

## 12 Speculations and Conclusions

This dissertation is about the process and consequences of Chinese lawyers' emancipation from their status as state functionaries. Emancipation is a multifaceted phenomenon, not limited to independence and self-reliance in everyday work. If this were the only measure of independence and self-reliance, we might draw the fallacious conclusion that lawyers in state-owned firms were the most emancipated. To be sure, in the state sector the business relationship between a lawyer and her firm closely resembles that of a freelancer or loosely affiliated contract worker, while the organization of work in partnership firms tends to be less atomized and more team-based. But the law firm-lawyer relationship is not merely a business relationship. It also includes various forms of control and support—the paternalism of state-owned firms, which to varying degrees extend social security benefits and organize professional and political activities, including not only legal study, but also political study and CCP activities. At the time of my survey, social security benefits, especially retirement and housing benefits, as well as firm-organized professional and political activities, were far more prevalent in state-owned firms than in partnership firms, and were associated with lower levels of professional difficulty and higher levels of work satisfaction.

Professional support also comes in the less tangible but extremely important form of channels of access to other state-sector organizations and actors. This resource is hard to quantify, but remains an arrangement—sometimes formal, sometimes symbolic and tacit—between organizations and actors in the state sector. In a difficult professional environment characterized by official obstruction, interference, and predatory rent-

seeking behavior aimed disproportionately at members of the private sector, state-sector membership provides a real measure of protection.

The difficulty lawyers have gaining formal access to the state organizations on which their practice depends has stimulated the creation of informal channels of access. In this dissertation I have tried to contribute to a theory of how and why social actors compensate for weak rights in the process of privatization, whether they be weak property rights or a weakly defined and poorly protected professional status. The theoretical propositions offered are valuable to the extent that their generalizability can be tested in transition contexts beyond China. A theory of social relationships that by definition is limited to China can be of only limited scientific value. The search for the unique character of relationships in China as distinct from "the general phenomenon of social networks that exists across societies" and "the general importance of social relationships in other parts of the world" (Guthrie 2002: 47) seems to imply that social connections are already sufficiently well understood and of uniform importance elsewhere in the world, which is obviously far from the truth.

China is a country that is privatizing but in which private property rights are poorly defined and weakly protected. Likewise, it is a country that is building the rule of law but in which the status of lawyers is poorly defined and weakly protected. Not only do the *gongjianfa* fail to recognize and protect the professional status of lawyers, but it is these very institutions that prey on lawyers. This predicament essentially precludes an alliance between the courts and the bar, an essential determinant of professional autonomy and professional mobilization in pursuit of political goals (Halliday 1999: 1055).

My findings therefore represent a challenge to the idea that the state and private sectors are not mutually antagonistic, but complementary and symbiotic. Dickson (2002, 2003) offers perhaps the most explicit assertion that entrepreneurs perceive their interests

to be in line with the interests of state agencies. A similarly celebratory picture is of state officials accommodating and facilitating the development of the private sector in order to advance the fiscal health of local state agencies (Oi 1999). In this picture, private entrepreneurs tolerate paying rents and investing in *guanxi* so long as their business interests are protected (Wank 1999b; Young 1994). My findings support the argument that the relationship between private-sector practitioner and state official is one of mutual dependence and symbiosis, but they also show that this relationship is far from collegial. My findings suggest that the rosy picture of symbiosis vastly exaggerates both the extent to which state cadres support the interests of the private sector and the extent to which private-sector entrepreneurs and independent practitioners perceive such an alliance, and therefore understates the extent to which they perceive state cadres as rent-seekers and predators preying on their vulnerability and marginalization. That the private sector has adapted and thrived in no way diminishes the reality of antagonism and power asymmetry inherent in its relationship with the state and the inordinate costs associated with negotiating this relationship. The private sector has thrived not because but in spite of its uneasy relationship with the state. Even if entrepreneurs and the state agents on whom they depend are unwitting and uneasy partners in economic development, it would be more than a stretch to say that lawyers and the *gongjianfa* are partners in building a rational legal system.

My primary goal has been to show how privatization in China's transition away from socialism has had the paradoxical effect of reinforcing state power, which in turn has fueled relationship-based strategies of gaining access to state agencies. This paradox captures the character not only of the Chinese bar, but of the private sector more generally. The distinction between public and private remains of tremendous salience to the members of these emergent groups in the transition away from socialism.

All of this is to say that we should shift our focus away from lawyers and toward the institutions that orientate and structure their behavior. The massive efforts on the part of the Ford Foundation, the Asia Foundation, USAID, the United Nations Development Program, and many other organizations hoping to advance political change and social justice in China have focused their efforts on "professional training" and "professional competence" in the legal system (DeLisle 1999: 216–19, 225, 237; also cf. Clarke 2003 and Alford 2002). In other words, lawyers, judges, legislators, and other judicial personnel have been the targets of misguided efforts to develop expert legal knowledge. The evidence presented in this dissertation suggests that expert legal knowledge is, for the most part, irrelevant to the legal process. Legal knowledge cannot equalize the fundamental power imbalance between state officials and lawyers who have only become increasingly marginal over the course of their "unhooking" from the state. Yet this power imbalance exhibits variation. My findings show that the status of independent practitioners in the private sector is highly variable, approaching levels enjoyed by members of the state sector only in the most economically developed parts of China. More research is needed to better understand variations in levels of cooperation and support from state agencies, under what conditions they are committed and able to provide public goods. This research problem represents a surprising gap in the social science literature.

A final lesson from the Chinese experience is that the existence of formal laws and regulations does not imply a rational legal system in the Weberian sense—not only in China, but in any legal system. The utility of formal legal procedures cannot be induced from the surface appearance of legal institutions. Rather, we need to get inside institutions and see how they operate on the ground (Stinchcombe 1997).

### ***What Do Chinese Lawyers Want?***

Lawyers are starting to discuss the political significance of their roles, or at least their political potential. As a retort to their official status of "professionals providing legal services to society," Liu Guiming (2002), the editor-in-chief of the official journal of the ACLA, appends to this definition additional roles found in the liberal democratic tradition of the West: "legal experts who provide legal services to society and who devote their lives to protecting the legal rights and interests of their clients, to defending social justice, *to creating a balance against government power*, and to advancing the improvement of the legal system" (emphasis added). At a conference held in Beijing on September 1, 2001, a legal scholar proclaimed that "lawyers and the government balance each other." Also at this conference, a different lawyer stated, "Lawyers are able to protect justice. Justice cannot be served without lawyers. *Lawyers are an indispensable force balancing the power structure*" (conference notes). This new political discourse is a radical break from the earlier "lawyers are state legal workers" discourse.

Thus, Chinese lawyers appear to be speaking the global liberal discourse of the autonomy of law as a restraint on state authority. But they also express how distant these liberal ideals remain: "There's no opportunity for lawyer political participation. There's no mechanism in society for this. You can come out of politics. It's very easy to become a lawyer. But returning is not easy... We're independent professionals [*ziyou zhiyezhe*]. If you want to enter government agencies you'll discover there's no entrance [*mei men'r*], you can't enter. If you want political participation by becoming a delegate of the NPC, there's even less of a chance, no chance to speak of" (em14). The idea that the decision to leave the state sector and become a lawyer cannot be reversed, that there is no turning back once one enters the bar, was echoed in a separate interview (lfi12). Another lawyer, proclaiming that democracy and the rule of law are inseparable, lamented that Chinese

lawyers have failed to undertake more official duties "within the system" (*tizhi nei*) (lfi21).

Lawyers want greater political participation. Chinese lawyers are keenly aware that a large proportion of politicians and legislators in the West have legal backgrounds (e.g., em14; see Miller 1995). They articulate a desire for more mayors, provincial governors, and NPC delegates to have lawyer backgrounds. There were 80 private businesspeople serving as People's Delegates in the Ninth NPC (Burns 1999). In contrast, there were currently only six lawyers (out of roughly 3,000) serving as NPC delegates. The fact that there were even six was celebrated in a newspaper article (Luo Rong 2002). In response to the posting of this article on the internet, some lawyers posted comments expressing how this news should be mourned, not celebrated, that it made them more sad than proud. In the Tenth NPC of 2003, the number of lawyers increased by two to a total of eight (ACLA 2003). Obstacles to lawyers' serving in the NPC are numerous. In terms of formal obstacles, according to Article 13 of the *Lawyers Law*, lawyers cannot join the NPC Standing Committee or hold government leadership positions without first being stripped of their lawyer's license (also see em25; em28). Lawyers also complain that they lack influence in the legislative process, even in an informal capacity, outside the scope of the NPC (e.g., lfi21; lfi23; em11).

The following were posted on the ACLA's internet bulletin board<sup>1</sup> in response to Luo Xuan (2002).

The time lawyers will be able to speak freely is when China truly realizes a rule of law state. Let us act and fight. To withdraw will only mean further oppression and humiliation. The best defense is to initiate an attack! Lawyers Association, it's time to step up! LL, May 29, 2002

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<sup>1</sup> [www.chineselawyer.com.cn](http://www.chineselawyer.com.cn)

Fellow lawyers, we must summon our energy and unite, longer fighting the battle as individuals. Lawyer Ma, April 3, 2002

To change the professional environment of lawyers requires that we unite and use our collective strength to raise the status of lawyers within the state political power structure. Only in this way will the voice of lawyers have any weight and the professional environment of lawyers change. Look at the bloody reality, my lawyer brothers. Let us unite our strength. People's Lawyer, April 4, 2002

Contemporary Chinese lawyers, a generation enduring a burden of insult, a generation whose task is great and whose path is long. Chinese lawyers are the hope of China's rule of law. A lawyer, June 6, 2002

In China, the road lawyers have left to travel is not very long. In many circumstances, lawyers have temporarily been reduced to a profession merely "hustling for food." The topic of protecting lawyers' rights is both genuine and grave. This proves that we are all courageous. There will be a day when a significant proportion of politicians come from the ranks of lawyers. When this day comes, lawyers' rights will no longer be a problem. Continue the struggle. Lawyers, first open the gates to government! Study Lü Xun. Start in medicine, but do not make it your lifelong vocation. San Shu, March 28, 2002

In the future, China's banner for rule of law will have on it the blood of lawyers who were insulted and wounded!!! Huang Chao, April 29, 2002

Chairman Mao taught us to obtain the final victory and not to be afraid to sacrifice our lives. Lawyer, March 27, 2002

Lawyers of China unite. Pull together and struggle against those who violate the rights of lawyers—until life is lost. Justice, April 1, 2002

Sometimes rationality and the brain are no wiser than the sword and the fist! Chinese lawyers include too many weak and too few unyielding. No more analysis and research. Stand up and protect your rights! Old Lawyer, April 2, 2002

The above statements embody many of the themes animating the contemporary Chinese bar. Lawyers are truly struggling to defend themselves against assaults both from the judicial system it serves and from competitive market pressures. In the context of this struggle, the above statements invoke revolutionary discourse ("lawyers of China unite!"), Chairman Mao, and the language of liberation from shackles and slavery. The

May 4<sup>th</sup> movement of 1919 is also invoked by way of Lü Xun, the great writer, social critic, and political activist who had originally chosen medicine as his field of study but subsequently decided a better way to help the people of China was to use literature to heal their spirits, spirits damaged by feudalism and colonialism (Lü 1981: iii). In the process of mobilizing for collective action, language is often borrowed from earlier episodes to frame issues in meaningful ways. Symbolism, language, and ritual—invoking the past through cultural scripts and "political theater"—are important parts of the mobilization process, especially in China (cf. Wasserstrom and Perry 1994). The image of the "People's Lawyer" is also significant insofar as it evokes nostalgia for an earlier time when lawyers were civil servants in government offices who were treated with more respect and who shared a stronger sense of common purpose than today's lawyers who face hostility from government agencies, from "the People," and from other lawyers under conditions of tremendous competitive pressure. But in terms of the goals of this study, the most significant theme in the above statements is the importance of lawyers' "uniting together," collectively pursuing the elevation of their abysmal political status. In this dissertation I argue that the issue of organization and cohesion is of central importance, perhaps the most formidable obstacle to lawyers' collective action.

This dissertation suggests that the relative political apathy of lawyers with respect to pursuing their political ambitions is associated with their changing political status. I do not offer a teleological argument that lawyers' collective action against state authority is necessary or inevitable. Rather, I propose a historically contingent account of why political interests and grievances do not always translate into political action. I speculate that weak internal cohesion in the Chinese bar is stymieing collective action in pursuit of collectively defined political goals. We know from the relevant scholarly literature that grievances are an insufficient condition for social movements and collective action. Besides grievances, political opportunities (i.e., the capacity of the challenged, typically

the state) and the internal organizational capacity of the challengers are essential determinants of successful mobilization (e.g., McAdam 1982).

I believe it is useful to approach the problem of lawyers' mobilization from a social movements perspective, to explain the collective action problem in terms of the organizational capacity of the bar. Lawyers elsewhere in the world at different historical moments have exhibited enormous variation in terms of cohesion and organization. At one end of the spectrum are bars that are little more than a collection of individual practitioners, while at the other end are tightly organized bars. A separate but related dimension is the degree of state control and regulation. At one extreme lawyers may be loosely connected market actors—as in 19<sup>th</sup> Century America (Chroust 1965) and contemporary India (Galanter 1989; Gandhi 1982)—while at the other extreme they may be civil servants, incorporated into the state bureaucracy—as in medieval France (Karpik 1995) and 19<sup>th</sup> Century Prussia (Rueschmeyer 1997). The Chinese bar is an interesting case because it scores highly in both dimensions—it is highly fragmented and market-oriented and at the same time retains a strong civil service character. Thus, with respect to the conditions that permit collective action, the Chinese bar is doubly handicapped.

### ***What Do Chinese Lawyers Pursue?***

The abuse of lawyers has generated both great anger and great hope. It would seem to be an open-and-shut case on grievances in the bar. It would be reasonable to expect that emancipation from the state and the heightened insecurity and vulnerability generated by this process would translate into the exertion of political pressure on the state in pursuit of political objectives. Yet rather than collectively standing their ground and collectively pushing for political protection in the face of the assault on the criminal defense bar, lawyers have largely retreated, responding as individuals simply by scaling back or ceasing their criminal defense practice. Indeed, emancipation seems only to have

weakened the collective strength of the bar. In the wake of its partial emancipation, the bar has become increasingly fragmented, internally splintered, undermining its capacity to mobilize.

Chinese lawyers complain bitterly about their low political status, especially relative to other actors in the judicial system, namely, judges, procurators, and public security officers. Complaints about the criminal defense crisis described throughout this dissertation are not limited to lawyers who practice criminal defense law, but rather are voiced universally throughout the bar: of fifteen items lawyers were asked to rate in terms of prevalence, government obstruction of lawyers' criminal defense work ranked by far the most prevalent in both Beijing and multi-city samples (Table 10.1). Lawyers tend to focus on substantive rights rather than the autonomy of law and neutral formalism more generally. This orientation towards specific rights such as legal immunity during criminal proceedings fails to give lawyers a unique voice; it reduces lawyers to merely another interest group engaging in conventional politics (cf. Halliday 1999). More to the point, however, is the bleak reality that this voice remains barely audible; lawyers complain as individuals, but fail to unite their individual voices into a louder collective voice, much less engage in any form of politically-oriented collective action.

Instead, the rare instances of collective action in the bar tend to be over economic issues. Economic interests are more likely to evoke action; political interests evoke rhetoric but little action. Thus, in terms of lawyers' action, politics takes a back seat to monopoly issues. This is not to deny the considerable political effort undertaken on behalf of the criminal defense bar. For example, Chen Xingliang of the Peking University School of Law and Zhao Bingzhi, Associate Dean of the People's University School of Law, held a well attended and highly publicized symposium on April 15, 2001 to discuss ways to repeal Article 306 of the *CL* and extend immunity to lawyers during criminal proceedings (Wang 2001). In both 2000 and 2002, Zhang Yan, one of the few NPC

delegates who is also a lawyer, spearheaded legislative initiatives to abolish Article 306 (Wu Yi 2002). Eckholm (2001) claims that the clamoring over Li Kuisheng by many prominent lawyers may have helped win his release. Similarly, Rosenthal (2000) describes how legal scholars and prominent lawyers in Beijing rushed to the aid of Liu Jian in Nanjing after his imprisonment (see Chapter 4). While these efforts are significant, they remain limited to a small minority of lawyers. The overwhelming majority of lawyers place economics before politics, their economic survival before the elevation of their political status.

Although not an example of collective action per se, the debate over lawyer fees and lawyers' voices in this public debate are revealing. Lawyers' desire to bill at whatever level the market can bear is often expressed in functionalist language, framed in an apologetic style: the value of their expert knowledge entitles them to a high income. Lawyers are therefore very vocal opponents of any regulatory mechanism that would impose a cap on their fees.

One lawyer stated that if the earlier 1991 billing schedules were enforced, every law firm would go out of business (Pan and Lin 2001) (see Chapter 7 on billing methods). But even the much higher caps in Shanghai have aroused concern among lawyers. One lawyer stated to the media that the use of the word "maximum" contradicts the regulation. He exclaimed, "So the most famous lawyer in all of Shanghai can only charge 3,000 *yuan* per hour! The significance of this fee is that it is manifestly too low compared to what any other profession in society can charge" (BJFZB 2002). While alarmist and exaggerated, this reaction is nevertheless understandable. As we saw, outside the state system, lawyers enjoy little in the way of social security; they enjoy few welfare benefits or perquisites; they are typically forced to purchase or rent housing; and they get saddled with all kinds of taxes and fees.

Under such circumstances, a seething resentment among lawyers is not hard to appreciate, and certainly goes a long way towards explaining their fixation on money. Hence the proclamation: "we're not a money tree!" (Yang 2002). These issues came to a head in 2001 with China's first prosecution of a lawyer for tax evasion. The case of Chen Dehui in Dalian encapsulates the struggle of lawyers to survive and to advance their economic and political interests in the context of their partial emancipation from the state. Given all the fees and taxes imposed on lawyers, most lawyers engage in some form of tax evasion—through off-the-books billing, kick-backs, creative accounting, and so on. As a result, lawyers across China were naturally watching this case with great interest. The ACLA appointed as Chen's lead defense counsel Gu Yongzhong, Deputy Director of the ACLA's Criminal Law Committee. According to one journalist present at the trial, lawyers, many of whom traveled from out of town just to see the trial, accounted for about one-third of the audience. Representatives of the State Administration of Taxation also traveled to Beijing to watch the trial (Niu 2001). This case was on the front lines of the state's battle to tax the private economy; it represents the real struggle to assert control over this and other social groups trying to survive after being banished from the state's protective enclave, cut off from the iron rice bowl. In the end Chen lost and was sentenced to four years in prison (O'Neill 2001).

Mobilization or quasi-mobilization over economic issues is also reflected in anecdotal accounts of lawyers protesting association membership fees. Annual membership registration fees are currently 2,500 *yuan*, an amount that riles many lawyers. However, it is half the former membership fee of 5,000 *yuan*. According to a lawyer I interviewed, lawyers protested in huge numbers by filing formal complaints, ultimately prevailing (lfi21).<sup>2</sup>

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<sup>2</sup> Unfortunately I was unable to verify this story in official government literature or media reports.

Finally, and perhaps the most telling example, is the formal complaint drafted, signed, and filed collectively in Qingdao by directors of over half of the city's law firms against a single law firm deemed "anti-competitive." Other law firms found it difficult to compete in a market overwhelmingly dominated by this single law firm, Deheng. The collective suit alleged that Deheng organized activities designed to foster and reinforce close relations with the public security, procuracy, and court systems. These activities included organizing soccer matches between the People's Court's team and Deheng's team over a period of two years. Deheng also advertised these soccer matches in local newspapers alongside separate advertisements publicizing the work its lawyers do "exclusively" in the Provincial-level People's Courts. Over a seven year period, the firm invited public security officers, procurators, and judges to poker games at which "prizes" were awarded. Deheng donated air conditioners to the local criminal detainment center (*kanshousuo*). Finally, the Deheng Law Firm is physically located in a hotel owned by the People's Court. The collective petition filed by the majority of law firms in Qingdao demanded that Deheng cease and desist from all such anti-competitive behavior (BJQNB 2001a; Li and Li 2001). Infighting of this kind reflects the enormous competitive pressures in the Chinese bar that focus lawyers' attention on more bread-and-butter economic issues relative to the elevation of their political status. A recent report from Anhui Province reveals widespread fee-slashing among law firms as lawyers reduce their fees by as much as two-thirds in order to undercut the competition (Wu Degao 2002). These conditions are reminiscent of the Japanese bar in the 1920s when it became highly fragmented as a result of overcrowding (Rabinowitz 1956; Leonard 1992).

In terms of what actually motivates action from the middle and lower ranks of the Chinese bar, economics come before politics. In the dog-eat-dog world of Chinese lawyers, attention is diverted away from advancing the collective interests of the profession. But even when their collective political status is discussed and debated in the

public sphere, lawyers' tendency to frame their cause in terms of their narrow interests instead of the general public interest alienates the public and thereby undermines their professional cause (also see Shamir 1995; Ledford 1997). Lawyers elsewhere in time and place have been more successful in the political arena when they frame the issues at stake in technical legal terms, as impinging on the autonomy of law, rather than as substantive rights issues (Halliday 1999).

### ***They Talk the Talk, But Why Can't They Walk the Walk?***

Although the market is clearly important to lawyers, it is also clear that we cannot reduce lawyers to market actors. Lawyers are not the embodiment of *homo economicus*; politics do matter (Halliday and Karpik 1997). "Socialist legality" removes politics from the range of channels available to aggrieved individuals. Law becomes a substitute for politics, a veritable "anti-politics machine" (Ferguson 1994). Legal rights have been advanced as a substitute for political rights; legal solutions are advanced by the state as political solutions remain beyond the reach of China's citizens. Potter's (1998) analysis of legal reforms as a basis for political reform implies this argument, but needs to be taken a step further. The conventional image is of politics defeating law. Along with Jones (1999), I believe this image should be flipped, that law is defeating politics.

Upon discovering the Chinese anti-politics machine, many lawyers experience despair and disillusionment. They discover that entertaining political ideals is an exercise in futility. In the words of one lawyer we interviewed: "Lawyers represent the multitudes of all people. Lawyers are an indicator of democracy. As a lawyer, in the beginning we all hold such lofty ideals. But owing to government obstruction and lack of understanding from our clients, and especially owing to judicial corruption, most lawyers no longer hold these ideals." He, like many lawyers, despairs: "When I first started working as a lawyer, I believed my interests and my clients' interests were united. At the time, if I lost a case I

was devastated. Now I understand things better. My interests are not the same as my clients'. When I do my work, it's enough just to make some money" (Ifi23). Thus, the perceived futility of political action serves to promote commercialism. While one response to disillusionment is to focus on making money, another is simply to vote with one's feet and walk away from the profession. Recall the significant attrition rates described in Chapter 8.

What is significant is not the lack of ideals per se, but rather the erosion of ideals in the face of political obstacles, particularly among young lawyers for whom lawyering is a first career, as opposed to those choosing to enter the bar as a way to convert the political and social capital they accumulated in a prior career into economic capital. Indeed, most lawyers do not enter the bar holding lofty social and political aspirations. But the few lawyers who do enter with such ideals discover that they are difficult to sustain in China's political environment. Consequently, lawyers typically either abandon their ideals and focus on making money or they maintain their ideals and abandon their lawyer careers. It seems only a small minority perseveres in the bar with political aspirations.

However, politics is not the whole story either. A more complete explanation considers the way politics and markets interact—the way lawyers' markets and politics are mutually constituted. Independence is a double-edged sword: greater individual autonomy is exerting centrifugal pressure on the bar, undermining collective, professional autonomy and an ability to effectively engage the state. The main point I am trying to make is that emancipation from the state is an insufficient condition for mobilization in pursuit of elevated political status. Autonomy from the state does not encompass all forms of autonomy. There are other forms of power besides state power, such as power exerted by other lawyers competing in the marketplace (cf. Pue 1997).

The most formidable obstacle to the mobilization of lawyers in pursuit of their political objectives is their lack of solidarity and cohesion. If Sun Yat-sen described Chinese peasants as a "loose sheet of sand" for their weak organizational capacity, it was only because he would never know Chinese lawyers of the turn of the century. The emancipation of the bar from its civil service status has had the paradoxical effect of heightening the political apathy and political impotence of lawyers. Yet Chinese lawyers are not unique in this regard. Abel (1989: 208–11) argues that, given their weak cohesion, it would be more appropriate to describe American lawyers as multiple professions, and that this fragmentation creates a collective action problem. Chinese lawyers' emancipation from the state has induced tremendous competitive economic pressure and the centrifugal fragmentation of the bar, which in turn has made lawyers vulnerable to new dangers, especially in the criminal defense field. These developments have essentially neutralized lawyers politically, buttressing rather than limiting state authority.

All sources of information about the Chinese bar point towards bread-and-butter economic concerns as the dominant axis orienting lawyer action in its post-emancipation stage. Although lawyers also attach importance rhetorically to the elevation of their collective political status, this concern does not seem to orient much in the way of action. Many lawyers expressed the idea that political issues will dominate only after basic economic needs are satisfied (e.g., em14). This is consistent with Halliday's (1987) sequencing into stages the dominant goals of lawyers: formative bars are predominantly concerned with monopoly issues while established bars turn to political concerns and "civic professionalism." This argument closely resembles Dalton's (1988) use of Maslow's hierarchy of needs to attribute to levels of economic development variations in the salience of competing issues and the nature of political protest—that is, only when basic material needs are satisfied do people make serious post-material demands in the political arena. Owing both to the financial insecurity of Chinese lawyers and to the

elusiveness of channels to political participation, the salience of economic issues currently eclipses that of political issues.

If and when lawyers' economic needs are satisfied, however, other forces may have precluded the realization of their political objectives. In other words, when lawyers finally get their act together it might be too late. Lawyers are clearly losing public support for their professional development by framing the issues in terms of their own substantive rights and not the autonomy of law more broadly. This was the problem facing both American lawyers fighting against the expansion of administrative power under the New Deal (Shamir 1995) and German lawyers fighting for their special rights in the Weimar Republic (Ledford 1997). To advance their interests, lawyers must make a convincing case that their objectives serve the general public interest. Just as lawyers invoke scripts and rituals when advancing their cause, so too does the public. Ordinary people have invoked Maoist revolutionary discourse reserved for "enemies of the people" by labeling lawyers "black-hearted capitalists." It is difficult for lawyers to gain public sympathy in their fight over the right to bill over 3,000 *yuan* per hour when laid-off factory workers are trying to live on stipends of 0.83 *yuan* per hour (e.g., Liu Bin 2001).

Change is happening quickly, however. We must not downplay the significant efforts made by small but important segments of the bar, including liberal-minded lawyers who have already earned more money than they know what to do with, legal scholars, and outspoken critics working within the various government offices overseeing the administration of lawyers. We must also keep in mind that practicing lawyers in China have not been practicing for very long. Chinese lawyers are not exposed to or mentored under other lawyers who have spent entire careers in the bar, and who themselves were exposed to and mentored under such lawyers at the formative stage of their careers. This is a one-time period effect (as opposed to a cyclical cohort effect) stymieing professional socialization and the transmission of professional ideals through

social osmosis. Finally, as lawyers' emancipation becomes more established, it will be increasingly problematic to expect lawyers to continue doing the bidding of the state; the civil service character of the bar will be increasingly difficult to maintain.

Almost all of the themes running throughout this dissertation are encapsulated in the following exchange between five lawyers recorded during a conference in Beijing held on September 1, 2001:

Lawyer A: "The system of lawyers and the system of democracy coexist. When the system [sic] reforms, the system of lawyers will also develop. I believe that when the level of economic development reaches a certain point, the proportion of lawyers participating in politics will rise. At the current time, those in government aren't really clear about what lawyers do. They think lawyers are merely litigators."

Lawyer B: "[Lawyers haven't realized their political potential] mainly because they haven't formed a collective strength."

Lawyer C: "Lawyers' political participation is an unreasonable expectation. Lawyers are a marginal group. Who gives us the time of day?...Political participation should mean entering the political core, not staying at the margins. Right now we're merely serving to promote reform in the economy."

Lawyer D: "Three years ago no lawyers were discussing the issue of political participation. Now it's already a hot topic. This requires a period of transition. Lawyers need collective political aspirations."

Lawyer E: "This is entire up to the Party. Without the permission of the Party you can't possibly raise your status. But we can still work hard in pursuit of this goal." (conference notes)

This exchange contains the following points: (1) lawyers' political status is low; (2) the articulation of the desire to raise lawyers' political status is a relatively new phenomenon; (3) raising the political status of lawyers is merely a pipe dream for many lawyers; (4) lawyers' behavior remains tightly circumscribed by the Party-state; (5) lawyers' failure to pursue the improvement of their political status can be attributed to a lack of collective political aspirations and a lack of organization; and (6) change takes time.

### ***Final Thoughts***

The social implications of legal reform in China are profound. As the state retrenches and pulls back from society in the process of reform and transformation, an important basis for the regulation of relationships is being uprooted. Social networks have developed in response to this growing void (c.f., Yang 1994). At the same time, an increasing array of responsibilities formerly undertaken by government agencies is shifting to intermediary organizations, including law firms. The regulation of social relationships and its effects on social order have been core issues in the field of sociology since Durkheim (1933, 1951) showed how law responds to changing social arrangements and what happens when new bases of social solidarity lag too far behind changing social arrangements. Do lawyers in China promote relationships governed by legal norms? Under the changing terms of the social contract (cf. Tang and Parish 2000), are they helping fill a void in which the threat of *anomie* looms ominously? How much do lawyers reproduce and reinforce traditional practices? Chinese lawyers do make a persuasive case for their function in a changing society. As the "rules of the game" change, lawyers justify themselves as the group most capable of negotiating the new institutional terrain on behalf of organizations and individuals (em19). However, one of the lessons of this dissertation is that we cannot assume that state law in general and lawyers in particular are handmaidens of social change. Just as we should resist the temptation to regard an impressive array of written laws as a reflection of a rational-legal system, when ordinary people enter the lawyer's office we must resist the temptation to regard this as an indication of growing confidence in the law. Indeed, lawyers reinforce and reproduce existing institutional forms at least as much as they are institutional innovators. Lawyers are a conservative force at least as much as they are liberalizers.

This dissertation shows that, by almost any standard, Chinese lawyers are not a bona fide profession. They lack a unified professional ideology; their grip on the market

for legal services is tenuous at best, certainly a far cry from anything resembling a monopoly; and they enjoy little in the way of genuine autonomy from the state in terms of their practice, admission to the bar, and disciplinary procedures. Yet to the Western observer they appear familiar. This familiarity is the result of a self-conscious effort on the part of government leaders to adopt and use Western categories in its efforts to build a legal system attractive both locally and globally, on the part of lawyers themselves in their efforts to create and expand local and global markets and professional legitimacy, and on the part of Western observers who fail to separate form from function, institutional appearance from institutional behavior, the label from the bearer.

Throughout this dissertation I have been sensitive to divergences between form and substance, analytically and empirically distinguishing informal practices from formal structure in order to avoid portraying a distorted image of legal processes, a problem that plagues some of the relevant literature. When we bracket the official labels (such as "lawyer" and "partnership") and gain an inside view of institutional and administrative reality unencumbered by rhetorical and ideological obfuscation, we see that, on the whole, the status of lawyers, their rights and their difficulties, are essentially the same as those accorded to private business entrepreneurs. This is how lawyers understand and describe themselves and their difficulties. Perhaps more importantly, from the standpoint of government administration, lawyers share much in common with small business owners in the private sector. Hence the symbolic significance of lawyers.