LAWYERS IN CHINA: THE PAST
DECADE AND BEYOND

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LAWYERS IN CHINA: THE PAST DECADE AND BEYOND

TIMOTHY A. GELATT*

I. Introduction

In 1820, the emperor of China issued an edict deploring the trend toward "unbridled litigation" and pinning the blame for it on a growing corps of "litigation tricksters." "These rascally fellows," the emperor wrote, "entrap people for the sake of profit . . . . At their bidding plaintiffs are induced to bring up stupid nonsense in their accusations." The edict concluded that those who made a profession of preparing legal petitions for others must be severely punished.¹ The legal annals of the Qing dynasty contain a number of reports of cases in which legal draftsmen received three years of penal servitude or worse for their efforts.²

This traditional official disrespect for the law and its practitioners did not disappear with the imperial era, but remained a stumbling block faced by the government of the People's Republic of China (PRC) in the mid 1950s when it first attempted to construct a new legal order that included a system of "people's lawyers."³ However, before this system had much opportunity to develop, it fell victim to political events that tragically claimed members of the legal profession, many of whom followed their Qing predecessors to labor camps.

When the PRC again commenced its reconstruction of the legal system in the late 1970s, reestablishment of the legal profession became an important item on the agenda once more. Lawyers played a substantial role in promoting this re-establishment. The time is now ripe to examine

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¹ D. Bodde, LAW IN IMPERIAL CHINA 416-17 (1967).
² ld. at 415.
³ See infra Section II.
whether PRC lawyers have been successful in their second attempt to establish a viable role in different areas of law and society, and to consider some relevant questions: To what extent do historical and political prejudices continue to hinder development of the legal profession in the PRC? Have lawyers been more successful in carving out a viable professional niche in some areas than in others? How have the foreign lawyers who have become active in the PRC since 1979 contributed to the development of the Chinese profession? How solidly established is the legitimacy of lawyers, and how vulnerable does it remain to political developments like those stemming from the events of June 1989?

This article will briefly sketch the development of the PRC legal profession in the 1950s and then consider these and related questions in the context of the PRC experience with the legal profession since the late 1970s.

II. HISTORICAL BACKGROUND: THE 1950S AND 1960S

Immediately after its establishment in 1949, the PRC abolished the entire collection of laws promulgated under the Nationalist Government.4 With one stroke it also eradicated the system of legal education and the legal profession as it had existed until then. By 1952, however, having completed at least a first sweep of bourgeois and other unsavory elements from society, largely without the use of law,5 the PRC was ready to begin initiating new socialist legal institutions and to start training a corps of socialist legal specialists to serve the new regime.

The first specific mention of lawyers in formal PRC legislation appeared in the organic law for the new system of people's courts, promulgated in 1954. The law granted defendants in criminal cases the right to retain a lawyer for their defense.6 Although no broad statute regulating the

qualification, organization, and conduct of lawyers was promulgated in the 1950s, a series of state “legal advisory offices” (falu guwen chu) was established under the Ministry of Justice (MOJ) and its local bureaus. By 1957, there were about 800 of these offices throughout China, with a total of about 3,000 lawyers, most of whom were products of old regime legal institutions. The remainder originated in the PRC’s newly-opened university law faculties and political-legal institutes. Provisional regulations issued in 1956 established fee standards for these law offices and provided for free legal services for needy clients under various circumstances.

During the brief period of law reform in the 1950s, the PRC legal press tended to focus its discussion of the lawyer’s function on issues related to defense counsel’s role in criminal proceedings. These issues included how socialist lawyers could play an effective role in supervising the legality of courtroom proceedings and how the theory of the presumption of innocence affected the lawyer’s function. The duties of lawyers during this period began to involve serving the general population, among whom they were increasingly popular, and drafting various legal documents.

The anti-rightist movement of 1957 brought this tentative beginning for lawyers in the new People’s Republic to an abrupt halt. Legal scholars and practitioners had been among the first to take advantage of Chairman Mao Zedong’s spring 1956 call to “let a hundred flowers bloom.” They had demanded more independence in their work and had

8. For background on legal education institutions in the 1950s, see Gelatt & Snyder, Legal Education in China: Training for a new Era, 1 China L. Rep. 41 (1980).
9. Lushi Shoufei Zhanxing Banfa (Provisional Measures for Lawyers’ Fees) [hereinafter Fee Measures], in 4 FGHB, supra note 6, at 235 (1957), art. 6, at 236.
11. See generally Cohen, supra note 5, at 439-40.
12. See Gelatt & Snyder, supra note 8, at 42.
gone so far as to challenge Party direction of the legal system. Their outspokenness led to a quick backlash. Denounced as bourgeois rightists, many members of China’s small corps of legal experts were transferred to the countryside to be “reeducated through labor.” The legal advisory offices ceased to function for all intents and purposes, and their supervisory agency, the MOJ, was abolished in 1959. Law journals that a few months earlier had featured serious discussion on the importance of defense counsel’s role in criminal trials reversed their positions and now lambasted lawyers for taking a “pro-defendant” attitude that served only to shore up the “enemy” against the State, and ridiculed such “bourgeois” legal notions as the presumption of innocence.

Law—and to some extent, lawyers—enjoyed a brief and fitful renaissance in the early 1960s, upon the resumption of the drafting of various codes (including those of criminal law and procedure), begun in the pre-1957 period. To the extent that some legal specialists may have emerged at least briefly from the purges of the anti-rightist campaign, they were once again singled out as particular targets for attack in the Cultural Revolution. The China that emerged from that long national nightmare in the latter half of the 1970s had been effectively rendered both lawless and lawyerless.

III. DEVELOPMENT OF THE PRC LEGAL PROFESSION AFTER 1978

A. The Re-Emergence of Lawyers

The legal discussions that began to appear in the speeches of government leaders and in the PRC press in the post-Cultural Revolution period were reminiscent of those

13. Id.
14. Id.
seen during the legal "golden age" of the 1950s. At this point, not surprisingly, the word "lawyer" began to reappear in the Chinese lexicon. The right to defense counsel was returned to the Chinese Constitution in 1978.\textsuperscript{18} This reintroduction was implemented by a provision in the Criminal Procedure Law enacted in 1979\textsuperscript{19} that allowed defendants to call on lawyers, as well as other types of defenders, for their defense.\textsuperscript{20} Law schools reopened, and legal journals reappeared, once again publishing serious discussions of the lawyer's functions in the legal system.\textsuperscript{21}

New incarnations of the 1950s legal advisory offices began to operate as those legal specialists who for two decades had been relegated to manual or other non-legal work refreshed their memories, and as the training of a new generation began. With the publication of the Interim Regulations of the PRC on Lawyers (Lawyers' Regulations) in 1980, the legal profession was given a formal charter for the first time in PRC history.\textsuperscript{22}

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\textsuperscript{20} CPL, supra note 19, art. 26, at 94 (trans. in CLCP, supra note 19, at 122).

\textsuperscript{21} On the resumption of legal education, see Gelatt & Snyder, supra note 8. For examples of discussions of lawyers, see Lin Guoding, Lushi de Xingshi Bianhu Gongzuo (The Criminal Defense Work of Lawyers) 5 FAXUE YANJIU 21 (1981); Lin Guoding, Lun Lushi de Minshi Daili (On Civil Representation by Lawyers), 3 FAXUE YANJIU 11 (1981); Su Yang, Yao Zhengque Kandai Lushi Gongzuo (Lawyers' Work Must be Correctly Regarded), 4 MINZHU Yu FAZHI 13 (1980).

\textsuperscript{22} Zhonghua Renmin Gongheguo Lushi Zhanxinxing Tiaoli (Interim
B. The 1980 Lawyers' Regulations

The Lawyers' Regulations, which did not take formal effect until January 1, 1982, define lawyers as "state legal workers" dedicated to upholding the correct implementation of the law and to protecting the interests of the State, the collective, and the lawful rights of citizens. As a threshold matter, the Regulations require that an individual wishing to practice law be a PRC citizen who "warmly loves" the country and supports the socialist system.

Under the Lawyers' Regulations, lawyers are organized into legal advisory offices that take the form of "institutional units" under the leadership and professional supervision of the MOJ (re-established in 1979), and its local affiliates. The director and deputy director of the legal advisory offices are elected by the lawyers in the relevant office, subject to approval by the provincial-level justice department. Establishment of lawyers' associations akin to those regulated by the People's Republic of China on Lawyers (hereinafter Lawyers' Regulations) (promulgated Aug. 26, 1980, effective Jan. 1, 1982), in 1980 FGHB, supra note 6, at 44 (trans. in XIX INTERNATIONAL LEGAL MATERIALS, hereinafter ILM) Nov. 1980, at 1456). The promulgation of the Lawyers' Regulations was preceded by a 1979 MOJ notice authorizing the establishment of legal advisory offices in major cities. Sifa Bu Youguan Lushi Gongzuo de Tongzhi (Notice of the Ministry of Justice Concerning Lawyers' Work) (Dec. 19, 1979) (hereinafter Lawyers' Notice), in ZHONGHUA RENMIN GONGHEGUO XINGZHENG LISHI WENJIAN HUIBIAN 1950-1985 357 (1987), art. 1, at 357.

23. Lawyers' Regulations, supra note 22, at 49 (trans. in ILM, supra note 22, at 1457).
24. Id., art. 1, at 44 (trans. in ILM, supra note 22).
25. Id., art. 8, at 46 (trans. in ILM, supra note 22, at 1456).
26. Shiye danwei. Lawyers' Regulations, supra note 22, art. 1, at 44 (trans. in ILM, supra note 22, at 1456). A shiye danwei is a non-profit state subsidized institution, such as a government ministry or bureau; it is distinguishable from a qiye danwei, or enterprise unit, such as a state corporation, which despite being state-owned is operated as a separate "profit center." See XIN BIAN FAXUE CIDIAN 536 (1985). See also note 182, infra.
27. Renda Changweihui Guanyu Shehui Dibao jixie Gongye Bu, Sifa Bu, Dizhi Bu He Renmin Mingdan de Jueding (Decision of the Standing Committee of the National People's Congress Concerning the Establishment of the Eighth Ministry of Machine Building, the Ministry of Justice, the Ministry of Geology and the List of Appointments and Removals), Renmin Ribao, Sept. 14, 1979, at 1.
28. Lawyers' Regulations, supra note 22, art. 13, at 47.
29. Id., art. 16, at 48 (trans. in ILM, supra note 22). Local Beijing regulations on the organization of law firms allow the municipal bureau of jus-
created in the 1950s was authorized to provide opportunities for professional exchange and to "uphold lawyers' lawful rights."³⁰

The Lawyers' Regulations thus established a framework for the legal profession similar to the one aborted in the 1950s. The intention was clearly to create a profession that enjoyed no substantive independence from the political and administrative control of the State. The next sections of this article examine the modifications of this basic orientation that have occurred both through official decisions and practical evolution over the past decade.

The Lawyers' Regulations reflect the reality of the PRC's recent emergence from a legal desert by providing a variety of extremely flexible ways to obtain qualification as a lawyer. Under the first system, one could graduate in law from an institution of higher education and then work for two years in legal instruction, research, or the judiciary.³¹ If one could not follow this preferred path, however, it was possible to qualify by receiving any legal training and then serving—for an apparently unspecified period of time—as a court judge or procurator.³² One could also qualify by receiving some legal training after becoming familiar with relevant specialized areas of the law through at least three years' work in economic, scientific, or technical fields.³³

Obtaining the right to practice law was a two-step process under the Lawyers' Regulations. First, individuals with any of these alternative backgrounds were to obtain "law-

³⁰. Lawyers' Regulations, supra note 22, art. 19, at 48 (trans. in ILM, supra note 22, at 1457).
³¹. Id., art. 8(1), at 46 (trans. in ILM, supra note 22, at 1456).
³². Id., art. 8(2), at 46 (trans. in ILM, supra note 22, at 1456).
³³. Id., art. 8(3), at 46 (trans. in ILM, supra note 22, at 1457).
yers' qualification” upon successful “examination.” 34 Despite the reference to examination, systematic implementation of a standardized system for testing potential lawyers began only in 1986. 35 Until that time, specific prerequisites for the certification of lawyers were nebulous, and varied from one part of China to another. 36 Second, however they actually obtained their initial qualification, prospective lawyers had to obtain a “lawyers' certificate” upon approval of their provincial-level justice bureau. 37 No specific basis was provided for obtaining the lawyer's certificate. 38

C. Development of Lawyers' Training and Qualification System since Promulgation of the Lawyers' Regulations

The Lawyers' Regulations were issued to meet what the PRC leadership perceived as a pressing need to put the legal profession officially back on the Chinese map and to establish some initial guidelines for its regulation. 39 As indicated above, however, promulgation of the Regulations came at a time when the infrastructure necessary for implementation—such as a sound system of legal education and a nationwide lawyers' examination—had not been fully established.

Since 1980, legal education has become more widely available, not only in university law faculties and institutes of politics and law throughout China, but also through numerous short-term training programs and even correspondence courses for law study. 40 In addition, legal education ex-

34. Id., art. 8, at 46 (trans. in ILM, supra note 22, at 1456).
35. See infra note 41 and accompanying text.
36. Author's discussions with PRC lawyers throughout 1980s; Tian, supra note 7, at 7-11.
37. Lawyers' Regulations, supra note 22, art. 9, at 47 (trans. in ILM, supra note 22, at 1457).
38. Id.
40. Only about 4,000 people graduate from formal university law courses each year. However, an additional 51,000 people per year are attending three-year college level correspondence law courses initiated in 1988. A further 76,000 people took law courses offered on television or in night schools in 1988. China Daily, Apr. 27, 1989, at 3, col. 1. In addition, a recently completed nationwide campaign to publicize basic legal knowledge reached 640 million out of the targeted population of 750 million people. The legal knowledge involved ten laws, including China's constitution, criminal law, marriage law, law on economic contracts, inher-
changes between the PRC and other countries have undergone substantial development over the past several years, with an ever-increasing number of law students, teachers, and scholars flowing between Chinese and foreign institutions.

Connected to the increased availability of legal training is the formal system of testing lawyers’ qualifications that was finally instituted in 1986 with the commencement of a semiannual nationwide bar examination. The 1990 examination was taken by about 83,000 candidates, of whom about 7.8 percent will be deemed qualified. The bar examination is only open to candidates who, after finishing their education, have either completed two years of judicial or other legal work, or met one of the other initial criteria for lawyers’ qualification set forth in the Lawyers’ Regulations.

The increasingly systematic approach to legal training and qualification that the PRC has attempted to institute over the past several years is reflected in a set of provisions issued in late 1988 by the MOJ (the MOJ Provisions). The MOJ Provisions supplement the Lawyers’ Regulations by...
tablishing more specific procedures for meeting the requirements of both qualification stages articulated in the 1980 Regulations (i.e., the initial lawyers' qualification and a subsequent certificate permitting actual practice).

Under the MOJ Provisions, an individual with the practical experience required by the Lawyers' Regulations who has subsequently passed the bar examination may apply for a "lawyers' qualification certificate" after approval by the provincial-level justice bureau. Such approval is based, in turn, on a report covering an examination of the individual's "thoughts and conduct" provided by the particular justice agency with jurisdiction over the individual's place of residence.

A primary purpose of the MOJ Provisions is to prevent would-be lawyers who have only obtained the initial "lawyers' qualification certificate" from actually practicing law. The MOJ apparently felt, based on experience in implementing the Lawyers' Regulations, that a large number of people with inadequate experience and competence were acting as lawyers. Thus, the MOJ Provisions have fleshed out the bare-bones Lawyers' Regulations provision for obtaining the lawyer's certificate, the second stage of qualification.

To obtain this certificate, an individual who has received preliminary lawyer's qualification must intern in a law office for one year. After completing the internship, the prospective lawyer must submit a written certification application, to be considered by the office in light of the applicant's conduct and professional capability. The office's conclusions are reported to the local justice agency, which, in turn, reports its recommendation to the provincial-level bureau of justice for approval.

Presenting oneself as a lawyer while having only a qualification certificate and not an actual lawyer's certificate is a

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44. See supra notes 31-38 and accompanying text.
45. MOJ Provisions, supra note 43, art. 1.
47. Lawyers' Regulations, supra note 22, art. 9, at 47 (trans. in ILM, supra note 22, at 1457).
49. Id., arts. 2-4.
ground for cancellation of the lawyer's qualification. In addition, those who let five years elapse after obtaining the lawyers' qualification before applying for a lawyer's certificate, unless they have been engaged in some form of legal work during the intervening period, are required first to pass a provincially administered examination on newly promulgated laws—a further example of the MOJ's heightened emphasis on professional competence.

D. The Development and Reform of "Law Firms"

Although the Lawyers' Regulations reflect the experience of the 1950s by calling for the establishment of "legal advisory offices" under the justice departments, in the past several years the term "law firm" (lushi shiwu suo) has come increasingly to replace that earlier designation. "Law firm" was first officially mentioned as an alternative to "legal advisory office" in a set of provisions issued by the MOJ in 1986 on the organization of lawyers' work places (the 1986 Provisions).

This change in lexicon does not, in and of itself, reflect a substantive change in the status, or degree of professional or administrative independence, of PRC lawyers. The 1986 Provisions continue to require the approval of the justice agencies for the establishment of legal advisory offices or law firms and to impose a variety of requirements and restrictions on their organization. For instance, firms are required to have at least three full-time lawyers in order to be established; law offices may only be established to serve a particular geographical area—i.e. a city or county—and may not establish affiliates in other areas.

50. Id., art. 3(5).
51. Id., art. 6.
53. Id., art. 4, at 623.
54. Id., art. 3, at 623.
The role of the justice agencies in supervising law firms' work is strongly emphasized both in the 1986 Provisions and in local regulations governing Beijing law firms. The latter rules require, for example, that firms report immediately to the local justice bureau when they accept certain types of cases, such as those involving crimes of counter-revolution, foreign-related cases, criminal cases in which there exists controversy about a defense of innocence, and cases of all types with a "relatively great influence" on the city or region.56 Beijing firms are also required to make annual reports of their work plans to the local justice agency.57 In addition to their emphasis on supervision by the justice agencies, the various regulations governing the work of law firms stress the importance of firm-wide collective decision making and consideration of cases as opposed to autonomous handling of matters by individual lawyers within the firm.58


56. Beijing Law Firms Regulations, supra note 29, art. 27. See also Beijing Criminal Defense Regulations, supra note 29, art. 21. These latter regulations also require law firms to request a decision from the bureau of justice when, after a collective discussion on a criminal defense case, the firm's lawyers are unable to reach a consensus. Id., art. 23(4). One PRC law review article suggests that some local justice bureaus require lawyers to obtain the bureau party committee's approval before presenting a defense of innocence. Wu Yun & Wu Ping, Lushi Xingzhi Xintan (New Explorations on the Nature of Lawyers), 2 Faxue 43, 44 (1988). An unconfirmed report in late 1990 stated that the MOJ has started to require lawyers to notify the MOJ before allowing a client to plead innocent. South China Morning Post, Nov. 9, 1990, at 16.

57. Beijing Law Firms Regulations, supra note 29, art. 32.

58. On the collective discussion of criminal defense cases, see, e.g., Beijing Criminal Defense Regulations, supra note 29, art. 23. See also Beijing Law Firms Regulations, supra note 29, arts. 20-24. A somewhat less rigorous system of collective case discussion seems to apply for non-criminal cases in which enterprises or individuals retain law firms. In these matters, the lawyer handling the matter is expected to make day-to-day decisions on his own and report to the leadership of the law firm for consultation only on matters of an important policy nature or with far-reaching significance. See Beijing Shi Sifa Ju Guanyu Falu Guwen Gongzuo Guicheng (Regulations of the Beijing Municipal Bureau of Justice Concerning Legal Advisory Work) (effective Feb. 1, 1988) [hereinafter Beijing Legal Advisory Provisions], art. 18 (unpublished regulations on file with the author).
As of October 1990, approximately 3,700 law firms and legal advisory offices had been established in the PRC. Of these, the vast majority (about 98 percent)—regardless of the term by which they refer to themselves—have evolved from the original "legal advisory offices," and are established under the relevant levels of the justice bureaucracy. In addition, a small number of firms have been established under state corporations, ministries, and organizations such as the China Council for the Promotion of International Trade and the China International Trust and Investment Corporation. These firms deal primarily, though not exclusively, with foreign trade matters.

The initial legal authority relied upon for the establishment of law firms not directly affiliated with the justice agencies is apparently based on a provision of the Lawyers' Regulations allowing the establishment of "specialized legal advisory offices" upon approval of the MOJ. The 1986 Provisions, while requiring that law offices generally provide a full range of legal services, also provide a basis for the establishment of firms by various entities with a specialized mandate by stipulating that, with provincial-level justice bureau or MOJ approval, law firms may be organized to emphasize a certain area of legal practice.

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60. Tian, supra note 7, at 55. In addition to law firms and legal advisory offices, China also has what it calls "legal service centers" for residents of small towns and the countryside. These are legislated under a set of 1987 regulations. Guanyu Xiangzhen Falu Fuwu Suo De Zhanxing Guiding (Provisional Regulations Regarding Rural Legal Service Centers) (May 20, 1987) [hereinafter Rural Regulations], in ZHONGGUO FALU NIANJIAN 586 (1988). By June 1990, approximately 32,000 of these service centers had been established throughout China. Of the roughly 94,500 "service workers" staffing the centers, only 800 were lawyers qualified under the Chinese system. China Daily, Nov. 20, 1989, at 3. The centers offer legal consulting services and document drafting, and also play a role in mediating disputes. Fazhi Ribao, Nov. 14, 1990, at 1.

61. See infra Section IV(c). As of the end of 1989, 70 firms had been established in the PRC to handle foreign economic activity. Fazhi Ribao, June 8, 1990.

62. Lawyers' Regulations, supra note 22, art. 14, at 48 (trans. in ILM, supra note 22, at 1457).

63. 1986 Provisions, supra note 52, art. 2(2), at 623.

Regardless of their actual institutional affiliation, all law firms are subject to the supervision of the justice agencies. Although the Lawyers’ Regulations and subsequent legislation make no distinction between law offices established directly under these agencies and others with respect to the degree of control over their activities, the law firms created under institutions other than the local justice bureau seem to have enjoyed greater autonomy in staffing, director selection, and similar matters than the majority of firms.\footnote{See Tian, supra note 7, at 49.}

The economic reform program of the PRC in the 1980s, one of the key aims of which has been to make state-owned units function more as independent economic entities and rely less on government allocations and subsidies for their existence, has also affected the newly developing law firms. Although the Lawyers’ Regulations alluded to measures on lawyer’s fees, which were to be formulated by the MOJ,\footnote{Lawyers’ Regulations, supra note 22, art. 20, at 49 (trans. in ILM, supra note 22, at 1457). See also Lawyers’ Notice, supra note 22, art. 2, at 357 (providing that the Fee Measures, see supra note 9, could be used by newly established legal advisory offices for reference, adjusted as appropriate based on the specific circumstances of each area, pending the overall revision of the Fee Measures based on experience).} only in 1990 were fee standards published to replace those promulgated in the 1950s.\footnote{Lushi Yewu Shoufei Biaozhun (Fee Standards for Lawyers’ Business), issued in Feb. 1990 by the Ministry of Finance, Ministry of Justice, and the State Bureau of Commodity Prices, in China Laws for Foreign Business § 16-608(4).} Nonetheless, internal guidelines have long regulated the fees charged by state law firms,\footnote{Author’s discussions with PRC lawyers throughout 1980s. See Beijing Legal Advisory Provisions, supra note 58, art. 30.} which in all cases until recently were, as the Lawyers’ Regulations prescribe, non-profitmaking state-subsidized administrative agencies whose employees were paid a standard


\footnote{65. See Tian, supra note 7, at 49.}

\footnote{66. Lawyers’ Regulations, supra note 22, art. 20, at 49 (trans. in ILM, supra note 22, at 1457). See also Lawyers’ Notice, supra note 22, art. 2, at 357 (providing that the Fee Measures, see supra note 9, could be used by newly established legal advisory offices for reference, adjusted as appropriate based on the specific circumstances of each area, pending the overall revision of the Fee Measures based on experience).}

\footnote{67. Lushi Yewu Shoufei Biaozhun (Fee Standards for Lawyers’ Business), issued in Feb. 1990 by the Ministry of Finance, Ministry of Justice, and the State Bureau of Commodity Prices, in China Laws for Foreign Business § 16-608(4).}

\footnote{68. Author’s discussions with PRC lawyers throughout 1980s. See Beijing Legal Advisory Provisions, supra note 58, art. 30.}
state functionary salary, largely irrespective of the amount of work they performed or the fees they generated for the firm.

Criticisms of the dampening effect of this system on the enthusiasm of law graduates for entering the legal profession began to be voiced in the mid 1980s, and have led to some reforms in the financial structure of state law firms. Certain firms whose financial condition is deemed stable have been allowed, under regulations issued in 1986 by the MOJ and the Ministry of Finance in 1986, to apply for permission to convert from the old state enterprise system (under which all expenses are subsidized by, and all profits turned over to, the State) to a system under which firms are responsible in varying degrees for their own costs and revenues and may retain all but 10 to 15 percent of their net earnings to use to expand the firm or for benefits and bonuses to staff.

The State may continue to provide subsidies for the cost of renting business premises and other basic expenditures as needed, and continues to exercise close control over the way in which firms' retained profits are used. For example, it regulates the maximum percentage that may be used for lawyer bonuses under various circumstances. Despite the continuing existence of guidelines on fees that may be charged, law firms in practice seem increasingly capable of exercising discretion in setting different fee standards depending on the nature of the matter and the client.

At about the same time as law firms began to be granted

69. See, e.g., China Daily, Nov. 17, 1987, at 3 (reporting an increasing tendency of lawyers to leave their jobs because of their low state-set salaries). See also Rong & Zhang, Shilun Lushi Guanli Tizhi de Gaige (Tentative Discussion of the Reform of the Lawyers' Management System), 1 FAXUE ZAZHI 46 (1988); Cheng & Gao, Fanlun Lushi Zhiye (General Discussion of the Legal Profession), 1 LUSHI YU FAZHI 5 (1990).


71. Id., art. 3, at 625.

72. Id. Rural legal service centers are granted financial autonomy regarding their expenditures and receipts. See Rural Regulations, supra note 60, art. 9.

73. Author's experience with PRC law firms and discussions with PRC lawyers throughout 1980s.
a somewhat greater degree of financial independence, provisional exemption was granted to state law firms from income tax as well as the business turnover tax normally imposed by the PRC on service revenues, to allow these firms a chance to establish themselves on a new financial footing. 74 In a further effort to bring the legal profession in line with the market-oriented reforms that have affected other areas of PRC life, a “gradation” system for lawyers, foreshadowed in the Lawyers’ Regulations 75 but not previously implemented, was established in 1988. The system assigns lawyers, apparently based on seniority and experience, one of several “grades,” similar to those into which other professionals such as engineers are divided. Lawyers may use their designated grade to identify themselves to the public. The primary reason for this new system, however, is apparently less to establish a basis for potential clients’ quality assessment of attorneys than to justify allowing senior lawyers to draw larger salaries than their more junior colleagues. 76


75. Lawyers’ Regulations, supra note 22, art. 20, at 49 (trans. in ILM, supra note 22, at 1457).

76. Tian, supra note 7, at 20. At the same time that firms have begun to be granted some economic flexibility, they are simultaneously being held to more stringent economic standards in major cities like Beijing and Guangzhou. In the latter city, for example, according to a new set of draft regulations, lawyers who make mistakes that result in economic loss to their clients must return not only their legal fees but also provide compensation to the clients, measured either as 10 percent (not to exceed 1,000 yuan) or 20 percent (not to exceed 2,000 yuan) of the loss, depending on the kind of loss involved. Renmin Ribao, June 16, 1990, at 4; Fazhi Ribao,
E. Part-Time Lawyers

Of the approximately 50,000 lawyers reported to be licensed in China as of January 1991, less than half are full-time employees of law firms. The remainder, primarily law teachers and researchers, have been pressed into part-time service as lawyers. A number of legal education institutions have set up law offices open to the public in which members of the school's faculty work part-time. The establishment of law offices under educational institutions is specifically authorized by the 1986 Provisions on the condition that these offices be called "legal consultancy organs" (lu xinzun jigu), not law firms, and that the legal educators working in the offices—even those with lawyers' qualifications—restrict themselves to consulting on legal questions and not hold themselves out as fully fledged lawyers. In addition, the 1986 Provisions prohibit these offices from charging fees, characterizing them as legal aid organizations.

In addition to law offices established in their own institutions, legal educators, particularly those with expertise in a certain area, have increasingly begun to affiliate themselves in a part-time capacity with firms under the justice or other agencies. The need for part-time lawyers was recognized in the Lawyers' Regulations as a function of the PRC's professional responsibility insurance has been suggested; see Gong Xiaobin, Jianli Lushi Zeren Peichang Zhiqu (A Proposal Regarding the Establishment of a System of Compensation for Lawyers Based on Responsibility), 2 Faxue 17 (1987).

78. Author's colleague's conversation with officials of the All-China Lawyers' Association and the MOJ, Nov. 14, 1990.
80. Id., art. 2(2), at 623.
81. Id., art. 5(2), at 624. The extent to which the rules cited in the text to notes 79 and 80 are honored in practice is unclear. Some legal research and educational institutions do seem to have established fee-charging "law firms" in which members call themselves "lawyers." However, in at least some cases, the rules may be technically honored by having a legal institute's law firm administratively attached to one of the existing law firms under the local justice bureau, thereby making a group of that institute's faculty essentially part-time lawyers attached to that law firm, while still using a separate name for the institute's firm for certain purposes. This approach has been used, for instance, in Shanghai, in two instances with which the author is familiar.
82. See supra text accompanying note 61; see also supra note 81.
shortage of legal talent, a shortage that of course continues to exist despite the enormous strides taken in legal education since 1980. Under the Lawyers' Regulations, those who have obtained the basic lawyers' qualification\(^{83}\) without leaving their original post may act as part-time lawyers.\(^{84}\)

In the original statute, no actual application for a lawyer's certificate appeared to be required for part-time lawyer's work.\(^{85}\) Rules issued in 1986 by the MOJ on part-time lawyers\(^{86}\) and the 1988 MOJ Provisions, however, require that, in addition to passing the bar examination and obtaining lawyers' qualification, would-be part-time lawyers must apply to a law firm and be issued a certificate upon approval of the provincial justice authorities.\(^{87}\) They are not, however, required to undergo the one-year internship required of full-time lawyers.\(^{88}\) Part-time lawyers are required to serve at least sixty working days per annum in their law firm,\(^{89}\) and are required to handle whatever work is assigned to them by the firm, and be paid a normal salary, presumably based on time spent. They are prohibited from accepting cases or receiving fees privately.\(^{90}\)

The 1988 MOJ Provisions also reflect the PRC's efforts in the 1980s to create what is at least in organizational terms an independent legal profession, by strictly limiting the pool from which part-time lawyers may be drawn. Under the Lawyers' Regulations, it remained possible for persons not cur-

\(^{83}\) See supra text accompanying notes 44-45.

\(^{84}\) See Lawyers' Regulations, supra note 22, art. 10, at 47 (trans. in IJM, supra note 22, at 1457).

\(^{85}\) Id.


\(^{87}\) Part-time Lawyers' Provisions, id., art. 1, at 624; MOJ Provisions, supra note 43, art. 5.

\(^{88}\) As the bar examination system becomes more firmly implanted, the phenomenon of part-time lawyers working in law firms is likely to be gradually phased out, with those certified as lawyers upon passing the bar examination being required to practice full-time if they wish to practice law. Author's discussion with PRC lawyers, Sept. 1989.

\(^{89}\) Part-time Lawyers' Provisions, supra note 86, art. 2, at 624.

\(^{90}\) Id., art. 3, at 624.
rently employed by the courts, procuracies, or public secur-
ity organs to be part-time lawyers. The MOJ Provisions, on
the other hand, allow only legal educators in "high-level"
law institutes or university departments to fill such roles.
The Provisions specifically exclude employees of the agen-
cies mentioned in the Lawyers' Regulations, as well as em-
ployees of any other party and government organs, enter-
prises, institutions, and social organizations. By limiting
these prohibitions to those who qualified as lawyers via the
1988 bar examination, however, the MOJ Provisions appar-
tently are intended not to have retroactive effect; thus, other
individuals who have already taken up part-time lawyers' work are apparently not required to cease their activities. In any event, a 1990 MOJ notice calling for a general 'rectifi-
cation' of the legal profession reaffirms that party or state organ personnel are prohibited from acting as part-time law-
ners. The notice indicates that this problem has continued to appear since the promulgation of the 1988 MOJ Provi-
sions.

F. Enterprise Lawyers

Over the past several years, legal specialists in China have also begun to play the role of in-house counsel in state and collective enterprises, as well as in government institutions. For the most part, however, such persons cannot accurately be called "lawyers," since the majority—while presumably having some background in legal fields relevant to their enterprises—have not passed the bar examination or met the other criteria for certification as a "lawyer." In-

91. Lawyers' Regulations, supra note 22, art. 10, at 47 (trans. in ILM, supra note 22, at 1457).
92. MOJ Provisions, supra note 43, art. 5. Part-time lawyers may only be drawn from legal education institutions in the locality of the law firm, and may not be brought in from other areas. 1990 Notice, supra note 55, art. 7.
93. MOJ Provisions, supra note 43, art. 5.
94. 1990 Notice, supra note 55, art. 7. An article published in early 1990 recommended that the system of part-time lawyers be phased out gradually as the availability of qualified full-time legal professionals increases, in order to better control the quality of lawyers. Bian Xinjun, Jian-
shi Lushi Zhidu Cunhu, Fanhu? (Should the System of Part-time Lawyers Con-
tinue to Exist or Be Abandoned?), 1 LUSHI YU FAZHI 11 (1990).
95. Tian, supra note 7, at 4-5.
Indeed, under Beijing's local regulations, even an individual who might otherwise qualify as a lawyer cannot function as a full-fledged "lawyer" unless he retains at least a part-time affiliation with a law firm.96

Such a lack of formal lawyer's status means that China's in-house counsel may only assist their enterprises in contract and other legal matters; they cannot appear in court, a function for which enterprises still need to retain law firms.97 Within these limits, however, legal advisors to various enterprises have taken on an increasingly significant role in such areas as drafting documents and mediating informal dispute resolutions, as well as participating in negotiations with foreign businesses.98 As of October 1990, 120,000 enterprises had full-time legal advisory staff, as compared with 40,000 in 1986 and close to 70,000 in 1988.99 In addition, more and more provincial and municipal governments and their agencies have begun to retain the assistance of in-house legal advisors for drafting regulations and other documents, advising on the legal aspects of government policies, and resolving disputes.100


97. See infra notes 115-18 and accompanying text. Enterprises with and those without "in-house counsel" have both increasingly begun entering into long-term arrangements with law firms under which one or more lawyers in the firm are designated as the enterprise's legal advisors. A 1988 set of Beijing regulations establishes guidelines for the work of law firms and lawyers acting in this capacity. Beijing Legal Advisory Provisions, supra note 58.

98. See Wang, Reform Revives Role of Lawyers, China Daily, Mar. 18, 1987, at 4; Epstein, Long March to the Present, Long Way to Go, FAR E. ECON. REV., Mar. 19, 1987, at 104. During the course of more than a year's work, an enterprise lawyer in one rural village handled 50 trademark cases, 100 economic contracts, drafted 60 legal documents, and recovered damages of 10,000 yuan. Guangming Ribao, Oct. 10, 1990.


100. Tian, supra note 7, at 24-25; Epstein, supra note 98, at 104; Fazhi Ribao, Nov. 25, 1989, at 1. See also Fazhi Ribao, Sept. 25, 1989, at 1 (reporting that 86% of local governments at the county level and above in Hebei province had retained long-term legal advisors); Summary of World Broadcasts, Oct. 10, 1990, at B2/5 [hereinafter SWB] (reporting that over
G. Foreign Lawyers

Although more will be said about the role of foreign lawyers in Section IV(C) below, the foregoing account of the Chinese legal profession's development over the past decade would be incomplete without a brief description of how foreigners have participated in the PRC legal scene during this period.

The Lawyers' Regulations' threshold requirement of PRC citizenship for lawyers effectively prohibits foreigners from exercising the functions reserved to lawyers by those regulations—for instance, participating in civil or criminal court proceedings or writing official legal documents. Nonetheless, in recent years, foreign lawyers have been permitted to represent foreign clients in PRC arbitration proceedings of commercial disputes. Strictly speaking, in doing they do not perform as lawyers, but instead as "agents," acting under a power of attorney from their clients.

Chinese law also restricts the performance of official accounting business (such as the issuance of legally effective audit reports for Chinese-foreign joint ventures) to PRC-qualified accountants. Nonetheless, under regulations governing the establishment of liaison or representative of-
offices, the PRC allows major foreign accounting firms to maintain offices in China to advise their foreign clients on accounting matters. As yet no similar formal—if limited—status has yet been granted to foreign law firms. Nonetheless, the MOJ has long been studying the issue of allowing such firms to establish offices in China to assist their foreign clients. In researching this issue, the MOJ has received numerous materials from organizations in the United States and elsewhere regarding the regulation of foreign attorneys in other countries, and has closely studied the recent Japanese experience. To this date, however, although regulations on the status of foreign lawyers in the PRC have apparently been drafted and debated, the MOJ has yet to issue any such rules. Its official position remains that foreign lawyers are not permitted to engage in any type of practice in the PRC; thus, foreign law firms have not been permitted to establish formal operations in the PRC in their own names.

Notwithstanding this official position, over the past decade, a dozen or so law firms from the United States, Hong Kong, and Europe have established outposts in Beijing, Shanghai, and Guangzhou. To comply with the MOJ position and the PRC regulations prohibiting unregistered offices from operating in China, these firms have devised creative solutions to the problem of obtaining a “representative office” operating license. Their methods include registering with the appropriate state agency on behalf of a ma-


108. Author's discussions with PRC lawyers, 1988-89.


110. See id. art. 4, at 526 (trans. in 1 CFEL, supra note 104, at 167).
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For the major client and establishing, in either Hong Kong or the firm's home jurisdiction, a consulting company, which in turn registers an office in China. The actual status of these registered offices as law firms is an open secret to both the justice and the registration authorities, and their existence is tolerated so long as the firms do not take any action patently incompatible with their formal incarnation—such as using the law firm's name on local business cards or on the door of their offices.111

The PRC's difficulty in reaching a decision on how to handle foreign lawyers stems from historical and political factors, involving the existence through the 1940s of extraterritorial legal privileges for foreigners in China and the ideologically sensitive position of lawyers in the PRC's forty-year history. This difficulty also stems from protective concerns about the PRC's own fledgling legal profession, particularly that part of it specializing in the foreign economic and investment area.112

In addition to the obvious prohibition on advocacy in legal proceedings, the Lawyers' Regulations are generally understood by foreign lawyers working in China to prohibit their issuing formal legal opinions on matters of PRC law. The Lawyers' Regulations offer less guidance on other issues that occasionally arise, such as the ability of a foreign lawyer to conduct interviews in China relevant to his client's case in a foreign court.113 But despite the limitations on their activities and their nebulous standing, foreign lawyers have managed over the past decade to play an increasingly active role

112. See infra Section IV(C).
113. In May, 1989, two U.S. lawyers were denied permission by the Shanghai Bureau of Justice to conduct depositions of witnesses relevant to the U.S. trial of defendants in a drug trafficking case involving both PRC and U.S. defendants, purportedly on the basis of an internal document prohibiting this practice by foreign lawyers. Author's personal experience. However, several months later, the lawyers in question were permitted to conduct the depositions. See South China Morning Post, Oct. 12, 1989, at 18, col. 1. This permission probably reflected more the special nature of the case and diplomatic factors than a general change in policy on the practice of foreign lawyers in the PRC.
in the PRC, not only in representing their clients in business negotiations but also in working closely with PRC lawyers on matters of common concern.  

IV. THE ROLE OF PRC LAWYERS IN DIFFERENT AREAS OF PRACTICE

As the foregoing discussion of the developments since the late 1970s in regulating the training, qualification, and organization of lawyers in the PRC has demonstrated, the PRC has made enormous efforts to create a sound framework for the legal profession. The degree to which this framework is being effectively implemented in practice, the problems it raises, and the substantive inroads lawyers have actually been able to make in various aspects of PRC law and society will be the focus of this section, which examines the role PRC lawyers have developed in different areas of law practice, and further of the concluding section of this Article.

The Lawyers' Regulations provide a basic list of the functions PRC lawyers are intended to serve. These are: (1) acting as legal counsel for state enterprises, agencies, and other units; (2) acting as counsel in civil litigation; (3) acting as defense counsel in criminal cases or as counsel for the victim of a criminal offense who brings a private law suit or joins a private claim to a public prosecution; (4) assistance on behalf of parties to nonlitigious dispute resolution procedures; and (5) general legal consulting, including the preparation of legal documents. Because they afford the most interesting grist for analysis of the legal profession's

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114. See infra Section IV(C).
115. Lawyers' Regulations, supra note 22, art. 2, at 45 (trans. in ILM, supra note 22, at 1456).
116. See supra Section III(F).
117. See CPL, supra note 19, arts. 126-28, at 116 (trans. in CLCP, supra note 19, at 154-55).
118. See CPL, supra note 19, arts. 53-54, at 100 (trans. in CLCP, supra note 19, at 131).
119. In addition to representing one party to a dispute in an out-of-court mediation, lawyers may act as mediators of disputes. See Wei, Qian-tan Lushi Dui Susong Shijian de Tiaojie (Tentative Discussion of Lawyers' Mediation of Non-litigious Matters), 4 FAXUE ZAZHI 46 (1989); Tang, Lushi Zhuchi Tiaojie de Ruoan Wenti Chutan (Preliminary Discussion of Several Issues Concerning Lawyer's Conducting Mediation), 6 FAXUE ZAZHI 39 (1989).
successes and failures in contemporary China, this section will examine three of these areas: criminal, civil, and the “foreign economic” practice that has developed among Chinese lawyers with the advent of foreign business cooperation and the arrival of foreign lawyers on the scene.\footnote{120}

A. The Criminal Process

As was the case in the 1950s, at least so far as legislative references to and public discussion of lawyers was concerned,\footnote{121} the reactivation of the lawyers' system in the late 1970s was initially focused on the lawyer's role in the criminal process. The official emphasis on legality and a rejection of the arbitrary procedures of the Cultural Revolution era that surrounded the adoption of the 1979 Criminal Procedure Law\footnote{122} included as one of its important focal points the right of criminal defendants to engage lawyers or other individuals for their defense.\footnote{123}
Lawyers are in actuality given a highly limited function in the PRC criminal process. Like that of many other socialist and other "civil law" countries, the PRC's system of criminal procedure affords the pre-trial investigation phase, conducted by the public security and procuratorial organs, a significantly more important function in establishing guilt or innocence than the trial itself.¹²⁴ Yet, the PRC system allows lawyers entry into the process only at the point where the pre-trial investigation, which may under the relevant rules last for approximately six months,¹²⁵ is essentially completed and the trial is about to commence. Under the CPL, the right of counsel retained by the defendant or appointed by the court attaches as a general rule only seven days before the date set for the opening of the trial.¹²⁶ Thus, during the all-important pre-trial phases, when the public security agencies are authorized to hold the defendant in custody,¹²⁷ PRC lawyers have no right to be involved in the case.

Since the promulgation of the CPL, the rights and functions of criminal defense lawyers during the time they are allotted in the justice system have been elaborated in two
published provisions issued in 1981 and 1986 by the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security and the MOJ. Lawyers are permitted to review and take notes on the case file at the relevant court and the courts are required to provide them with facilities for doing so. Lawyers representing criminal defendants may also visit defendants in custody. Places of custody are permitted to adopt security measures for such visits as they deem necessary, but are also required to make their best efforts to avoid "adding to the apprehension" of the defendant in meeting with his lawyer.

The PRC lawyer, however, does not enjoy the type of "privileged" relationship with his client that is the essence of the United States and other legal systems. For instance, although officials of detention houses are not allowed to question the defendant on the contents of his discussion with his lawyer, "to avoid influencing the full exercise of the right to defense," the lawyer, for his part, must "promptly inform" such officials of any questions regarding the defendant that such officials "need to understand." A set of Beijing regulations on lawyers' conduct further admonishes law-


130. Id., art. 2, at 11.
131. Id., art. 2(2), at 11.
132. Id. See also Anhui Sheng Guanyu Lushi Zhixing Zhiwu de Ruogan Guiding (Certain Regulations of Anhui Province Regarding Lawyers' Implementation of Their Duties) (adopted Aug. 27, 1988) [hereinafter Anhui Regulations], art. 9 in ZHONGGUO FALU NIANJIAN 400 (1989) (providing that a defendant will not be questioned on the contents of his conversations with his lawyer).
133. 1981 Litigation Provisions, supra note 128, art. 2(3), at 11. One discussion of the role of criminal defense counsel stresses the need for a lawyer to divulge to the procuracies and courts any information about his client's criminal conduct of which they have not been made aware. The lawyer, this analysis goes, has only the duty to protect his client's lawful rights and interests, not those that are unlawful. Yin, Qiantan Lushi Bianhu Wenti (A Brief Discussion of the Question of Lawyers' Defense), 5 FAXUE ZAZHI 43 (1986).
yers not to divulge to defendants they visit in custody any materials from the case file that the defendant "should not be allowed to know about." 134

These various provisions on lawyers' conduct of criminal defense activities do not make any explicit modification to the seven-day limit on the defense lawyer's pre-trial role. However, the 1981 provisions appear to introduce a note of flexibility by providing that, after a lawyer is notified by the court of the trial date, 135 he may request an extension if the case is complex and more time is needed to prepare. 136 The court may consider this on the condition that an extension not influence the legally prescribed time for concluding cases. 137

The extent—if any—to which this right of extension has been implemented is unclear, but appears limited at best. In any event, the requirement that extensions requested by lawyers not affect legally prescribed time limits contrasts starkly with the sometimes indefinite right of extension the investigatory authorities enjoy for pre-trial investigation in "complex" cases. 138

The time allotted to criminal lawyers has become a hotly debated issue in the increasingly open atmosphere that has characterized the past few years in the PRC. The legal press on numerous occasions has pointed out the constraints—caused by the short period during which lawyers have access to their clients—imposed by the criminal process, and has made suggestions for the system's reform. One commentator noted that the seven-days-before-trial date is, in fact, the date on which the defendant has the right to be informed of his right to appoint a lawyer. Thus, the lawyer actually may

135. CPL, supra note 19, art. 110(4), at 112 (trans. in CLCP, supra note 19, at 149). This notice must be given no later than three days before the trial opens.
136. 1981 Litigation Provisions, supra note 128, art. 4(2) at 40. Beijing provisions on criminal defense work of lawyers require, as one of the conditions for acceptance of a criminal defense assignment, that the lawyer "have time to prepare." Beijing Criminal Defense Regulations, supra note 29, art. 4(2).
137. See supra note 125 and accompanying text; see also Anhui Regulations, supra note 132, art. 12.
138. See note 125, supra.
have far fewer than seven days to prepare the case. The legal press has also noted the investigating authorities' unfair advantage of having a long period in which to investigate the defendant's criminal responsibility, and has recommended that lawyers be allowed to participate in the pre-trial investigatory phase.

Other criminal justice systems that are similar to that of the PRC, such as that of Taiwan and the Soviet Union, 141


140. Id. See also Wang Wangxiang, Woguo Lushi Bianhu Zhidu De Gaige Quyi (Preliminary Suggestions on the Reform of China's Lawyers' Defense System), 3 XIANDAI FAXUE 81 (1988); Han, supra note 123; and Kong, supra note 41, at 47-52 (noting the earlier participation of lawyers in the criminal process in other systems and recommending that PRC lawyers be permitted to become involved after the completion of the investigation phase but prior to the decision on formal prosecution). The latter author believes that such a system would both enhance lawyers' defense function and avoid undue interference with the investigation of cases. Under this approach—assuming that time limits provided in the CLP, see supra note 125 and accompanying text—were followed, the defense lawyer could normally become involved approximately two months after the initial detention of a criminal suspect. See CPL, supra note 19, art. 92, at 108 (trans. in CLCP, supra note 19, at 142). A more recent commentator, writing after the events beginning June 4, 1989 (see infra Section VI), proposes that lawyers should be allowed to participate in the process as soon as a criminal suspect is detained. Zhou Qiang, Luetun Lushi Gongxu Baoguang he Fazhan de Falu Jizhi (A Brief Discussion of the Legal System for the Safeguarding and Development of Lawyers' Work), Fazhi Ribao, Dec. 11, 1989, at 3. See also Zhang & Chen, Lun Bianhu Lushi Canjia Xingshi Susong De Shijian (A Discussion of the Time for Defense Lawyers to Participate in Criminal Procedure), 2 FAXUE YANJIU 43 (1990) (proposing that criminal defendants be informed of right to counsel at the time they are first interrogated by "judicial authorities"—presumably, that is, the public security bureau or the procuracy). See CPL, supra note 19, art. 62, at 108 (trans. in CLCP, supra note 19, art. 142). A recent article discussing suggestions for China's forthcoming new Lawyer's Law (see infra text accompanying note 217), suggests that the lawyers' role include representation of those who have been "detained" and "arrested," implying a much earlier participation in the criminal process than that currently afforded to lawyers. Fazhi Ribao, Nov. 5, 1990, at 3; see also Han, supra note 123, at 45.

141. The criminal procedure law currently applicable on Taiwan allows the defense counsel to become involved at any time during the investigation. Zhonghua Minguo Xingshi Susongfa (Code of Criminal Procedure of the Republic of China) (promulgated by the National Government, Jan. 1, 1935), as amended in 1982, LATEST COMPLETE BOOK OF THE SIX LAWS (B. Tao, ed. 1986), art. 27, para. 1, at 488; arts. 33, 34, at 489. See Fa, The
have been moving towards expanding the participation of lawyers in the criminal process. In China, the trend has, if anything, been the opposite. In 1983, in the course of a major campaign against crimes of "endangerment of public security," the CPL was amended to allow the seven-day advance notice to defendants of their rights to counsel, as well as the deadlines for delivering a copy of the bill of prosecution to the defendant and informing defense counsel of the trial date, to be disregarded in a wide array of cases if necessary for the efficient handling of cases. Thus, in the cases covered by this amendment, while the right to have counsel at trial still exists, the lawyer may not be informed of the case until literally hours before the court hearing commences. This streamlined procedure was invoked in trials of alleged


142. The Soviet system also affords the defense counsel a much earlier role in the process than does China's system. Basic Principles of the Criminal Procedure of the USSR and the Union Republics (1958) (trans. in Z. Smirnai, Law in Eastern Europe (1958)), art. 22, at 125, as revised in 1972, provides that defense counsel "shall be permitted to participate in a case from the moment the accused is informed of the completion of the preliminary investigation and is presented with all the proceedings of the case to become acquainted with them." By decree of the procurator, defense counsel may be permitted to participate in the case from the moment the accusation is presented, thus giving him a role during the preliminary investigation. In addition, participation of defense counsel during the preliminary investigation is obligatory in cases involving minors, deaf, dumb, or blind defendants or defendants whose handicaps otherwise prevent them from exercising their right to defense. H. Berman, Soviet Criminal Law and Procedure 218 (1972). See also The Criminal Procedure Code of 1960 of the Russian Soviet Federated Socialist Republic (RSFSR) (trans. in H. Berman & J. Spindler, The Soviet Codes of Law 158 (W. Simon ed. 1980)) arts. 47, 49, 211(2)(j), at 176, 177, 238.


violent crimes surrounding the student demonstrations during the spring of 1989.\textsuperscript{145}

Even in cases where the normal seven-day rule applies, the practical ability of the lawyer to exercise the functions the law allows during that period are the subject of considerable doubt. In addition to the right to visit the defendant and study the case file, lawyers have the right, based on a letter of introduction from their law office, to conduct interviews at relevant units and otherwise gather evidence relevant to their case.\textsuperscript{146} Relevant units and individuals are required to lend their “support” to these efforts.\textsuperscript{147} However, reports in the PRC press and the accounts of PRC lawyers reveal that, in addition to the time constraints imposed on them by law, lawyers frequently encounter lack of cooperation and outright resistance in attempting to exercise both their rights to meet with the defendant in custody and to pursue evidence.\textsuperscript{148} Recommendations for the further strengthening of legal provisions on lawyers' rights to gather evidence have been made\textsuperscript{149} but as yet have not been reflected in changes to relevant legislation.

Given the nature of the PRC criminal justice system and the constraints on the pre-trial role of lawyers, it follows that lawyers' role at the trial itself is highly limited. The criminal defense lawyer's function in criminal cases is stated by the CPL to be to “present materials and opinions proving that the defendant is innocent, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility. . . .”\textsuperscript{150} The actual ability of the lawyer to make any substantive contribution to proving his client innocent, however, is clearly minimal since in the overwhelming preponderance of cases, by the time of trial guilt already has been established through the extensive pre-trial

\textsuperscript{145} See Renmin Ribao, June 21, 1989, at 1, col. 1.
\textsuperscript{146} 1981 Litigation Provisions, supra note 128, art. 4(6) at 12.
\textsuperscript{147} Id.
\textsuperscript{149} See Yuan Zhengwei. Lishi Diaocha Quan de Guifan Xing (Standardization of Lawyers' Rights of Investigation). 5 FAXUE ZHAZHI 46 (1988).
\textsuperscript{150} CPL, supra note 19, art. 28, at 94 (trans. in CLCP, supra note 19, at 122-23).
That being said, the defense lawyer's function in PRC criminal trials is not purely decorative. Particularly in recent years, at least some of China's more independent-minded criminal lawyers are apparently exercising their right to engage in vigorous debate with the prosecution, arguing in detail over fine legal and evidentiary points that go at least to the nature of the offense charged and to sentencing standards, if not necessarily to guilt or innocence.

B. Civil and Economic Cases

To a large extent, the ability of PRC lawyers to practice as full-fledged attorneys is obviously a function of the existence or absence of external factors—political, historical, and social—which superimpose themselves on the area of law in which they are working. In this sense, PRC lawyers working on civil and economic matters over the past decade have enjoyed both advantages and disadvantages over their counterparts in the criminal arena. Lawyers injecting themselves into economic and civil relations have had to contend with a continuing under-recognition of the utility of lawyers in Chi-

151. For a discussion of this phenomenon in the PRC criminal justice system, see Gelau, supra note 10, at 309-12 passim. Interestingly, under local regulations governing lawyers in Tianjin, a lawyer may request that the court perform a supplementary investigation if the lawyer discovers major problems in the determination of guilt during the process of handling the case. Tianjin Shi Lushi Zhixing Zhiwu de Ruogan Guiding (Certain Provisions of Tianjin Municipality Concerning the Exercise of Duties by Lawyers) (adopted Nov. 2, 1988), art. 12, in ZHONGGUO FALU NIANJIAN 343 (1989) [hereinafter Tianjin Provisions].

152. See CPL, supra note 19, art. 118, at 114 (trans. in CLCP, supra note 19, at 152).

153. The author attended a robbery trial in Shanghai in 1989 during which the defense lawyer and the prosecutor engaged in an extensive discussion of whether the amount of property the defendant was accused of stealing could be characterized as "huge" under the relevant provision of the CL, art. 152, at 79 (trans. in CLCP, supra note 19, at 53). This provision was an important factor in determining the severity of the sentence. The defense counsel for Wang Juntao, one of the leading figures tried for counterrevolution in connection with the 1989 democracy movement, was remarkable in its detailed challenges to the prosecution's evidence and factual allegations. Transcript of defense statement in the Wang Juntao case, on file with the author.

154. See generally Section VI, infra.
Chinese society—the "litigation trickster" syndrome.\textsuperscript{155} Criminal lawyers, on the other hand, may have had to struggle with the political perils of being perceived as too eager to act as a bulwark against other players in the criminal process,\textsuperscript{156} but their theoretical \textit{raison d'être} may have been less open to challenge from the man in the street than that of civil and economic lawyers.

Needless to say, political and socio-historical factors affecting lawyers overlap between the two areas of practice and their dynamics cannot be oversimplified. As a general matter, however, lawyers practicing in civil and economic fields in the PRC's newly emerging law firms seem to have been more successful in overcoming the obstacles in their path than those working in the criminal process, for a variety of reasons including the need for economic reform and the increasing recognition of the lawyer's role therein.

Lawyers in non-criminal litigation are not subject to the temporal limitations on their involvement in a case that stymie their counterparts on the criminal side.\textsuperscript{157} Of course, to conclude that lawyers involved in civil and economic litigation encounter no impediments in exercising their legal rights would be erroneous. Indeed, PRC lawyers frequently report resistance both from institutions they visit to gather evidence and from courts.\textsuperscript{158} The provisions issued by the MOJ and other agencies requesting support and respect for lawyers' rights\textsuperscript{159} reflect the continuing existence of these problems in the non-criminal as well as the criminal context.

If the increasing involvement of PRC lawyers in the economic and civil spheres does not necessarily demonstrate a

\textsuperscript{155} See \textit{supra} notes 1 and 2 and accompanying text.
\textsuperscript{156} See \textit{supra} notes 12-16 and accompanying text; see also \textit{infra} note 195 and accompanying text.
\textsuperscript{158} See Tian, \textit{supra} note 7, at 39.
\textsuperscript{159} See \textit{supra} notes 146-49 and accompanying text. See also Anhui Regulations, \textit{supra} note 132, art. 4 (stating that lawyers who suffer abuse of any kind, including insult, slander, physical attack, or interference or obstruction of their work, may bring a complaint to the relevant authorities—presumably the local justice agency—who must then conduct an investigation and reply to the complaint).
new-found appreciation for legal professionals, it does reflect the reality that, for better or worse, the PRC has over the past decade become an increasingly legalized society. Among other features, the economic reforms instituted in both agriculture and industry have emphasized contracts between enterprises—arranging for procurement of materials, for example—as a way of replacing many functions previously carried out by the state. The economic reforms also encourage enterprises to exploit their own potential and to compete for profits in the marketplace. These changes have resulted in, among other things, a growing body of intellectual property law allowing for legal actions to protect trademark and patent rights. Recognition that specialists are needed to handle the complexities of these areas of law has become widespread.

Formal litigation to resolve civil and economic disputes, while its volume has increased exponentially over the past decade, continues to play second fiddle to mediation and other ways of resolving disputes in the PRC. In addition to their involvement in civil and economic litigation, lawyers have also begun to play an increasing role in those more informal mechanisms, as well as in the in-court mediation that is a prominent feature of the PRC's civil procedure system. Under the new Chinese legal and economic climate, enterprises' ever-increasing use of lawyers for document drafting, business negotiations, and general legal advice is testimony to the heightened awareness of the lawyer's utility in structuring business transactions from their inception and also in assisting with problems as they arise.

C. Foreign Trade Law

As is well known, in addition to making enormous pro-

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160. See Tian, supra note 7, at 26, 65.
161. See Civil Procedure Law, supra note 157, arts. 85-91, at 2 (trans. in SWB, supra note 100, May 8, 1991, at C1/7). The Lawyers' Regulations include assistance to parties in mediation as one of the functions of lawyers. Lawyers' Regulations, supra note 22, art. 4, at 45 (trans. in ILM, supra note 96, at 1456. See also Beijing Lawyers' Provisions, supra note 96, art. 12; Beijing Law Firms Regulations, supra note 29, art. 13. For a discussion of the role of lawyers in mediation, see Kong, supra note 41, at 138-41. See also China Daily, Oct. 10, 1989, at 4, col. 1.
162. See supra Section III(F).
gress in developing a legal infrastructure governing domestic civil and economic relations, the PRC has over the past decade created a substantial and ever growing body of law specifically directed to foreign trade and investment, including laws on taxation, joint ventures, labor, foreign exchange control, and numerous other subjects. The grooming of lawyers for participation in this arena has been a prominent focus of the PRC’s legal training efforts over the past decade. Legal specialists trained in the pre-1957 period and even before 1949, particularly those with foreign language capability, have been pressed into service to assist in the drafting of model contracts for trade and investment projects, negotiations with foreign companies, and the provision of legal opinions in connection with foreign economic transactions. The flow of legal education and training that has developed between China and foreign countries in the past decade, while by no means limited to this area, has had as one of its strong emphases the development of knowledge of international economic law in order to enable PRC lawyers to play an effective role in adequately protecting the interests of Chinese units as they become involved in increasingly complex business transactions.

The involvement of foreign lawyers in PRC investment negotiations, while initially regarded by Chinese parties as reflecting an “unfriendly” attitude, has now become routinely accepted and is frequently matched by the presence of an in-house or outside lawyer for the Chinese party in these discussions. While PRC lawyers are not necessarily required to participate in day-to-day negotiations, regulations in Shanghai and other cities make the signed opinion of a recognized foreign economic law firm on the legal aspects of major investment contracts a prerequisite to approval of

163. For collections of articles discussing some of the major aspects of this body of law, see Foreign Trade, Investment and the Law in the People’s Republic of China (M. Moser, ed., 1987); Doing Business in China (W. Streng & A. Wilcox, eds., 1990).
such contracts by the local investment authorities, and these lawyers are beginning to enjoy a significant degree of influence in recommending changes to contracts that the approval agencies should require before approving the documents.

Particularly in recent years, with the increase in the number of Chinese lawyers trained in both foreign languages and economic law, it has become more and more useful for these lawyers and their foreign colleagues to work effectively together in resolving differences and crafting documents acceptable to both sides. The phenomenon of business people sending their respective lawyers off to “work out the details”—so common in Western business circles—is occurring with increasing frequency in the negotiation rooms of Beijing and Shanghai.

In addition to acting as counsel to the Chinese side in Sino-foreign negotiations, PRC law firms specializing in foreign economic relations have also sought involvement in providing legal advice and representation to foreign individuals and companies in the PRC. In this area, PRC lawyers have also made significant inroads, though not in as many ways as they might like. To the extent foreign lawyers have been allowed to play a role as advisors to their clients in business transactions, most, though not all, foreign investors have preferred to utilize the services of foreign lawyers in representing them. Chinese lawyers and legal officials alike are frank in their recognition of this fact and of the reasons for it, which stem in part from a lack of confidence in the level of training and experience of China’s newly emerged legal profession. Even more significant, perhaps, is the concern that Chinese lawyers, in their capacity as employees of state-run law firms, are somehow all part of the same “China, Inc.” as the state enterprises with whom most foreign companies are negotiating, and are thus in a difficult position to provide impartial and effective representation.

166. See, e.g., Shanghai Shi Waishang Touzi Xiangmu Shenqing He Shenpi Chengxu De Zhanxing Banfa (Interim Measures of Shanghai Municipality on the Application and Examination and Approval Procedures for Foreign Investment Projects) (June 6, 1988), art. 2(2) (unpublished regulations on file with the author).

The degree to which these concerns are justified vary widely, depending on the individuals and dynamics involved in any case. The desire to help eliminate this obstacle to a fuller role for PRC lawyers in the foreign economic arena was one of the factors lying behind the beginning of experimentation with non-state law firms that began in 1988 and will be discussed in Section V. In any event, if their use as counsel to foreign parties in Sino-foreign business negotiations per se has been limited, the retention by foreign companies and their lawyers of PRC lawyers to provide informal advice and legal opinions on issues of PRC law relevant to business transactions and litigations involving PRC legal aspects is ever on the rise. In Sino-foreign arbitrations that take place in China, while foreign companies are allowed to involve non-Chinese lawyers to a certain extent, the ability of PRC lawyers to gain access to evidence and other information and to advise on Chinese legal aspects has made them necessary and useful complements to foreign lawyers in many such cases.

V. THE EMERGENCE OF NON-STATE LAW FIRMS

Before drawing some tentative conclusions about the achievements of and prospects for the PRC legal profession as it enters its second decade of revival, attention should be drawn to the emergence of a phenomenon that could not have been foreshadowed when the legal profession first came out of obscurity in the late 1970s. As the economic and political reforms of the 1980s proceeded, giving professionals in a number of fields greater leeway to pursue their

168. The discussion of legal questions under both PRC and foreign law relevant to PRC-foreign business corporation projects and the development of legal opinions are areas in which cooperation between China's foreign economic law firms and foreign lawyers present in China has grown more and more fruitful in recent years.

169. See supra note 103 and accompanying text.

170. There have been far fewer PRC court cases involving foreign parties than arbitrations. One example of a case in which a PRC lawyer representing a foreign individual worked behind the scenes in close cooperation with a foreign attorney was that of Richard Ondrik, an American businessman, who was tried on both criminal and civil counts for allegedly starting a fire in a Chinese hotel in 1985. See Lubman & Wajnowski, Criminal Justice and the Foreigner, CHINA BUS. REV. Nov.-Dec. 1985, at 27.
careers independent of the economic and institutional constraints of China's planned economy, the view began to be voiced both among lawyers and in official judicial circles that the legal profession should also be included in these reform efforts. While the financial autonomy of law firms had been increased to some extent, the continuing essential subservience of all lawyers and law firms, even those established under educational institutions and other agencies, to the justice bureaus, and the continuing definition of all lawyers as "state legal workers," began to be perceived as incompatible with the fullest possible development of the legal profession.

In published analyses of this issue, the problems of the existing structure of the legal profession were expressed primarily in terms of the lack of economic initiative afforded to lawyers by this system, as well as in some cases the dampening effect it had on foreigners' confidence in PRC law-


172. See supra notes 70-73 and accompanying text.

173. This description of lawyers was repeated in the Guangdong Regulations, supra note 64, art. 2. See also Beijing Lawyers' Provisions, supra note 96, art. 4.

174. See Xu, Lun Shehui Zhuyi Chuzui Jieduan De Lushi Tizhi (A Discussion of the Lawyer's System in the Preliminary Stage of Socialism), 4 XIANDAI FAXUE 2 (1988); Renmin Ribao (Haiwai Ban), Feb. 20, 1988, at 4; China Daily, Jan. 28, 1988, at 1; Wu, Lun Lushi Hezuo Kaiye (A Discussion of Lawyers' Collective Operation), 12 FAXUE 34 (1988); Wu Yun & Wu Ping, supra note 56; Zhuang Guangze, Lushi Ying Shi Falu Fuwu Gongzuo Zhe (Lawyers Should Be Legal Service Workers), in 2 FAXUE 40 (1987). The latter article suggests that "legal service workers" replace "state legal workers" as the term for lawyers, as if the change would, in and of itself, relieve the tensions inherent in the "state legal worker" characterization. Another article suggests the name "legal workers," but recognizes that reform of the lawyers' system—and not a mere change in terminology—is necessary to promote development of the profession. Cheng & Gao, supra note 69, at 7.

175. See Xu, supra note 174; see also supra note 69 and accompanying text.
yers.\textsuperscript{176} In many cases, a subtle critique of the lack of independence from administrative—and by extension, political—constraints engendered by China's state law firm system, and of the conflicts a lawyer's position as state legal worker posed with the full and effective representative of clients, underlay the discussion.\textsuperscript{177}

The result of these discussions was the MOJ's early 1988 authorization of a new type of non-state law firm to be established on a trial basis in every province, autonomous region, and directly-administered municipality in China.\textsuperscript{178} While sometimes described in the foreign press as "private" law firms, most if not all of these trial offices—of which there were eighty-four by mid-1990, comprising about 800 practitioners\textsuperscript{179}—were authorized to be organized only in the form of what the PRC terms a "cooperative" enterprise. These are somewhat similar to Western partnerships or cooperatives, in which the members own the assets and share both profits and losses pro rata, without any kind of financial intervention by the state.\textsuperscript{180}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{176} See China Daily, Jan. 28, 1988, at 1; Wu Yun & Wu Ping, \textit{supra} note 56, at 44; Cheng & Gao, \textit{supra} note 69, at 5.
\item \textsuperscript{177} See especially Wu Yun & Wu Ping, \textit{supra} note 56, at 43-44, which is quite open in referring to the problem of party and state interference with lawyers' work under the prevailing system.
\item \textsuperscript{178} Beijing, Tianjin, and Shanghai are the three "directly-administered municipalities" (zhixia shi). They have the status of provinces, and are directly administered by the central government.
\item \textsuperscript{179} China Daily, Oct. 10, 1990, at 1, col. 4.
\item \textsuperscript{180} See Jingji Ribao, June 3, 1988, at 1 (reporting the establishment of one experimental "private" law firm in Shenzhen as being distinct from the other experimental firms to be established on a cooperative basis). For a discussion of the distinctions between "collective" or cooperative and "private" enterprises in the PRC legal and economic system, see H. Zheng, \textit{China's Civil and Commercial Law} 309-65 (1988). Some of the many discussions of reforms of the lawyers' system that appeared in the PRC legal press during the late 1980s advocated allowing private practitioners, as well as cooperative firms, to hang out their shingles. See, e.g., Liu & Peng, \textit{Woguo Lushi Zhidu de Gaige} (Reform of China's Lawyers' System), 4 \textit{Faxue Lazhi} 47 (1989); Mao, Guanyu Lushi Fa de Fudian Qianjian (A Few Preliminary Views Regarding the Lawyers' Law), 2 \textit{Xiandai Faxue} 60, 61 (1990). On the other hand, one frequent commentator on these issues considers that the time is not yet ripe for China to have private legal practitioners, and that the cooperative firms should be used for a transitional period, paving the way for eventual private practice. Wu, \textit{supra} note 174. See also Wu, \textit{Lushi Zhidu Gaige de Kunhuo Ji Qi Duice} (A Discussion of the Dilemmas in the
The collective law firms were given explicit legal standing under a MOJ document of June 1988, which describes them as "institution legal person organizations of a socialist nature." Like the state law firms, collective firms must have at least three full-time lawyers. Lawyers in collective firms are hired on a "contract" basis and paid on the "floating wage" system, under which part of their monthly wages fluctuates based on the quantity and quality of their work. Like state law firms, however, collective firms must receive local justice agency approval for their establishment and although administratively and economically independent, they are subject to the "management" of the justice agencies.

A joint notice issued in mid 1989 by the MOJ and the State Administration of Industry and Commerce left no doubt that permitting the existence of non-state law firms did not mean loosening the strict regulation of the legal profession. It noted the determination of these agencies to...
close down several unauthorized law firms that had begun springing up.\footnote{190}{Renmin Ribao, July 31, 1989, at 2. The 1990 Notice, \textit{supra} note 55, art. 3, mandates the closing of any law firms not authorized by the justice agencies. A recent article discussed the concern over unqualified lawyers in rural areas giving legal advice and cheating their clients. The article stressed the need for the MOJ to crack down on such lawyers and to educate rural people about the law to prevent their being cheated. Fazhi Ribao, Sept. 25, 1990. On October 31, 1989, the MOJ announced the Guiding Principles for Rural Legal Work. These principles provide a code of ethics and responsibilities for legal workers in towns and in urban neighborhood legal service centers. Among other things, rural legal workers are called upon to adhere to high standards of work quality and efficiency, as well as to make their rates and methods available for public inspection. Fazhi Ribao, October 31, 1989.}

Official reports of this cooperative firm experiment have always treated the new entities as supplementary to—not a replacement for—the system of state law firms and state legal workers. Perceived differences in the roles and functions of the two types of firms have not been discussed in detail. One reported suggestion was that the justice agencies should continue to exercise direct control over “a group of high-level lawyers, to act as legal advisors for governments at various levels.”\footnote{191}{Renmin Ribao (Haiwai Ban), Feb. 20, 1988, at 4.}

In fact, the new collective law firms have not thus far supplanted the role of state firms in as many areas as the above comment might appear to suggest, or as the firms might prefer. Numerous factors, including lack of public awareness and manpower, as well as macro-economic and political factors have thus far prevented cooperative firms from becoming an important part of the PRC legal scene.

Moreover, from the outset of this experiment, and in particular after the events of June 1989, PRC judicial officials have made it clear that while cooperative lawyers are not “state legal workers,” they are expected to support the socialist system, as required by the Lawyers’ Regulations.\footnote{192}{Lawyers’ Regulations, \textit{supra} note 22, art. 8, at 46 (trans. in ILM, \textit{supra} note 22, at 1456). The head of China’s first cooperative law firm—established in Baoding, Hebei Province, in 1988—said that the “guiding principles” of his firm are “the upholding of the four fundamental principles and policy of reform and opening of the profession.” Cheng & Gao, \textit{supra} note 69, at 7. See also Si, Ta Dakai Le “Hexuo Zhi” de diiyie (He Opened up the First Page on the ‘Cooperative System’), 6 \textit{Lushi Yu Fazhi} 12 (1990).}
"China," the Minister of Justice told a conference of provincial justice officials in August, 1989, "should continue to require that lawyers always consider their socialist orientation. . . . we are absolutely against the idea that lawyers in China should become individual professionals as is the case in capitalist countries." 193

Despite the practical and ideological limitations on the existence of non-state law firms, their very emergence in the PRC at the end of the 1980s is a promising sign of how far the legal profession has developed in a single decade. The more prominent lawyers among the new breed have vigorously involved themselves in economic matters of both domestic and foreign concern, civil affairs, and even issues of criminal defense194—an area from which non-state lawyers might well have been excluded, given its political sensitivity.195 The degree to which the new kinds of law firms are permitted to develop, and their importance permitted to grow, is a pivotal question in considering the future prospects of the Chinese legal profession. It is this outlook to which the concluding section of this article will turn its attention.


194. One of Shanghai's cooperative law firms, headed by prominent criminal lawyer Li Guoji, specializes in criminal defense and other criminal law work. For an example of a cooperative law firm established in Beijing to handle foreign economic activity, see China Daily, Feb. 12, 1990, at 6, col. 3. For an enthusiastic report of the successes, including in proving the innocence of criminal defendants, of a small cooperative law firm in Hebei Province, see Si, supra note 192.

195. See generally Section IV(A), supra.
VI. Conclusion

A recent article by an official in the lawyer’s department of the MOJ discussing the problem the PRC faces in reforming the lawyer’s system contrasts what the author calls the “ideal lawyer’s qualities” with the “actual lawyer’s qualities.” The ideal lawyer, he writes, is one who has “received higher legal education, possesses a relatively high level of legal and other knowledge and has attained a relatively high moral level, possessing the capacity to act independently without being attached to any other agencies, political parties or organizations.” The term “actual lawyer” describes “the actual attainment and capacity of China’s current lawyers. As everyone knows, the current situation of China’s lawyers involves a deficiency of attainment in various aspects and a lack of independent capacity.”

This telling passage is a reminder of one of the two major categories of problems that confront the development of a strong legal profession in the PRC in the 1990s and beyond. China’s achievements in building a system of education and qualification for lawyers in the past decade are undeniably impressive. As reflected in the various regulations, however, this system represents the reality of only a small percentage of the PRC’s fledgling legal professional corps. The number of people practicing as lawyers who are fully qualified under the newly instituted regime is still dwarfed by those who have been pressed into service as lawyers with only rudimentary and uneven training and experience, especially in rural areas. The MOJ recognizes this problem and made it the focus of a six-month “rectification” campaign for the legal profession, which began in August 1990.

196. Wu, supra note 180.
197. Id. at 67.
198. Id. at 67.
199. See Tian, supra note 7, at 5, 6.
200. See 1990 Notice, supra note 55. Thirty-eight “sub-standard” law firms were closed down under the rectification campaign, and 2300 part-time lawyers were dismissed from law firms for being either too old or unqualified. China Daily, May 22, 1991, at 3, col. 1. Even while emphasizing the need to clear unqualified lawyers from the ranks, the 1990 Notice recognizes that in certain far-flung rural areas there may still be need for legal workers with a certain level of legal knowledge but who are not yet
In and of itself, the problem of inadequate legal training is neither surprising nor a cause for undue discouragement. After thirty years during which legal education was ignored—except for a brief period in the 1950s—China should not be expected to muster an army of fully qualified legal professionals in a single decade. The PRC's major effort to create a viable system for lawyers' qualification is important in its own right. If PRC legal policy makers were content to leave the legal profession in a ramshackle state—denying it an opportunity to win the confidence and support of the people it was designed to serve—they would have had no need to go to the lengths they have to establish an elaborate framework for correcting a situation caused by nearly thirty years' neglect. All else being equal, the fact that the new system as yet exists more on paper than in reality may be expected to change steadily over time.

Of course there is another variable, a second principal range of issues that must be considered in analyzing the current and future prospects for lawyers in China. These issues concern the extent to which Chinese lawyers are (and may continue to be) hindered by political and social antipathy toward their work or their very existence. The author of the article cited at the beginning of this section completely sidesteps this aspect of the problem, whether consciously or not, when he suggests that the way to handle the currently underqualified Chinese legal profession is to have lawyers practice in "partnerships." This is apparently a reference to the new experimental cooperative firms, or something similar, that would afford intraprofessional supervision and guidance, as opposed to giving lawyers free reign to operate completely privately.

The issue of the precise economic context in which lawyers may be allowed to function is an important one. It would be naive, however, to believe that the PRC will approach this question in precisely the same way as it has other

fully qualified to provide legal services. The Notice provides that such people receive temporary lawyers' work permits from the local justice agencies, pending their formal qualification. 1990 Notice supra note 55, art. 7.

201. See supra Section II.
202. See Wu, supra note 180.
203. Id. at 67.
aspects of economic and professional reform. While none of these reforms is divorced from ideological concerns, the close but uneasy relationship that has always existed between law and politics in the PRC will continue to impose unique considerations on the legal profession’s development. The justice minister’s earlier-quoted comment—to the effect that lawyers will not be allowed to practice as they do in capitalist countries—was much more than a statement about the economic status of lawyers.

The events of June 1989 and the ensuing crackdown in the PRC on dissidence and “bourgeois liberalization” afford a useful, if unfortunate, vantage point from which to examine Chinese legal specialists’ continuing vulnerability to the kinds of political forces that crushed them in the late 1950s. Precipitous conclusions would be foolhardy at a time—mid-1991—when general political trends in the PRC remain highly unsettled. However, it does seem possible to state with some confidence that while the legal profession, and the legal system in general, are by no means insulated from ongoing political developments, they will not be left scattered to the wind as they were in the 1950s. For example, there have been no indications that experimental non-state law firms are to be abandoned, despite the MOJ’s reminder that lawyers retain their socialist orientation. Indeed, an active discussion has continued in the PRC legal press since June 1989 about the role of cooperative lawyers vis-a-vis state lawyers, showing the continuing recognition of non-state lawyers’ utility for both economic and professional purposes.

To be sure, there are signs that all is not the same as it was before June 1989. During the spate of criminal trials of those accused of violent conduct during the period of student demonstrations, the Shanghai Bureau of Justice issued a statement that more closely resembled edicts of the preceding era in which lawyers were reminded of their duty to

204. See supra note 193 and accompanying text.
205. Id.
206. See Xiao Yishun, Lushi Tizhi Gaige de Kunhuo Yu Xuanze (Dilemmas and Choices in the Reform of the Lawyers’ System), Fazhi Ribao, Sept. 11, 1989, at 3. See also Kohut, Lawyers Escape the Crackdown, South China Morning Post, Nov. 23, 1989, at 21, col. 1; Zhou Qiang, supra note 140.
carry on with ideological and political work. It also stated that lawyers both had to defend the legal rights of their clients and uphold the "political standpoint of state legal workers and a work orientation that serves the people's democratic dictatorship." By carrying out these dual tasks, lawyers handling defense work in cases surrounding the "period of rebellion," are encouraged to have a "unified understanding" of their work.207 A 1990 MOJ document announcing a six-month "rectification" program for the legal profession emphasizes the importance to lawyers of a sound understanding of the socialist system's fundamental tenets, and suggests that, when conditions allow, law firms should have full time "political assistants" responsible for the "thought and political work" in the firm.208

In addition, lawyers have been included among those being subjected to intensified political study, and law graduates are among those who will be required to complete a year of industrial and rural training before continuing their professional work, so as to "reform [their] thinking" and "improve their political understanding."209 Even more potentially damaging to the long-term strengthening of the legal profession are the reductions in numbers of students that will be admitted to study law, as well as other disciplines, at major Chinese universities.210 A further discouraging note was sounded by the temporary removal of lawyer's certificates from two lawyers who represented one of the key figures of the Spring 1989 protest movement.211

While the political reliability of lawyers, particularly

208. 1990 Notice, supra note 55, arts. 1, 5. The Minister of Justice, speaking at a conference on the legal profession held in October 1990, emphasized the need to raise the "political and professional quality" of lawyers. Fazhi Ribao, Oct. 19, 1990, at 1.
209. See South China Morning Post, Sept. 18, 1989, at 10, col. 5.
211. According to an April 2, 1991, Reuters report, the MOJ refused to renew the credentials of the two lawyers for Chen Ziming, an economist who was sentenced in February, 1990 to 13 years for counterrevolution in connection with his activities in support of the 1989 democracy movement. Memorandum of the Lawyers Committee for Human Rights (April 1991) (on file with the author). These credentials have, however, subsequently been returned to the two lawyers, according to an individual close to Chen's family. Author's conversation in Beijing, June 16, 1991.
those involved in the criminal process, continues to be questioned during times of political difficulty for the PRC regime, and continues to hamper the unfettered development of the legal profession, there are no echoes of the wholesale rejection of the legitimacy of the profession that characterized the anti-rightist movement.212

Indeed, the MOJ's 1990 "rectification program"213 was introduced by stating that, while a "small number" of lawyers had been infected by bourgeois liberal thinking and were overly concerned with money—in some cases to the point of engaging in corrupt activity214—the legal profession in general, over the past decade, had become "an important force in socialist democracy and the building of the legal system."215 A conference held in the fall of 1990 by the All China Lawyers Association on the "protection of the rights and interests of the legal profession" discussed the continuing need to educate both the public and the judiciary about the important and positive role lawyers played in eliminating problems of disrespect for, and even abuse of, lawyers.216 Eight provinces and municipalities have issued regulations designed to protect the rights of lawyers in carrying out their legitimate functions.217 A new Lawyer's Law currently being

212. See supra Section II.
213. See supra text accompanying note 200.
214. The problem of corrupt behavior among lawyers has been reported as an important focus of "rectification" campaigns being carried out at the provincial level. See, e.g., Fazhi Ribao, Oct. 19, 1990, at 2 (reporting such a campaign in Hunan province), and China Daily, Nov. 8, 1990, at 3, col. 1 (reporting a similar effort in Beijing).
215. 1990 Notice, supra note 55, Preamble. The Notice points out that lawyers had received designations of "national labor model" 1,688 times over the past decade. Id.
216. Fazhi Ribao, Oct. 19, 1990, at 1; Foreign Broadcast Information Service, Daily Report, China (FBIS-CHI-90-202), Oct. 18, 1990, at 34. Lawyers in China have been ordered out of courtrooms for voicing differing views. They have also been insulted, beaten up, and illegally detained. The All China Lawyers' Association received 93 cases of serious infringement of lawyers' rights during the law few years. China Daily, Oct. 23, 1990, at 3, col. 1.
217. Tianjin Provisions, supra note 151; Guangdong Regulations, supra note 64; Jilin Sheng Baozheng Lushi Zhixing Zhiwu de Zanxing Guiding (Interim Provisions of Jilin Province Concerning the Safeguarding of the Exercise of Duties by Lawyers), adopted Nov. 21, 1987 by the 28th meeting of the Standing Committee of the 6th Jilin Provincial People's Con-
drafted in the PRC will consolidate the 1980 Lawyers' Regulations and many of the MOJ and local documents dealing with lawyers and law firms that are discussed in this article. Such action will give the PRC legal profession the most authoritative legislative foundation it has enjoyed in the country's history.

Chinese lawyers have not, and should not have been expected to, establish a totally impenetrable bulwark against political forces. They, however, have established a sufficiently strong "interest group" to convince both the Chinese people and their leaders of the necessity and utility of their existence. This recognition led the MOJ to launch a major investigation of a case in which an accused rapist's two lawyers challenged the accuracy of the evidence against their client and were criminally prosecuted for their troubles. The investigators upheld the propriety of their actions: the lawyers were exonerated and received financial compensation for the injustice they had suffered.²¹⁸

There is no reason to think that this particular case would have come out any differently had it occurred after June 1989. That conclusion may seem of minor importance to a Western lawyer, but it is significant to the student of contemporary Chinese law because it means that—within the inevitable constraints on the role of legal practitioners that will exist for as long as China remains a one-party communist dictatorship—lawyers have succeeded in vastly increasing the degree to which they can carry out their work in a professional manner, secure in the knowledge that their expertise is both recognized and encouraged by the state and society at large. The road to creating a legal profession sufficient in both number and quality to meet China's needs will be a long one and will be subject to detours caused by factors beyond lawyers' control. Nonetheless, as they reflect on their experience of the past decade, the PRC's lawyers would seem entitled to indulge in a moment of self-congratulation. Starting as they did in the late 1970s to pick themselves up from a position of extraordinary historical, political, and professional weakness, they have come a very long way indeed.

219. It seems clear, based on current statistics, that the PRC has not met the prediction enunciated in 1987 of having 100,000 full-time qualified lawyers by 1990. See China Daily, Mar. 18, 1987, at 4, col. 1; see also supra notes 77, 199 and accompanying text. China's largest city, Shanghai, has only some 400 full time lawyers though another 2,000 practice part time. Renmin Ribao (Haiwai Ban), Oct. 12, 1990, at 1.
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