyers' Evaluations of Their Institutional Environment by Firm Ownership, 25 Cities, China, 2000

	Total	State-Owned Firm	Partnership Firm	Statistical Significance of Differences
Positive Response to Any of the 7 Items	48%	58%	44%	χ^2=13.003 (d.f.=1), p<.001
Negative Response to Any of the 7 Items	92%	90%	92%	χ^2=1.879 (d.f.=1), p<.170
Mean Number of Positive Responses	.84	1.03	.76	t=3.237, (d.f.=884), p<.001 (two-tailed)
Mean Number of Negative Responses	3.39	3.10	3.51	t=-2.919, (d.f.=884), p<.004 (two-tailed)
Mean Score (Positive Scale)†	1.72	1.86	1.66	t=3.563, (d.f.=884), p<.001 (two-tailed)
N	886	258	628	

NOTE: Other ownership categories excluded. † See notes on Table 6.

Table 10. Lawyers' Evaluations of Their Institutional Environment by Firm Ownership, 25 Cities, China, 2000

		any cases assigned by courts		
	Total	no	yes	Statistical Significance of Differences
Positive Response to Any of the 7 Items	48%	46%	52%	χ^2=2.683 (d.f.=1), p<.101
Negative Response to Any of the 7 Items	92%	92%	92%	χ^2=.049 (d.f.=1), p<.825
Mean Number of Positive Responses	.83	.77	.95	t=-2.365, (d.f.=959), p<.018 (two-tailed)
Mean Number of Negative Responses	3.39	3.55	3.08	t=3.636, (d.f.=959), p<.001 (two-tailed)
Mean Score (Positive Scale)†	1.72	1.64	1.87	t=-4.465, (d.f.=959), p<.001 (two-tailed)
N	961	627	334	

NOTE: † See notes on Table 6.

Table 11. Correlates of Lawyers' Evaluations of Their Institutional Environment, Incidence Rate Ratios from Negative Binomial Regression Models of Responses to Seven Questions about Lawyers' Institutional Environment, Chinese Lawyers, 25 Cities, 2000

	NUMBER OF POSITIVE RESPONSES				NUMBER OF NEGATIVE RESPONSES			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
RELATIONSHIP WITH STATE								
FIRM OWNERSHIP								
belong to state-owned firm (yes=1)	1.293*	1.253*	1.246#	1.224#	.907#	.912#	.903#	.909#
	(.154)	(.144)	(.156)	(.150)	(.051)	(.051)	(.051)	(.050)
belong to firm of other ownership (yes=1)	1.002	.999	.932	.905	.810***	.811***	.818***	.817***
	(.211)	(.228)	(.220)	(.208)	(.051)	(.051)	(.049)	(.051)
belong to partnership firm (reference group)								
ANY CASES/CLIENTS ASSIGNED BY COURT (YES=1)	1.218*	1.196*	1.210*	1.197*	.891**	.894**	.893**	.893**
	(.105)	(.106)	(.104)	(.104)	(.039)	(.039)	(.038)	(.038)
PRIOR WORK IN COURT (YES=1)	—	1.405*	1.252	1.199	—	.937	.956	.956
	—	(.224)	(.195)	(.183)	—	(.067)	(.073)	(.070)
PRIOR WORK IN PROCURACY (YES=1)	—	1.175	1.073	1.076	—	1.090	1.093	1.074
	—	(.352)	(.310)	(.297)	—	(.123)	(.126)	(.119)
LAWYER REGISTRATION STATUS								
part-time lawyer (yes=1)	—	—	1.955**	1.853**	—	—	.793*	.806#
	—	—	(.475)	(.428)	—	—	(.093)	(.092)
specially-appointed lawyer (yes=1)	—	—	2.272***	2.039***	—	—	.770*	.775#
	—	—	(.378)	(.368)	—	—	(.098)	(.110)
interning lawyer (yes=1)	—	—	1.173	1.151	—	—	.928	.937
	—	—	(.156)	(.154)	—	—	(.055)	(.058)
full-time lawyer (reference group)								
% BILLINGS FROM BUSINESS FIELDS OF PRACTICE ÷ 100	—	—	1.593*	1.624*	—	—	.820*	.823*
	—	—	(.384)	(.377)	—	—	(.078)	(.076)
STRONG SPECIALIZATION IN CRIMINAL DEFENSE (YES=1)	—	—	1.145	1.133	—	—	1.138*	1.137*
	—	—	(.198)	(.195)	—	—	(.066)	(.063)
CONTROL VARIABLES								
FEMALE (YES=1)	—	—	—	1.099	—	—	—	.911#
	—	—	—	(.106)	—	—	—	(.046)
AGE								
age: 21-30 (yes=1)	—	—	—	.748*	—	—	—	1.053
	—	—	—	(.111)	—	—	—	(.071)
age: 31-45 (yes=1)	—	—	—	.811	—	—	—	1.038
	—	—	—	(.109)	—	—	—	(.066)
age: 46+ (reference group)								

Table 11, continued.

	NUMBER OF POSITIVE RESPONSES				NUMBER OF NEGATIVE RESPONSES			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
WEEKLY WORK HOURS								
weekly work time: 40 hours (yes=1)	—	—	—	1.167	—	—	—	.893#
	—	—	—	(.150)	—	—	—	(.055)
weekly work time: 41+ hours (yes=1)	—	—	—	.903	—	—	—	.984
	—	—	—	(.119)	—	—	—	(.046)
weekly work time: less than 40 hours (reference group)								
constant	.732**	.656***	.459***	.547**	3.607***	3.694***	4.190***	4.337***
	(.082)	(.069)	(.073)	(.109)	(.123)	(.124)	(.243)	(.363)
dispersion parameter	.575**	.541**	.452***	.417***	.000***	.000***	.000***	.000***
	(.106)	(.104)	(.081)	(.079)	(.000)	(.000)	(.000)	(.000)
F	5.47***	5.93***	4.02***	3.38***	3.87***	3.82***	3.41***	2.99***
degrees of freedom for design-based F-test	29, 261	32, 258	38, 252	46, 244	29, 261	32, 258	38, 252	46, 244

NOTE: N=970 lawyers in 314 law firms in 25 cities. The "number of positive responses" is calculated as sum of responses "0" or "1" to Questions A, B, and C and of responses "4" or "5" to Questions D, E, F, and G in Table 5. The "number of negative responses" is calculated as sum of responses "4" or "5" to Questions A, B, and C and of responses "0" or "1" to Questions D, E, F, and G in Table 5. Standard errors (in parentheses) were adjusted for survey design effects and for nonindependence between observations clustered within law firms (treated as primary sampling units) and within cities (treated as strata). Additional control variables included but not presented are the following dummy variables: each of the 25 city samples, missing information on firm ownership, missing information on case assignment/client matching, missing information on fields of practice, missing information on gender, missing information on age, and missing information on weekly hours of work time. Incidence rate ratios are interpreted as proportionate change in the rate of positive or negative assessments for each one-unit change in the independent variable. An incidence rate ratio of 1.000 means the rate of supplying positive or negative assessments neither increases nor decreases. An incidence rate ratio of 1.500 means the rate increases by 50% (i.e., a factor of 1.5). An incidence rate ratio of 2.000 means the rate doubles. And an incidence rate ratio of .500 means the rate halves.

p≤.10 * p≤.05 ** p≤.01 *** p≤.001 (two-tailed test)

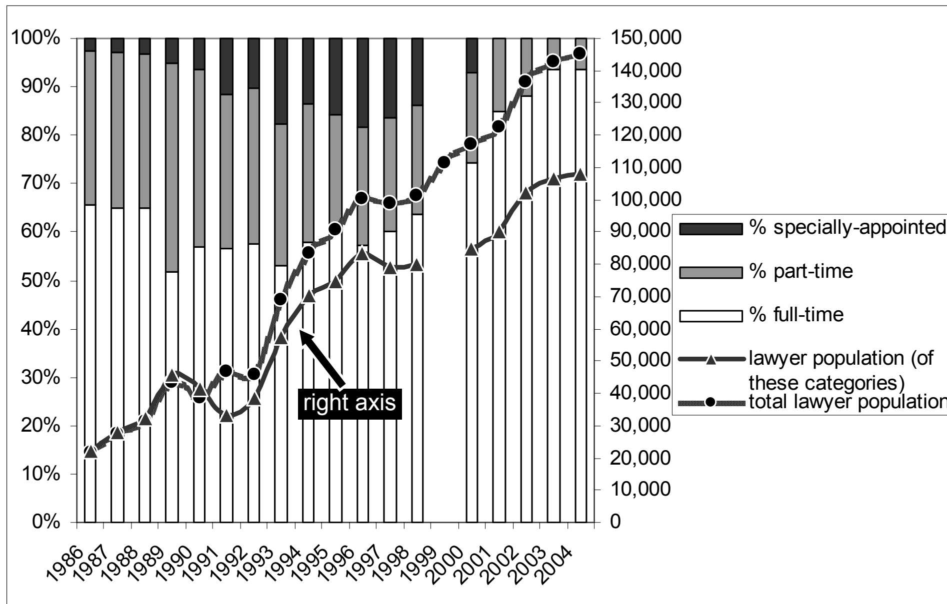
Table 12. Correlates of Positive Evaluations of Lawyers' Institutional Environment, Unstandardized Coefficients from Linear Regression Models of Mean Score of Responses to Seven Questions about Lawyers' Institutional Environment, Chinese Lawyers, 25 Cities, 2000

	(1)	(2)	(3)	(4)
RELATIONSHIP WITH STATE				
FIRM OWNERSHIP				
belong to state-owned firm (yes=1)	.158*	.148*	.144*	.131*
	(.073)	(.070)	(.071)	(.068)
belong to firm of other ownership (yes=1)	.146#	.140#	.113	.113
	(.085)	(.085)	(.088)	(.088)
belong to partnership firm (reference group)				
ANY CASES/CLIENTS ASSIGNED BY COURT (YES=1)	.205***	.198***	.200***	.198***
	(.053)	(.053)	(.052)	(.051)
PRIOR WORK IN COURT (YES=1)	—	.140	.089	.084
	—	(.109)	(.109)	(.104)
PRIOR WORK IN PROCURACY (YES=1)	—	-.075	-.098	-.078
	—	(.184)	(.187)	(.178)
LAWYER REGISTRATION STATUS				
part-time lawyer (yes=1)	—	—	.444**	.421**
	—	—	(.159)	(.155)
specially-appointed lawyer (yes=1)	—	—	.542***	.503**
	—	—	(.152)	(.166)
interning lawyer (yes=1)	—	—	.128	.118
	—	—	(.084)	(.088)
full-time lawyer (reference group)				
% BILLINGS FROM BUSINESS FIELDS OF PRACTICE ÷ 100	—	—	.217#	.212#
	—	—	(.127)	(.121)
STRONG SPECIALIZATION IN CRIMINAL DEFENSE (YES=1)	—	—	-.147	-.146
	—	—	(.102)	(.099)
CONTROL VARIABLES				
FEMALE (YES=1)	—	—	—	.128*
	—	—	—	(.061)
AGE				
age: 21-30 (yes=1)	—	—	—	-.139
	—	—	—	(.092)
age: 31-45 (yes=1)	—	—	—	-.094
	—	—	—	(.086)
age: 46+ (reference group)				
WEEKLY WORK HOURS				
weekly work time: 40 hours (yes=1)	—	—	—	.144#
	—	—	—	(.079)
weekly work time: 41+ hours (yes=1)	—	—	—	.013
	—	—	—	(.067)
weekly work time: less than 40 hours (reference group)				
Constant	1.615***	1.566***	1.405***	1.413***
	(.267)	(.232)	(.332)	(.466)
F	4.72***	4.99***	3.88***	3.46***
degrees of freedom for design-based F-test	29, 261	32, 258	38, 252	46, 244
R^2	.072	.087	.122	.136

NOTE: N=970 lawyers in 314 law firms in 25 cities. On the construction of the dependent variable (the mean score of seven items), see notes on Table 6. On additional control variables included but not presented, and on the calculation of standard errors (in parentheses), see notes on Table 11.
p≤.10 * p≤.05 ** p≤.01 *** p≤.001 (two-tailed test)

Figures

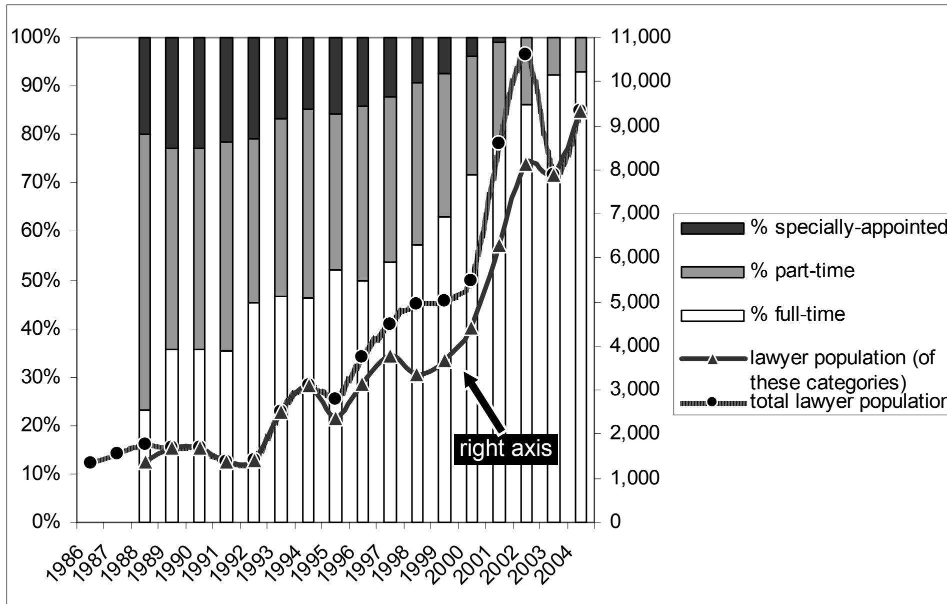
Figure 1. Population of Registration Status Categories of Lawyers, China, 1986-2003



NOTE: For the 18 years for which information on full-time lawyers is available, percent full-time and total lawyer population are correlated at R=.73 (p<.001). The specially-appointed lawyer category was not reported for 1999. The discrepancy between the total lawyer population and the sum of these three categories of lawyers cannot be reconciled in official sources. (In contrast to official data on Beijing, there is no "other" category for the national data.)

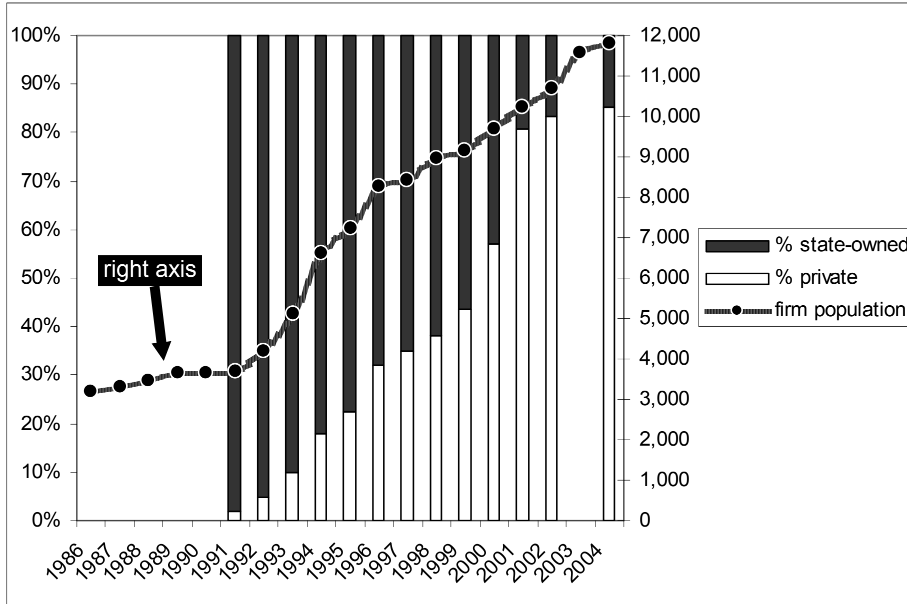
SOURCE: ZFN (various years), Jia (2000), Ma (2001), Gu (2000:4), Jia (2003:168), and SSB (various years).

Figure 2. Population of Registration Status Categories of Lawyers, Beijing, 1988-2004



NOTE: For the 17 years for which information on full-time lawyers is available, percent full-time and total lawyer population are correlated at R=.94 (p<.001). Between 1995 and 2002 the discrepancy between the total lawyer population and the sum of these three categories of lawyers are accounted for by an "other" category that presumably includes interning lawyers. Such an "other" category is not reported for national data.
SOURCE: BBJ (2001a:105-6), Cui et al. (1999), BBJ (2001b), BSB (various years), and Jia (2003:176-7).

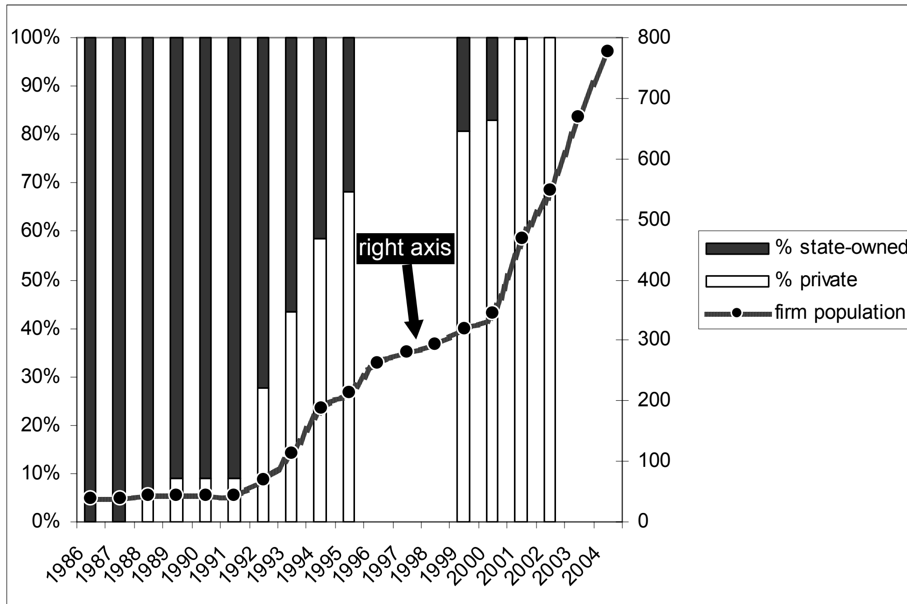
Figure 3. Population and Ownership of Law Firms, China, 1986-2003



NOTE: For the 13 years for which ownership data are available, percentage private and law firm population are correlated at R=.94 ($p<.001$).

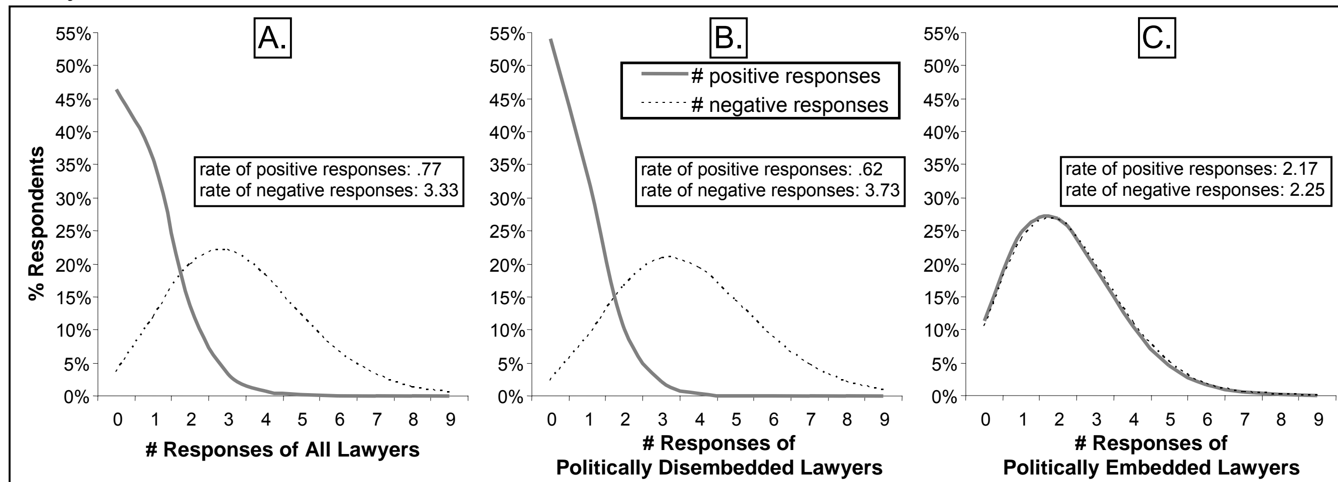
SOURCE: ZFN (various years), Jia (2000), Ma (2001), Jia (2003:168), SSB (various years), and Liu (2005).

Figure 4. Population and Ownership of Law Firms, Beijing, 1986-2004



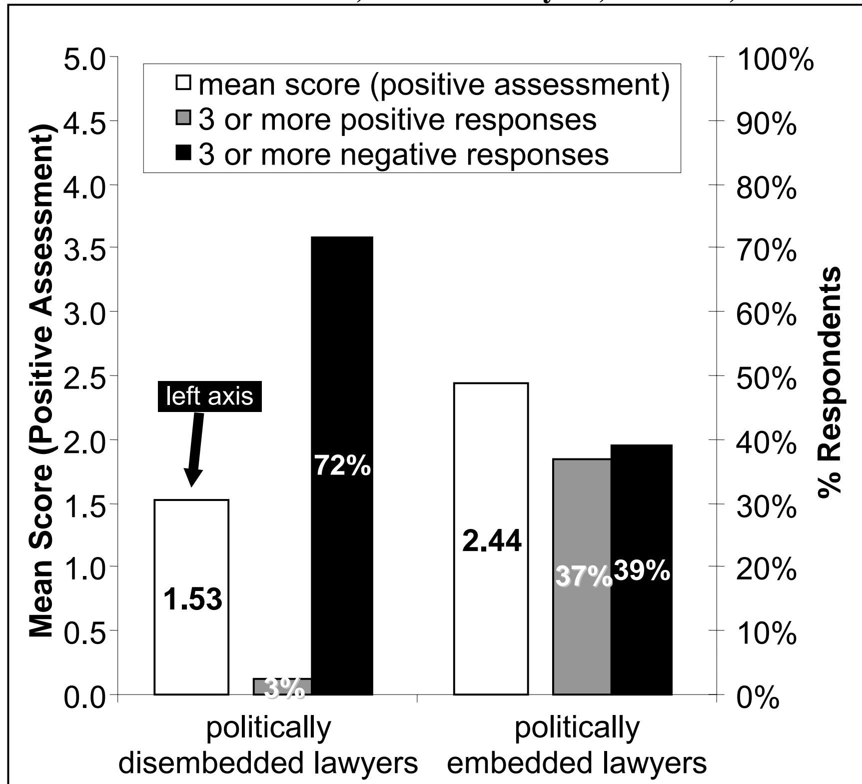
NOTE: Ownership data have not been reported since 2002, presumably because there are no more state-owned law firms in Beijing (as there was only 1 state-owned firm in 2001 and 0 state-owned firms in 2002). For the 14 years for which ownership data are available, percent private and law firm population are correlated at R=.95 (p<.001). Ownership data missing for 1986-89 and 1996-98.
SOURCE: 1986-95 data from BBJ (2001a:105-6) and Cui et al. (1999); 1996-2004 data from ZSXN (2000:63), BBJ (2001b), BSB (various years), Jia (2003:195-98), and a September 2001 interview with Cui Yuqi, director of the Lawyer Administration Section of the BBJ.

Figure 5. Post-Estimation Predicted Counts of Positive and Negative Responses, Calculated from Regression Models of Responses to Seven Questions about Lawyers' Institutional Environment, Chinese Lawyers, 25 Cities, 2000



NOTE: Predicted probabilities of positive responses calculated from Table 11, Model 4. Predicted probabilities of negative responses calculated from Table 11, Model 8. "Politically disembedded lawyers" are defined as full-time lawyers without prior work experience in the courts, with no cases assigned by courts, and working in partnership law firms. "Politically embedded lawyers" are defined as specially-appointed lawyers with prior work experience in the courts, with cases assigned by courts, and working in state-owned law firms. For both sets of calculations (Figures 5B and 5C), part-time lawyer, interning lawyer, and other law firm ownership were set to "0" and all remaining variables were set to sample means presented in Appendix, Table A11. For the predicted numbers of responses of all lawyers (Figure 5A), all variables were set to sample means. For details on post-estimation techniques, see Long and Freese (2006).

Figure 6. Post-Estimation Predicted Outcomes from Regression Models of Responses to Seven Questions about Lawyers' Institutional Environment, Chinese Lawyers, 25 Cities, 2000



NOTE: Predicted mean scores calculated from Table 12, Model 4. See notes on Figure 5.