

# THE GOOD, THE BAD AND THE LEGAL: LAWYERING IN CHINA'S WILD WEST

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## I. INTRODUCTION

*Out here...the rhythm of life is slow, it's a small community, everyone knows each other. What matters out here is 关系 感情 人情(connections, relationships, friendships).*

### -Lawyer D on practicing in Qinghai

The explosive growth of legal professionals in China over the past two decades is unprecedented, but geographically the growth has also been wildly uneven. After the Cultural Revolution in the late 1970s, the country had about 3000 lawyers, most of whom had just suffered severe social and political persecution. Today, China has approximately 150,000 lawyers. However, one-third of them are concentrated in Beijing, Shanghai, Jiangsu, Guangdong, and Zhejiang, and they account for two-thirds of the national income earned by lawyers.<sup>1</sup> By contrast, over 200 rural counties in China do not have a single lawyer. The earnings of the 400 to 500 lawyers in Qinghai, an undeveloped province on the northeastern portion of the Tibetan Plateau, make up 0.12% of the national lawyerly income.<sup>2</sup>

While the numbers are startling, the situation of lawyers in China cannot be told by numbers alone. Commentators on China's development sometimes assume that more lawyers equals more justice, because more *laobaixing* (a colloquial term for the average person or peasant) will have access to the legal system through which they can air their grievances.<sup>3</sup> Michelson's empirical research on case-screening methods used by lawyers in a Beijing law firm when faced with workers who have labor grievances has challenged the simplicity of this assumption.<sup>4</sup> However, beyond the usual statistics lamenting the paucity of lawyers, there has been very little in-depth research on the practice of law in China's less developed regions in the west. Given the reality of China's uneven

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<sup>1</sup> *Zhongguo: 206 xian wu lüshi* [China: 206 Counties without Lawyers], *Fazhi ribao*, December 24, 2004.

<sup>2</sup> *Id.* at 8.

<sup>3</sup> For a critique of the Western observer's propensity to equate more lawyers with more justice, see Williams P. Alford, *Of Lawyers Lost and Found: Searching for legal professionalism in the People's Republic of China*, in *EAST ASIAN LAW AND DEVELOPMENT: UNIVERSAL NORMS AND LOCAL CULTURE* (Arthur Rosett, Lucie Cheng, and Margaret Woo eds., RoutledgeCurzon, 2002).

<sup>4</sup> Ethan Michelson, *The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work*, 40 *Law & Soc Rev.* 1, 4 (2006).

economic development and the increasing gap between urban and rural areas, a better understanding of the bar beyond the prosperous regions of the east coast seems vital in order to gain a more complete picture of China's legal development.

The goal of this paper is to provide the beginnings of some insight into what has been a largely neglected area. First, I will give an overview of the bar in Xining, the capital of Qinghai, and highlight some of the issues facing legal professionals in China's undeveloped regions. In this section, I cover the structure of law firms in Xining, the practice of an average lawyer, and the issue of emigration out of Qinghai to major cities in the east.

Second, I hope to show that the emerging professional identity that the interviews reveal is complex and contains many contradictions. This is most apparent in the lawyers' attitudes towards basic-level legal workers (基层法律工作者), another group of legal professionals established by the government in the 1980s to perform simple legal and administrative tasks in rural areas where lawyers were scarce.<sup>5</sup> In recent years, legal workers, just like other Chinese, have migrated to urban centers, and lawyers feel threatened by their encroachment on the lawyer's professional turf. At the same time, lawyers in Xining take pride in their distinction from legal workers, and refuse those cases perceived to be beneath the dignity of a lawyer and more suitable for a legal worker. Against this background, I argue that legal workers are playing a valuable role even in urban centers in terms of taking up cases that lawyers do not want. Furthermore, the notion that simply increasing the number of lawyers in rural regions will lead to improved access to justice for *laobaixing* and better rule of law is both simplistic and misguided.

## II. METHODOLOGY

In the summer of 2007, I visited 11 legal offices in Xining (nine law firms and two legal worker offices), and interviewed 16 lawyers, four basic-level legal workers, and four government officials in the Qinghai Ministry of Justice. The interviews were open-ended and semi-structured, since the subjects spanned a wide range in their level of comfort and willingness to talk about their work. While the data is not scientific and lacks empirical verification, it does reveal a certain degree of consensus on the part of practitioners and illuminates their perceptions

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<sup>5</sup>William P. Alford, *Second Lawyers, First Principles? Lawyers, Rice-Roots Legal Workers, and the Battle Over Legal Professionalism in China* 3-4 (2005) (Unpublished manuscript, on file with author).

of the legal culture within which they work. The data may also be skewed towards the more politically liberal, more educated, and more successful portion of the local bar. I had to rely heavily on personal introductions in order to gain access to subjects. Government officials tried to steer me only towards the most prominent law firms in the city; receptionists steered me to senior partners within a firm. I tried to balance the data by walking in cold to a few small firms with fewer than five lawyers, and randomly talking to whomever was present, with mixed results.

Early note-taking made some subjects nervous and suspicious. I hired a research assistant, an intern of Hui ethnicity who had recently graduated from law school and now worked at a local law firm. Her presence made interviews run more smoothly because she was a local resident who spoke with the local accent. Going with her made me less of an outsider, and, after being introduced to the both of us, the interviewees were more likely to open up and talk. They were more comfortable when she took notes discreetly during the interviews, which was ironic given the fact that her notes were much more thorough, accurate, and detailed than anything I might have possibly written. The interviews were reconstructed as soon as possible afterwards. For a comparative perspective, some data is also drawn from interviews conducted in Guizhou, another undeveloped province in southwest China with a relatively small bar.

### III. THE BAR IN XINING, QINGHAI

Southeast of the Taklamakan Desert in Xinjiang, on the northeastern portion of the Tibetan Plateau, Qinghai is the fourth largest province in China, but also one of the most sparsely populated, with a population of about 5.5 million.<sup>6</sup> The average elevation is 3,000 meters above sea level, and the climate is arid and dry. Qinghai is one of the least economically developed provinces in China; it contributed to a little over 0.3% of the entire nation's economy in 2006. Oil and natural gas has long been its major industry, though the opening of the railroad to Lhasa from Xining last year has caused a resurgence of tourism in the region. Qinghai has a large population of minorities; Tibetans and Hui are the two largest minority groups (20% and 16% of the population, respectively). Xining is the capital of Qinghai and the largest city in the

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<sup>6</sup> Qinghai Province Official Website, <http://www.qh.gov.cn/html/271/20070327111713.html>.

province, but it is a small city by Chinese standards, with a population of about 2 million.<sup>7</sup>

Due to Xining's remote location and economic backwardness, the development of the legal profession in Xining has lagged behind the changes occurring inland.<sup>8</sup> During the 1980s to the early 1990s, as the number of lawyers in China increased, lawyers remained state employees, working in state-run law firms and enterprises.<sup>9</sup> The promotion of the legal profession during this period is a direct consequence of the Chinese government's recognition of the need for lawyers as it began transforming China's economy. In 1988, the Ministry of Justice (MOJ) began permitting lawyers to practice free of direct state supervision, authorizing the establishment of cooperative law firms. Another turning point occurred in 1993, when the MOJ authorized the establishment of partnership law firms, and lawyers began to work mainly in for-profit firms.<sup>10</sup> In Xining, for-profit partnership law firms began to proliferate in the mid-1990s. The state firm managed by the Qinghai Ministry of Justice did not officially privatize until 1997.

While all law firms in Xining are currently profit-driven and financially independent of the state, the Qinghai Ministry of Justice maintains oversight of the Qinghai Bar Association (青海律师协会). This is consistent with the practice throughout the rest of China. The president of the bar association is appointed by the Qinghai MOJ. He is essentially considered a staff member of the MOJ and his office is just another room in the MOJ building.

Of the 69 law firms and 419 registered lawyers in Qinghai, there are 25 law firms and 275 lawyers in Xining.<sup>11</sup> The largest law firm in Xining has over 30 lawyers, but the average firm size is between 10 to 20 lawyers. While a few firms are elaborately furnished, with reception desks, sleek waiting areas and conference rooms with oblong tables, most firms are a series of offices along a hallway, with a placard on the wall marking the end of another enterprise and the beginning of the legal

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<sup>7</sup> By contrast, the population of Beijing is 15 million, larger than the population of the entire Qinghai province. See *Beijing Population tops 15 million*, CHINA DAILY, Jan. 1, 2005 available at [http://www.chinadaily.com.cn/english/doc/2005-01/07/content\\_406996.htm](http://www.chinadaily.com.cn/english/doc/2005-01/07/content_406996.htm).

<sup>8</sup> People in Xining refer to any area east of Qinghai, including major cities on the east coast like Beijing and Shanghai, as “内地” meaning “inland.” This usage that is not consistent with the way that word is used in other parts of China, but it reflects the indigenous perception that Xining is on the remote Western brink of the country.

<sup>9</sup> Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L.J. 211, 217 (1999).

<sup>10</sup> *Id.* at 219.

<sup>11</sup> Qinghaisheng sifating 2007 nian gonggao. [Qinghai Province Ministry of Justice 2007 Report] available at [http://www.lawyer.qh.cn//include/third.php?subject\\_two\\_id=15&id=966](http://www.lawyer.qh.cn//include/third.php?subject_two_id=15&id=966).

office. The law firms in Xining, with two notable exceptions, are *ticheng* firms (提成律师事务所), where the individual lawyer's salary consists solely of the fee that he collects from his own cases, minus about 30% or 40% that he or she gives to the law firm to pay for firm-wide expenses, which may include rent for office space, salaries of accountants and receptionists, and other miscellaneous administrative costs.

The *ticheng* law firm is the most common firm structure in China and it places great economic pressure on each individual lawyer to find clients and to maintain a practice that essentially resembles the practice of a sole practitioner.<sup>12</sup> At the time of the interviews, the MOJ was on the verge of lifting the ban on sole practitioners. While a few lawyers mentioned this new development, when asked whether they predicted that many lawyers would now exit law firms in order to keep the entirety of their legal fees for themselves, without paying 30 or 40% to the law firm, the respondents expressed uncertainty. To break out as a sole practitioner was still considered to be risky. To some degree, lawyers still exhibited an attachment to the *ticheng* firm structure, either because the prestige of a particularly prominent local firm helped their practice, or because their cases sometimes came from other lawyers within the firm.

One striking characteristic of the bar in Xining is its diversity. A government official of the Qinghai MOJ estimated that 30% of the lawyers are ethnic minorities (about 15% Hui and a little over 10% Tibetan). Hui lawyers hold prominent positions in the local bar, and arguably two of the most famous and well-respected lawyers in Xining are of Hui ethnicity. Tibetan lawyers have decidedly less of a presence in the professional legal community.<sup>13</sup> While female lawyers only make up a little over 10% of the lawyers in Xining, select individual female lawyers have achieved significant professional success and high levels of respect around town. Two of the larger<sup>14</sup> firms in Xining have female chairpersons. Ethnicity and gender aside, the diversity of the bar in Xining is also striking in terms of age, geographic origins, education, and past professional experiences before becoming a lawyer.

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<sup>12</sup> Michelson, *supra* note 4, at 11.

<sup>13</sup> In the course of my interviews, while I was introduced to quite a few highly successful Hui lawyers, I did not encounter a single Tibetan lawyer. According to the 2007 Qinghai Ministry of Justice records of licensed lawyers (Qinghaisheng sifating 2007 nian gonggao [Qinghai Province Ministry of Justice 2007 Report]), there are 5 Tibetan lawyers, all working outside of Xining. However, it is possible that some Tibetans have changed to Han names to practice.

<sup>14</sup> A large firm is any firm with more than 20 people.

A. *The Decision to Become a Lawyer*

The paths to the legal profession are varied, and each person had their own story to tell. However, three general categories emerged. First, the oldest generation of lawyers, who had been practicing for more than 15 years, began to work in state-run law firms in the mid or late 1980s. When state-run firms were officially dissolved in late 1990s, these lawyers moved to private firms. Individuals in this group usually do not remember making a conscious decision to be a lawyer. A few were assigned to be lawyers without any formal legal training after holding another government position. Others have various degrees of legal training, ranging from a law degree from Northwestern University of Politics and Law in Xi'an, to a *da zhuan* (probably the equivalent of a two-year Associate degree) from a local school. A lawyer who started practicing in 1988 in a state-owned law firm in a rural county outside Xining and is now the chairperson of a large firm in Xining summed up her experience:

My feelings on being a lawyer are complex. I don't regret it, nor do I think it was my dream career or I find it really fulfilling. I sort of just got into it. Some people look at me and see a really successful female lawyer, but it's a lot of pressure....When the state-owned firm closed up, I had an opportunity to get a position at the Qinghai MOJ. However, I decided to strike out as a private lawyer and see what I could do. Sometimes, I regret that decision.<sup>15</sup>

Other lawyers of this generation expressed similar nostalgia for the days when they were considered state employees and were guaranteed a steady salary along with the social and political benefits of working for the state. Though most of these lawyers are now senior partners in prominent local firms, with an income much higher than what they earned as government workers, they still express anxiety about their income, and uncertainty as to whether they will have enough clients in the future. Lawyer M elaborated on the precarious financial situation of the lawyer:

Some people think that lawyers earn big money. Maybe there are some lawyers who earn big money, but I don't. In the 20 years that I have practiced, most of my clients

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<sup>15</sup> Interview with Y, Lawyer, in Qinghai, P.R.C. (June 2007).

didn't seem to have enough money. How could I bear to charge them too much? When a lawyer doesn't have clients, he doesn't earn a cent. Who pays him a salary? No one... Maybe a lot of the other lawyers tell you how busy they are, but they are lying. I don't know. I just know my own experience. Maybe some lawyers are out there earning big money and are very busy, but I'm not. I need more clients.<sup>16</sup>

Lawyer M has been a lawyer since the 1980s. She recently took five years off to nurse older family members and to raise her child, who is now 3 years old. She came back into the legal practice just one month ago (prior to the interview date), but, in that one month, she has already taken three cases and earned about 10,000 RMB (about 1,300 USD). Yet like many other lawyers I interviewed, her success and relatively high income did not quell the anxiety of being a private attorney whose livelihood depended upon the getting the next client and the next case.

The second wave of lawyers had been practicing for about five to ten years. Most of these lawyers had previous non-legal careers, ranging from teacher to factory worker to policeman to small entrepreneur. Some went to law school, but many studied for the bar exam by themselves and passed the exam without any formal legal training. Individuals in this group were often more articulate about their decision to become a lawyer.

Some interviewees cited dissatisfaction or insecurity with their previous jobs as an impetus for studying law. Usually, these individuals did not go to law school formally, and studied by themselves for the bar exam. Lawyer P was a factory worker in a rural county of Qinghai where the elevation was quite high, and many of the long-term factory workers developed health problems. While working at the factory, he studied for the bar exam on his own when he was 26 or 27, and subsequently came to Xining to practice. He said of his decision, "When I took the bar exam in 1997 or 1998, there was the general sense that being a lawyer was a good career to pursue."<sup>17</sup> Lawyer E was a businessman in a state-owned enterprise, and he decided to study for the bar exam because he was afraid of losing his job in the late 1990s, when state-owned enterprises were going through a period of transition.

Other lawyers cited independence or freedom (自由) as reason for entering the legal profession, though the independence they describe is usually related to work schedule and life-style choices. Lawyer D

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<sup>16</sup> Interview with M, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>17</sup> Interview with P, Lawyer, in Qinghai, P.R.C. (June 2007).



started out in the police force; then he was a judge for a few years. Now he is the founding partner and vice-chairman of a 13-person firm, and he described his decision to become a private attorney as follows:

I like freedom. I do not like going to the office at the same time everyday. Here, I just need to finish my work. My schedule is up to me. If I stay up finishing something important, the next day I can sleep late and come in at 11:00. However, I am usually quite busy.<sup>18</sup>

Only one interviewee cited an intellectual interest in the law as a reason for entering the legal profession. Lawyer G was a Chinese literature teacher while he self-studied for the bar exam, and he has been a lawyer for seven years. While he is the only person to espouse somewhat lofty ideals in recalling his decision to practice law, he was also the most cynical when talking about the present status of the legal profession:

I was interested in the law. At first, I thought it has something to do with justice and right. After being a lawyer for many years, I see now that it's not true....the voice of a lawyer is low. When you talk, nobody hears. It has to do with the history of China. Historically, rule of law is not that important. It's a question of 人治 (*renzhi*—personal political power) versus 法治 (*fazhi*—power of rule of law)...which is stronger or has the bigger impact?<sup>19</sup>

Third, the youngest generation of lawyers, who have been practicing for less than five years, were mainly concerned with establishing their reputation and building a roster of clients. Most of them formally studied law in college. Within a firm, a partner might delegate simple cases that he does not want to work on to younger lawyers who do not have many cases.<sup>20</sup> The chairman of a large firm in Xining reflected on the generational difference he saw among lawyers:

Young lawyers are more focused on what they can gain (功利主义). They grew up in a very competitive environment, and they have been in school for most of

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<sup>18</sup> Interview with D, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>19</sup> Interview with G, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>20</sup> Interview with V, Lawyer, in Qinghai, P.R.C. (June 2007).

their lives. For the older generation of lawyers (like me) who have been doing this for about ten years or so, the law is usually their second career. Older lawyers have more varied life experiences and they come from a variety of backgrounds. They have seen more, so maybe older lawyers are more interested in what law can do for society, and in improving the power of the law in our society. In many ways, the older generation has opened the path for younger lawyers. They have fought for the status of legal professionals in our society.<sup>21</sup>

Lawyer H has worked as a lawyer for one year, and while his situation is exceptional in that he recently retired from the army, he discussed many of the common challenges facing a lawyer who is just beginning to build his practice in Xining. Originally from Henan, he studied engineering in college, and subsequently joined the army. He was stationed in a remote area of Qinghai, and, finding some spare time on his hands, began to study for the bar exam, and passed the test in 2000. After 20 years in the army, he retired last year and came to Xining to work in a medium-sized law firm. In his first year, he worked on over ten cases, but he dismissed them as more along the lines of simple legal tasks. He said, "For lawyers, it's about reputation. It's hard for me because I am from the army. I do not have many friends and acquaintances in Xining, so it's hard to get started."<sup>22</sup> As the conversation continued, it became clear that while he desired more cases, economic gain was not always the deciding factor:

I never take on divorce cases....Maybe I could make more money, but divorce cases do not add to your prestige and status as a lawyer. Negotiating for companies and giving them advice, those cases improve your prestige as a lawyer. Divorce cases are routine and mundane. Maybe I could make more money, but I would rather forego the money if I can....Just last week, this guy came to consult with me, and I charged 4,000 yuan. It was a simple case. He came and paid the fee. But later, he came again, and said he had found a lawyer who would only charge 2,000. He was searching for a

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<sup>21</sup> Interview with U, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>22</sup> Interview with H, Lawyer, in Qinghai, P.R.C. (June 2007).

better deal. Well, I am worth 4,000, so I refused to lower my fee and I lost a client.<sup>23</sup>

His statements reflect the complicated calculus that new lawyer must consider when deciding which cases to take on, often weighing reputation and prestige-building behavior against the economic exigencies of his situation. Lawyer H also conceded that he was in a better position to exercise discretion over what kind of work he does as opposed to other young lawyers because he has a retirement pension from the army.

Given the independent and solitary nature of the legal practice in a *ticheng* firm, another hurdle for young lawyers is the difficulty of gaining skill as a legal practitioner. Most lawyers recalled the importance of finding a mentor who willingly assumes personal responsibility for one's legal education. Lawyer Y said that when she first came to work in Xining in the early 1990s from a rural county of Qinghai, she fell under the wing of a prominent Xining lawyer, whose goal was to turn her into a "powerful female lawyer."<sup>24</sup>

Some lawyers take a more proactive approach. Lawyer I recalled that when she started out, she would market herself aggressively to clients. After getting the case, she would go to the lawyer in town who was reputed to be best at handling this type of case, and promised him half of the legal fees if he taught her what he knew. Through this unorthodox method, Lawyer I is now one of the few lawyers who confessed to me that she has more cases than she can handle, and she never lacks work because she is quite a famous litigator.

### B. Legal Fees

The average income of a lawyer in Xining, based on the estimates of most lawyers, was consistently between 100,000 and 200,000 RMB a year (13,000 to 26,000 USD). These numbers are likely to be overestimates. Some lawyers admitted that they do not make this much, but they think this is what other lawyers make. A particularly successful lawyer told me that his early income was about 500,000-600,000 RMB a year.

While the Qinghai Judicial Department sets a range that lawyers can charge for certain legal tasks, lawyers are able to contract out of that

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<sup>23</sup> While the standard legal fees are set by the Qinghai MOJ, there is a possible range for a certain legal service. Both Lawyer H and his competitor were within that range. *Id.*

<sup>24</sup> Interview with Y, Lawyer, in Qinghai, P.R.C. (June 2007).

range. Sometimes lawyers will also take cases on contingency fees, though the lawyers stressed the high risk associated with this practice.

Lawyer C, the chairman of a mid-sized firm, allowed me to sit in on his client meetings for a day. In the early afternoon, a woman entered with a baby in her arms, followed by a man who was a friend of the lawyer's. The woman's husband is a taxi driver charged with assault. When the police arrested him, they also found a home-made gun in his possession. Lawyer C:

First, can you afford to pay me? My fees are higher than the average lawyer in Xining. There are others lawyers here in the firm who are very capable. Second, what is your goal? Is your goal realistic? I cannot guarantee that I can free him. He has two serious charges: a gun violation and an assault charge. The gun charge alone is at least five years. I don't want you to spend all this money, money you probably can't afford to spend, and afterwards look back and think—we spent all that money for what? It was a waste, or the lawyer tricked us. I can only promise to do my best to argue for your side, to do everything in my power to help him. That is all I can promise.<sup>25</sup>

The client replied that she wants to hire him. She understood that there are no guarantees. Family circumstances were hard. She has a baby, and she is also raising three orphans, children of her husband's deceased brother. Lawyer C's friend also spoke up on the potential client's behalf and urged him to take the case. Lawyer C:

How much money do you have? (about 20,000 RMB)  
Okay, I can see that your circumstances are hard right now. You have a family and kids to look after. Don't spend too much effort trying to get more money. My basic fee is 20,000, but I'll cut it in half to 10,000. You will need the other 10,000 in court fees. (Friends and clients thank him.) How much money do you have now? Okay, I will take the 5,000 right now.<sup>26</sup>

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<sup>25</sup> Interview with C, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>26</sup> *Id.*

The basic fee cited by Lawyer C of 20,000 RMB is above and beyond the range set by the Qinghai MOJ for a criminal case. When I asked another person in the firm about this discrepancy, I was quickly told that Lawyer C can charge more because he is a famous lawyer, and people are willing to pay that much for his service.

C. *The Practice of a Xining Lawyer*

When asked what made being a lawyer in Xining distinct from being a lawyer elsewhere in China, most lawyers responded that a lawyer in Xining could not specialize in a specific area of law due to the lack of economic development in the region. When there is lucrative transactional work to be done, lawyers from Beijing are hired because they have the expertise and necessary connections.<sup>27</sup> The lawyers' statements often conveyed the impression that individual local lawyers are so desperate to make a living that they will work on any case that falls into their lap. Lawyer D gave a typical response:

In developed cities like Shanghai or Beijing, lawyers are highly specialized....Here, lawyers must be generalists and take on all kinds of cases. For example, if a lawyer wanted only to specialize, he would starve. There simply aren't enough cases.<sup>28</sup>

Yet as the interview with Lawyer D continued, contradictions emerged. A woman holding a crying baby walked into the office, looking for a lawyer to help her divorce her husband. Lawyer D, instead of rapidly accepting the case, as he suggested in his previous comments, coolly asked her a series of questions, and requested that she return without her baby. After she departed, I asked him if he would take the case, and he answered in the negative:

I have never done a divorce case. I don't like them. It's impossible to know what really happens in a home. I will usually explain the law to them, and I will probably refer her to another lawyer in the firm here. Ironically, I am the chairperson of [some local woman's organization]. I prefer commercial cases.<sup>29</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Interview with D, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>29</sup> *Id.*

Most lawyers interviewed expressed a similar disdain for divorce cases, pointing to various reasons, including the lack of prestige,<sup>30</sup> the difficulty of determining a person's true assets, the low fee potential,<sup>31</sup> and the unpleasantness of becoming involved in intimate domestic disputes.<sup>32</sup>

Yet a degree of specialization is possible for some prominent lawyers who have established a strong individual reputation. For example, Lawyer C was known as a highly skilled criminal defense lawyer. Lawyer U, chairman of a large and prestigious law firm, only handled complex commercial matters and delegated cases that he did not want to work on to other attorneys in the firm who needed cases.<sup>33</sup>

Interestingly, Lawyer C and Lawyer U, arguably two of the most successful and prominent lawyers in town, both spoke at length about the positive social effects that resulted from the generalist practice of the average Qinghai lawyer:

In Qinghai, lawyers cannot specialize much because the economy is not as developed as in other provinces....[A lawyer] must be a jack-of-all trades and take on all kinds of cases. But this can be beneficial to society because it involves doing a lot of legal work for the average citizen (普通百姓案件). This is what people in Qinghai need right now.<sup>34</sup>

In my opinion, the current legal system in Qinghai fully provides for the legal needs of this province. Because there are so few commercial cases, many of our cases are grass-roots cases, involving the *laobaixing* and serving social causes. Maybe, ultimately, this should be a government function, but for now lawyers step in and fight for social causes. Our fees are relatively low, compared to legal fees elsewhere. And when the client can't pay, we cut down our fees. Sometimes, I will work on a case for no fee.<sup>35</sup>

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<sup>30</sup> Interview with H, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>31</sup> Interview with G, Lawyer, in Guizhou, P.R.C. (July 2007).

<sup>32</sup> Interview with D, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>33</sup> Interview with V, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>34</sup> Interview with U, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>35</sup> Interview with C, Lawyer, in Qinghai, P.R.C. (June 2007).

However, lawyers who were not as successful and famous around town as Lawyer C and Lawyer U did not share this enthusiasm for serving the *laobaixing*. The average attorney's practice consists of a mixed assortment of litigation (诉讼), involving both criminal and civil matters, and transactional work (非诉讼), which usually involves acting as legal advisor for a company, giving advice, and drawing-up documents. Most lawyers were still able to exercise some discretion over the cases they take on. Lawyer G described his decision-making process:

Well, I have relationships with certain companies, and when they need something done, they contact me. I take almost all of those cases. It's very rare that someone just walks in and asks for a lawyer... There are some cases where a regular person comes in and needs me to do something. The first thing I consider is the legal merit of the case, whether the case has any likelihood of success based on the facts. The second thing I consider is whether I would be willing to take on this case. Only then do my personal preferences come in.<sup>36</sup>

Lawyer G declined to elaborate as to what his personal preferences were. Other lawyers mentioned such factors as the prestige associated with a case,<sup>37</sup> whether the case is likely to attract publicity,<sup>38</sup> and the fee potential.<sup>39</sup>

Another factor that determined the lawyers' attitudes towards a client's case was whether the client was a social acquaintance, or had been introduced to the lawyer through family or friends. Throughout the course of my interviews, I observed six meetings between attorneys and clients. Most walk-in clients were treated with aloofness and cool directness, as the lawyers usually asked briskly, without pleasantries, "Who are you looking for?" or "What do you need?" The clients who were treated with the most respect and courtesy by a lawyer were clients accompanied by a third-party acquaintance of the lawyer.

A *ticheng* lawyer's income is completely dependent upon the client's willingness to pay legal fees. As a result, the threat of nonpayment is an important source of power for the client.<sup>40</sup> "The client

<sup>36</sup> Interview with G, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>37</sup> Interview with H, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>38</sup> Interview with M, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>39</sup> *Id.*

<sup>40</sup> Michelson, *supra* note 4, at 19-20.

is the lawyer's first enemy" is a common saying among Chinese lawyers.<sup>41</sup> If the client emerges through the introduction of a mutual acquaintance, the client is within the same general social network as the lawyer, and the lawyer can depend to a certain extent on extra-legal sanctions such as gossip and social disdain to reign in the client's behavior. Chinese society, in general, is not reluctant to discuss money in specific amounts, and various subjects, such as one's income or one's housing costs, which might be considered taboo in America among casual acquaintances, are common topics of discussion. In Xining, the legal professional population is relatively small, and social networks among lawyers are more intimate than in larger cities. Almost all lawyers mentioned the importance of having good social connections in order to establish a successful practice.

On the other hand, a social or familial connection can also limit the lawyer's ability to refuse a case. Lawyers who claimed that they never worked on a divorce case would then also admit that they work on divorce cases for friends, and friends of friends, even when that compromises their prestige. Lawyer V said, "Sometimes, we will do a divorce case for a friend or a family member. When we go to court, even the judge will ask 'why are you doing a divorce case?' Usually, our firm doesn't take any divorce cases."<sup>42</sup>

A strong preference for commercial transactional work emerged from many of the interviews. One reason is that transactional work does not involve going to court, so lawyers can bypass some of the social complexities of litigation, such as cultivating relationships with judges and using connections (*la guanxi*). The Chinese government in recent years has tried to regulate the relationship between judges and lawyers (e.g., barring judges from recommending lawyers to litigants and lawyers from inviting judges out to dinner). However, on a local level, relationships with judges are an important factor in a lawyer's litigation success. Such relationships, like professional relationships in other sectors in China, are established through late-night dining, drinking, gambling and karaoke. As one litigator put it, the best advice she ever got as a young lawyer was: "don't be careful about where you dine, but be careful about what you say, (饭你能乱吃, 话不能乱说)."<sup>43</sup>

Most lawyers pointed out that, in contrast to American expectations, judges in China do not represent the best and brightest legal minds. There is a general consensus that the situation has improved in

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<sup>41</sup> Interview with V, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>42</sup> *Id.*

<sup>43</sup> Interview with I, Lawyer, in Guizhou, P.R.C. (June 2007).



recent years, especially now that new judges are required to pass the national bar exam. Data also shows that the education levels of judges have increased dramatically across the country.<sup>44</sup> Yet lawyers still relate with sordid relish particularly atrocious examples of local abuse, such as a judge who was a cobbler before being appointed by a relative. Another story involved a well-educated judge who was pressured to leave his job in order to make the position available to a person who was less qualified, under the reasoning that the legally-trained judge could still make a living as a lawyer, while the less-qualified person could not. To what extent such accounts are exaggerated or the product of gossip is unknown, but they do reflect a perception among practicing lawyers that the qualifications of contemporary judges span a very wide range, from high to low.

A second reason transactional work for a company is desirable is that a long-term relationship between the lawyer and the client can develop, with a company repeatedly retaining the same lawyer to draft documents or to give legal advice. Some companies, once a relationship has been established, even pay an annual salary (usually between RMB10,000 and RMB50,000), essentially retaining the lawyer as an in-house counsel, while the lawyer continues to work in private practice on other cases.

Third, lawyers often felt that commercial transactional work reflected positively on their level or quality (*suzhi*) as a lawyer. This perception seems to stem from the belief that this is what lawyers do in more developed jurisdictions, and lawyers made frequent comparisons between themselves and lawyers in Beijing or Shanghai, or even New York. According to data from 2002, the transactional cases involving Qinghai lawyers accounted for 0.08% of the national total.<sup>45</sup> Unsurprisingly, the transactional work that Qinghai lawyers seemed to aspire to took place mostly along the east coast, in Beijing, Shanghai, Guangdong, and Zhejiang (at 3.25%, 2.92%, 14.13%, and 3.28% respectively).<sup>46</sup> In Xining, the lack of transactional work only added to its desirability and cachet.

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<sup>44</sup> Benjamin L. Liebman, *China's Courts: Restricted Reform*, 191 THE CHINA QUARTERLY 620, 625 (Sep. 2007).

<sup>45</sup> Excluding Tibet, the only province lower than Qinghai is Guizhou, at 0.03%. *Zhongguo: 206 xian wu lüshi* [China: 206 Counties without Lawyers], fazhi ribao. December 24, 2004.

<sup>46</sup> *Id.*

#### IV. EXPERIMENTATION WITH FIRM STRUCTURE

While most lawyers pointed to the economic backwardness of Qinghai as the main factor that hindered them from getting lucrative commercial cases, some lawyers also blamed the *ticheng* model of law firms, which discourages collaboration between lawyers. Rather than cooperating on cases, lawyers and partners within a firm are competitive and keenly aware of each other's income. Interviewees often referred to firms in Beijing or Shanghai that are similarly structured to the large corporate firms of New York, where lawyers work in teams to complete complex commercial transactions.

Two firms have diverged, in differing degrees, from the traditional *ticheng* model. DT Law Firm, a three-year-old firm, has fully embraced a lock-step compensation system for all attorneys, including partners. Lawyer Z, a founding partner, explained that the impetus for the founding of this firm sprang from the considerable drawbacks of the *ticheng* model for lawyers who want to develop their career:

First, [*ticheng* firms] discourage cooperation among lawyers. Each lawyer is focused on his own practice and earning money for himself. But without cooperation among lawyers, you can not possibly work on any big or complex cases. Second, the *ticheng* model doesn't allow for specialization. It doesn't allow a lawyer to reach a level of expertise in a specific area that is necessary to draw in big clients. Third, the focus on the individual lawyer hurts young lawyers. A young lawyer, in order to establish himself, needs at least five years, just to build up an average practice....Currently, success in the legal profession is not decided by talent or skill. It depends on good social connections, age (you seem wiser if you are older), and good relationships with judges. This may be hard for people from other countries to understand.

Presently, DT Law Firm has won the largest client in Qinghai, Western Mining (西部矿业). It is also the only firm in Xining that has worked on corporate public offerings. This feat is regarded by lawyers around town as a great coup.

KG Law Firm is one of the oldest and largest law firms in Xining. It was formerly a state-run law firm, and transitioned into a private law firm in the late 1990s. A few years ago, KG Law Firm experimented with

lock-step compensation, but abandoned the system after one year. Currently, KG Law Firm uses a modified lock-step compensation system, where interns and junior associates (1-2 years into practice) receive a salary. Other lawyers in the firm are still *ticheng* lawyers.

A partner at KG Law Firm argued that lock-step compensation is ultimately unsuitable for the Qinghai legal market. The unwillingness of senior partners, who have already built a successful practice, to sacrifice a portion of what they earn is only part of the reason for this. Determining a lawyer's salary level within the firm places a heavy monitoring responsibility on senior partners, who must watch over the junior attorneys to determine whether they are working enough to justify their salary level.

[A Lock-step firm] is more suited to places where there is always work, where there are lots of cases. You come to work, and we will give you work to do. It doesn't suit the realities of the Qinghai market, where the case load is just not that big. The Specialization of lawyers (专业化) may be in the future, but the market in Qinghai is not mature enough for that yet, realistically speaking.<sup>47</sup>

When discussion turned to the apparent success of DT Law Firm's implementation of the lock-step compensation system, Lawyer AA was quick to argue that DT's experiment has yet to run its course. First, only three years old, DT is still a very young firm, and only time will tell whether DT can maintain the lock-step structure in the long term. Second, the founding partner and director of DT Law Firm is a prominent lawyer who has a Ph.D. from a good law school inland. Therefore, it would be foolhardy to attribute the recent successes of DT Law Firm solely to its firm structure, and not to take into account other traditional factors, such as the excellent connections of the chairman who is able to bring in business.

#### A. *Emigration from Qinghai*

##### 1. Reasons to leave

With the national bar exam, lawyers in China enjoy a high degree of mobility. Many lawyers have worked on cases in counties outside

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<sup>47</sup> Interview with AA, Lawyer, in Qinghai, P.R.C. (June 2007).

Xining in Qinghai Province, while a few have worked on cases inland and along the east coast. Lawyers who had attended law school inland were more likely to discuss the possibility of moving out of Qinghai. The consensus was that major cities inland offered better opportunities for career development. No lawyer interviewed felt that the departure of lawyers from Qinghai was a serious problem, since competition in the local legal market was perceived to be too intense. One lawyer summarized the trend:

When I first became a lawyer [in late 1990s], the number of lawyers was about the same as it is now. In Qinghai, the number of lawyers remains steady, but there is a lot of movement. Lawyers who do well in the rural counties move to Xining. Lawyers who do well in Xining go inland to develop their careers.<sup>48</sup>

Lawyers used the word “development” (*fazhan*) to refer to a combination of factors. Economic development was one consideration, as most lawyers thought that they could earn more inland.<sup>49</sup> Second, lawyers regarded learning new legal skills and intellectual challenge as an aspect of their professional development. When asked if his work was interesting, Lawyer D replied, “Interesting? That’s hard to say....Qinghai is not very economically developed, so cases are very similar to each other. I see the same cases year after year.” Third, technical expertise in one area of law, such as real estate law, was perceived to be a desirable achievement in a lawyer’s career, and most lawyers felt that such specialization was not possible in Xining.

Last, but not least, lawyers had the common perception that rule of law was better in Beijing or Shanghai. The adjective “backward” (*luohou*) was used to describe Qinghai’s legal development as well as economic development. In a small community, the rule of law (*fazhi*) is often at odds with the rule of personal political power (*renzhi*).<sup>50</sup> As one lawyer put it, “You will lose some cases because the law is not on your side. You will lose some cases because the facts are not on your side. You will lose some cases for another reason, and there’s absolutely nothing you can do about it.”<sup>51</sup> Though corruption and abuse in the legal

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<sup>48</sup> Interview with P, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>49</sup> A questionable assumption, since the bar in cities like Beijing is also segregated into many strata, with wealthy commercial lawyers at the top, and individual lawyers at the bottom who struggle for survival. Michelson, *supra* note 4, at 11.

<sup>50</sup> Interview with G, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>51</sup> Interview with V, Lawyer, in Qinghai, P.R.C. (June 2007).

system also exist in Beijing and Shanghai, the bar in these major cities includes urbanites with elite legal educations and foreign practitioners who bring international norms into the system. The business-oriented practice of lawyers in major cities inland is generally not politically sensitive, and the state is less likely to interfere.<sup>52</sup>

When discussions turned to specific lawyers who have left Xining recently, the majority of emigrants have been young lawyers who had only been practicing a few years and had not yet established a particularly successful practice. While an established lawyer is unlikely to leave the comfort of his local prominence for the uncertainties of a larger urban jungle, the current situation of legal practice in Xining presents many challenges for a young lawyer. There are only two firms in Xining that guarantee young lawyers any sort of a steady salary. Young lawyers in a *ticheng* firm must face the reality that a successful practice depends upon building one's individual reputation, which involves making social connections and cultivating relationships with other legal professionals, like judges and prosecutors. This task is particularly daunting in Xining, a relatively small city where social networks and professional alliances are extremely tight and loyal.

## 2. Reasons to stay

Most female lawyers cited family considerations when discussing their decision to remain in Xining. Lawyer P, a female partner in a large firm, who is of Mongolian ethnicity, considered going to Beijing, partly because her brother graduated from Peking University, and was in a position to help her make excellent connections. She made a trip to Beijing a few years ago to explore this possibility and was offered a position in a prominent firm. She said the following of her decision to stay in Xining:

I guess the society here is more traditional than society in Beijing or Shanghai. There, you see women in their thirties who still have not married. Here, most women get married in their early twenties and establish a family first....Ultimately, I decided not to go to Beijing for family reasons. It's easy for a lawyer to move freely; the license can be used anywhere in the country. However, my husband works for a company, and it is almost impossible for someone in a company out here to

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<sup>52</sup> Alford, *supra* note 3.

be transferred to a post on the east coast. When two people are on opposite sides of the country, don't even talk about courtship. When you have a family and you stay apart, the family is bound to fall apart sooner or later...Now, when I look back, I still regret a little bit that I didn't move to Beijing. A few of the younger people in this firm in the last few years have moved east. Last I heard, they have done pretty well so far.<sup>53</sup>

Lawyer O has been practicing for 20 years, and she went back to school when she was thirty-five years old to obtain a masters degree at the Northwest University of Politics and Law in Xi'an. She is one of the few people in Xining with an advanced degree, and says the following about her decision to return to Qinghai after obtaining her masters:

I thought about going inland to develop my career, but I didn't for a lot of reasons. The first consideration was my child, who had already been lacking a mother's love for most of his young life...I am actually a very traditional woman. There are some career women...who have great careers, but their family life is a mess. In my eyes, they are total failures as women. A woman's greatest happiness still comes from the success of her domestic life.<sup>54</sup>

While male lawyers also mentioned family considerations, they spoke at length about the difficulty of establishing a practice in a more developed city in the east, due to factors such as lack of social connections, and even more intense competition among greater numbers of lawyers:

In the past few years, three people have left our firm to try to make it in Beijing or Shanghai. Only one is doing just okay....The reality is that my standard of living here is pretty good. I am busy, but I do not work as hard as the lawyers in Beijing. My income is not as high, but the cost of living is low. The rhythm of life is slower here.<sup>55</sup>

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<sup>53</sup> Interview with P, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>54</sup> Interview with O, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>55</sup> Interview with X, Lawyer, in Qinghai, P.R.C. (June 2007).

To whatever extent lawyers thought that rule of law may be better in major cities, they were also conscious of the fact that a lawyer can live a better life in a less developed area if he has built a good practice. Even within Qinghai province, lawyers recognized the possibility that practicing outside Xining can be lucrative. When an intern who was studying for the bar exam mentioned that she was from Golmud, a town twelve hours by train from Qinghai, close to the border of Tibet, a lawyer encouraged her to take advantage of her *hukou* (户口). The Chinese government, in the effort to encourage lawyers to practice in rural areas, will add extra points to the score of the bar exam if the test-takers are from certain designated rural areas with the local *hukou*, on the condition that the test-taker remain in that area to practice law. When the intern expressed uncertainty about staying in Golmud to practice, the lawyer encouraged her to consider the benefits:

Lawyers in Golmud can do quite well, because sometimes the salaries in Golmud are higher than salaries in Xining due to special government subsidies. It's an obscure town, and they are trying to develop it.<sup>56</sup> Lawyers are few, so there is less competition. Some lawyers in Golmud earn more than lawyers from Xining.<sup>57</sup>

However, the government policy of giving lawyers an incentive to stay in remote towns like Golmud can be difficult to enforce on a local level. In general, the mobility of lawyers in China granted by the nationalized bar exam allows lawyers to try things out for a few years, and no decision has to be permanent. Some young associates have returned to Xining after a few years inland, during which they realized that competition in the bar is much worse in major cities. Other lawyers in Xining left open the possibility that they might leave Qinghai in the near future.

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<sup>56</sup> There is a national initiative to make Golmud China's "Salt Lake City." *City in Gobi Desert Aims High*, Shanghai Daily, available at <http://edu.sina.com.cn/en/2002-07-10/4210.html>.

<sup>57</sup> Interview with P, Lawyer, in Qinghai, P.R.C. (June 2007).

## V. LEGAL WORKERS VERSUS LAWYERS

### *A. Legal Workers Move to the Cities*

In addition to the competitive atmosphere generated by *ticheng* law firms, lawyers in Xining also compete in the legal market with basic-level legal workers (基层法律工作者). Legal workers are a class of legal professionals created after the Cultural Revolution to address the critical shortage of legal services in rural China, and the main responsibility of legal workers was to work on civil cases for the *laobaixing*. The growing numbers of lawyers were to serve the more complex legal needs of developed urban areas. A two-tiered system of legal services resulted, consisting of legal workers, who needed only a high school diploma, serving the needs of the people, and lawyers, who were to serve the complex legal needs that would arise with China's economic development.<sup>58</sup>

In recent years, as competition among increasing numbers of lawyers in urban centers has intensified, the migration of legal workers into the cities has exacerbated the situation. The Qinghai MOJ sets fees for lawyers and legal workers, and the fees are printed in an official chart that hangs on the walls of all legal offices. The fees set for legal workers are lower than those for lawyers, even when the same service is being provided, leading to complaints that legal workers have "attacked the market" (冲击市场) in the cities.<sup>59</sup> Moreover, lawyers complain that not only are legal workers encroaching on their turf, they are also misrepresenting their professional status to the public, telling clients that they are in fact lawyers.

The opinion of most government officials and lawyers is that the legal workers ought to be regulated more stringently so that they stay in rural areas and do not compete unfairly with lawyers in the cities.<sup>60</sup> But this is a difficult position for the government to enforce practically, because legal workers are no longer on the government payroll.<sup>61</sup> If the government strictly limits legal workers to practice in rural areas, the government also implicitly takes some responsibility to ensure that these workers can make a decent living in poverty-stricken rural areas.

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<sup>58</sup> Alford, *supra* note 5, at 3-4.

<sup>59</sup> Interview with D, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>60</sup> An article published on Qinghai Province Attorneys' Net titled Legal Workers Should Leave the Cities (Rang falü gongzuozhe tuichu chengzhi), reflects the lawyer's point of view, available at [http://www.lawyer.qh.cn/include/third.php?subject\\_two\\_id=9&id=767](http://www.lawyer.qh.cn/include/third.php?subject_two_id=9&id=767).

<sup>61</sup> In the early years, legal workers were government workers (公务员), and were paid a steady salary by the government. Alford, *supra* note 5, at 3.



Currently, the Chinese government is unwilling to make such a commitment, and a government official in the Qinghai MOJ expressed some sympathy for the plight of legal workers:

Originally, these legal workers were supposed to remain mainly in very rural areas where lawyers were few, and serve as patches where there were holes (补充的作用). Once they start to compete unfairly with lawyers, they cease to fulfill their original purpose... However, like most people, these legal workers need to feed themselves. Qinghai is a special place, where the economy is backward, the population is small and the land mass is huge. So it is especially hard for a legal worker to make a satisfactory living in the countryside. We can't blame them for wanting to come into the city to make a better living.<sup>62</sup>

In the offices of legal workers in Xining, a significant portion of legal workers only work part-time, with jobs elsewhere in the city.<sup>63</sup> This implies that even in the city, it is difficult for the average legal worker to earn enough income through performing legal tasks alone. At one office, the chairman said that many legal workers were retirees, either from government positions or from the army.<sup>64</sup>

Legal Worker R has worked as a legal worker for 10 years. Her child attends day care while she works full-time. When she does not have enough work, she studies for the national bar exam with the hopes of becoming a fully licensed lawyer.<sup>65</sup> When asked whether she felt legal workers competed unfairly against lawyers, she replied, "No, I don't think so. For example, we can't represent clients on criminal cases. We are different from lawyers."<sup>66</sup> At the same time, she acknowledged that people are not aware of the difference between lawyers and legal workers:

Well, some people will pick a lawyer, and some may pick us. But usually, I don't think people approach legal service as they would when buying an item, where

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<sup>62</sup> Interview with O, Government Official, in Qinghai, P.R.C. (June 2007).

<sup>63</sup> Interview with Q, Legal Worker, in Qinghai, P.R.C. (June 2007).

<sup>64</sup> Interview with S, Legal Worker, in Qinghai, P.R.C. (June 2007).

<sup>65</sup> Speaking to bar exam test prep coordinator in Guizhou, most of the people who enroll in the bar exam prep course are already engaged in some sort of legal work, such as they are already legal workers.

<sup>66</sup> Interview with R, Legal Worker, in Qinghai, P.R.C. (June 2007).

they will go and search for the best price. Most people need some legal service to be done, and they will just find someone, and often not look back.<sup>67</sup>

### *B. Governance of Legal Workers*

While the official position of the MOJ in Beijing is that legal workers will gradually be phased out of the legal system in urban centers, on a local level, licenses for legal workers are still being issued, though the policy for issuance is unclear. A legal worker who passed the national exam in 2000<sup>68</sup> described the current policy as she understood it to be:

Every year, the local government sets limits on the number of people who can become legal workers in a certain district. For example, in Xining, there are very few spots available because there are already so many legal workers and lawyers. In some rural places, there are no lawyers or maybe just one lawyer. There are many positions available for legal workers. However, the level of education in those areas is very low, so many people are not qualified, whereas in Xining, too many people are qualified....But the qualified people in Xining cannot go to the rural countryside because those positions require local *hukou* (户口). He must understand the local way (人土风情). A legal worker in a rural district would also need to know the local language, such as Tibetan or the Qinghai dialect.<sup>69</sup>

Whatever the official MOJ position from Beijing may be, local practice often diverges onto its own track. One lawyer in a small town in Guizhou complained about the lack of a clear policy on granting legal worker licenses and the potential for local abuse:

Legal workers have completely attacked the market. Let's say this bottle of water...it's really only meant for two people to drink. However, lots of people are drinking it from the bottom, and, for some reason, they

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<sup>67</sup> *Id.*

<sup>68</sup> A national uniformed test for legal workers was administered only once in 2000. Alford, *supra* note 60, at 8.

<sup>69</sup> Interview with T, Legal Worker, in Qinghai, P.R.C. (June 2007).

are drinking a lot. Why is that? The local judicial department here (司法局), everyone who works there has a license to practice law. How did they get that license? They got it because they are the ones who issue the license.<sup>70</sup>

Personal connections to local government officials, or actually being a government official, can pave the way to getting a license to practice law.

The close ties of legal workers to local government officials has also led to accusations of ethical shortcomings on the part of legal workers who use their connections not only to obtain a license, but also to advance the interests of their clients once they are practicing. However, all lawyers interviewed also freely acknowledged the importance of having good connections, both with judges and with government officials, in order to build a successful practice. As Alford points out, anecdotal evidence suggests that abuses occur among both groups of practitioners and there is no systematic data so show that problems of corruption and pulling connections are more serious among legal workers than among lawyers themselves.<sup>71</sup>

## VI. THE PRIDE OF THE LEGAL PROFESSIONAL AND EMERGING CONTRADICTIONS

The notion of professionalism is highly contested, and it is not the goal of this article to add to the theoretical debate, but rather to use some of the existing literature to shed insight on the legal market in Xining. In the turf war between lawyers and legal workers in urban centers, it is clear that two assumptions about legal professionalism have been internalized by the Chinese bar and accepted by the Chinese government: (1) lawyers cost more, but (2) deliver higher quality. Lawyers clearly take pride in their professional distinction from legal workers, and are particularly incensed when legal workers pretend to be lawyers. As Lawyer U bluntly put it, "Legal workers are people who can not pass the bar exam."<sup>72</sup>

However, recent empirical studies have turned assumptions about legal professionalism on their head.<sup>73</sup> And while a frequent complaint

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<sup>70</sup> Interview with BB, Lawyer, in Guizhou, P.R.C. (June 2007).

<sup>71</sup> Alford, *supra* note 5, at 13.

<sup>72</sup> Interview with U, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>73</sup> A recent study in England and Wales found that nonlawyers provided significantly improved quality (for about 10 to 20% of clients), but at significantly increased cost (about

among Xining lawyers is that legal workers are low quality, lawyers also admit, however begrudgingly, that some legal workers can be very good at what they do:

Many legal workers have been doing this for many years. Who knows how they got into this professions. Legal workers are low quality (他们的水平不高). In court you can tell. However, there are some legal workers who are very skilled, with solid legal training. They just couldn't pass the bar exam. There is a very wide range among these legal workers. I don't associate with them very much.<sup>74</sup>

In practice, a legal worker with excellent connections and years of experience as a government official can be a much more effective advocate for his client than a young lawyer who has just passed the bar. This is especially true in Xining where such a high premium is placed upon connections and personal reputation.

While lawyers complain about unfair competition and encroachment on their professional turf, the reality is that legal workers mainly take cases that lawyers scorn, and divorce is a primary example. As mentioned above, many lawyers, even those who are just starting to build their practice and are eager for business, routinely reject divorce cases because they feel that these cases are beneath their dignity. In the small professional community, lawyers seem willing to forego opportunities to make more money rather than accept the stigma among their colleagues of being branded as a "low-level" lawyer. Thus, it is far from clear that if all the legal workers immediately left Xining, the lawyers would eagerly jump at all the new business.

One way for lawyers to reclaim some of their turf without damaging their reputation is through small-scale pro bono work. Sandefur has observed how pro bono work can be a means by which lawyers maintain professional boundaries. By performing a task for free, the lawyer reduces the demand for less expensive service providers (e.g. legal workers) and thereby protects legal work from encroaching occupations.<sup>75</sup> In one interview, after a divorce client left the office, a lawyer was quick to add, "This is for a friend, and I didn't take a fee. In

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double). Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 LAW & SOC'Y REV. 765 (2003).

<sup>74</sup> Interview with H, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>75</sup> Rebecca Sandefur, *Lawyers' 'Pro Bono' Service and American-Style Legal Assistance*, 41 LAW & SOC'Y REV. 79, 88 (2007).

general, I don't take divorce cases at all. If someone comes in, I'll give them some advice, but I usually won't take the case."<sup>76</sup> Performing small scale pro bono is also a means of gaining the loyalty of potential clients. Another lawyer explained why he did not usually charge for first-time legal advice that is not too complex: "It's really not worth it. Maybe I'll charge 30 or 50 yuan, but if I don't charge them, they'll think—that lawyer is pretty nice. Next time they have a legal problem, they can come to me."<sup>77</sup> By performing pro bono work, the lawyer reasserts his professional elitism while protecting his professional turf at the same time.

## VII. WHAT TO LEARN FROM THE XINING LAWYER

The bar in Xining reveals that China's legal development is closely tied with the reality of its uneven economic development. The general backwardness of the western region means that there is a very limited amount of lucrative legal work available for lawyers. The economic disparity between rural and urban areas compels both legal workers and lawyers to migrate towards urban centers, especially in a province like Qinghai, where the population is low, the land mass is huge, and the rural population is scattered and poor. The concentration of legal professionals in Xining leads to intense competition among individual lawyers in the bar and increased resentment between legal workers and lawyers. Xining lawyers repeatedly emphasized that their top priority was to survive economically.

While individual barefoot lawyers have gained attention in the west for daring to defy the state on behalf of rural villagers,<sup>78</sup> on the whole, it is not realistic to expect lawyers in undeveloped areas to be crusaders for political change. If Xining lawyers are frustrated by the lack of rule of law locally, their response is not to confront the state, but to aspire to and compete for what little transactional commercial work there is, both for economic motives and for professional motives. Commercial transactional work depends less upon cultivating relationships with judges and is less likely to be politically sensitive. The scramble at the top produces a professional norm that is surprisingly

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<sup>76</sup> Interview with H, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>77</sup> Interview with D, Lawyer, in Qinghai, P.R.C. (June 2007).

<sup>78</sup> Most notable is the case of Chen Guangcheng, the blind rural lawyer who exposed forced abortions and sterilizations in eastern China which gained international attention. Joseph Kahn, *Chinese Court Upholds Conviction of Peasants' Advocate*, N.Y. Times, Jan. 13, 2007.

elitist given the economic reality of the environment in which Xining lawyers work.

However, within the small legal community of Xining, professional norms are strongly reinforced. Due to the emphasis on individual reputation, lawyers are continuously aware of how their actions are perceived by others: fellow lawyers, judges, and clients.<sup>79</sup> In the quest for greater prestige and professional respect, a lawyer can show his level (*shuiping*) and quality (*suzhi*) in various ways. First, he must refuse cases that are beneath him, like divorce cases. Second, he can refuse to cut down his fee to show that he is worth the money. Third, if he does work on a case that he considers below him, he can work on the case pro bono to show that he is doing this as a favor to a friend or a family. However, the lawyers must also act practically given the economic reality of their own situation and that of the clients, so there are also instances of lawyers citing a high fee and cutting it down, based on how much the client has at hand.

Since the emphasis on individual reputation can stifle opportunities and constrain a lawyer's choices, struggling lawyers in Xining are more likely to leave Qinghai altogether than to take cases that are scorned by other lawyers. The main consequence of this phenomenon is the loss of young talent, since the recent emigrants have been young lawyers who have not yet established a solid practice in Xining. At the same time, legal workers who operate outside the local professional norm mainly work on cases that lawyers do not want, such as divorce, labor grievances, and economic disputes between individuals or among families. Even in an urban center like Xining, legal workers are providing a valuable service by fulfilling the legal needs of average citizens. Therefore, the MOJ's official policy of phasing out legal workers in urban centers does not seem to take into account the reality of what is happening on the ground on a local level.

Despite occasional crackdowns on radical lawyers who challenge the state politically, the Chinese government in general has nurtured the growth of the bar. While it is clearly not in the state's interest for lawyers to push for political change, the state does seem to believe that its interest

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<sup>79</sup> Previous studies of lawyers working in rural regions of America offer an interesting comparative perspective to Xining lawyers. Examining rural lawyers in Missouri, Landon found that lawyers were "community driven." The intimate ties between rural lawyers and their communities may impose severe restraints on the professional judgment or freedom of action of the country practitioners. For example, the simple act of accepting a malpractice case against a popular local doctor can seriously tarnish a lawyer's practice. The pivotal role of personal reputation in a small community also heightens the social pressures faced by lawyers. Donald D. Landon, *COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE* (Praeger Publishers 1990).

are served by the establishment of a coherent and comprehensible market in legal services that addresses the basic legal needs of its citizenry. However, this project has increasingly taken on Western standards of legal professionalism as a model. The lawyers themselves in Xining, who are just as likely to mention New York along with Beijing or Shanghai, also look to their Western counterparts in defining their own professional roles. The situation of the legal market in Xining suggests that a more practical approach is for the Chinese government to examine the institutions and personnel that already exist in the system and to figure out how they can be better regulated and utilized to serve the basic legal needs of its citizenry.

