

# Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism<sup>1</sup>

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This article uses the case of Chinese lawyers, their professional troubles, and their coping strategies to build on and develop the concept of political embeddedness. Data from a first-of-its-kind 25-city survey suggest that political embeddedness, defined broadly as bureaucratic, instrumental, or affective ties to the state and its actors, helps Chinese lawyers survive their everyday difficulties, such as routine administrative interference, official rent seeking, and police harassment and intimidation. The article draws the ironic conclusion that legal practice in China reveals at least as much about the enduring salience of socialist institutions as it does about incipient capitalist and “rule of law” institutions. Lawyers’ dependence on state actors both inside and outside the judicial system preserves the value of political connections inside the very institutions that some sociologists have argued are responsible for obviating the need for such *guanxi*.

Legal practice for many Chinese lawyers is fraught with difficulties and dangers. The challenges they routinely face include various forms of obstruction, harassment, 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

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ing 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 article 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.

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 macrolevel institutional barriers stymieing their work by building microlevel 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. 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 must be conceptualized more generally as *political embeddedness*.

In a little over a 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 they lost their formal state-sector membership, lawyers’ individual-level *guanxi* helped fill the void left in the wake of retreating organizational-level support. As they unhooked from the state at a macro level, lawyers found ways to stay hooked and to rehook by mobilizing microlevel political connections. Insofar as legal reform is commonly theorized as

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eroding the value of ties to political officeholders, lawyers' mobilization of political connections is a theoretically important, albeit ironic, strategy for navigating their hostile institutional terrain.

#### THEORETICAL ISSUES AND DEBATES: DECLINE OR PERSISTENCE OF GUANXI?

Formal laws and regulations are at the center of the new institutional economics (see Carruthers [2006] for a review). 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 in the postsocialist context 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 in postsocialist market transitions (Nee 1989, 1991, 1992, 1996; Nee and Matthews 1996; Nee and Cao 1999; Cao and Nee 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, p. 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" (original emphasis). (For similar statements, see Guthrie [1999, pp. 20, 177, 178, 185, 196; 2002, p. 52].)

Theoretical predictions of guanxi's decline are problematized 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. By overcoming these three conceptual limitations, this article 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).

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 article builds on 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. Ritualistic and ceremonial conformity to standardized models belies and obscures 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 often reveals 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, p. 179; Shi 1997, p. 69; Gold et al. 2002; 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*.

Political embeddedness here differs from earlier conceptualizations. Political embeddedness in earlier research refers in general to the *political* forces and in particular to the *legal* constraints that shape economic institutions (Zukin and DiMaggio 1990; Fligstein 1990), and thus, to some measure, by privileging law as coercive constraints over law as “legal rational myths,” it fits the characteristics of “naive legal formalism” (Suchman and Edelman 1996). In this article political embeddedness refers to ongoing structural relations to the state and its actors—relations that are both formal and informal, and that are bureaucratic, instrumental, and affective. Political embeddedness, as I conceptualize it, encompasses subspecies of embeddedness belonging to the larger species of “relational embeddedness” (ongoing direct, dyadic relations with state actors), “structural embeddedness” (ongoing indirect, triadic relations with state actors), and “positional embeddedness” (ongoing organizational relations with state organizations) (Granovetter 1985, 1992; Gulati and Gargiulo 1999).

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 consistent with 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 neo-institutionalist expectations of global convergence, of the 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, p. 76), or of the rise of a “rational-legal system at the state level” (Guthrie 1999, p. 183), is to succumb to what Alford (1995) calls the “tasseled loafers” syndrome: “the tendency of some observers to mistake appearances for substance” (Alford 2002, n. 31). Just as a dragon sporting a three-piece suit may still feel and act like—and be perceived locally as—a dragon, a Leninist state sporting a legal system may still behave like and be understood locally as 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, p. 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 political 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 article 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). As we will see, Chinese lawyers tell 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 1994; Winn 1994; Dezalay and Garth 1997; Potter 2002; Schramm and Taube 2003; Alford 2002, p. 184; Appelbaum 1998; Wank 1999, p. 115). A comparative look elsewhere in time and place shows that lawyers mobilize direct and indirect connections to judicial insiders in a variety of contexts, including the United States (Black 1976, p. 45; 1989, pp. 16–17; Galanter 1974, p. 99; Sarat and Felstiner 1995, pp. 101–2; Kritzer 1998, pp. 16, 196; Parikh and Garth 2005, p. 297), Mexico (Lomnitz and Salazar 2002), and India (Gandhi 1982). While it is the general case that lawyers everywhere depend to an important measure on social connections, this article 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 con-

trolled by government agencies and other public organizations. Any lawyer who does any amount of trial work depends on resources controlled by the courts. Any lawyer with any volume of criminal defense work depends not only 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 of working with the *gongjianfa*—that is, 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* 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) (Cho 2003; Zhang 2003; Liu 2006; Cohen 1997; Potter 1999; Lubman 1999; Woo 1999). Second, as we will see in greater detail below, lawyers face enduring institutional discrimination that relegates them to a marginal status of outside interloper.

A consequence of institutional barriers to institutional outsiders such as lawyers is the development of microlevel bridging strategies that give enduring value to political capital. They embed themselves deeply in clientelist networks bridging 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.<sup>2</sup> In what Solinger (1992) calls the “merger of state and society,” public and private spheres have become symbiotically linked through microlevel behavior (Wank 1999). Lawyers find patrons in the state to protect their interests. In return,

<sup>2</sup> Extensive research on Chinese business entrepreneurs reveals similar marginalization and similar adaptive coping strategies. 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, p. 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, pp. 167–68; Young 1994; Parris 1999; Tsai 2002, p. x; He 2003, p. 78; 2005). In response to such institutionalized forms of harassment, business entrepreneurs turn to informal solutions; they adopt informal substitutes for formal institutional support (Yang 1994, p. 161; He 2005, p. 540; Xin and Pearce 1996).

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).

In addition to conceptualizing guanxi as a means of engaging in corrupt practices, of circumventing, bending, and breaking legal rules and procedures (Guthrie 1999, p. 177), guanxi must also be understood as a means of fending off corrupt practices. To be sure, lawyers survive and thrive by developing relationships, often through bribes and kickbacks, with personnel in the gongjianfa and elsewhere in the state bureaucracy. But lawyers 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 success of lawyers not only by enhancing their ability to secure preferential access to essentially bureaucratically controlled resources, and not only by helping them sway and circumvent official procedures, but also by sheltering them from predatory state agents.<sup>3</sup>

Before deriving more concrete hypotheses, however, it is necessary first to set the stage, to provide some historical background on the meso- and macrolevel institutions that shape the microlevel responses of lawyers. In the following, I draw on documentary sources as well as interviews my research assistants and I conducted between 1999 and 2001. (Basic descriptive information about interviews cited in this article are presented in app. table A2.)

#### SOCIALIST LAWYERS' MARGINALIZATION VIS-À-VIS JUDICIAL INSIDERS

Chinese lawyers' woes have been more thoroughly documented in the press than in the scholarly literature (but see Yu 2002; Sheng 2003, 2004; 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 prominently featured, 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.,

<sup>3</sup> 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 (Nardulli 1986; Carlin 1962; Blumberg 1973) and Indonesia (Lev 2000; Kadafi 2002).



Becker 2000; Rosenthal 2000; Eckholm 2001, 2002; Pomfret 2002*a*, 2002*b*; also see *Human Rights Watch* 2006).

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 (2003–present) 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 with collecting evidence (*quzheng nan*), (2) the difficulty with meeting with clients (*huijian dangshiren nan* or *huijian beigao nan*), and (3) the difficulty with 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 their difficulty collecting evidence. She publicly appealed for organizations and individuals to help level the playing field on which lawyers and the *gongjianfa* conduct their investigative work (*Beijing Chenbao* 2005).

The difficulties Chinese lawyers report extend beyond state agencies' failure to cooperate with lawyers (e.g., refusing to share relevant evidence), beyond obstructed access to criminal defendants, and beyond judges' tendency to discount or ignore lawyers' arguments in court hearings and trials. They also include police tampering with evidence, police intimidation of witnesses, and outright police harassment and abuse, including beating, kidnapping, and illegal detention. 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 similar difficulty securing the assistance and cooperation (*xie-zhu, 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). Most 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 the *gongjianfa*. Lawyers with five or fewer

years of experience complained more than lawyers with at least 10 years of experience. Consistent with findings I report later in this article, 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 were not protected. One out of five respondents (21%) reported frequently receiving 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 said to me, "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 E11).<sup>4</sup> Criminal defense lawyers also face the threat of being criminally prosecuted themselves on (often trumped-up) charges of fabricating or concealing evidence (Michelson 2003, pp. 99–111).

Not surprisingly, lawyers have expressed reluctance to perform criminal defense work (interviews I04, I13, E11, E33). According to He (2005), two popular mottos reflect the plight of criminal defense lawyers in the southern city of Shenzhen: (1) "Many lawyers are unwilling to take criminal defense cases." (2) "I can only selectively take criminal defense cases." In recognition of the problem, six local 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)" (He 2005).

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, p. 2295;

<sup>4</sup> Access to clients is characterized as the "oldest and biggest difficulty" (*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).

Petrova 1996, p. 543), 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 I12). Another lawyer referred to the "antagonistic character [*duili de ju-mian*] of the relationship between lawyers and the gongjianfa" (interview I21).<sup>5</sup>

Reports of the harassment and intimidation 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 reforming 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 emerged during the first national Strike Hard anticrime campaign of 1983 (see Tanner 1999). Throughout China officials in the gongjianfa routinely denounced defense lawyers simply for defending their clients (see Mao and Li 1992, p. 37). 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, p. 717). 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, p. 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, discussed government cadres "who even deliberately harass and obstruct [*diaonan*], abuse [*ruma*], shackle and unlawfully lock up lawyers" (cited in Li 1997, p. 723).

In 1984, in response to these problems, Hu Yaobang, general secretary

<sup>5</sup> In the Soviet Union, *advokatura* were "quasi-private agents with no official status, no official power or prestige. . . . Procurators 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, p. 581).

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, pp. 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, p. 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” (Huang 1986). In 1988 the deputy general secretary of the ACLA 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). For illustrations from the 1990s showing the uninterrupted plight of Chinese lawyers from the time of their revival to the present, see Jin (1990) and Du and Li (1997, pp. 261–91). Indeed, recent events suggest remarkable continuity: the Tianjin judge who in March 2006 allegedly beat and choked a Beijing lawyer who was trying to file a case was quoted as exclaiming, “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).

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, p. 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, p. 8). Rents are also exacted in the form of kickbacks from lawyer fees for referrals from judges (Wang and Gao 2000, p. 7), sometimes called “cash cases” (*jinqian an*) or “friendship cases” (*renqing an*) (Cai 2006). Lawyers tire of the heavy “extralegal” investments demanded by trial work (interview E33). 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, p. 10). Indeed, lawyers even used to advertise their special insider connec-

tions.<sup>6</sup> In short, lawyers' guanxi imperative stems not only from the gongjianfa, but also from competitive market pressures and pressure from their clients and prospective clients.

#### POLITICAL EMBEDDEDNESS AS A SOURCE OF PROTECTION

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, pp. 467, 722; Du and Li 1997, p. 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 newly revived bar.

After the system of lawyers that prevailed during the Republican period (1911–49) was formally abolished in September 1949, Republican lawyers were labeled "black lawyers" and purged in 1949–50 (Cui, Cuizhen, and Lizhu 1999, p. 219; Guo 2000, p. 99). 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, pp. 99–100; Lubman 1999, pp. 77–78). In 1957, 30% of lawyers in Beijing were classified as "Rightists" (Cui et al. 1999, p. 223).<sup>7</sup>

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 sys-

<sup>6</sup> 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 later that year by the 2000 Beijing Municipal Methods for the Administration of Law Firm Advertising (Lin 2001).

<sup>7</sup> In 1983 an official in a local public security bureau in Jilin Province proclaimed, "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 tendered their collective resignation. Lawyers in a neighboring county, upon hearing that Liaoyuan City was going to strike down on Rightists, also resigned" (Li 1997, p. 718). A county party secretary elsewhere reportedly told lawyers, "You must remember the lesson of 1957! [the year of the anti-Rightist campaign]" (Li 1997, p. 469). Not uncoincidentally, one-third of all lawyers in Jilin Province quit their jobs in the two years spanning 1984 and 1985 (Li 1997, p. 726).

## Lawyers and Political Embeddedness

tem. 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, p. 101). For the first decade following their revival in 1979, lawyers remained “hooked” to the state; they remained embedded in and an inextricable 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 E28)

Guo 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. (Guo 2000, p. 101)

From the time of their revival in 1979 until the end of 1986, lawyers were treated as “administrative cadres” and assigned administrative ranks according to the complex *nomenklatura* system of civil service grades (Luo 1998, p. 2). 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 E16).

### The Political Embeddedness of Specially Appointed Lawyers

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 was 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, p. 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 local government request for guidance, 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 government organs were qualified to work as specially appointed lawyers if they were in good health and met conditions stipulated by the Provisional Regulations on Lawyers and other requirements set by Ministry of Justice documents (BBJ 2001a, pp. 103–4). In Beijing the first “specially appointed law firms” were established in the same year.

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; interview E28). Together with other lawyers who had prior careers, they were 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, p. 101), likened to “old doctors” for the wealth of experience and comfort they brought 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, p. 105).

Entry from the *gongjianfa* did not require formal educational certification or passing the bar examination.<sup>8</sup> 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 being 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 en-

<sup>8</sup> 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, p. 80) and in the Republican bar (Conner 1994, p. 219), which had been modeled after the Japanese bar.

actment of the 1996 Law on Lawyers did passing the national lawyer's examination become a licensing requirement (article 6).<sup>9</sup>

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 particular 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 100% certainty” (interview I13). 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).

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, p. 35; BBJ 2001*a*, pp. 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, at about half their 1997 population, they represented 23% of all lawyers in Beijing; see fig. 1 and fig. 2). Only a few years later this official category suddenly disappeared. In accordance with the 1999 Ministry of Justice Notice Regarding the Issue of Registering Specially Appointed Lawyers, starting in 2001, specially appointed lawyers were required either to pass the bar examination or to abandon practice (interview E08). Those who had acquired their lawyers' licenses prior to 1997, when the Law on Lawyers was made effective, 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.

<sup>9</sup> 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, p. 234).



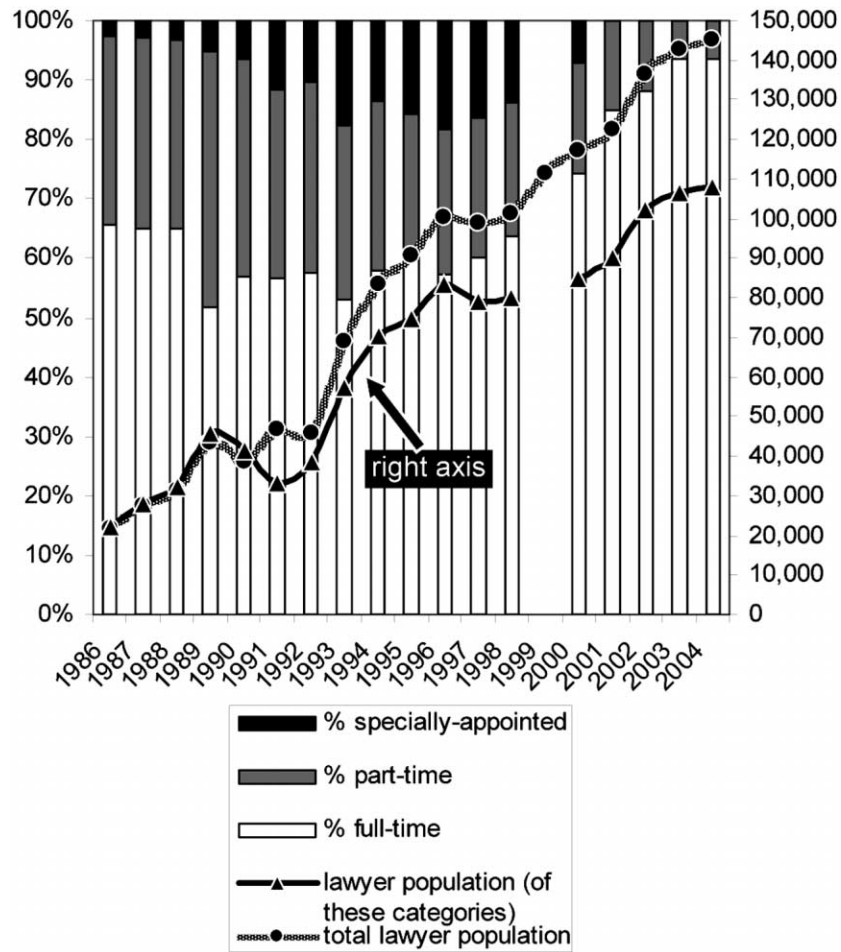


FIG. 1.—Population of lawyers by registration status category, China, 1986–2004. For the 18 years for which information on full-time lawyers is available, percentage full-time and total lawyer population are correlated at  $R = .73$  ( $P < .001$ ). The specially appointed lawyer category was not reported 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 in the national data.) See ZFN (1986–2003), Jia (2000), Ma (2001), Gu (2000, p. 4), Jia (2003, p. 168), and SSB (1999–2005).

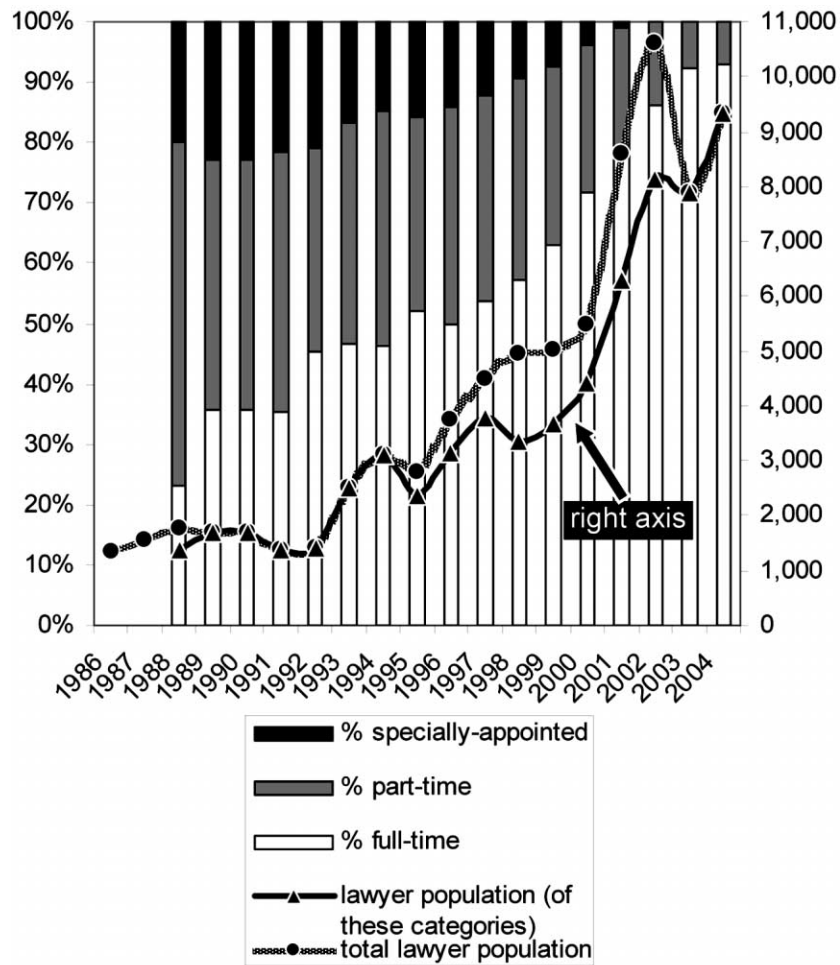


FIG. 2.—Population of lawyers by registration status category, Beijing, 1986–2004. For the 17 years for which information on full-time lawyers is available, percentage full-time and total lawyer population are correlated at  $R = .94$  ( $P < .001$ ). Between 1995 and 2002 the discrepancy between the total lawyer population and the sum of these three categories of lawyers is accounted for by an “other” category that presumably includes interning lawyers. Such an “other” category is not reported in the national data. See BBJ (2001a, pp. 105–6; 2001b), Cui et al. (1999), BSB (1996–2005), and Jia (2003, pp. 176–77).

### The Political Embeddedness of Part-Time 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 E28). The formal institutional affiliation of a part-time lawyer is her or his law school or research unit, not law firm. Beijing's first "part-time law firm" was established in 1984 by the China University of Political Science and Law (BBJ 2001a, p. 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 Dishu 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 unambiguously official status of part-time lawyers shields them from many of the difficulties that plague lawyers without this official status.

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, p. 3). 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.

### The Political Embeddedness of State-Owned Law Firms

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*. The advantages of state-sector membership in the bar are no different from the advantages of “wearing a red hat” in private business, the advantages of registering as a state-owned business in order to minimize the uncertainty and vulnerability associated with private-sector membership (Solinger 1992, pp. 126–28; Parris 1999, pp. 268–69; Wank 1999; Tsai 2002). A lawyer’s organizational affiliation is of enormous consequence to her or his 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. When the bar was first revived, lawyers worked in “legal advisory offices” (*fali guwen chu*) modeled after Soviet law offices (see Zhang 1999, p. 63; Gelatt 1990–91, p. 761; Zheng 1988, p. 490; Feinerman 1987, p. 120). By 1984 the name “legal advisory office” had already been changed to “law firm” (*lushi shiwusuo*), although in reality the name “law firm” had already been adopted in parts of China by 1983 (Zhang 1999, p. 63; BBJ 2001a, pp. 91, 94). 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, p. 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 losses” (*zifuyingku*) (Li 1997, pp. 459–60). Such opinions notwithstanding, this is precisely the direction in which law firm reform unfolded.

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 30 people in the firm, then the government allocated a budget according to 30 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 E28)

The process of “unhooking and privatizing” law firms began in the late 1980s. 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. 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, p. 64; Dai and Zhu 1994; BBJ 2001a, p. 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, p. 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, pp. 62–93; Law on Lawyers, articles 17 and 18 [see app. B]). 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” (*tizhi nei*), part of the state bureaucracy, whereas their private-sector counterparts were situated “outside the system” (*tizhi wai*). 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, p. 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 E08). An extreme case of political embeddedness illustrates 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, itself under the authority of the Ministry of Public Security, would have offered to its lawyers unparalleled access to and protection against the police and other criminal justice personnel.

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 beginning only in 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. Fourth, whereas in China as a whole 15% of law firms remained state owned in 2004, in Beijing the process of unhooking was already complete in 2001.

#### Political Embeddedness through Case Assignments from Courts

Even after unhooking, however, lawyers and law firms remain unequally endowed with political connections and formal 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. 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, pp. 226–27). 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 E11).

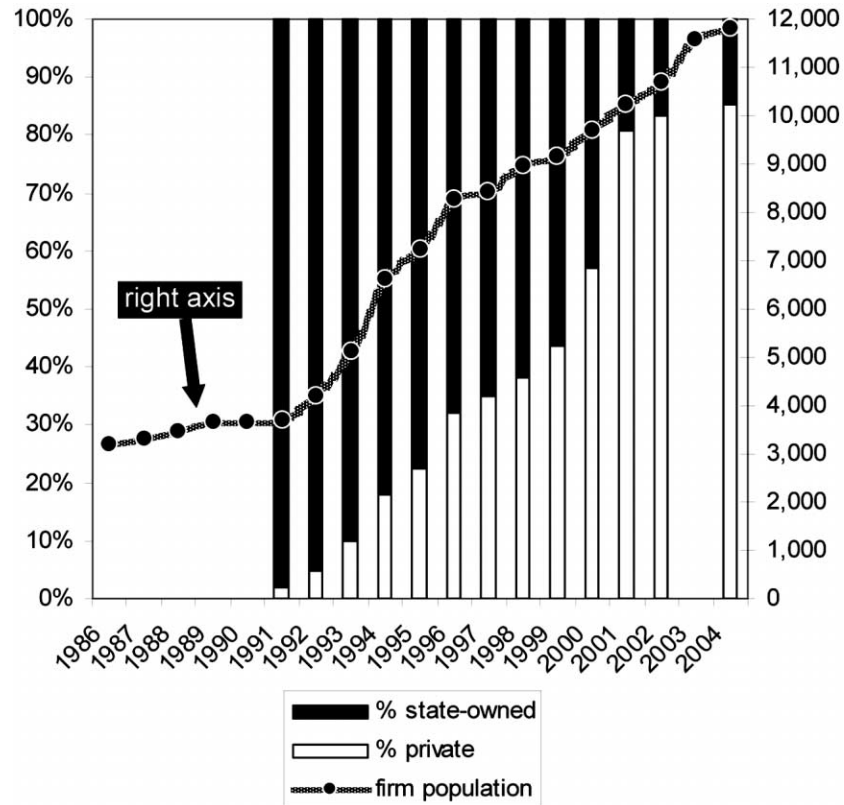


FIG. 3.—Population of law firms by ownership, China, 1986–2004. For the 13 years for which ownership data are available, percentage private and law firm population are correlated at  $R = .94$  ( $P < .001$ ). See ZFN (1986–2003), Jia (2000; 2003, p. 168), Ma (2001), SSB (1999–2005), and Liu (2005).

### HYPOTHESES

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

#### Aggrieved Lawyers

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

**HYPOTHESIS 1** (general support).—*Lawyers complain generally about weak levels of support from government agencies.*

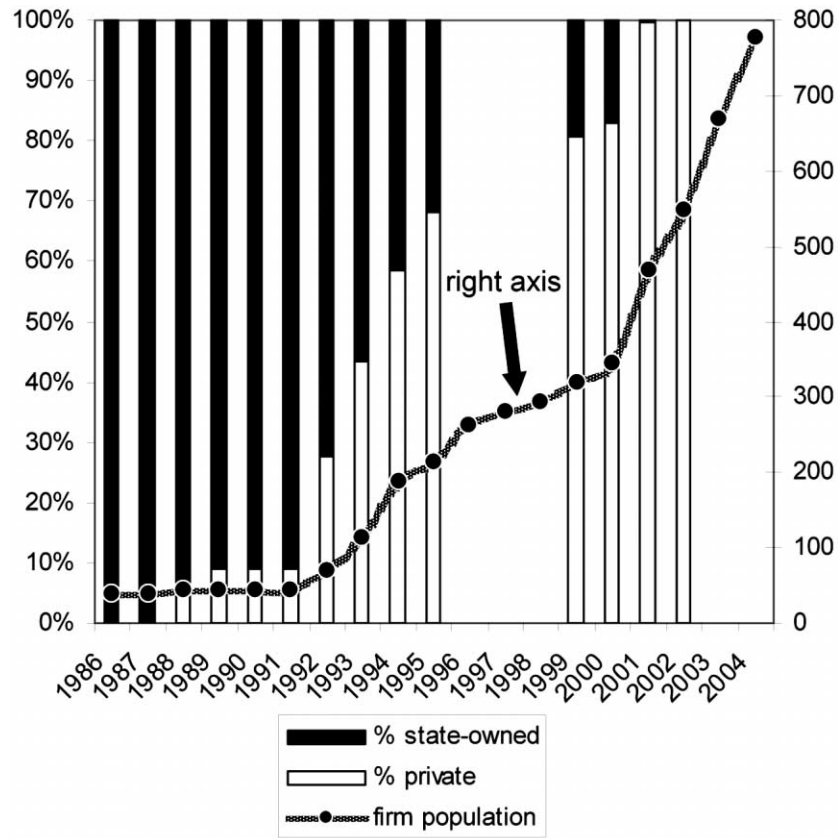


FIG. 4.—Population of law firms by ownership, Beijing, 1986–2004. Ownership data have not been reported since 2002, presumably because there are no more state-owned law firms in Beijing (as there was only one state-owned firm in 2001 and zero state-owned firms in 2002). For the 14 years for which ownership data are available, percentage private and law firm population are correlated at  $R = .95$  ( $P < .001$ ). Ownership data missing for 1996–98. See 1986–95 data from BBJ (2001a, pp. 105–6) and Cui et al. (1999); 1996–2004 data from ZSXN (2000, p. 63), BBJ (2001b), BSB (1996–2005), Jia (2003, pp. 195–98), and a September 2001 interview with the director of the lawyer administration section of the Beijing Bureau of Justice.

**HYPOTHESIS 2 (criminal defense).**—*Lawyers complain particularly about interference and obstructionism in the field of criminal defense.*

**The Guanxi Imperative**

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



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HYPOTHESIS 3 (prevalence).—*Guanxi is a widely used strategy to gain access to and support from the gongjianfa.*

HYPOTHESIS 4 (significance).—*Lawyers perceive that guanxi matters in the judicial process, that the quantity and quality of their relations to judicial insiders make a difference.*

### Aggrieved Criminal Defense Lawyers

Whereas hypotheses 1–4 are descriptive, the remaining hypotheses are explanatory. This hypothesis states that the gravity of lawyers' complaints is positively associated with exposure to trouble via specialization in criminal defense work.

HYPOTHESIS 5.—*Criminal defense work is associated with complaints about interference and obstructionism.*

### 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.

HYPOTHESIS 6 (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.*

HYPOTHESIS 7 (specially appointed lawyers).—*Because of 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.*

### 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.

HYPOTHESIS 8 (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.*

HYPOTHESIS 9 (part-time lawyers).—*As a result of their formal insti-*

*tutional 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.*

HYPOTHESIS 10 (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 midsize cities in 16 provinces outside Beijing ( $N = 518$ ).<sup>10</sup> I cannot overstate the fortuitousness of my timing. As we saw, between 1999 and 2002 almost all state-owned firms shut down or privatized, and specially appointed lawyers, as an official registration status, entirely disappeared. Had I conducted the surveys any later I would have missed most if not all state-owned firms and specially appointed lawyers.

All questionnaires were self-administered. In Beijing questionnaires were distributed and collected by 33 local undergraduate student research assistants, all female. Using a 1999 roster of Beijing law firms published in the *Zhongguo Lüshi Bao* (China Lawyer News), I randomly assigned Beijing law firms to the student research assistants. In Beijing the firm-level refusal rate (e.g., receptionists' turning away interviewers and firm directors' refusing to permit lawyers' participation) was 23%. In total I collected data from lawyers in 131 identifiable firms, representing 38% of all Beijing law firms in 2000.

The 24 survey sites outside Beijing were not selected randomly, but purposively. Multicity survey 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 traveling home for the summer holiday anyway. Whereas the Hohhot and

<sup>10</sup> 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). At the time of the survey the average urban population in these cities was 800,000, a small fraction of Beijing's 10 million.

Nanning surveys were respectively administered by two assistants, the remaining multicity surveys were each administered by one assistant. Because law firm directories were available for only 10 of the 24 cities outside Beijing, in only a fraction of the multicity survey sites could law firms be randomly sampled. Information on firm-level refusals in the multicity sample was not recorded. Moreover, the proportion of all firms accounted for by the 185 identifiable firms in my multicity sample is impossible to estimate given the absence of a comprehensive national law firm directory. However, in the 10 cities with available local law firm directories, 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).

I trained all assistants working on both surveys to select lawyers randomly within firms. Although information on individual-level refusals was recorded in neither sample, all indications are that these are reasonably representative samples. 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, 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). Nonetheless, because cities were not randomly sampled, and because we cannot be certain about the quality of the sampling either of firms or of lawyers within firms, we must treat the findings I present in this article as more suggestive than conclusive. This caveat notwithstanding, I hasten to add that, at the time of this article’s publication, no comprehensive sampling frame of Chinese lawyers can be constructed from publicly available information.

I test my hypotheses by analyzing answers to questions about the nature and extent of lawyers’ difficulties and the means by which lawyers alleviate their difficulties. I construct my dependent variables from information 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. 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

## Lawyers and Political Embeddedness

TABLE 1  
LAW FIRM OWNERSHIP, PERCENTAGE NONSTATE FROM OFFICIAL GOVERNMENT DATA  
AND SURVEY SAMPLE DATA, CHINA, 1999–2001

	BEIJING		CHINA	
	Official Sources	Beijing Sample	Official Sources	Multicity Sample
1999 .....	81		43	
2000 .....	83	84	57	65
2001 .....	100		81	

SOURCES.—Official sources for Beijing: 1999 data come from ZSXN (2000, p. 63); 2000 data come from BBJ (2001*b*); and 2001 data come from BSB (2002) and a September 2001 interview with the director of the Lawyer Administration Section of the Beijing Bureau of Justice. Official sources for China: 1999 data come from Jia (2000); 2000 data come from Ma (2001); and 2001 data come from Jia (2003, p. 168). Survey sample data: author’s survey data.

NOTE.—Beijing  $N = 131$  firms; multicity sample  $N = 169$  firms.

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 analysis 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, 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. Among respondents, specially appointed lawyers were over 60% more likely than average to belong to state-owned law firms (.47 vs. .29) and two-thirds as likely to belong to partnerships (.43 vs. .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 institutional support. Specially appointed and part-time lawyers also remained in state-owned firms that had privatized and registered as partnerships.

Specially appointed and part-time lawyers were embedded in the state bureaucracy not only by virtue of their membership in state-owned law

TABLE 2  
LAWYER REGISTRATION STATUS CATEGORIES, OFFICIAL GOVERNMENT DATA AND SURVEY SAMPLE DATA, CHINA, 1999–2000

Registration Status	BEIJING			CHINA		
	Official Sources	Information about Firms <sup>a</sup>	Information about Respondents <sup>a</sup>	Official Sources	Information about Firms <sup>b</sup>	Information about Respondents <sup>b</sup>
Full-time .....	72	71	88	74	70	91
Part-time .....	25	24	9	19	23	6
Specially appointed .....	4	5	4	7	7	4
Total .....	101	100	101	100	100	101
<i>N</i> (lawyers) .....	4,414	2,205	404	84,982	2,265	484
<i>N</i> (firms) .....	345	131	130	9,381	179	175

SOURCES.—Official source for Beijing: BSB (2001). Official source for China: Gu (2000, p. 4). Survey sample data: author's survey data.

NOTE.—All numbers except *N*s are percentages. Some totals do not equal 100% 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 figs. 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. This table does not include interning lawyers because they are omitted from official sources.

<sup>a</sup> Beijing sample.

<sup>b</sup> Multicity sample.

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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 over 50% more likely than full-time lawyers to be CCP members (.56 vs. .36).<sup>11</sup> 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 vs. .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.<sup>12</sup> 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 vs. .14, respectively) and less than half as likely to spend more than 40 hours per week working as a lawyer (.19 vs. .45, respectively).

Because of their prior careers in the courts and the procuracy, specially appointed lawyers were 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) was almost double the overall average (.31), and part-time lawyers were almost 30% more likely than full-time lawyers to have state housing (.37 vs. .29).

Because most specially appointed lawyers were retired officials from the gongjianfa, specially appointed lawyers were almost 20 years older than average (54 years vs. 35 years old, respectively). Whereas only 14% of all lawyers in the samples were over 45 years of age, 72% of all specially

<sup>11</sup> The prevalence of CCP membership by lawyer registration status is virtually identical across the Beijing and multicity samples. They also correspond closely to information supplied in September 2001 by the director of the Lawyer Administration Section of the Beijing Bureau of Justice: among all lawyers currently registered at the time in Beijing, 68% of specially appointed lawyers, 58% of part-time lawyers, and 43% of full-time lawyers were CCP members (the overall average being 47%, slightly higher than the 42% in my Beijing sample).

<sup>12</sup> Of the eight 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.

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	56	81	$\chi^2 = 32.034$ ( $df=2$ ), $P < .001$
CCP or Youth League (%) .....	55	52	70	87	$\chi^2 = 20.784$ ( $df=2$ ), $P < .001$
	(858)	(766)	(61)	(31)	
Prior work experience:					
In government bureaucracy (excluding courts, pro- curacy, and public security) (%) .....	13	13	2	34	$\chi^2 = 16.856$ ( $df=2$ ), $P < .001$
In court (%) .....	10	9	6	45	$\chi^2 = 40.730$ ( $df=2$ ), $P < .001$
In procuracy (%) .....	4	4	2	17	$\chi^2 = 14.090$ ( $df=2$ ), $P < .001$
In any of the above, the police, or the military (%) .....	29	28	12	72	$\chi^2 = 34.136$ ( $df=2$ ), $P < .001$
As teacher (%) .....	14	12	50	3	$\chi^2 = 60.516$ ( $df=2$ ), $P < .001$
	(776)	(697)	(50)	(29)	
Time devoted to work as a lawyer:					
More than 40 hours per week (%) .....	45	48	19	38	$\chi^2 = 18.458$ ( $df=2$ ), $P < .001$
	(835)	(748)	(58)	(29)	
Specialization in criminal defense:					
Strong ( $\geq 25\%$ of total billings) (%) .....	6	5	3	25	$\chi^2 = 22.545$ ( $df=2$ ), $P < .001$
Moderate ( $\geq 10\%$ of total billings) (%) .....	19	19	11	41	$\chi^2 = 12.457$ ( $df=2$ ), $P = .002$
	(888)	(793)	(63)	(32)	
Housing:					
Possess state housing (%) .....	31	29	37	56	$\chi^2 = 8.853$ ( $df=2$ ), $P = .012$
	(750)	(673)	(52)	(25)	

Age:					
Mean .....	35	35	34	54	Full-time vs. specially appointed: $t = -12.644$ , $df = 813$ , $P < .001$ (two-tailed)
21–30 (%) .....	37	38	40	6	
31–45 (%) .....	49	50	50	22	
46+ (%) .....	14	12	10	72	
Total (%) .....	100	100	100	100	$\chi^2 = 92.082$ ( $df = 4$ ), $P < .001$
	(877)	(783)	(62)	(32)	
Years of practice:					
Years working as a lawyer .....	7.0	7.0	6.3	8.5	Full-time vs. specially appointed: $t = -1.621$ , $df = 809$ , $P = .105$ (two-tailed)
	(872)	(779)	(61)	(32)	
Years licensed as a lawyer .....	5.5	5.5	5.4	6.4	Full-time vs. specially appointed: $t = -1.032$ , $df = 813$ , $P = .302$ (two-tailed)
	(873)	(784)	(58)	(31)	
Firm ownership:					
State owned (%) .....	29	28	32	47	$\chi^2 = 9.818$ ( $df = 4$ ), $P = .044$
Partnership (%) .....	66	68	60	43	
Other (%) .....	5	5	8	10	
Total (%) .....	100	101	100	100	
	(846)	(756)	(60)	(30)	

NOTE.—Prior work experience categories are not mutually exclusive; some lawyers reported prior work experience in multiple categories. “Other” firm ownership forms include cooperative and group (*jituan*). Some totals do not equal 100% due to rounding error. This table omits interning lawyers. Numbers in parentheses indicate subsample size.



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, their average tenure as lawyers is only 1.5 years longer than the overall average, and they have been licensed as lawyers for only about a year longer than average.

Table 4 shows lawyers' overwhelmingly negative assessments of their status, of the level of support (or the lack thereof) from government agencies extended to them, of their troubles in criminal defense, and of the importance of *guanxi* in legal practice. Consistent with my "aggrieved lawyers" hypotheses (hypothesis 1 and 2), 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 received in the process of gathering evidence. Consistent with my hypothesis (hypothesis 1), 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 complained about the foregoing problems, they complained even more vehemently about their criminal defense woes (hypothesis 2): 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).

Consistent with my "guanxi imperative" hypotheses (hypotheses 3–4), survey respondents also reported the remarkable prevalence (hypothesis 3) and disheartening consequences (hypothesis 4) 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 17% 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, I calculated the mean score 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

TABLE 4  
DISTRIBUTIONS OF LAWYERS' EVALUATIONS OF THEIR INSTITUTIONAL ENVIRONMENT, 25 CITIES, CHINA, 2000

Item	VERY RARE					VERY PREVALENT	Total	N
	0	1	2	3	4	5		
A	“In criminal cases, public security organs always find ways to obstruct lawyers’ investigation work.”						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.”						100	964
C	“Lawyers I know about spend a lot of time fostering personal relationships [ <i>gao hao geren guanxi</i> ] with judges.”						100	958
D	“The quality of a relationship [ <i>geren guanxi</i> ] between a lawyer and a judge will not influence how a court case is tried.”						100	962
E	“In general, in the process of gathering evidence, lawyers get the full cooperation of related individuals and civil organizations.”						101	961
F	“In general, in the process of gathering evidence, lawyers get the full cooperation of related government offices.”						100	964
G	“Currently the laws concerning the rights of lawyers are sufficient to guarantee that lawyers’ functions are brought into full play.”						100	964

NOTE.—All numbers except Ns are percentages. Listed in descending order of “very prevalent.” Some totals do not equal 100% due to rounding error.

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.

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 for all seven items, eight respondents chose the most negative response category 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 four times greater than the average number of positive responses (3.4 vs. .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 multicity samples are not statistically significant (details not presented).

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 not reported.)

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 5, lawyers specializing in criminal defense took greater umbrage about their institutional environment than did their nonspecialist counterparts.

A lawyer's ability to succeed in her or his practice area was facilitated

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TABLE 5  
 FREQUENCY DISTRIBUTIONS AND MEANS OF LAWYERS' POSITIVE AND NEGATIVE  
 ASSESSMENTS OF THEIR INSTITUTIONAL ENVIRONMENT, 25 CITIES, CHINA, 2000

No. of 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 no. of responses ...	.829	3.400

NOTE.—All numbers except mean no. of responses are percentages. Totals do not equal 100.0% due to rounding error. Difference of means *t*-test,  $t = -31.413$  ( $df=974$ ),  $P < .001$ .  $N = 975$ .

and constrained by her or his 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. 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. 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 E24). 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.

In support of my "individual prophylaxis" hypotheses (hypotheses 6–7), table 7 shows that lawyers who reported prior careers in the court system (hypothesis 6) expressed more positive assessments of their institutional environment. Because of the advantages they derived from their special backgrounds in the *gongjianfa*, specially appointed lawyers, compared to their full-time counterparts, were far more sanguine and far less cynical about their institutional environment (hypothesis 7). As we can

TABLE 6  
LAWYERS' EVALUATIONS OF THEIR INSTITUTIONAL ENVIRONMENT BY STRONG  
SPECIALIZATION IN CRIMINAL DEFENSE, 25 CITIES, CHINA, 2000

	SPECIALIZATION			SSD
	Total	No	Yes	
Positive response to any of the seven items (%) .....	48	48	51	$\chi^2 = .176$ ( $df = 1$ ), $P = .674$
Negative response to any of the seven items (%) .....	92	92	98	$\chi^2 = 2.882$ ( $df = 1$ ), $P = .090$
Mean no. of positive re- sponses .....	.83	.82	1.02	$t = -1.267$ ( $df = 966$ ), $P = .206$ (two-tailed)
Mean no. of negative re- sponses .....	3.40	3.38	3.85	$t = -1.754$ ( $df = 966$ ), $P = .080$ (two-tailed)
Mean score (positive scale) .....	1.71	1.72	1.61	$t = .984$ ( $df = 966$ ), $P = .325$ (two-tailed)
<i>N</i> .....	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 4 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. SSD = statistical significance of differences.

see in table 8, specially appointed lawyers were almost 75% more likely than full-time lawyers to supply at least one positive response (.78 vs. .45).

Evidence in support of my “organizational prophylaxis” hypotheses (hypotheses 8–10) is equally strong. Table 9 demonstrates that, compared to their counterparts in partnership firms, lawyers in state-owned firms averaged more positive responses and fewer negative responses (hypothesis 8). At the same time, lawyers in state-owned firms were 30% more likely than their counterparts in partnership firms to supply at least one positive response (.58 vs. .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 enjoyed formal membership in the state bureaucracy, were far more sanguine and supplied far fewer negative responses about their institutional environment (hypothesis 9). Finally, table 10 reveals that lawyers who were assigned cases from courts were significantly more positive and significantly less negative about the troubles afflicting the bar as a whole (hypothesis 10).

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. Before presenting the results of the regression analysis, I should first make three disclosures. First, in no multiple regression

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TABLE 7  
LAWYERS' EVALUATIONS OF THEIR INSTITUTIONAL ENVIRONMENT BY PRIOR  
WORK EXPERIENCE IN THE COURT SYSTEM, 25 CITIES, CHINA, 2000

	PRIOR WORK			SSD
	Total	No	Yes	
Positive response to any of the seven items (%) . . . . .	46	45	54	$\chi^2 = 2.587$ ( $df = 1$ ), $P = .108$
Negative response to any of the seven items (%) . . . . .	93	93	90	$\chi^2 = 1.034$ ( $df = 1$ ), $P = .309$
Mean no. of positive re- sponses . . . . .	.79	.76	1.08	$t = -2.554$ ( $df = 883$ ), $P = .011$ (two-tailed)
Mean no. of negative re- sponses . . . . .	3.46	3.49	3.22	$t = 1.240$ ( $df = 883$ ), $P = .216$ (two-tailed)
Mean score (positive scale) . . . . .	1.68	1.66	1.82	$t = -1.825$ ( $df = 883$ ), $P = .068$ (two-tailed)
<i>N</i> . . . . .	835	752	83	

NOTE.—See note to table 6. This table omits respondents with missing prior work data.  
SSD = statistical significance of differences.

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 multicity 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.<sup>13</sup> An ad-

<sup>13</sup> I replicated all findings presented in this article with multilevel models containing random intercepts and random slopes calculated using HLM. HLM results almost perfectly mirror the results from the fixed-effects models presented in this article and entirely support my substantive conclusions. I am grateful to Joshua Klugman for his technical assistance. Although the city dummy variables (not presented) reveal some measure of regional variation with respect to lawyers' evaluations of their institutional environment, this variation could not be explained by economic development indicators, such as city population, per capita GDP, GDP composition, foreign investment contracts, and amount of foreign investment. More important, HLM results show that the effects of theoretical interest (i.e., the slopes in the regression models) do not vary across cities (i.e., they do not exhibit significant variance components). Even when intercepts and slopes are allowed to vary randomly across cities, the robustness of the results indicate that the key effects highlighted in this article persist across a variety of contexts.

TABLE 8  
LAWYERS' EVALUATIONS OF THEIR INSTITUTIONAL ENVIRONMENT BY REGISTRATION STATUS CATEGORY, 25 CITIES, CHINA,  
2000

	Total	Full-Time	Part-Time	Specially Appointed	SSD
Positive response to any of the seven items (%) . . . .	47	45	62	78	$\chi^2 = 19.463$ ( $df=2$ ), $P < .001$
Negative response to any of the seven items (%) . . .	92	93	84	84	$\chi^2 = 8.316$ ( $df=2$ ), $P = .016$
Mean no. of positive responses . . . . .	.82	.74	1.37	1.75	Full-time vs. part-time: $t = -4.423$ ( $df=850$ ), $P < .001$ (two-tailed); full-time vs. specially appointed: $t = -5.419$ ( $df=819$ ), $P < .001$ (two-tailed)
Mean no. of negative responses . . . . .	3.42	3.51	2.62	2.81	Full-time vs. part-time: $t = 3.579$ ( $df=850$ ), $P < .001$ (two-tailed); full-time vs. specially appointed: $t = 2.030$ ( $df=819$ ), $P = .043$ (two- tailed)
Mean score (positive scale) . . . . .	1.70	1.65	2.14	2.18	Full-time vs. part-time: $t = -5.063$ ( $df=850$ ), $P < .001$ (two-tailed); full-time vs. specially appointed: $t = -3.968$ ( $df=819$ ), $P < .001$ (two-tailed)
<i>N</i> . . . . .	884	789	63	32	

NOTE.—See note to table 6. This table omits interning lawyers. SSD = statistical significance of differences.

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TABLE 9  
LAWYERS' EVALUATIONS OF THEIR INSTITUTIONAL ENVIRONMENT BY FIRM OWNERSHIP, 25 CITIES, CHINA, 2000

	Total	State Owned	Partnership	SSD
Positive response to any of the seven items (%)	48	58	44	$\chi^2 = 13.003$ ( $df = 1$ ), $P < .001$
Negative response to any of the seven items (%)	92	90	92	$\chi^2 = 1.879$ ( $df = 1$ ), $P = .170$
Mean no. of positive responses	.84	1.03	.76	$t = 3.237$ ( $df = 884$ ), $P < .001$ (two-tailed)
Mean no. of negative responses	3.39	3.10	3.51	$t = -2.919$ ( $df = 884$ ), $P = .004$ (two-tailed)
Mean score (positive scale)	1.72	1.86	1.66	$t = 3.563$ ( $df = 884$ ), $P < .001$ (two-tailed)
<i>N</i>	886	258	628	

NOTE.—See note to table 6. This table omits other ownership categories. SSD = statistical significance of differences.

ditional 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 appendix table A1.

Regression results are presented in table 11 and table 12. With respect to my "aggrieved criminal defense lawyer" hypothesis (hypothesis 5), specialization in criminal defense significantly increased the rate of supplying negative responses (table 11, model 6). 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. Nonetheless, the "billings from business fields" coefficients suggest that lawyers specializing in commercial nonlitigation work are relatively immune from grievances.

With respect to my "individual prophylaxis" hypotheses (hypotheses 6–7), prior work in a court (hypothesis 6) significantly increased the number of positive responses to questions about lawyers' institutional environment. In table 11, model 1, 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 2 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 (hypothesis 7) supplied positive responses was more than double the rate at which full-time lawyers supplied positive responses (table 11, model 3), and the rate at which they supplied negative responses was over 20% lower than the rate at which full-time



TABLE 10  
LAWYERS' EVALUATIONS OF THEIR INSTITUTIONAL ENVIRONMENT BY CASE  
ASSIGNMENTS FROM COURTS, 25 CITIES, CHINA, 2000

	CASES ASSIGNED BY COURTS			SSD
	Total	No	Yes	
Positive response to any of the seven items (%) . . . . .	48	46	52	$\chi^2 = 2.683$ ( $df = 1$ ), $P = .101$
Negative response to any of the seven items (%) . . . . .	92	92	92	$\chi^2 = .049$ ( $df = 1$ ), $P = .825$
Mean no. of positive re- sponses . . . . .	.83	.77	.95	$t = -2.365$ ( $df = 959$ ), $P = .018$ (two-tailed)
Mean no. of negative re- sponses . . . . .	3.39	3.55	3.08	$t = 3.636$ ( $df = 959$ ), $P = .001$ (two-tailed)
Mean score (positive scale) . . . . .	1.72	1.64	1.87	$t = -4.465$ ( $df = 959$ ), $P < .001$ (two-tailed)
<i>N</i> . . . . .	961	627	334	

NOTE.—See note to table 6. SSD=statistical significance of differences.

lawyers supplied negative responses (table 11, model 6). 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 0–5) (table 12, model 3).

With respect to my “organizational prophylaxis” hypotheses (hypotheses 8–10), among lawyers with otherwise seemingly identical characteristics, the rate at which lawyers who belonged to state-owned firms supplied positive responses (hypothesis 8) was 23% higher than the rate at which lawyers in partnerships supplied positive responses (table 11, model 3), 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 6). 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 3). The effect of being a part-time lawyer (hypothesis 9) 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 3), and the rate at which they supplied negative responses was 20% lower than the rate at which full-time lawyers supplied negative responses (table 11, model 6). In the regression analysis of mean scores, among otherwise seemingly identical lawyers, the average score of part-time lawyers was .43 points

greater than the average score of full-time lawyers on the six-point scale (ranging 0–5) (table 12, model 3).

Finally, as hypothesized (hypothesis 10), 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 3). 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 6). In the regression analysis of mean scores, on the six-point scale (ranging 0–5), 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 3). The foregoing results are replicated by logistic regression models of the choice of *any* positive response and of the choice of *any* negative response (details not presented).

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 3 and 6, and predicted values, or  $\hat{y}$ , from table 12, model 3—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.

Figure 5 contains postestimation results. Not only do they replicate the finding in table 5 that lawyers were far more likely to supply negative responses than they were to supply positive responses, but they also reveal that the strongly negative assessments voiced by lawyers as a whole are attributable for the most part to the politically disembedded portion of the bar. 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. Figure 5 shows that politically disembedded lawyers were almost 20 times more likely to supply three or more negative responses than they were to supply three or more positive responses (.715 vs. .039). Among politically embedded lawyers, by contrast, the probability of supplying three or more negative responses and the probability of supplying three or more positive responses were similar

TABLE 11  
 DETERMINANTS OF LAWYERS' EVALUATIONS OF THEIR INSTITUTIONAL ENVIRONMENT, INCIDENCE RATE RATIOS FROM  
 NEGATIVE BINOMIAL REGRESSION MODELS OF RESPONSES TO SEVEN QUESTIONS ABOUT LAWYERS' INSTITUTIONAL  
 ENVIRONMENT, 25 CITIES, CHINA, 2000

	NO. OF POSITIVE RESPONSES			NO. OF NEGATIVE RESPONSES		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Relationship with state:						
Firm ownership:						
State owned (yes = 1) .....	1.253*	1.250 <sup>+</sup>	1.227 <sup>+</sup>	.912 <sup>+</sup>	.904 <sup>+</sup>	.910 <sup>+</sup>
	(.144)	(.156)	(.150)	(.051)	(.051)	(.050)
Other ownership (yes = 1) .....	.999	.936	.907	.811***	.819***	.818***
	(.228)	(.220)	(.208)	(.051)	(.049)	(.051)
Partnership firm (reference group) .....						
Any cases/clients assigned by court (yes = 1) .....	1.196*	1.204*	1.191*	.894**	.893**	.894**
	(.106)	(.104)	(.104)	(.039)	(.038)	(.038)
Prior work in court (yes = 1) .....	1.405*	1.251	1.199	.937	.955	.955
	(.224)	(.195)	(.183)	(.067)	(.073)	(.070)
Prior work in procuracy (yes = 1) .....	1.175	1.075	1.077	1.090	1.093	1.075
	(.352)	(.312)	(.298)	(.123)	(.126)	(.119)
Lawyer registration status:						
Part-time lawyer (yes = 1) .....		1.908**	1.820**		.782*	.792*
		(.450)	(.408)		(.088)	(.087)
Specially appointed (yes = 1) .....		2.270***	2.040***		.770*	.774 <sup>+</sup>
		(.377)	(.369)		(.098)	(.110)
Interning (yes = 1) .....		1.178	1.150		.940	.951
		(.163)	(.162)		(.057)	(.059)
Full-time (reference group) .....						
% billings from business fields of practice ÷ 100 .....		1.585 <sup>+</sup>	1.613*		.820*	.823*
		(.384)	(.377)		(.078)	(.075)
Strong specialization in criminal defense (yes = 1) .....		1.145	1.132		1.139*	1.137*
		(.198)	(.194)		(.066)	(.063)
Control variables:						
Female (yes = 1) .....			1.100			.912 <sup>+</sup>
			(.106)			(.046)

Age:						
21–30 (yes = 1) .....			.747*			1.052
			(.111)			(.070)
31–45 (yes = 1) .....			.811			1.038
			(.109)			(.066)
46+ (reference group) .....						
Weekly work hours:						
40 (yes = 1) .....			1.175			.892 <sup>+</sup>
			(.152)			(.055)
41+ (yes = 1) .....			.904			.983
			(.119)			(.046)
Less than 40 (reference group) .....						
Constant .....	.656***	.460***	.547**	3.694***	4.190***	4.343***
	(.069)	(.073)	(.109)	(.124)	(.243)	(.364)
Dispersion parameter .....	.541**	.454***	.418***	.000	.000	.000
	(.104)	(.082)	(.079)	(.000)	(.000)	(.000)
<i>F</i> .....	5.93***	4.12***	3.39***	3.82***	3.39***	2.96***
<i>df</i> for design-based <i>f</i> -test .....	32,258	38,252	46,244	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 items A, B, and C and of responses “4” or “5” to items D, E, F, and G in table 4. The number of negative responses is calculated as sum of responses “4” or “5” to items A, B, and C and of responses “0” or “1” to items D, E, F, and G in table 4. Transformed SEs (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). “% billings from business fields of practice” is defined as the percentage of all billings accounted for by the following fields of practice: finance and banking; bankruptcy; company law (e.g., mergers and acquisitions); industrial and commercial investment; trade; patents, trademarks, and copyrights; information technology; securities; tax; consumer protection (representing merchants); real estate (housing demolition representing work units, rental disputes representing landlords, and sales); and labor (representing management). 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.

<sup>+</sup>  $P \leq .1$ .

\*  $P \leq .05$ .

\*\*  $P \leq .01$ .

\*\*\*  $P \leq .001$ , two-tailed tests.

TABLE 12  
DETERMINANTS 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, 25 CITIES, CHINA, 2000

	Model 1	Model 2	Model 3
Relationship with state:			
Firm ownership:			
State owned (yes = 1) .....	.148* (.070)	.145* (.071)	.131* (.067)
Other ownership category (yes = 1) .....	.140+ (.085)	.113 (.088)	.112 (.088)
Partnership firm (reference group) ....			
Any cases/clients assigned by court			
(yes = 1) .....	.198*** (.053)	.199*** (.052)	.196*** (.052)
Prior work in court (yes = 1) .....	.140 (.109)	.090 (.110)	.084 (.104)
Prior work in procuracy (yes = 1) .....	-.075 (.184)	-.098 (.187)	-.078 (.178)
Lawyer registration status:			
Part-time (yes = 1) .....		.448** (.151)	.429** (.147)
Specially appointed (yes = 1) .....		.542*** (.152)	.504** (.166)
Interning (yes = 1) .....		.115 (.087)	.102 (.091)
Full-time lawyer (reference group) .....			
% billings from business fields of prac- tice ÷ 100 .....		.215+ (.126)	.209+ (.121)
Strong specialization in criminal defense (yes = 1) .....		-.147 (.102)	-.147 (.099)
Control variables:			
Female (yes = 1) .....			.128* (.060)
Age:			
21-30 (yes = 1) .....			-.138 (.092)
31-45 (yes = 1) .....			-.094 (.086)
46+ (reference group) .....			

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TABLE 12 (Continued)

	Model 1	Model 2	Model 3
Weekly work hours:			
40 (yes = 1) .....			.147 <sup>+</sup>
			(.080)
41+ (yes = 1) .....			.014
			(.067)
Less than 40 (reference group) .....			
Constant .....	1.566***	1.406***	1.413***
	(.048)	(.082)	(.113)
<i>F</i> .....	4.99***	3.89***	3.47***
<i>df</i> for design-based <i>f</i> -test .....	32,258	38,252	46,244
<i>R</i> <sup>2</sup> .....	.087	.123	.137

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 note to table 6. On additional control variables included but not presented, and on the calculation of SEs (in parentheses), see note to table 11.

- <sup>+</sup> *P* ≤ .1.
- \* *P* ≤ .05.
- \*\* *P* ≤ .01.
- \*\*\* *P* ≤ .001, two-tailed tests.

(.389 vs. .343).<sup>14</sup> The same pattern emerges from predicted mean scores presented in figure 5: whereas politically disembedded lawyers averaged a score of 1.5, one full point below the midpoint on the six-point scale (ranging 0–5), politically embedded lawyers averaged a score of 2.4, almost precisely the midpoint on the 0–5 scale of responses. In short, whereas politically disembedded lawyers were far more negative than they were positive, politically embedded lawyers were roughly equally positive and negative.

CONCLUSIONS AND IMPLICATIONS

In this article 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 re-

<sup>14</sup> The rate at which politically embedded lawyers supplied positive responses (2.19) is virtually identical to the rate at which they supplied negative responses (2.24). However, the rate at which politically disembedded lawyers supplied positive responses (.61) was only a small fraction of the rate at which they supplied negative responses (3.73).

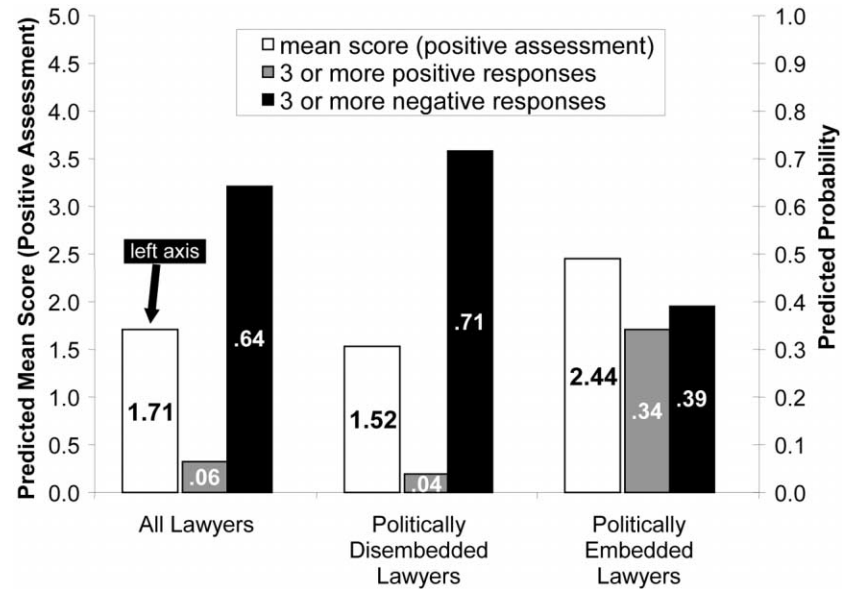


FIG. 5.—Postestimation predicted outcomes from regression models of responses to seven questions about lawyers’ institutional environment, 25 cities, China, 2000. Predicted mean scores were calculated from table 12, model 3. Predicted probabilities of positive responses were calculated from table 11, model 3. Predicted probabilities of negative responses were calculated from table 11, model 6. “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, 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 A1. For the predicted outcomes of all lawyers, all variables were set to sample means. For details on postestimation techniques, see Long and Freese (2006).

search 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. 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 article, there is no necessary reason to believe China is on a track of teleological institutional convergence with liberal democratic settings. 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 enjoy routinized, institutionalized access (Guthrie 1999, p. 191; 2002, pp. 53–54). 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.<sup>15</sup> 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 which was 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 article: 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 prohibiting judges and procurators from handling cases represented by their spouses and children.<sup>16</sup>

<sup>15</sup> In 2002 the three-in-one judicial examination (*sifa kaoshi*) for lawyers, judges, and procurators replaced the national lawyers' examination established in 1986.

<sup>16</sup> These amendments (article 17 in the 2001 revised Law on Judges and article 20 in the 2001 revised Law on Procurators) 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, pp. 234–35).



However, these formal institutional changes obscure the deeper continuity of socialist institutional logics and the enduring importance of informal microlevel 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 as much as they are 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, p. 189). The methodological implications of this conclusion include the need to develop more sensitive and creative measures of political embeddedness. We must consider not only *current* position but also *former* position. We must 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. One informant underscored 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 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 E22)

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 microlevel 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 pro-

fessional 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*) (Liu and Michelson 2004). 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 postsocialist 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, unauthorized 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 as much to dash as to advance lawyers’ political and professional aspirations for political reform. 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 article are precisely the ones with the greatest vested interest in the institutional status quo. Moreover, the Chinese pattern of career mobility from the state into the bar, while not historically and comparatively unprecedented, runs counter to the more commonly observed pattern to the contrary in other contexts (Miller 1995). The case of Chinese lawyers thus contributes to scholarly efforts to remedy earlier approaches to the study of lawyers that ignore the centrality of politics and the state (see Halliday and Karpik [1997] and Halliday [1998] for reviews). But whereas research in the “political lawyering” tradition (Halliday and Karpik 2001) highlights lawyers’ efforts to *advance* political change (Abel 1995; Sarat and Scheingold 1998, 2001; Scheingold and Sarat 2004), the case of China identifies conditions under which lawyers also, wittingly or unwittingly, *stymie* political change (Dezalay and Garth 1996, 2002). While under many circumstances they are a politically liberal force, under other circumstances they are a politically conservative force. Although their political subordination is exacerbated by socialist legality, it is by no means limited to the socialist context. In the civil law world more generally, lawyers in private practice are distinguished from and have lower levels of status and prestige than legal practitioners employed by the state (Abel 1988).

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 “antipolitics machines” (Ferguson 1994; Jones 1999) by reproducing local institutional logics incongruous with the institutional logic of political liberalism.

APPENDIX A

TABLE A1  
DESCRIPTIVE CHARACTERISTICS OF VARIABLES INCLUDED IN MULTIVARIATE ANALYSES

	Mean	SD	Min	Max
No. of positive responses .....	.831	1.128	0	7
No. of negative responses .....	3.391	1.907	0	7
Any positive response .....	.481	.500	0	1
Any negative response .....	.921	.270	0	1
Mean score <sup>†</sup> .....	1.714	.772	0	4.571
Female .....	.244	.430	0	1
Male .....	.742	.438	0	1
Missing gender .....	.013	.115	0	1
Age: 21–30 .....	.388	.487	0	1
Age: 31–45 .....	.462	.499	0	1
Age: 46+ .....	.128	.334	0	1
Missing age .....	.023	.149	0	1
Weekly work time < 40 hours .....	.206	.405	0	1
Weekly work time = 40 hours .....	.309	.462	0	1
Weekly work time > 40 hours .....	.414	.493	0	1
Missing weekly work time .....	.070	.255	0	1
% billings from business fields of practice .....	39.253	22.847	0	100
Belong to state-owned firm .....	.266	.442	0	1
Belong to partnership firm .....	.647	.478	0	1
Belong to firm of other ownership ...	.045	.208	0	1
Missing firm ownership .....	.041	.199	0	1
Any cases/clients assigned by court .....	.343	.475	0	1
Missing case assignment/client match- ing data .....	.014	.119	0	1
Prior work in court .....	.086	.280	0	1
Prior work in procuracy .....	.032	.176	0	1
Missing prior work data .....	.141	.348	0	1
Strong specialization in criminal de- fense .....	.055	.227	0	1

TABLE A1 (Continued)

	Mean	SD	Min	Max
Missing fields of practice data .....	.007	.085	0	1
Full-time lawyer .....	.809	.393	0	1
Part-time lawyer .....	.065	.247	0	1
Specially appointed lawyer .....	.033	.179	0	1
Interning lawyer .....	.093	.290	0	1
Beijing .....	.473	.500	0	1
Tangshan .....	.021	.142	0	1
Qinhuangdao .....	.012	.111	0	1
Baoding .....	.009	.096	0	1
Changzhi .....	.013	.115	0	1
Hohhot .....	.052	.221	0	1
Dandong .....	.022	.146	0	1
Liaoyang .....	.013	.115	0	1
Shuangyashan .....	.013	.115	0	1
Mudanjiang .....	.026	.159	0	1
Wenzhou .....	.009	.096	0	1
Quanzhou .....	.007	.085	0	1
Nanchang .....	.025	.155	0	1
Anyang .....	.025	.155	0	1
Xinxiang .....	.014	.119	0	1
Yichang .....	.021	.142	0	1
Zhuzhou .....	.026	.159	0	1
Nanhai .....	.020	.139	0	1
Nanning .....	.044	.206	0	1
Liuzhou .....	.030	.170	0	1
Guilin .....	.029	.168	0	1
Haikou .....	.028	.165	0	1
Xining .....	.018	.131	0	1
Yinchuan .....	.026	.159	0	1
Changji .....	.025	.155	0	1

NOTE.— $N=970$ .

† See note to table 6.

TABLE A2  
SOURCES OF QUALITATIVE INTERVIEW DATA

Interview Code	Interview Dates	Age	Position at Time of Interview	Prior Work Experience
E08	7/31/2001	35–39	Bureau of Justice official	
E11	8/7/2001	35–39	Lawyer in partnership firm with 11 lawyers	
E16	8/28/2001	65–69	Law school professor, part-time lawyer	
E22	7/27/2001	30–34	Journalist	
E24	11/8/1999	40–44	Partner of firm with 13 lawyers, PhD in law	
E28	9/1/2001	40–44	Former ACLA leader	
E33	11/5/1999	40–44	Director of state-owned firm with 17 lawyers	
I04	8/5/2001		Lawyer in partnership firm with 50 lawyers	
I12	8/2/2001	30–34	Lawyer in partnership firm with 50 lawyers	Engineer
I13	8/2/2001, 8/7/2001	30–34	Lawyer in partnership firm with 50 lawyers	Factory manager
I21	7/24/2001, 8/13/2001	25–29	Intern in partnership firm with 50 lawyers	Military; government agency

NOTE.—Codes beginning with “E” refer to interviews cited in this article (of a total of 32) I conducted myself, whereas codes beginning with “I” refer to interviews cited in this article (of a total of 35) conducted by my research assistants. See Michelson (2003, app. A) for more details, although in this article I changed the prefixes from “em” to “E” and from “lf” to “I,” respectively. The interview citation method in this article is the same as in Michelson (2006). Age refers to approximate age at the time of interview. With the exception of E22, all informants are male.

## APPENDIX B

### Statutes Cited

Beijing Municipal Methods for the Administration of Law Firm Advertising (Test Version) (Beijing Shi Lüshi Shiwusuo Zhiye Guanggao Guanli Banfa [Shixing]), promulgated July 1, 2000, and revised September 23, 2000, by the Beijing Lawyers Association.

Criminal Law (Xingshi Fa), passed July 1, 1979, during the second session of the Standing Committee of the Fifth National People’s Congress, effective January 1, 1980, revised March 14, 1997, during the fifth session of the Standing Committee of the Eighth National People’s Congress, effective October 1, 1997.

Criminal Procedure Law (Xingshi Susong Fa), passed July 1, 1979, during the second session of the Fifth National People’s Congress,

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revised March 17, 1996, during the fourth session of the Eighth National People's Congress.

Law on Judges (Faguan Fa), passed February 28, 1995, during the twelfth session of the Standing Committee of the Eighth National People's Congress, revised June 30, 2001, during the twenty-second session of Standing Committee of the Ninth National People's Congress, revised edition effective January 1, 2002.

Law on Lawyers (Lüshi Fa), passed May 15, 1996, during the nineteenth session of the Standing Committee of the Eighth National People's Congress, effective January 1, 1997, amendments adopted December 29, 2001, by the twenty-fifth meeting of the Standing Committee of the Ninth National People's Congress.

Law on Procurators (Jianchaguan Fa), passed February 28, 1995, during the twelfth session of the Standing Committee of the Eighth National People's Congress, revised June 30, 2001, during the twenty-second session of Standing Committee of the Ninth National People's Congress, revised edition effective January 1, 2002.

Ministry of Justice Notice Regarding the Issue of Registering Specially Appointed Lawyers (Sifabu Guanyu Teyao Lüshi Zhuce Wenti de Tongzhi), Notice No. 63, issued by the Ministry of Justice, June 16, 1999.

Plan Regarding Deepening the Reform of Lawyers' Work (Guanyu Shenhua Lüshi Gongzuo Gaige de Fang'an), promulgated December 26, 1993, by the Ministry of Justice.

Provisional Regulations on Lawyers (Lüshi Zanzing Tiaoli), circulated August 27, 1980, at the fifteenth meeting of the Standing Committee of the Fifth National People's Congress and promulgated by Order No. 5 of the Standing Committee of the National People's Congress.

Several Regulations on Guaranteeing the Professional Rights of Lawyers in Criminal Litigation (Draft) (Guanyu Baozhang Lüshi Zai Xingshi Susong Zhong Zhiye Quanli de Ruogan Guiding [Cao An]), drafted and circulated in 2005 by six government agencies in Shenzhen.

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