

AUTONOMY, QUALIFICATION AND PROFESSIONALISM OF THE PRC BAR

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I. INTRODUCTION

In May 1996 the Lawyers' Law of the People's Republic of China (PRC) was promulgated to replace the PRC Provisional Regulations on Lawyers (hereafter referred to as the Regulations on Lawyers) in existence since 1980. The Lawyers' Law represents a compromise resulting from the endeavors of the PRC authorities and the Chinese Bar to develop a more professional and accountable legal community.¹ This paper analyzes the evolution of the PRC legal community since the early 1980s.

The changes in the PRC legal community have been phenomenal during the past decade. After the establishment of the Communist regime in 1949, lawyers in China had been degraded, frustrated, and trivialized for nearly three decades due to political campaigns. The legal community revived in the 1980s to provide legal services under the Regulations on Lawyers. Being charged with upholding the socialist legal system

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1. See generally ZHONGGUO LUSHI ZHIDU FAZHAN DE LICHENG BEI [THE MILESTONE OF THE DEVELOPMENT OF THE PRC LAWYER SYSTEM] (Zhang Geng ed., 1997) (reviewing the legislative process of the Lawyers' Law) [hereinafter Zhang Geng].

throughout their activities, for many years lawyers were *de facto* state authority figures.²

Rapid economic growth and the dramatic social changes occurring in China today have presented significant opportunities for the expansion of the legal community. The numbers of lawyers and law firms have been soaring in recent years. By 1989, there were approximately 33,000 lawyers in the country;³ by 1994, 83,619 lawyers and 6,149 law firms;⁴ and 170,000 lawyers and more than 8,000 law firms by the end of 1997.⁵ Many lawyers and law firms have become economically independent from the state, which has allowed private lawyers to be more assertive of the interests of their clients than state lawyers.

This significant growth of the Chinese Bar, however, coexists with the continuous control by the CCP and government authorities over the operation of the legal system as well as the state apparatus and hence the role of the Bar. The functional weakness of the judicial system, and the ongoing complex and often uneasy relationships between the Bar and other parts of the judicial system, and the interference from the administrative agencies and the CCP often make the results of the lawyers' activities uncertain and unpredictable.

Moreover, a large number of practicing lawyers in China today are poorly trained in legal knowledge and skills. Many lawyers lack the necessary range of skills and adequate experience to meet the ever growing, ever more complicated demands arising from the socio-economic changes. In addition, like the rest of society, the Chinese Bar, caught up in the tension between the tug of traditional values and Communist ideology and the push of capitalist forces, faces a value crisis in the process of searching for a new soul. The previous poorly-defined professional

2. Before October 1987 when the Ministry of Justice (hereinafter referred to as the MOJ) promulgated the Provisional Regulations on Lawyers' Professional Posts, according to which lawyers are "graded" based on their seniority and experience, lawyers were treated as administrative cadres. See ZHONGGUO LUSHI ZHIDU YANJIU [RESEARCH ON CHINESE LAWYERS' SYSTEM] 125 (Mao Pengnian & Li Bida eds., 1992). [hereafter Mao & Li]

3. See CHINA DAILY, Feb. 22, 1989, at 4.

4. See CONG CHUANTONG XIANG XIANDAI KUAISU ZHUANXING GUOCHENG ZHONG DE ZHONGGUO SHEHUI [CHINESE SOCIETY IN THE PROCESS OF RAPID TRANSITION FROM TRADITION TO MODERNIZATION] 54 (Zheng Hangsheng ed., 1996).

5. According to statistics from the MOJ, by the end of 1997, there were 170,000 lawyers and more than 8,000 law firms. See *Reforms in Criminal Procedure*, BEIJING XINHUA NEWS AGENCY, Feb. 26, 1998, World News Connection found at <<http://wnc.fedworld.gov/cgi-bin/ret...2x4ing&CID>> (visited on Apr. 8, 1998).

ethics hardly fits in the changing political, social and legal environment and new ethical rules are yet to be defined and enforced. Lack of cohesion within the community and the current practices of ethics hinder many lawyers in their provision of satisfactory services, tarnishing the image of the legal community.

Rapid expansion coupled with the inherent weaknesses of the PRC legal community and the structural dysfunction of the Chinese polity have raised a basic question as to whether the Chinese Bar is becoming a more professional and independent community. In other words, do the expanding roles of the legal community and the perceptions of lawyer autonomy, both within and outside the community, indicate that the community will thrive as a profession in the PRC? I will examine the evolution of the Chinese legal profession in the historical, political, economic and social contexts and analyze the relationships between the Chinese Bar and the state, mainly in the light of two elements of Parsonian conception of professionalism, autonomy and knowledge. In addition, I will draw upon the "arena approach" suggested by Robert Nelson and David Trubek in my examination of the Chinese legal professionalism.⁶

I will use two methods for the analysis, namely, document analysis and survey results. For document analysis, the paper mainly uses articles and accounts from *China Lawyer* of 1990-96. The All China Lawyers' Association (hereafter referred to as the ACLA) has been publishing *China Lawyer* under the supervision of the MOJ since July 1987. *China Lawyer* contains articles and accounts by, on, and for lawyers in various aspects of their practices. Authors of these articles and accounts discuss various types of legal services offered by lawyers, the success and frustration of lawyers in work, as well as interactions among lawyers, clients, and state authorities. I will also use articles from other sources in the paper.

In addition, the paper incorporates the results of a survey to measure lawyers' attitudinal attributes including their views of self-regulation, and their expectations of lawyers' associations. The survey, conducted in late 1996 and early 1997, is part of my research on Chinese legal community's view on provision of legal aid services. A total of 72 questionnaires were distributed among lawyers in four cities, Beijing, Nanjing, Qingdao and Wuhan, and 67 of them were completed.⁷

6. See *infra* Section II.

7. Although the survey was not conducted at random, it provides the impression that the views expressed are widely shared among colleagues of the respondents. See QIZHI LUO, *LEGAL AID PRACTICES IN THE PRC IN THE 1990S: DYNAMICS, CONTENTS AND IMPLICATIONS* 44 (Sch. of L. U. of Md. Occasional Papers/Reprints Series in Contemporary Asian Studies No. 141, 1997), for a more

The following Section II identifies indicators with which to study the Chinese legal profession. Section III briefly discusses the political and social contexts of the development of the Chinese legal community and particularly the changes in the role of lawyers, the organization of law firms and lawyers' associations. Section IV discusses the institutional constraints and the obstacles faced by the legal community in developing a professional Bar. Section V concludes the paper by arguing that, the ideals, in terms of the Western concept of a qualified independent profession, are still on a nebulous standing in China. However, the PRC legal community has achieved a significant measure of autonomy from the state and the sphere of the autonomy may differ depending on the nature of the arenas.

II APPROACHES TO STUDY CHINESE LEGAL PROFESSIONALISM

A. *Approaches to Study Western Legal Profession*

The number of dimensions and perspectives from which the professionalization process and professionalism in the West can be analyzed is manifold. According to Rayman Solomon, professionalism has no commonly accepted definition.⁸ One school of professionalism, among others, focuses on the development of an ideal of what lawyers ought to do.

The "ideal" approach, mainly taken by Talcott Parsons and such adherents as Eliot Freidson, views professionalism as a set of ideals, involving motivations, skills, and organizational structures. Solomon suggests that there are two main elements in ideal professionalism: one is knowledge and the other is autonomy.⁹ According to Parsons, the interpretation and application of law requires complex knowledge and specialized skills.¹⁰ To interpret and apply laws, lawyers need to have autonomy and independence to apply their legal knowledge and skills

detailed discussion of the sample.

8. See Rayman Solomon, *Five Crises or One: The Concept of Legal Professionalism, 1925-1960*, in *LAWYERS' IDEALS/ LAWYERS' PRACTICES: TRANSFORMATION IN THE AMERICAN LEGAL SYSTEM* 145, 145 (Robert Nelson et al. eds., 1992).

9. *Id.*, at 146.

10. Talcott Parsons, *The Law and Social Control*, in *LAW AND SOCIOLOGY* 56-72 (William M. Evan ed., 1962).

properly.¹¹ With autonomy, lawyers control the content, processes, and output of their work. Lawyers must also have independence, meaning that lawyers should perform their services free from the political control of the state and the economic control of their clients. As Robert Gordon and William Simon note, professionalism should be viewed as an alternative to the free market and bureaucracy,¹² that is, the bar, as a collective, should be ideally free from both the influence of the market forces and state regulation.

Some scholars of the legal profession have explored other paradigms of professionalism. For example, scholars have started to dissect the American legal profession and portray it as a rather diversified community, suggesting lawyers' backgrounds and experiences have influence on lawyers' ideals and practices.¹³ Among these scholars, Robert Nelson and David Trubek notably, develop a paradigm for the analysis of professionalism by examining different contexts.

According to Nelson and Trubek, professionalism is "the process by which ideas about the appropriate role of lawyers in society and the proper methods of conducting and organizing the practice of law are constructed."¹⁴ Viewed in this light, professionalism is not a fixed, unitary set of ideals, but rather multiple facets of values. Competing conceptions of professionalism reflect the multiple, interactive "arenas" in which they are produced. Particular institutional, organizational and social settings influence lawyers' roles and professional ideology. Nelson and Trubek propose to study professionalism from the perspectives of "arenas," which calls for the analysis of the specific historical, ideological and political

11. Cf. A. M. CARR-SAUNDERS & P. A. WILSON, *THE PROFESSIONS* 399-400 (1933); TALCOTT PARSONS, *THE SOCIAL SYSTEM* 470-71 (1951).

12. Robert Gordon & William Simon, *The Redemption of Professionalism?*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES* 230, 230-257 (Robert Nelson et al. eds., 1992); cf. ELIOT FRIEDSON, *PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE* (1986).

13. See, e.g., Carrie Menkel-Meadow, *Feminization of the Legal Profession: The Comparative Sociology of Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW VOLUME 3: COMPARATIVE THEORIES* 196, 196-255 (Richard L. Abel & Philip S. C. Lewis eds., 1995); Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification, and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621 (1994); Janet Rosenberg et al., *Politics, Feminism, and Women's Professional Orientation: A Case Study of Women Lawyers*, 10 WOMEN & POL. 19 (1990); David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981 (1993); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493 (1996);

14. See Robert Nelson & David Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES* 180 (Robert Nelson et al. eds., 1992).

forces that shape the profession and its ideology. In addition, Nelson and Trubek assert that the best approach to study the relationship between the ideals and practices of lawyers is the study of exemplary moments in which lawyers are organized and lawyers' roles are structured.¹⁵

B. Applicable Approaches to Study the Chinese Legal Profession

The elements of autonomy and knowledge embodied in conventional Western concepts of legal professionalism seem relevant to the changing Chinese Bar. Some forms of professional behavior seem to be gaining recognition and acclaim both within and outside the Chinese Bar. For example, private practices are according the profession a sense of autonomy and independence that it previously lacked when the Chinese Bar was revived in the early 1980s. The prosperity of the economy has encouraged the rise of a class of legal entrepreneurs and a sense of perceived collective interests appears to be growing among the Chinese Bar. As Chinese law becomes more complex, a special core of expertise and knowledge seems to be increasingly important for lawyers. The *pro bono publico* ideal, in the form of legal aid services, is becoming visible as lawyers begin to volunteer their time and effort to underprivileged segments of society.¹⁶

It should be noted, however, that these elements of legal professionalism were mainly formulated in the developed countries, which might have to be reformulated or reassessed in light of continuing evolution in the legal community. These indicators may be useful to measure how far the Chinese profession has moved along the professionalization path,¹⁷ but may not mirror the social context in China. Given the distinctively different Chinese context in which lawyers practice, an analysis of PRC professionalism requires more than a measurement of the Chinese legal profession against the indicators of Western conceptions of professionalism.

The Chinese legal profession is undergoing a process of historical development that differs from that in the Western world. In contrast to the experience of democracy and capitalism on which Western profession ideology is crafted, the ongoing influence of the CCP might have impact

15. See *id.*, at 182.

16. I am indebted to Professor Lubman for his helpful input here.

17. Cf. Amos Odenyo, *Professionalism and Change: The Emergent Kenyan Lawyer*, in *LAWYERS IN THE THIRD WORLD: COMPARATIVE AND DEVELOPMENTAL PERSPECTIVES* 178 (C. J. Dias et al. eds., 1981).

on the professional ideology in China.¹⁸ In addition, the conventional conception does not capture the trend of globalization that Chinese lawyers are experiencing today, which differs fundamentally from those in the developed countries during their early phase of development. The arena approach to the analysis of legal professionalism is therefore instructive and necessary for an analysis of the professionalization of the Chinese legal community.

In summary, to apply the elements of classical Parsonian theory as mentioned above, I will identify the following areas to analyze the evolution of the Chinese Bar: lawyers, law firms, lawyers' associations, state action and lawyers' professional qualification. These areas will shed light on the understanding of the evolution in the Chinese Bar both in view of the elements of the classical theory of professionalism and in terms of the characteristics of the Chinese legal profession. I identify state action as a setting in which the PRC legal profession is constructed, because state action, particularly in the PRC, is a source of "systematic and regular production of ideas about lawyers' conduct."¹⁹ As will be seen below, from the very beginning of its history, the Chinese Bar and its operation were shaped and controlled by the party state. The PRC lawyers continue to face interference by state authorities, including the courts, the procuracy, the public security, as well as administrative agencies and the Communist Party. Obstacles resulting from the actions of the state will continue to influence the autonomy, independence, self-regulation as well as the professional ideology of the Chinese Bar.

III. EVOLUTION OF THE PRC LEGAL COMMUNITY

Generally economic, political and social structures and cultural values affect the role of law and lawyers, and the role of law and lawyers in shaping economic, political and social structures and cultural norms is historically and culturally specific.²⁰ The development path of the Chinese legal community has been a long and hard one in view of the nature of Chinese polity. Throughout Chinese history, lawyers never found a niche

18. See William P. Alford, *Tasselled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers*, 141 CHINA Q. 22, 38 (1995).

19. See Nelson & Trubek, *supra* note 14, at 185.

20. Cf. Richard L. Abel & Philip S. C. Lewis, *Putting Law Back into the Sociology of Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW VOLUME 3: COMPARATIVE THEORIES* 478, 478-526 (Richard L. Abel & Philip S. C. Lewis eds., 1995).

with sufficient influence or a clear identity in society.

In the initial years following the Communist sweep of the Chinese political landscape, the government authorities abolished the legal system of the Nationalist regime and adopted a socialist legal system following the Soviet model.²¹ After some years of inconsistency and inexperience, the PRC authorities promulgated a few laws and regulations that included provisions on lawyers' services and attorneys' fees.²² Hence a primitive lawyers' system was established. By 1957, about 2,800 full-time and part-time lawyers had been working in state sponsored legal advisory offices across the country.²³ Most of these lawyers had their legal training during the Nationalist era and the rest were trained in legal institutes modeled after the former Soviet Union for a planned economy.²⁴ Lawyers were mainly involved in criminal defense activities. There were no official rules on the basic rights and the role of lawyers in their practices. Various forms of administrative and party interference were likely to exist in the lawyers' practice.²⁵

During the late 1950s and the early 1970s, however, political movements and campaigns smashed the fragile legal system, including the newly established lawyers' system.²⁶ Lawyers were seen as social and political undesirables because of their role in defending alleged criminals and counter-revolutionaries against the state.²⁷ Moreover, during this period, because laws and court systems were simplified for the public to get access,²⁸ and various mediation committees used traditional methods

21. See generally EUGENE HUSKEY, *RUSSIAN LAWYERS AND THE SOVIET STATE* (1986), for an overview of lawyers' system in Soviet Russia.

22. The first constitution of the PRC (1954) and the first organic law of the people's court provided that the defendant has a right to retain a lawyer to defend for him. In 1956, the MOJ promulgated the Interim Procedures on the Collection of Attorneys' Fees. See Mao & Li, *supra* note 2, at 37.

23. See *id.*, at 40.

24. See Timothy A. Gelatt, *Lawyers in China: The Past Decade and Beyond*, 23 NYU INT'L L. & POL. 751, 753 (1991).

25. During the "let a hundred flowers bloom" movement in 1956, lawyers were among the first to take the chance to challenge the CCP direction of the legal system. Among their requests were demands for more independence in their work. See *id.*, at 753-54.

26. The MOJ was separated from the State Council in 1959. See *id.*, at 754. The constitution of the PRC was amended in 1975 and it eliminated the provision in the 1954 Constitution giving a defendant the right to defend himself.

27. See Alford, *supra* note 18, at 27.

28. In 1979 when the Criminal Law and Criminal Procedure Law were promulgated, a law professor in Beijing commented that the two laws were simple and easy to understand. They were much shorter than similar laws in Germany, France, Japan and the Soviet Union. He said: "People with an average education can understand them. This is in keeping with the provision by which a wide range of people can act as advocates. Even if the advocate knows little about the law he can

such as mediation to settle disputes, lawyers were not needed. Many lawyers were sent to the countryside, and many others switched to non-legal jobs.²⁹ For almost two decades, lawyers were absent from the Chinese social and political scene.³⁰

After the Cultural Revolution, the CCP regime committed itself to a national policy to reform the economic system. The government authorities have since then started to reestablish the country's legal system including a lawyers' system.³¹ Chinese lawyers started to return to the social scene.³² Law schools and departments were reestablished and started to train a new generation of lawyers.³³

The economic reform has also given rise to increasingly complex forms of legal relationships in society. In litigation-related activities such as criminal defense and civil matters, as people grow richer and legally more sophisticated, there is more to argue about. Given that Chinese lawyers are enjoying more autonomy from the state authorities, they are more aggressive to expand their roles in society to various fields of law. The Lawyers' Law of 1996 codifies many of the changes in the lawyers' system since the 1980s. Both the legal community and the PRC authorities

carry on a sound defense so long as he can present the facts clearly..." See *Legal Experts Comment on the Law of Criminal Procedure*, BBC Summary of World Broadcasts, Jul. 17, 1979, available in LEXIS, Allnews File.

29. Law schools were closed during the period and many law faculties were merged into other faculties. See Gelatt, *supra* note 24, at 753-754.

30. Mao Zedong once said, "[t]o construct our Socialist society, the proletarian class must have its own team of leading technocrats, that is, its own team of professors, teachers, scientists, journalists, writers, artists and Marxist theorists." He did not include jurists in his proletarian team. *Quoted in Editorial*, FAZHIRIBAO [LEGAL DAILY], Nov. 5, 1997, at 1. In a country where leadership favoritism dominated the social and political life, it is arguable that the extreme disrespect for lawyers by the leadership is in part responsible for the demise of the lawyers' system.

31. Deng Xiaoping, *cited in* Mao & Li, *supra* note 2, at 41. In the late 1970s, the National People's Congress passed a few new laws, among which the Criminal Procedure Law provided for the role of lawyers in criminal defense. See Art. 26-30 of the Criminal Procedure Law. The Constitution Law (1978) again included the right to defense counsel. The MOJ was reestablished in 1979 to take charge of the administration of lawyers and draft lawyers' law.

32. The October 1980 trial of Gang of Four and their six followers made the presence of Chinese lawyers felt in the Chinese political scene. The ten defendants including Mao's wife are allegedly the major players during the Cultural Revolution. But the trial was probably more like a political show than a legal trial. It is reported that lawyers did not even know what their mission was (let alone who were their clients) when they were called to Beijing. Lin Biao Jiang Qing Fangeming Jituan An Lushi Bianhu Zu [Legal Counsel for the Case of Lin Biao-Jiang Qing Anti-Revolutionary Clique], ZHONGGUO LUSHI [CHINA LAWYER], Jun. 5, 1992, at 44.

33. Timothy A. Gelatt & Frederick E. Snyder, *Legal Education in China: Training for a New Era*, CHINA L. REP. 41 (1980); see also WILLIAM P. ALFORD & FANG LIUFANG, LEGAL TRAINING AND EDUCATION IN THE 1990'S: AN OVERVIEW AND ASSESSMENT OF CHINA'S NEEDS (1994) for a general discussion on legal education in the PRC.

highly applaud the improvement and progress from the Regulations on Lawyers to the Lawyers' Law.³⁴ In this section I discuss three major aspects of this revolution, relating to the autonomy of the legal community, namely, (1) the definition of lawyers; (2) the organization of law firms; and (3) lawyers' associations.

A. *Definition of Lawyers*

1. Lawyers as "State Legal Workers"

The Regulation on Lawyers reflected the reality of a state-planned political economy, which excluded professional independence from the party and administrative control. It defined lawyers as "state legal workers" who must work to uphold the correct implementation of the law and to protect the interests of the state, the collective, and the lawful rights of citizens.³⁵ In addition to training qualification, a citizen must meet political criteria to be admitted to practice. He or she must, *inter alia*, cherish the motherland and support its socialist system.³⁶ There were no specific guidelines for the criteria's interpretation and the basis for prohibiting an individual from practicing law was not clear.³⁷

2. Redefining Lawyers

According to the Lawyers' Law, lawyers are individuals who are licensed to provide legal services to society.³⁸ The Lawyers' Law implies that lawyers are no longer state servants; but they should accept the supervision of the state, society and their clients.³⁹ The judicial administrative departments supervise and guide lawyers, law firms and lawyers' associations.⁴⁰ It is notable that the Lawyers' Law emphasizes a lawyers' provision of services to "society" (instead of "clients").

34. Zhang Geng, *supra* note 1, at 193-203.

35. Interim Regulations of the P.R.C. on Lawyers, art. 1 [hereinafter Regulations on Lawyers].

36. *See id.*, art. 8.

37. According to a formal MOJ official in charge of lawyers' work, until 1986 when the MOJ started to admit lawyers through a national bar exam, only state staff (*ganbu*) could practice law and the approval procedure. *See* Mao & Li, *supra* note 2, at 114. Chinese lawyers' certificates must be renewed annually. According to one commentator who interviewed some Chinese lawyers, the renewal process had been used by the authorities to remove politically suspect lawyers. *See* TIMOTHY A. GELATT, CRIMINAL JUSTICE WITH CHINESE CHARACTERISTICS (1993).

38. *See* Lawyers' Law, art. 2.

39. *See id.*, art. 3.

40. *Id.*, arts. 3 and 4.

Furthermore, the MOJ has been emphasizing a correct political standing among lawyers.⁴¹ Thus, critics say that the role and influence of lawyers are subject to skepticism,⁴² particularly in sensitive political cases.⁴³ Yet as many lawyers are now developing various types of practice independent of the government authority, it seems that they are increasingly capable of asserting the interests of their clients.

B. Organization of Law Firms

1. State Law Firms

Under the Regulations on Lawyers, lawyers were affiliated with legal advisory offices that were subject to the leadership and supervision of the MOJ and local justice bureaus. However, the Regulation on Lawyers did not define the scope of the leadership and supervision. According to the Interim Provision on Several Questions Concerning Legal Service Organizations⁴⁴ promulgated by the MOJ in 1986, law firms must report periodically to judicial administrative authorities about their practice.⁴⁵

According to drafters of the Regulation on Lawyers, the recruitment, evaluation, rewards and penalties, political education and professional training of lawyers and non-lawyers, financial management and major spending of law firms, and application for the establishment of law firms "are all and can only be subject to the judicial administrative authorities."⁴⁵ In addition, "the legal practice of lawyers ... should also be subject to the direction, examination and supervision of the judicial administrative

41. *MOJ Guanyu Yanghe Zhixing Lushifa Jin Yi Bu Jiaqiang Lushi Duiwu Jianshe De Jueding* [MOJ Decision Concerning the Strict Enforcement of the Lawyers' Law and Further Strengthening of the Establishment of the Lawyers Force] (issued on Sep. 26, 1996), *reprinted in* Zhang Geng, *supra* note 1, at 226-35.

42. See RANDALL PEERENBOOM, *LAWYERS COMMITTEE FOR HUMAN RIGHTS, LAWYERS IN CHINA* 50 (1998).

43. See US Department of State, *China Report on Human Rights Practices for 1997*, <<http://www3.itu.int/missions/us/hrr97/china.html>> (visited Apr. 15, 1998) (reporting that government-employed lawyers may be reluctant to overzealously represent politically sensitive defendants).

44. *Reprinted in* Zhongguo Falu Nianjian Bianji Bu [China Law Yearbook Editorial Department], *ZHONGGUO FALU NIANJIAN* (1986) [CHINA LAW YEARBOOK (1986)] 622-23.

45. Interim Provision on Several Questions Concerning Legal Service Organizations, art. 5.

46. See *Several Comments on the Provisional Regulation on Lawyers* (cited in Mao & Li, *supra* note 2, at 112).

authorities."⁴⁷ According to some Chinese commentators, lawyers in some areas were required to report to and request instructions from the judicial administrative authority when dealing with important cases.⁴⁸ Not surprisingly, the directors of legal advisory offices were subject to approval by local or regional justice bureaus.⁴⁹

2. Reform of Law Firms and Development of Private Law Firms

For years the government had been responsible for the funding of law firms, that is, all law firms are subsidized by the state. In the early 1980s, the Chinese government launched a fiscal reform to make state-owned non-business entities financially independent in order to ease its burden. In October 1984, the MOJ, together with the Ministry of Finance, formally approved a plan to reform the financial management of law firms.⁵⁰ With varying degree of discretion in managing costs, revues and expenditures, law firms started to link lawyers' earnings and, in particular, bonuses with their performance and set different fee standards.⁵¹ According to a Chinese commentator, this is an essential step towards the autonomy of Chinese law firms.⁵²

In 1988 the MOJ started to authorize cooperative law firms to operate on an experimental basis mainly in developed areas in an effort to keep up with the economic reform which pushed for self-sufficient entities.⁵³ During the early years of the experiment, cooperative law firms were under

47. *See id.*

48. *See* Wang Rujia & Duan Wenju, LUSHI GONGZUO ZHIDAO [LAWYERS' WORK GUIDANCE] 302 (1987).

49. Under the Regulation on Lawyers, lawyers elect the head and, when necessary, the deputy head for a three-year term, and the provisional judicial administrative bureaus approve the appointment. Art. 16 of the Regulation on Lawyers. Some local justice bureaus could even directly appoint the heads of legal advisory offices. *Cited in* Gelatt, *supra* note 24, at 756, n. 29.

50. *Sifa Bu Caizheng Bu Guanyu Falu Guwenchu Jingfei Guanli Wenti de Ruogan Guiding* [Certain Provisions of the MOJ and Ministry of Finance Concerning Questions Regarding the Funds of Legal Advisory Offices], *reprinted in* ZHONGGUO FALU NIANJIAN (1987) [CHINA LAW YEARBOOK (1987)], at 623.

51. *See generally* Gelatt, *supra* note 24, at 764-66, for a discussion of the application of financial reforms to law firms.

52. *See* Yang Zhong, *Lushi Shiwusuo Fei Shui Tong Jiao shi Chongfu Zhengshui* [Levying Both Fees and Taxation on Law Firms is Double Taxation], ZHONGGUO LUSHI [CHINA LAWYER], Jun. 5, 1992, at 25-27.

53. *See* Alford, *supra* note 18, at 31.

close control of the MOJ and its local affiliates.⁵⁴ Compared with state law firms, lawyers in cooperative law firms are no longer regarded as state legal workers, and the law firms are independent from the government financial support; therefore they enjoy more autonomy over their personnel and finances.

During the last few years, the number of private law firms in the forms of cooperative and partnership and sole proprietorship, has been increasing.⁵⁵ Private law firms continue to enjoy autonomy from the MOJ and its affiliates. Since the end of 1993, the MOJ further encouraged law firms to operate according to the principles of the "two nos and four selves" (*liang bu si zi*). Under the principles, law firms have neither state funding nor a state staff quota. Law firms are organized by lawyers on a voluntary basis and develop by themselves. Furthermore, law firms shall derive earnings and make expenditures by themselves and restrain themselves through professional discipline.⁵⁶ Even with state-owned law firms which are still subject to administrative direction in some aspects, many of them are no longer under the government's financial sponsorship and lawyers are under pressure to make profit.⁵⁷ The implications of the reform in structure and organization of law firms are that law firms are likely to take cases independently or subject to less state interference thus evolving towards autonomy and independence of the legal profession.⁵⁸

C. Lawyers' Associations

1. Official Lawyers' Associations

According to the Regulations on Lawyers, lawyers' associations ostensibly "shall be established to protect the lawful rights and interests of lawyers, to exchange work experience, to further the progress of lawyers'

54. At a meeting on cooperative law firms in December 1991, the Minister of Justice called for a close control of cooperative law firms. For example, the annual budget of cooperative law firms was subject to approval by the justice administrative bureaus. See Staff reporter, *Hezuozhi Lushi Shiwusuo De Xianzhuang Yu Fazhan Qianjing* [Current Situation and Prospects of Cooperative Law Firms], ZHONGGUO LUSHI [CHINA LAWYER], Feb. 5, 1992, at 4-6.

55. By the end of 1991, there were only 65 cooperative law firms across the country. See *id.*, at 4. By the end of 1995, there were more than 500 cooperative law firms, 1200 partnership law firms, and dozens of sole proprietorship law firms. See Zhang Geng, *supra* note 1, at 208.

56. *Sifabu Guanyu Shenhua Lushi Gongzuo Gaige De Fang-an* [The MOJ Plan for Further Reform of Lawyers' Work], reprinted in ZHONGGUO LUSHI [CHINA LAWYER], Feb. 28, 1994, at 4.

57. By the end of 1995, 48.6% of the state-owned law firms had to handle their own expenditures and costs. See PEERENBOOM, *supra* note 42, at 55.

58. See *infra* Section IV (A), for the relationship between law firms and the MOJ.

work and to promote contacts between lawyers both at home and abroad."⁵⁹ It was not until 1986 that the All-China Lawyers' Association (hereafter referred to as ACLA) was set up,⁶⁰ with government officials as the association leaders.

As social organizations, the ACLA and its local chapters have existed under the shadow of the MOJ and its local affiliates. Their ability to protect the members' interests, particularly from the hostility of state authorities, has been weak. Unlike their counterparts in developed countries, they also lacked authority to define professional and ethical standards for the legal profession.

In 1995, the ACLA restructured its council board and promulgated a new constitution, and for the first time, the leadership of ACLA is composed of professionals. Local lawyers' associations are required to undergo reform as well. Under the Lawyers' Law, lawyers' associations shall assume some responsibilities for professional management under the supervision and direction of the MOJ and its affiliates.⁶¹ However, given the structural weakness of the lawyers' associations and inadequate separation from the MOJ,⁶² it remains to be seen whether and how the lawyers' associations can evolve into self-regulating professional bodies with a distinct identity.

2. Development of Cooperation Networks among Law Firms

All PRC lawyers are members of the official ACLA⁶³ and its local

59. See Regulations on Lawyers, art. 19.

60. In some provinces, provincial lawyers' associations such as the Beijing Lawyers' Association were established in the early 1980s. PEERENBOOM, *supra* note 42, at 56. According to the MOJ, the establishment of lawyers' associations at city level in developed areas was subject to the approval by the MOJ. However, the control and management of the lawyers' associations sometimes might be tighter. For example, in the Notice on the Strengthening of the Leadership and Management of Lawyers' Work by the Judicial Administrative Bureaus in late 1989, lawyers' associations were not allowed to direct or manage lawyers' work, and lawyers' associations of city level were not permitted. XIN ZHONGGUO SIFA JIESHI DAQUAN [COLLECTION OF JUDICIAL INTERPRETATIONS OF NEW CHINA] 941 (Liang Guoqing ed., 1990). *But cf.* PEERENBOOM, *supra* note 42, at 56 (in early 1993, the MOJ again started to approve the establishment of lawyers' associations in large and medium sized cities).

61. Lawyers' Law, art. 40

62. See *infra* Section IV (A), for more discussion on the relationship between ACLA and the MOJ.

63. Lawyers' Law, art. 39

chapters, and they are not permitted to form other lawyers' associations.⁶⁴ Interestingly, since the late 1980s, lawyers and law firms across the country have formed various cooperation networks (*xiezuowang*),⁶⁵ and these networks are even supported by government authorities.⁶⁵ Some networks cover law firms in certain geographical areas, while others convene law firms in large and medium sized cities across the country.⁶⁷ According to one report, these cooperation networks have developed a constitution on lawyers' cooperation and an increasing number of law firms have voluntarily accepted the constitution.⁶⁸

It seems that the cooperation networks were originally established among law firms from different areas for cooperation in business and practice.⁶⁹ Given China's size and the number of lawyers, law firms will largely reduce workload and costs and exercise quality control by referring business to other law firms in the cooperation networks. Perhaps most pragmatically, cooperation among law firms and lawyers derives from the need to counter regional protectionism. In their practice, lawyers have constantly been confronted with difficulties in filing and dealing with cases in courts and enforcing court judgements.⁷⁰ At a network conference in 1993, two law firms shared their experience in dealing with regional protectionism by cooperating with law firms in other regions.⁷¹

It is not known yet where the cooperation networks are going and whether the cooperation networks will have a significant influence on the

64. The PRC Constitution provides for the freedom of association, but in practice this right is restricted. All professional and social organizations are required to register officially and be approved by government authorities.

65. According to Zhao Jian, one of the initiators of such cooperation networks, there had been about ten cooperation networks across the country by 1994. See Zhao Jian, *Lushi Yewu Xiezuowangluo Qian Tan [Preliminary Discussion on Lawyer Business Cooperation Networks]*, ZHONGGUO LUSHI [CHINA LAWYER], Oct. 29, 1994, at 6.

66. Delegates from the judicial administrative authorities and lawyers' associations often participate in the meetings of the cooperation networks.

67. See Zhao, *supra* note 65, at 6; Zhongnan Liu Sheng (*Qu*) *Di Er Ci Lushi Xiezuowangluo Huiyi Zai Guilin Zhaokai [Lawyers from Six Provinces in the Mid-South Convened a Second Cooperation Meeting in Guilin]*, ZHONGGUO LUSHI [CHINA LAWYER], Aug. 5, 1992, at 21; ZHONGGUO LUSHI [CHINA LAWYER], Nov. 29, 1995, at 42 (reporting that lawyers from five provinces in the south-west and two cities have organized cooperation conferences since 1986).

68. See Chen Qiulan, *Quanguo 100 Chengshi Lushi Xiezuowangluo Dahui Caifanglu [An Journal of the Cooperation Meeting of Lawyers from 100 Cities across the Country]*, ZHONGGUO LUSHI [CHINA LAWYER], Jun. 5, 1993, at 5-6.

69. See Zhao, *supra* note 65, at 6.

70. See Donald Clarke, *Power and Politics in the Chinese Court System: The Enforcement of Civil Judgements*, 1996 COLUM. J. OF ASIAN L. 85 (1996).

71. See Chen, *supra* note 68, at 6.

status quo of the official lawyers' associations in the current Chinese social and political context.⁷² Nevertheless, the mere existence of these networks is worth noting.⁷³ The voluntary socialization that developed among lawyers and law firms was largely the product of lawyers' needs to achieve their collective interests across geographical areas in their practice. Although the processes may be uncertain in terms of their consequences due to structural obstacles, there seems to be a growing consciousness of professional identity and self-governance among the PRC legal community. At the conference mentioned above, for instance, a lawyer representative appraised the conference as a symbol of lawyers' solidarity and strength.⁷⁴

In addition, the emergence and development of the cooperation networks among law firms may also indicate a facet of lawyers' attitudes towards the official lawyers' associations and their responsibilities. The lawyers associations seem ineffectual in promoting exchanges among lawyers.⁷⁵ For example, in a report about their expectations of the newly restructured ACLA, four Beijing lawyers expressed similar views. In their views, ACLA should aim at protecting lawyers' interests, coordinating relationships among law firms and public relationships, providing practical training and cultivating professional identity.⁷⁶

Results of my survey of 67 lawyers show similar findings. When asked whether the lawyers' associations are helpful to them, 52% of the respondents replied no, and only 18% of them replied that the lawyers' associations are somehow helpful. Nearly 60% of the respondents wish that the lawyers' associations would protect their rights and interests, help to coordinate public relations, and provide practical training programs. Nearly 42% of the respondents wish that the lawyers' associations would facilitate exchange and cooperation among lawyers and law firms. These

72. So far neither the MOJ nor the ACLA has officially defined the cooperation networks, and their relationships with the administrative authorities and the official lawyers' associations. The official position towards lawyers' own organizations is explicit in the MOJ's Notice on Forbidding the Voluntary Establishment of National and Regional Lawyers' Organizations (Aug. 8, 1989), MOJ Document 211 (1989) (on file with the author).

73. Cf. RICHARD ABEL, *AMERICAN LAWYERS* 45 (1989) (American Bar Association was established by some 100 lawyers in 1878).

74. See Chen, *supra* note 68, at 6.

75. See Henry Pitney, *The Role of Legal Practitioners in the People's Republic of China*, 24 STAN. J. OF INT'L L. 349 (1988).

76. See Zhang Yanli, *Shoudu Lushi Tan Lushi Gongzuo Gaige* [Lawyers in Beijing Talk about the Reform of Legal Profession], ZHONGGUO LUSHI [CHINA LAWYER], Jul. 29, 1995, at 3-5 (reporting that one interviewee specified that ACLA should pioneer in transforming the function of government agencies, and develop lawyer culture including distinct working style and life style).

survey results indicate the demands of the lawyers for more responsive and service-oriented lawyers' associations.

Since there is no precedent model of a self-regulation group for the legal community in the PRC, and because the PRC authorities are still ambivalent about allowing the Bar full autonomy, members of the Bar can only turn to the models of their foreign counterparts. They seem increasingly interested in Western models of law firms and the Bar associations. The ACLA has, in recent years, been introducing foreign lawyers' systems with topics including, among others, lawyers-clients relationship, organization of lawyers' associations and law firms, professional ethics, as well as specific legal services.⁷⁷

IV. CONSTRAINTS ON AND CHALLENGES TO PROFESSIONALIZATION OF THE CHINESE BAR

Professionalism needs to be understood in a specific social, economic and political context. Since the functions of law and the role of lawyers in the PRC cannot be considered separately from the CCP regime that controls the state apparatus, the professionalization of the Chinese Bar cannot be assessed without consideration of the influence of the CCP regime. In this section, I examine the challenges confronting the Chinese legal community in the process of striving for professionalization. Economic autonomy may not necessarily result in the Chinese Bar's enjoying substantial autonomy, independence and self-regulation. Tensions between the Chinese Bar and the state authorities continuously beset the ideal of lawyers independently performing their professional tasks. Moreover, lack of professional expertise and ethics also plagues lawyers and prevents them from meeting the growing demands of quality legal services and gaining public acclaim.

When examining the relationship between the Chinese Bar and the state apparatus, scholars have generally discussed the control of the Bar by the party state as a unitary category.⁷⁸ However, political scientists on China suggest that the operations of the changing Chinese polity are so complicated that such crude concepts as a unitary "state" and a homogeneous "society" can hardly illuminate the "subtlety and

77. See generally ZHONGGUO LUSHI [CHINA LAWYER] (1993-96), for an overview of the introduction of foreign lawyers' systems.

78. Alford, *supra* note 18; Gelatt, *supra* note 24.

significance" of the process.⁷⁹ Thus a sophisticated appreciation of these complicated operations requires a "disaggregation" of these concepts.⁸⁰

Generally, the Chinese state power penetrates the official bureaucracies and society based on two separate principles: the principle of vertical control, *tiao*, and the principle of horizontal control, *kuai*.⁸¹ The Chinese Bar is under the vertical control of the MOJ. In addition, it interacts with other parts of the state authorities, including the public security, the procuracy, the court, and other government bureaucracies. I examine these two types of interactions: the relationship between the Chinese Bar and the MOJ, and that between the Chinese Bar and other state authorities.

A. *Relationship with the MOJ and its Affiliates*

The MOJ is the immediate government agency that supervises and fosters the general lawyers' system.⁸² After the MOJ was reestablished in 1979, it was given the power and responsibility to take charge of the lawyers' system. As a result, the MOJ has direct influence on the functions and development of lawyers and law firms and, hence, the autonomy and quality of the Chinese Bar.

As discussed earlier, under the Regulations on Lawyers and other regulations, lawyers and law firms were subject to the leadership and supervision of the MOJ and its affiliates with law firms having to regularly report to the authorities about their work. Given the antagonism toward legal practitioners by other state authorities and traditional prejudice against lawyers in Chinese culture, there seemed to be a need for the MOJ to protect the Chinese Bar. In other words, when the work and rights of lawyers were hindered and endangered by any individuals or entities, it seems preferable for a government authority to intervene on behalf of the

79. Elizabeth J. Perry, *Trends in the Study of Chinese Politics: State-Society Relations*, 139 CHINA Q. 704, 707 (1994); See also DOROTHY J. SOLINGER, CHINA'S TRANSITION FROM SOCIALISM: STATIST LEGACIES AND MARKETING REFORMS (1993); GORDAN WHITE, RIDING THE TIGER: THE POLITICS OF ECONOMIC REFORM IN POST-MAO CHINA (1993).

80. See Perry, *id.*, at 708.

81. According to the two principles, superiors in a certain bureaucratic hierarchy dictate inferiors, a particular body cannot exercise power over other bodies at a given level of bureaucracy.

82. During the early 1980s, due to the growing demands of economic transaction, many law firms were set up or sponsored by various state agencies, such as the Ministry of Foreign Trade and Economic Cooperation. As a result, these law firms were not fully under the supervision of the MOJ. See generally Pitney, *supra* note 75, at 340-43, for a detailed discussion of such law firms in the 1980s.

lawyers to ensure their rights are respected. The dominating role of the MOJ in lawyers' system thus left little, if any, space for the lawyers' associations to assume self-regulation.

The privatization of law firms and the delegation of some management responsibilities to the lawyers' association have resulted in a dual structure for the management of lawyers in the Lawyers' Law.⁸³ Lawyers and law firms are subject to management by lawyers' associations under the macro-level supervision and guidance of the MOJ and its affiliates.⁸⁴ According to one commentator, a substantial basis for the separation of powers between the state and the Chinese Bar is absent.⁸⁵ Given the continuity of the influence of the party state, the structural weakness of the lawyers' associations, and continuing fragility of the Bar, the PRC legal community will likely continue to be under the sponsorship, if not the control, of the MOJ in the near future.

1. The MOJ's Control of the Legal Community

The MOJ insists that the legal community needs supervision and guidance because the legal community lacks the necessary professional skills and ethical standards.⁸⁶ In addition, the boundary of the MOJ "professional management by lawyers' associations" (*hangye guanli*) is unclear in theory as well as in practice.⁸⁷ In this regard, the MOJ seems to be experimenting. For example, before the Lawyers' Law was promulgated, disciplinary sanctions were enforced by Disciplinary Committees consisting of practicing lawyers, lawyers' association board members⁸⁸ and judicial administrative personnel. Under the Lawyer' Law, however, the MOJ and its local affiliates are now the administrative organs responsible for sanctioning legal practitioner misconduct.⁸⁹

It seems that the MOJ intends to continue to exercise far-reaching supervision and guidance over lawyers and law firms. After the Lawyers'

83. See PEERENBOOM, *supra* note 42, at 55.

84. Lawyers' Law, art. 4.

85. See generally PEERENBOOM, *supra* note 42, at 56-58, for a discussion of the MOJ's supervision and guidance.

86. See Dong Haolai, *Lushi, Ni Ke Bie Zheyang [Lawyers, Please Don't Behave like These]*, MINZHUYUFAZHI [DEMOCRACY & LEGAL SYSTEM], Aug. 6, 1996, at 14, 15 (reporting that more and more complaints are filed about unsatisfactory services and ethics of legal practitioners).

87. See Zhang Geng, *supra* note 1, at 121.

88. Before July 1995, the board members for lawyers' associations included both lawyers and non-lawyers. Since July 1995, the ACLA board has consisted of practicing lawyers only.

89. Lawyers' Law, art. 44; The reason for such change, however, remains to be known.

Law was promulgated, the MOJ called for the local justice bureaus to take steps to propagate and implement the law, and to strengthen the administration of legal practitioners.⁹⁰ The MOJ explicitly defined the administration of lawyers as macro-level supervision by the MOJ, management by lawyers' associations, as well as micro-level management by law firms.⁹¹ For the former, the MOJ and its affiliates will provide lawyers, law firms and lawyers' association guidance in policy, personnel and practices. For the latter, the MOJ stressed the need to strengthen, among others, the CCP leadership in law firms.⁹² It is not known whether and how such supervision and control work in reality.

Perhaps most importantly, the MOJ seems to have economic incentives to continue the control of lawyers and law firms. Since lawyers are no longer defined as state legal workers, the Communist ideology is less important in the administration of lawyers' work. However, under the current fiscal system, the MOJ and its affiliates may be motivated by perceived economic gains to manage and supervise lawyers' work. This is due to the fiscal reform on appropriations of judicial administrative authorities since the mid-1980s. Under these policies, economically autonomous law firms are required to turn over 10-15% of their annual profits to the judicial administrative authorities. These profits will compensate the government's limited appropriations to the judicial administrative authorities for their daily operations.⁹³ As a result, the MOJ and its affiliates have the incentive to control law firms and lawyers to ensure that they continue to share profits with law firms under their supervision. This will shed light on why in a specific city some law firms may be under the supervision of provincial justice bureaus (if in the capital city of a province), while others are under the supervision of municipal justice bureaus, and yet many others are under the district justice bureaus. This has created odds between different levels of judicial and administrative bureaus and impeded a sense of solidarity and community between lawyers and law firms under various levels of supervising authorities.⁹⁴ So far there seems no sign that the situation will change in the near future.

Recent years have witnessed that the MOJ and its affiliates often

90. See Zhang Geng, *supra* note 1, at 228.

91. Justice Minister Xiao Yang, *Speech on Further Strengthening of the Establishment of the Lawyers Force*, reprinted in Zhang Geng, *supra* note 1, at 224.

92. See Zhang Geng, *supra* note 1, at 234.

93. See Yang, *supra* note 52, at 26-27.

94. Interview with Official, Guangzhou Justice Bureau (Nov. 1996) (on file with the author).

make efforts to coordinate with other administrative agencies to mandate the use of lawyers' services particularly in new types of lucrative business transactions such as securities and other corporate legal work. The MOJ's influence over law firms and lawyers indicates its interest in the development of the legal profession. Yet it may also reflect the MOJ's motive to share interests with other ministries and administrative entities. In such an environment, for better or for worse, the professionalization of the Chinese Bar will inevitably be subject to the influence of the MOJ.

2. Structural Weakness of the Legal Community

While there are voices from the legal community for a complete separation from the MOJ,⁹⁵ many lawyers' associations and members of the legal profession still insist that, under the current circumstances, the MOJ should play important roles in the lawyers' system. For example, Yang Jinguo, the Secretary General of the All China Lawyers' Association, commenting on the role of the lawyers' associations, said that the associations were not up to the task of administering the profession.⁹⁶

It seems that protection of lawyers' system by the MOJ is still perceived as a necessity. This is probably due to the structural weaknesses of the lawyers' associations. First, many of the top executives of local lawyers' association are still current or former justice administrative officials. As a matter of fact, in an environment where the state still plays a dominant role in the judicial system, it may be strategic for some lawyers' associations to retain government officials as executives. Second, most of the lawyers' associations are poorly funded and staffed. According to the Secretary General of the Guangdong Province Lawyers' Association, by 1995 among 29 provincial level lawyers' associations, 13 were still sharing the same offices with the justice bureaus. They actually functioned on a basis of "one team, two titles" (*yi tao ren ma, liang kuai pai zi*). Even those that were separated from the justice bureaus were poorly staffed. On the city level, lawyers' associations were set up only in one third of the cities across the country. Most of these lawyers' associations were not

95. Interview with Board Member, Shanghai Lawyer's Association (Aug. 1996); Pitney, *supra* note 75, at 378; Mao & Li, *supra* note 2, at 114 (some individuals called for the management of lawyers by lawyers' associations instead of by the judicial administrative authorities).

96. See Irene So, *Lawyers 'Not Ready for Independence'; Justice Ministry Keeps Control of Legal Reforms*, SOUTH CHINA MORNING POST, Jun. 10, 1996, at 8.

staffed with full-time personnel.⁹⁷ Lawyers' associations are unlikely to shoulder the task of governing the legal community before they could be structurally and substantially strengthened.

As for members of the legal community, the transformation of law firms from government-sponsored public entities into intermediary entities has had a significant impact on the autonomy and self-regulation of the Bar. Lawyers are increasingly independent and aggressive to serve the interests of their clients. However, lawyers also find that they lose some kinds of privileges enjoyed previously as state staff, for example, the right to get access to certain information.⁹⁸ As intermediaries, some lawyers have not been allowed to get access to what are perceived as internal documents. In one example, when a lawyer filed an administrative case in a court based on a document from the Supreme Court, he was rejected by a judge on the ground that the Supreme Court document was an internal document of the court and lawyers were not allowed to cite it.⁹⁹ Many lawyers are denied access to their clients before an investigation is conducted on the ground protecting "state secrets".¹⁰⁰ Many others frequently experience interference by individuals and entities in their practice.¹⁰¹ Some lawyers even suffered from physical attacks by judges, government agencies, or clients.¹⁰²

In some instances, lawyers urge the need of the MOJ to grant them a monopoly to exclude non-lawyers to provide legal services.¹⁰³ During

97. See Wang Zhibiao, *Jianli Xin de Lushi Guanli Tizhi De Sikao* [Reflections on Establishing New Lawyers Management Structure], ZHONGGUO LUSHI [CHINA LAWYER], Apr. 29, 1995, at 11.

98. In order to get information from government agencies on behalf of their clients, lawyers will have to request permission from these agencies. Sometimes their requests are denied. See *infra* Section IV B (2).

99. See Yu Chunyu, *Xinnian* [Trust], ZHONGGUO LUSHI [CHINA LAWYER], May 29, 1995, at 27-30.

100. See Zhou Guojun, *Zhengque Renshi Lushi Yu BeiZhuisu Zhe De Guanxi Baozhang Lushi De Susong Quanli* [Correctly Understand the Relationship between Lawyers and the Accused and Guarantee the Litigation Rights of Lawyers], 1997 ZHENGFA LUN [POLITICS AND LAW FORUM], No. 5, at 60-69.

101. See PEERENBOOM, *supra* note 42, at 32-33, for a discussion of the interference with lawyers carrying out their professional duties.

102. Recent examples include an attorney who had an eye gouged out by a client's relative; another lawyer who was illegally taken into custody by his client's adversaries and held for more than four months; another lawyer who was injured when a client threw boiling water into the lawyer's face. See Xia Lu, *Shui Lai Baohu Zhongguo Lushi* [Who are to Protect Chinese Lawyers?], ZHONGGUO LUSHI [CHINA LAWYER], Dec. 29, 1995, at 3-4.

103. During the debate process of the draft of Lawyers' Law, members of the legal community proposed that lawyers shall be entitled to the protection of personal rights and working rights as well as a service monopoly. See Zhang Geng, *supra* note 1, at 162.

the past few years, legal service is becoming a lucrative business for many people including non-lawyers. It has been phenomenal that many non-lawyers establish their practicing businesses outside of the MOJ control.¹⁰⁴ However, it is difficult, if not impossible, to establish a legal service monopoly in China. Due to the shortage of lawyers, Chinese laws permit other organizations or individuals to act as representatives in court proceedings.¹⁰⁵ Ironically, both the legal community and the MOJ indicate a great interest in cracking down on the practices of non-lawyers to ensure such a monopoly. According to a survey done by a provincial justice bureau, some lawyers hoped that the justice bureaus would exercise control and provide for a monopoly over the legal services market to ensure that lawyers are privileged over non-lawyers.¹⁰⁶

3. Arenas of Control and Variations

The Chinese Bar and its self-regulation and professional quality will continue to be under the supervision and control of the MOJ. However, it is not clear how expansive the supervision and control of the MOJ will be. Currently, the MOJ controls the development and expansion of the legal community both in quantity and in quality. In 1993 the MOJ set a target of 150,000 licensed lawyers by the year 2000.¹⁰⁷ In another instance, the MOJ ambitiously planned that lawyers should have criminal defense skills training before they defend their clients in the court.¹⁰⁸ This reflects the ambiguous efforts by the state to move away from a planned political economy.

Anecdotal evidence also shows that sometimes the justice administrative authorities coordinated and organized lawyers to take specific cases and clients. According to officials at the MOJ, the control by the MOJ and its affiliates also means guidance and coordination (*zhidao*

104. See *id.*, at 225-26.

105. Criminal Procedure Law of the P.R.C., art. 26.

106. See Li Hongtao & Ma Qing, *Lushi Gaige Xintai Yu Duice Chuyi* [Preliminary Discussion on Lawyers' Attitudes toward Reform and Proposal], ZHONGGUO LUSHI [CHINA LAWYER], Dec. 5, 1993, at 25-28.

107. See Staff Reporter, *Sifabu Guowuyuan Xinwen Bangongshi Zhaokai "Zhongguo Lushi Gongzuo Gaige" Xinwen Fabuhui* [Chinese Lawyers' Work Reform News Conference], ZHONGGUO LUSHI [CHINA LAWYER] Dec. 5 1993, at 4.

108. See Zhang Geng, *supra* note 1, at 222. In some other lucrative fields of legal services, the MOJ and its affiliates have exercised its power from time to time to license particular lawyers and law firms to handle the work, thus creating a kind of monopoly. For example, in 1993 the MOJ and the State Securities Regulation Commission organized training sessions for selected lawyers from across the country and created the first group of securities lawyers and law firms in the country.

he xietiao) is provided in cases perceived to involve "national interests" (*guojia liyi*). The definition of the "national interests" is not clear, but it is reported that these cases include, for example, a ten-trillion-dollar fraud case in a Northern city,¹⁰⁹ a case of arson in Xinjiang,¹¹⁰ an allegedly illegal project financing,¹¹¹ and a case involving Harry Wu.¹¹²

The control that the justice bureaus exercise over law firms and lawyers can vary based upon forms of law firm ownership. The property rights of private law firms are relatively clearly defined and, thus, enjoy relative autonomy from the justice bureaus in their day-to-day operation. As for state law firms, despite the fact that many of them operate by themselves, since property rights are poorly defined, anecdotal evidence shows that they are subject to interference by the justice bureaus in such matters as the appointment of law firm heads and internal management.

The extent of supervision and control at the local level may also vary among justice bureaus. In some policy areas, local justice bureaus might not always be in tune with the MOJ. For example, at the First Legal Aid Conference of the MOJ in 1996, some local justice bureaus were against the MOJ's ambitious legal aid plan to cover state-owned enterprises. They contended that *their* law firms are not charity organizations and the MOJ is the relevant government authority that should be responsible for state-

109. Two Americans, who were charged for plotting a branch of Chinese Agricultural Bank to issue a ten-trillion-dollar letter of credit. Four Chinese lawyers defended for them. It was alleged that the fraud severely damaged the rights and interests and the fame of the Chinese Agricultural Bank and Chinese financial management order. See Chen Qiulan, *Zhongguo Hengshui De Tebie Jinggao* [Special Warning from Hengshui, China], ZHONGGUO LUSHI [CHINA LAWYER], Jan. 29, 1996, at 22-24.

110. Thirteen officials in Xinjiang received sentences of years imprisonment for neglect of duty. They were charged for causing a fire which claimed the lives of 232 people in a concert hall in December 1994. Xinhua News Agency, *Xinjiang Court Finds 13 Guilty of Causing Fire*, BBC SUMMARY OF WORLD BROADCASTS, Oct. 16, 1995, at 1, available in LEXIS, News Library, Asian Pacific Stories File.

111. A vice-minister was charged for encouraging and participating in the illegal fund-raising activities of a company and taking bribes. Xinhua News Agency, *Vice-Minister Sentenced to 20 Years for Bribe-Taking and Embezzlement*, BBC SUMMARY OF WORLD BROADCASTS, Apr. 12, 1994, at 1, available in LEXIS, News Library, Asian Pacific Stories File. The case was reported to the NPC session as one of the "major" anti-corruption cases of 1994. See *Supreme Court President, Chief Procurator Report on "Major" Anti-Corruption Cases*, BBC SUMMARY OF WORLD BROADCASTS, Mar. 26, 1994, at 1, available in LEXIS, News Library, Asian Pacific Stories File.

112. A naturalized American Chinese human rights activist was charged for alleged crimes of spying and illegally obtaining, buying and providing state secrets to international institutions and individuals. Wu was sentenced 15 years imprisonment and was expelled from China. Xinhua News Agency, *Court Sentences Harry Wu to 15 Years in Jail*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 25, 1995, at 1, available in LEXIS, News Library, Asian Pacific Stories File.

owned enterprises.¹¹³ In another instance, while the MOJ is still responsible for, *inter alia*, assessing lawyers' qualifications and issuing practicing certificates to lawyers,¹¹⁴ as of early 1995, the Beijing Justice Bureau decided to delegate the two tasks to the Beijing Lawyers' Association.¹¹⁵

The immediately discussed areas of supervision and control together with others indicate that, notwithstanding the increased autonomy in the organization and activities of lawyers and law firms, various forms of supervision and control of the MOJ over the development of lawyers and law firms still remain. It is noteworthy that the forms and extent of supervision and control may vary by, among other factors, types of law firm ownership, policy goals and the geographical locations of the justice bureaus. The broader implications of these variations are that the autonomy and self-regulation as enjoyed by Chinese lawyers will develop at varying paces depending on the nature of the nebulous relationships between lawyers and the MOJ.

B. Relationship with the Court, Procuracy, Public Security and Other State Agencies

1. Relationships with the Court and Procuracy and Public Security

In the official rhetoric, the relationship among the Chinese Bar and the court, the procuracy and the public security have been vaguely defined as to "cooperate with each other and check on each other" (*huxiang peihe huxiang zhiyue*).¹¹⁶ There were some debates among the legal community about the relationships in the early 1990s. One commentator argued that lawyers should not be involved in such a cooperative relationship on the ground that lawyers represent the interests of their clients against the

113. The author's observation at the Conference (on file with the author). The MOJ eventually dropped its plan to offer legal aid services to state-owned enterprises in its later regulations on legal aid.

114. Lawyers' Law, art. 11.

115. Other administrative work assigned to the lawyers' association included lawyers' professional training, professional guidance, professional ethics training and discipline review, domestic and international exchange. See, e.g., Wang, *supra* note 97, at 9-11.

116. See Zhang Geng, *supra* note 1, at 194.

prosecution of the state.¹¹⁷ Many other commentators, however, contended that lawyers should be included in the "cooperation and balance" relationship. While their grounds varies slightly, they generally shared one common reason, that is, if lawyers were not involved in the relationship, they would be perceived inferior to the court, procuracy and the public security.¹¹⁸

The relationships between the PRC Bar and the other parts of the judicial system have been complicated and uneasy since the Bar was established. The PRC Bar was first set up in the court apparatus.¹¹⁹ Since the late 1970s when the MOJ reorganized the Bar, Chinese lawyers have struggled to find a niche in the existing structure of the judicial system. As newcomers, lawyers were frequently marginalized in the apparatus of the judicial system. Although lawyers were defined as state functionaries like judges, prosecutors or public security officers, lawyers were, practically, speaking, inferior to judges, prosecutors and police.¹²⁰ The relationships between lawyers and other actors in the judicial system were so tense at times that the MOJ issued a document in 1986, calling for improvement of the treatment of lawyers:

[s]ome political and judicial cadres (*zhengfa ganbu*) regard criminal lawyers as 'losing political standing' or 'defending bad people,' some even humiliate lawyers by ... scolding, binding and illegally detaining lawyers Lawyers are state

117. See, e.g., Wang Guiwu, *Lushi De Bianhu Huodong Shifou Keyi Naru Huxiang Peihe Huxiang Zhiyue De Zhidu* [Should Lawyers' Defense Activities Be Included in the System of Mutual Cooperation and mutual Check?], *ZHONGGUO LUSHI* [CHINA LAWYER], Aug. 5, 1990, at 14.

118. E.g., Zhao Zhenhuan, *Lushi De Bianhu Huodong Ying Naru Huxiang Peihe Huxiang Zhiyue De Zhidu* [Lawyers' Defense Activities Should Be Included in the System of Mutual Cooperation and mutual Check], *ZHONGGUO LUSHI* [CHINA LAWYER], Feb. 5, 1991, at 16-17; Zhang Qimin, *Lushi De Bianhu Huodong Jiushi Dui Gong Jian Fa Gongzuo De Peihe Yu Zhiyue* [Lawyers' Defense Activities Are Cooperation and Balance With the Public Security, the Procuracy and the Court], *ZHONGGUO LUSHI* [CHINA LAWYER], Feb. 5, 1991, at 17, 27; Xie Youping, *Bianhu Lushi Yu Gong Jian Fa Jiguan Zhijian Cunzai Huxiang Peihe Huxing Zhiyue De Jichu* [There Are Bases for Defending Lawyers to Cooperate and Balance with the Public Security, the Procuracy and the Court], *ZHONGGUO LUSHI* [CHINA LAWYER], Jun. 5, 1991, at 41-42.

119. In 1953, the first public defender's office was set up in the Shanghai People's Court. See Mao & Li, *supra* note 2, at 39.

120. The inferiority can simply be seen from the order of the four state judicial authorities in the official rhetoric: public security ministry, procuracy, courts, and ministry of justice (*gong, jian, fa, si*).

legal workers, and should be treated politically equally as political and judicial cadres ...¹²¹

Specifically, lawyers have uneasy interactions with the court and the procuracy in the litigation process and with the public security in the investigation process. In criminal trials, judges often disregard the defense arguments of lawyers. Some judges and prosecutors even regard lawyers as troublemakers when the lawyers' arguments are substantially different from those of the prosecutors. A lawyer once contended that judges and prosecutors should listen to lawyers' defense arguments, arguing that, if the courts, prosecutors and the lawyers share the same views, defenders would be meaningless.¹²²

The relationships among lawyers and the court, the procuracy and the police continue to be uneasy after the Amendments to the Criminal Procedure Law. Some lawyers reported that they had difficulties in getting involved at early phase, meeting with the defendants, and making defense arguments.¹²³ This impedes lawyers from playing a meaningful role in the criminal process, particularly in the investigation phase. For example, among 42 criminal cases a court heard during the first quarter of 1997, there was only one case with lawyer involvement in the investigation phase. There, lawyer, instead of conducting discovery, counseled the suspect to "confess to the crime and submit to the law."¹²⁴

In other instances, the police or the procuracy rejected lawyers' requests for involvement in the investigation process on the ground of "maintaining state secrets." According to one PRC commentator, since "state secrets" are broadly defined in both regulations of the Ministry of Public Security and the Supreme People's Procuracy, excluding the involvement of outsiders including lawyers, the rights of lawyers to counsel their clients at an early phase have been meaningless.¹²⁵ Only under a recent regulation on the enforcement of the Criminal Procedure Law of 1998, for cases not involving state secrets, lawyers do not have to obtain approval from the police or the procuracy before meeting the

121. ZHONGGUO LUSHI ZHIDU YANJIU ZILIAO HUIBIAN [RESEARCH MATERIALS ON THE CHINESE LAWYERS' SYSTEM] 224-26 (Mao Pengnian & Li Bida eds., 1993).

122. See Wang Wenzheng, *Bianhu Lushi Zhen De Bang Le Dao Mang Ma?* [Are Defense Lawyers Really Counter-Productive?], ZHONGGUO LUSHI [CHINA LAWYER], Jun. 5, 1992, at 27.

123. See Sun Jibin, *Lushi Xingbian You Sannan* [Lawyers Have Three Types of Difficulties in Criminal Process], CHINA LAWYER NEWS, Apr. 2, 1997, at 1.

124. Cited in Zhou, *supra* note 100, at 66.

125. See *id.*, at 67.

suspects.¹²⁶ In civil and administrative matters, largely due to regional protectionism and lack of independence of the courts, lawyers have difficulties in filing cases and presenting arguments in courts, as well as enforcing court judgements.¹²⁷ Worse even, lawyers are at times attacked by judges during court proceedings.¹²⁸

Under these circumstances, lawyers seem to tend to perceive that they should co-operate rather than bargain with the courts and procuracy. This is particularly true in criminal proceedings, where lawyers often play a passive role in criminal proceedings, they either accept court decisions or attempt to mitigate sentences. A comment by the President of the Shanghai Lawyers' Association is revealing:

[a]fter hearing that the judges and prosecutors had some complaints, a law firm took immediate action to seriously examine ten cases where the defendants had been found innocent. They found that in seven cases they should not have contended that defendants were innocent. Through study and discussion, the lawyers in the firms uniformed their thoughts and improved their understanding of policy and law, and improved their work and developed a smooth relationship with the judges and prosecutors¹²⁹

In another instance:

[a] district procuracy once examined 21 cases in which the lawyers defended the defendant and as a result, defendants were found not guilty, and concluded that lawyers made wrong defense arguments in 20 cases. It requested the justice bureau to supervise lawyers to improve their work. The Lawyers' Association immediately formed a team to examine the cases. After talking to the judges and lawyers, the team discussed the

126. See The Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice and the Legal Work Committee of the NPC Regulation on the Several Issues Concerning Enforcement of the Criminal Procedure Law (Jan. 19, 1998).

127. See Staff Reporter, *Baohu Zhuyi Bixu Jinjue Qingchu Zhifa Zhong de Difang he Bumen* [Protectionism Rampant in Legal Enforcement], LIAOWANG [OUTLOOK], Feb. 17, 1997, at 4-6, for an overview of the influence of protectionism on law enforcement.

128. For instance, two lawyers were respectively beaten and detained by judges because they held views that differed from those of the judges. See Xia, *supra* note 102, at 3-4.

129. See Wang, *supra* note 122, at 28.

cases among themselves and concluded that lawyers differed from the judges and prosecutors in 16 cases, where the lawyers argued the defendants were innocent, while the prosecutors and judges found the defendants guilty ...¹³⁰

In yet another account of the defense of two alleged murderers, the lawyers reported how they made their arguments in the case for which there seemed no arguments to make. The two defendants killed 11 people and injured four others in revenge against their village head. The two lawyers were appointed to defend the defendants. After they examined the case and met with the defendants, the lawyers believed that the facts and law in the indictment were clear and there was nothing with which to defend their clients. At the open trial, the lawyers first accepted the charge that the defendants should be punished and then they went on to draw some lessons from the case to "propagate the socialist legal system." The court and the procuracy were satisfied with the lawyers' cooperation with them.¹³¹

In summary, it remains to be seen how the relationships among lawyers and the other parts of the judicial system will evolve. If the MOJ and the Chinese Bar continue to exert their influence, bolstered by the Lawyers' Law, there will probably be more elements of checks and balances in the relationships among them. In addition, the relationships may also develop to be more multi-dimensional. In recent years, it has been reported that some courts open their doors to lawyers for criticisms and suggestions.¹³² With the introduction of adversarial elements into court hearings, lawyers' relationships with the courts will improve, particularly in economic-related cases.¹³³ In economic litigations, generally both parties retain lawyers. If the lawyers can present and discuss facts and legal arguments at court hearings, their role will probably be more respected by judges.

130. See *id.*, at 28.

131. See Yan Zeping & Wang Wantao, *Cong Yi Qi Teda Sharen An Tan Lushi "Wu Ci Ke Bian"* [Discussion on Lawyers' Having No Arguments to Make Based on a Severe Murder Case], *ZHONGGUO LUSHI* [CHINA LAWYER], Aug. 5, 1992, at 12-13.

132. See *Xi-an Shi Zhongji Fayuan Jianli Lushi Lianxi Gongzuodian* [A Lawyers' Work Office Is Established in Xi-an Intermediary Court], *ZHONGGUO LUSHI* [CHINA LAWYER], Jul. 29, 1994, at 47.

133. See, e.g., Lu Jianping & Hu Jiankang, *Faguan Yu Lushi Gonghua Jingji Shenpian Fangshi Gaige* [Judges and Lawyers Talk about Reform of Economic Hearings], *ZHONGGUO LUSHI* [CHINA LAWYER], Jul. 29, 1995, at 36.

2. Relationships with Other State Agencies

Besides judicial administrative agencies, such as the MOJ and its affiliates at various levels, lawyers also interact with other administrative agencies. Their relationships with government agencies are no less complicated than their relationships with other state authorities. Lawyers' practices are sometimes subject to the interference from government agencies. Some lawyers are denied assistance when approaching administrative agencies for information. Though reasons behind these interferences or denials may vary, many of them have to do with departmental or regional protectionism. Particularly when a lawyer represents a client in any jurisdiction other than the client's place of domicile and when a dispute involves a large amount of money, motivated by desire to protect the local economy, local officials often meddle with the lawyer's practice.

Tensions between society and state may also lead to government authorities' interference with lawyers' practices. In recent years the government authorities have become more aware of the importance of the role of lawyers and sometimes have turned to lawyers to deal with issues of public concern. However, as the government authorities hold that the overriding concern of judicial work is to maintain political and social stability, lawyers sometimes find themselves walking a fine line between the interests of their clients and those of the state authorities.

For instance, a lawyer in a city in Guangdong Province once represented some 2,000 villagers to write to local city government regarding its decision on these villagers' disputes with a retail market. These 2,000 villagers' disputes over land rent with a motorcycle peripherals retail market resulted in some damage to public and private properties. The farmers' village committee hired a lawyer to represent them. A couple days later, the city government issued an open letter to the farmers to the effect that the accident was pre-mediated and organized by a few "bad people," and, therefore, violated the criminal law. The lawyer responded on behalf of the farmers in an open letter. There were essential differences in the account of the accident between the government authorities and the farmers. The lawyer was later detained by the local public bureau and received an administrative punishment of education

through labor on the charge of "disturbing the social order."¹³⁴

The instance described above illustrates the tension between a lawyer's obligations to his clients and the state's political interests. Tension between a lawyer's obligations to his clients and state interests would probably continue to arise. Lawyers are to provide legal services to the society under the Lawyers' Law, but it is unclear to what extent lawyers can represent their clients' interests against those of the state. Particularly in cases involving public interests, lawyers would have to make decisions carefully about their services in an uncertain political environment.

The foregoing discussion illustrates the complex relationships between lawyers and the state authorities in the PRC. Even though the legal community now enjoys higher prestige and more autonomy than at any time in PRC history, various tensions between the Chinese Bar and the state authorities continue to plague lawyers performing their professional tasks independently. However, given that private practice is becoming a more important source of income for lawyers, the PRC lawyers, who have had attenuated relationships with clients, much like lawyers in other civil law societies,¹³⁵ seem to be gradually shifting to a client-oriented practice model, particularly in economic matters. An important issue implied in this shift is whether the legal community will mount an effective challenge to sovereign state interests.

So far, it is still unclear whether the autonomy enjoyed by the PRC legal community would lead to lawyers' challenging the state or if the community would still have close ties to the state authorities. The illustration of the relationships between the legal community and the state

134. See Zhang Ailei, *Lushi Bei Laojiao Rechu Guansi [Educating Lawyer through Labor Incurs Lawsuit]*, MINZHU YU FAZHI [DEMOCRACY & LEGAL SYSTEM], Jul. 6, 1997, at 36-37; see also Zhou Min, *Xianwei Zuzhibu Bu Rang Wo Dang Lushi [The County Personnel Department Didn't Allow me to Practice Law]*, MINZHU YU FAZHI [DEMOCRACY & LEGAL SYSTEM], Nov. 11, 1990, at 11-12 (reporting that the CCP personnel department in a county in Hainan Province prohibited a lawyer from practicing law because he appealed a case for two fishermen who were detained by the local public security bureau for organizing a fishermen's interest group. The county public security bureau detained the two fishermen on the charge that they did not register their interest group with the government authorities. On behalf of the two fishermen, the lawyer appealed to the Hainan Province Public Security Bureau, the upper level authority of the local bureau. However, the CCP personnel department called a meeting criticizing the lawyer to the effect that the county government was requisitioning land in the fishermen's village and the lawyer's representation of the fishermen was against the county's work. Later on the personnel department decided to prohibit the lawyer from practicing law and dismiss his from the director of his law firm).

135. See, e.g., Mark Osiel, *Lawyers as Monopolists, Aristocrats and Entrepreneurs*, 103 Harv. L. Rev. 2009 (1990) (book review).

reveals ambivalent prospects for lawyering for society vis-à-vis the state. On the one hand, market forces have provided ample opportunities for lawyers to represent the interests of various segments and sectors of the society. Since the 1980s with the erosion of Communist ideology, the CCP leaders have come to use law as a tool to reflect and foster socioeconomic and political changes. They have gradually called upon legal system "to provide . . . comprehensive management of public order as the fresh readjustment and distribution of interests."¹³⁶ During the process, lawyers will inevitably face challenges from conflicts of interests between the society and the state. Lawyers' economic independence in private law firms may endow them with greater autonomy, and, therefore, enable them to be more outspoken and more persistent in mobilizing resources to pursue protection of their clients' interests and to exert their pressure on the state when necessary.

On the other hand, as the party state still eclipses the operation of legal system, and the role of lawyers in the society remains ambiguous. Challenging the status quo through legal means remains a nebulous, if not entirely alien, concept to the legal community. Besides the emerging conscious efforts of a large number of dedicated lawyers, the role of lawyers in challenging and shaping political development also depends on popular demands or willingness to change the status quo. Since there is not yet such a thing as a mature civil society in the PRC, and hence no sophisticated demands for rule of law and independence from the state, the lawyers' role in challenging social and political injustice will be limited.

The discussion of relationships among lawyers and the state indicates that the legal community seems to lack the necessary aura of independence from the state and many lawyers still desire to be part of the state system. Anecdotal evidence shows that members of the legal community seem to have a closer connection with the local elite and business communities. In summary, to the extent that PRC lawyers represent the interests of their specific clients against state, they have made some progress blessed with more autonomy in their practice. It remains to be seen to what extent Chinese lawyers will get involved in activities with general social and political goals.

136. Cf. Ronald C. Keith, *Legislating Women's and Children's "Rights and Interests" in the PRC*, 149 CHINA Q., 29, 53 (1997).

C. *Challenges to Lawyers' Professional Qualification*

Professional knowledge and legal ethics are important indicators to distinguish the Bar as a professional group in society. Besides state actions mentioned above, inherent deficiencies within the legal profession, as well as the crisis of values in the larger background, in a changing society also plague lawyers' activities and role in the society. Both society and the government authority blame the Chinese legal community for its insufficient legal expertise and low professional ethics.

Even lawyers themselves seem ready to admit these problems exist within the legal community. In my survey, when asked about the four major problems within the legal community a low level of legal expertise and professional ethics, unfair competition among lawyers, poor judicial environment and selfish pursuit for money are, among others, the most serious problems identified. Some lawyers lack an awareness of conflicts of interest.¹³⁷ They are deeply involved in corporate management or investment activities or bribes to judges, prosecutors or arbitrators. Some work in two or more law firms at the same time and represent both parties in a dispute.

The number of lawyers employed as legal representatives is relatively small in the PRC.¹³⁸ Besides the fact that most people are unwilling or incapable of paying the fees, lawyers' poor capacity to assert their clients' interests may also contribute to low representation rate by lawyers. Many lawyers lack professional knowledge and skills or are underqualified to meet the demands of society. The Chinese authorities have taken steps to control the professional qualification of practitioners. Under the Lawyers' Law, passing the national bar examination is a statutory requirement for practice.¹³⁹ However, currently in China, a large number of practicing lawyers have neither passed a bar exam nor obtained a university degree in law. According to MOJ statistics, by 1996, only 25 percent held a formal law degree.¹⁴⁰

Even worse, without a continuing education system, many lawyers are ill prepared for the increasing number of new laws. It is reported that,

137. See Staff Reporter, *Better Qualifications Can Improve Lawyers' Standards*, CHINA DAILY, May 11, 1996, at 4.

138. Official statistics shows that, in 1995, lawyers were present in only 11 percent of the total civil cases recorded. See CHINA DAILY, Jan. 13, 1996, at 1.

139. Lawyers' Law, art. 6.

140. See MOJ, *Woguo Lushi Shiye Fazhan Jiben Zhuangkuang* [Basic Information on the Development of Lawyers in Our Country] (1996) (on file with the author); see also Alford, *supra* note 18, at 31.

since many lawyers do not have training in administrative law, they would make excuses to decline requests for representation.¹⁴¹ Many lawyers and law firms claim that they can provide a broad spectrum of services and perform a wide range of tasks, yet seem to make little efforts to develop special interests and fields or to divide labor within the firms. Many other lawyers perform poorly in courts because of lack of necessary skills and knowledge.

A study on civil court sessions by Isabelle Thireau and Hua Linshan reveals a surprisingly low level of legal expertise displayed by those lawyers who represented their clients. In an analysis of 130 legal disputes heard in a basic civil court of a hinterland medium-size city, the authors divided both groups of lawyer and non-lawyer representatives into four categories: (1) those who remain silent; (2) those who make one or two brief interventions, repeating some of the facts stated by the party, summarizing his claims or presenting the written proofs to the judge; (3) those who are very active during the court sessions, speaking on behalf of the party, adding new claims, rejecting or accepting conciliation; and (4) those who make explicit references to given laws.¹⁴² Among the 130 disputes studied, four major types of disputes involve rights over houses and commercial spaces, compensation for physical or material loss, debts, and divorce and custody. During the 130 court sessions with lawyer representation, 27% of the lawyers remained silent, 43% made brief remarks, 25% are very active and only 4% make explicit reference to substantive or procedural law.¹⁴³ Compared with non-lawyer representatives, those lawyer representatives provided virtually no qualitatively different services.¹⁴⁴ Furthermore, according to the authors, many lawyers' arguments were similar to those of non-lawyer representatives in that they were prone to display a greater concern for moral issues than legal issues in court discussions: [s]ome appear to bring

141. See, e.g., Wang Yi, *Min Gao Guan Nan Zai He Chu* [Where Do the Difficulties Lie for Citizens to Bring Lawsuits against the Government Agencies?], *ZHONGGUO LUSHI* [CHINA LAWYER], Sep. 29, 1994, at 39.

142. See Isabelle Thireau and Hua Linshan, *Legal Disputes and the Debate about Legitimate Norms*, in *CHINA REVIEW* 1997 360 (Maurice Borsseau et al. eds., 1997).

143. See *id.*

144. The results of non-lawyer representatives shows that 27% remained active, 42% made brief remarks, 27% were quite active and 3% made explicit reference to legal texts or procedures. See *id.*, at 360.

most of all their moral caution to the party at stake, much like a retired cadre would do¹⁴⁵

As more Chinese individuals and institutions are using formal legal means by arguing in courts what is right or wrong, the capacity of lawyers to assert the claims of their clients will become increasingly important. The fact that lawyers act passively in many court sessions reveals that these lawyers possess poor legal expertise and, hence, makes one suspicious of their capacity to articulate the claims of their clients in a court. This problem could be exacerbated as Chinese court proceedings are undergoing reform by introducing more adversarial elements into the adjudicative system. The role of lawyers will become ever more important in court proceedings. The fact that lawyers' performance is similar to that of non-lawyers also indicates that members of the legal community have not yet developed enough legal expertise to distinguish them from lay members of society.

The fact that lawyers are not much different from non-lawyers by making non-legal arguments further raises a question as to what role lawyers are playing in a changing Chinese society.¹⁴⁶ The study of Thireau and Hua indicates that the meaning and application of laws are largely determined by historical and social conditions. Today, the Chinese legal system reflects the continuities of traditional cultures and many elements of capitalist economy.¹⁴⁷ The tension between Chinese traditional values together with communist ideology and the emerging economic rationality and legal individualism has resulted in no criteria but competing values that shape the interpretation and application of law. In a society with a plurality of values and, yet, no guides to properly apply and interpret law, lawyers and judges will unavoidably resort to various kinds of arguments to settle disputes. Before rationality and legalism become an integral norm of the morality in society, the continuity of traditional values and particularly the ongoing influence of politics will probably continue to have a strong influence over the function of the legal system.

That the function of legal system is influenced by political ideology probably also helps to explain why the experiences of lawyers differ

145. See *id.*, at 361; see also Xu Yangying, *Lushi Daili Lihun Anjian Tansuo* [Discussion on Lawyers' Dealing with Divorce Case], *ZHONGGUO LUSHI* [CHINA LAWYER], Jul. 29, 1994, at 14-15, for moral discourse in the role of lawyers, discussing principles for lawyers' role in divorce cases. Lawyers should consider factors such as feelings, reasons, and law when dealing with a case.

146. I thank Professor Lubman for raising this point to me.

147. Cf. Benjamin Gregg, *Law in China: The Tug of Tradition, the Push of Capitalism*, 21 *REV. OF CENT. & E. EUR. L.* 83 (1995).

depending on the nature of the roles they are expected to play in various kinds of cases. In civil and economic cases as opposed to criminal cases, because lawyers are expected to realize the government's policy of rapid economic modernization, generally they are less subject to formal interference from the government authorities.¹⁴⁸ Given the economic tensions and political competitions among various localities and departments, however, lawyers may be subject to protectionist interference. And, in criminal cases, since criminal law is to protect state interests and lawyers are vaguely required to provide services to society, they will remain subject to interference from the state authorities.

V. CONCLUSION: AN ASSESSMENT OF THE PRC LEGAL PROFESSIONALISM

In the foregoing sections, I discussed the evolution of the Chinese Bar, in particular, the organizations and activities of the Chinese Bar, its relationships with the party state, as well as its professional qualification. The road to an autonomous legal community in China has been a difficult one. During nearly three decades of anti-formalistic and anti-legalistic Communism, lawyers almost disappeared from the social and political landscape of the PRC. The autonomy of lawyers has been limited by a variety of factors, such as direct state control of lawyers and law firms, ambiguous political screening of lawyers, weak function of the lawyers' associations, and intervention by state authorities in lawyers' practice. All of these have impeded the development of a professional Bar in the PRC.

Economic reform and social changes have brought about growing demands for legal services in society. Lawyers are involved in criminal law, in the expansion of civil and economic matters, in the relationship between government agencies and various segments of the society, as well as in public interests matters. Reform of the lawyers' system resulted in part from the government's response to the demands of diversified economic patterns and participants. It also reflects the needs of the legal community to enhance their perceived interests and their collective identities.

The above discussion also suggests that the changes in the PRC legal community have indicated some trends that can be measured against some

148. See *id.*, at 81.

elements in classical Western conceptions of professionalism, such as autonomy, independence, self-regulation, and professional qualification. Members of the Chinese Bar are enjoying more autonomy and independence from the state, which enables them to be more aggressive and effective in advancing the interests of their clients. Practicing lawyers have started to take over the responsibilities of managing lawyers' associations and to assert their collective interests and identities. A growing number of the Bar members are developing some "professionalism anxiety" or concerns over their image in society. This has led some practitioners to make credible efforts to prove their commitment to social justice and public interest. The government authorities and lawyers' associations have started to set more systematic standards for entry into the Bar and to regulate professional ethics.

Considering the historical lack of an autonomous legal community in Chinese society, and the fact that there is an underdeveloped sense of lawyers' identities, Chinese lawyers have indeed a long way to go. The ideals of Western legal professionalism are not yet integrated into either the collective identity of the Chinese Bar or the official rhetoric and public perception of the role of lawyers. Various forms of interference by the MOJ and other state authorities still remain and the legal community will continue to face interference. All licensed lawyers must join the official lawyers' associations. With limited knowledge of the rule of law, lacking sufficient professional qualifications and a clearly defined role for lawyers in the changing society, the Chinese Bar is still far from being a professional community.

The analysis of Chinese legal professionalism should be made in the Chinese social, economic and political context. I have attempted to demonstrate that state action has strong and perhaps decisive influence upon the legal community as it stands today. The foregoing discussion indicates that the relationships between the Chinese Bar and the state authorities are becoming complex and multi-dimensional.

The complex lawyer-state relationships suggest that the autonomy enjoyed by the legal community is diverse in degree, if not in kind. The broader implication of the diversification in autonomy from the state is that legal professionalism in the PRC will vary depending on a variety of factors, including educational backgrounds, client types, and geographic divisions. This preliminary study has shown that the diversification of autonomy can be expected in at least three arenas. First, autonomy may vary among different types of law firm ownership. Compared with private law firms, state law firms are generally subject to more direct interference from the government agencies. Second, due to different perceptions of

lawyers' role in economic matters, criminal defense, and administrative litigation, autonomy may vary, depending on the types of services lawyers provide. Finally, given geographic divisions and diversification in economic development, lawyers in relatively developed areas are likely to enjoy more autonomy. Further research on these variations of autonomy enjoyed by lawyers in various arenas will help to better understand the social, economic and legal context in which the Chinese legal community may strive for professionalism as such with Chinese characteristics.