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Tradition in the Shadow of Modern Legal Practice

Continuity and Change in the
Delivery of Justice in China (I)

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Guest Editor's Introduction

The “Lawyer Bao Advice Column” (Bao lüshi dayi lanmu) contains the stories of the everyday problems people in China encounter both while bravely forging ahead and while being grudgingly dragged out of the protective enclaves of their workplaces (and villages) and into the marketplace where they must fend for themselves. But they also contain the stories of people who remain trapped in a system that retains many of its traditional Maoist redistributive features (Walder 1986). The abundance of research literature chronicling post-Mao marketization and institutional reform (which started in 1978) tends to focus on the extent and consequences of market forces liberating individuals from their old redistributive shackles. Likewise, the primary focus in the literature on Chinese legal process and reform tends to be on the development of formal legal channels, as opposed to the more traditional institutions of justice and dispute processing. Indeed, there is scant empirical research on traditional modes of disputing in contemporary China.

The Lawyer Bao columns supplement and add personal voices to the existing literature on the post-Mao reforms—reforms at the workplace, at the marketplace, and in the delivery of justice. To date, however, there has been scant literature on the intersection between work and justice in contemporary China. The Lawyer Bao columns help fill this gap by revealing the relationship between the organization of work, the exercise of social control, and the delivery of justice. By examining disputes, the manner in which they unfold, and modes of resolution deemed appropriate and legitimate, we can gain valuable insight into other important areas of social life. One of the major stories told by the Lawyer Bao columns is the following: Despite the mass development of access to formal law and the concomitant increase of lawyers, litigation, and functional specialization in the delivery of justice, traditional forces, what I term the *de facto* legal jurisdiction of intermediary organizations, particularly work organizations inhibiting the use of formal law, remain strong.

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In these introductory comments I provide only a cursory outline of some salient features of Chinese justice in the context of Chinese social organization and change. After providing such a framework in which to read the Lawyer Bao columns, I then trace the origins and development of the column. Following this, I explain the organization of these columns within and between the two volumes in which they appear. In the process I address the question of representativeness and attempt to construct a profile of the landscape of disputes in Beijing. The extent to which the de facto legal jurisdiction of nonlegal organizations selectively hides certain classes of disputes will be the focus of this discussion. Beyond what space limitations permit me to write in these introductory comments, I let the Lawyer Bao columns do the talking.

The contents of the Lawyer Bao columns are valuable in different ways. As a sociologist, my interest lies in their sociological value. The contents, contours, dynamics, dilemmas, and difficulties of the Chinese planning-to-market transition are reflected in these everyday experiences of ordinary people. The details of everyday trials and tribulations show us the kinds of issues defined as legitimate grievances worthy of the pursuit of justice. The columns show us the conditions under which different kinds of organizations are deemed appropriate forums for dealing with different kinds of problems. What kinds of problems are conventionally handled internally? When is jurisdiction over the delivery of justice deferred to extralegal organizations? In answering these questions we can learn much about the structures and boundaries of social control in China. But, as Roberts (1983, 20) points out, disputes also allow us to see the cultural values possessed by the participants: "If we are not directly interested in conflict at all, we can use them [i.e., disputes] to reconstruct at least a partial picture of the beliefs and everyday lives of those involved." The Lawyer Bao columns reveal the practice of filial piety, the process of family division, the role of grandparents in child-rearing, and other traditional family institutions. The Lawyer Bao columns show how the law is at least as "duty-oriented" as it is "rights-oriented" (Xia 1998). As Gregg (1995) points out, Chinese law appears undifferentiated from the prevailing moral order. Through these columns we also see the basic institutional building blocks of Chinese society: We see the functions of the work unit, the Neighborhood Committee, the Subdistrict Office, the local Police Substation, and so on. We see fundamental areas of life normally invisible in most research: What is the legal age of marriage? (How) Do people pay taxes? When do workers retire? How does the "single-child" policy deal with remarriage and adoption? How are "deadbeat dads" handled? Finally, we see a society rapidly adopting institutions of capitalism, lacking experience with respect to, but eager to learn about, protection through contracts, guaranteeing loans, notarization, partnership arrangements, patent and trademark protection, and so on.

Although I am not a legal scholar, these columns also are extremely valuable as an introduction to, and rudimentary reference source, on Chinese laws, policies, and regulations. There are references to 83 specific bodies of law in the 188 columns presented in these two issues. Of these 188 columns, 165 cite and offer interpretation and explanation of at least one legal document. Most (101) cite only one legal document, but many (46) cite two, and several (18) cite three or more. Further, while most (54) of the 83 bodies of law are cited in only one column, several are cited repeatedly: the *Marriage Law* is cited in 36 separate columns; the *General Rules of Civil Law*, in 27 columns; the *Criminal Law*, in 21 columns; the *Inheritance Law*, in 20 columns; the *Constitution*, in 13 columns; and the *Civil Procedure Law*, in 11 columns. Within these 83 bodies of law, 140 specific articles, sections, items, and chapters are cited. While 38 of the columns do not cite any specific articles, 22 articles of the *General Rules of Civil Law*, 15 articles of the *Marriage Law*, 13 articles of the *Criminal Law*, 9 articles of the *Civil Procedure Law*, and 9 articles of the *Inheritance Law* are cited.¹ As a self-contained translation, my English translations of the names and contents of the laws were not corroborated with other translations. In general, while I stand behind the accuracy of my translations, I cannot guarantee they conform to Chinese-English legal translation conventions that may exist. On a related note, the basic principle guiding my translations was to sacrifice elegance for fidelity; clumsy English in certain areas was the price I was willing to pay to stay as true to the original text as possible.

Tradition and Change in the Delivery of Justice

Until recently, civil disputes in China, such as family disputes, divorce, personal injury, debt obligation disputes, and so on, were settled informally through various available intermediary organizations outside the formal judicial system, most notably through the workplace. Work and the process of justice were, and remain, overlapping and intertwined in China. The intertwining nature of work and justice was part and parcel of the traditional redistributive social system with the individual inextricably sealed into an urban work unit (*danwei*) or rural village committee that provided, in a quasi-monopolistic fashion, most basic necessities. Until recently, resolving the necessities and problems of life, outside or without the involvement of one's *danwei*, was practically unthinkable.

Throughout the Maoist years, Chinese society was rigidly organized in hierarchically structured cells with extremely limited horizontal integration. Every individual belonged to one cell and one cell only, mobility between cells was almost impossible, and life outside the cell was not viable. Rigid cellular segmentation was established and enforced in large part thanks to the state household registration (*hukou*) system. Under the *hukou* system, each member of the Chinese population is registered as either worker or peasant, and traditionally

this meant entitlement to live and work only in the city or village of registration. Typically controlled by the danwei is another mechanism that functioned to limit geographic mobility: the all-important personal dossier (*dang'an*). To this day, the goods and services redistributed by the danwei to its members continue to run the gamut, ranging from housing, certain food staples, and shopping to day-care, schooling, and future employment for the children of employees. Thus the urban danwei—the state-owned enterprise, public organization, government office, Party organ, and so on—controls the supply and redistribution of many resources and opportunities necessary to the urban dweller. For a thorough exposition on the Chinese danwei system, see Lü and Perry (1997), Li (1995), Lu (1993), and Shaw (1996).

In addition to life's most basic necessities, welfare amenities, and other perquisites, the administration of justice also was (and remains) to a huge extent under the purview of the danwei (Shaw 1996; Xu 1994; Li 1977; Whyte and Parish 1984, 241–43). The danwei traditionally served, and continues to serve, as broker and mediator on behalf of its employees and as regulator of personal relationships within and between units. Thus, as the Lawyer Bao columns show in abundance, the danwei remains highly involved in disciplinary matters that would more likely be handled by outside law-enforcement agencies in the West. The danwei frequently intervenes in the personal and family affairs of its employees, with or without invitation. In the face of a grievance, an aggrieved individual may choose between multiple offices within the danwei, depending, of course, on the danwei's size. The complainant is likely to take a dispute directly to her immediate danwei superior. But a family dispute could also be taken to the Women's Federation representative within the danwei. A labor dispute might be taken to the danwei's union or the Party Committee for Inspecting Discipline. A dispute between employees might be taken to a danwei's Mediation Committee. But in smaller danweis, or depending on the nature of the dispute, it is often more appropriate to seek redress outside the danwei. One often hears of "going up to the next administrative level" or "going over the offender's head" in pursuit of justice (*zhao shangji*). For example, an aggrieved individual may approach the offender's danwei leaders. The Lawyer Bao columns show that within these various offices the danwei's traditional use of "mediation," "persuasion," "education," "criticism," and "self-criticism" as tools of dispute settlement and discipline.

Besides handling a grievance internally within one's own danwei or going over the offender's head at another danwei, a wide array of other administrative intermediary organizations also carry dispute-resolution duties outside the danwei. Typically, organizations are charged with settling their own disputes. For example, housing concerns can be taken to the local Housing Administration or the local Bureau of Urban Planning. The Bureau of Labor's Arbitration Committee is charged with settling labor disputes. A dispute between neighbors might be mediated at the Subdistrict Office's Mediation Committee. Finally, economic

problems (between firms, for example) might be taken to the Bureau of Commerce and Industry. Thus, as the Lawyer Bao columns demonstrate with great clarity, these intermediary channels are the basic features of traditional justice in socialist China. Moreover, the plethora and variation of such organizations settling disputes reflect a low division of labor and low degree of specialization in the delivery of justice. In short, Chinese law appears undifferentiated from the social structure (Gregg 1995). Outside this traditional system of redundant, overlapping intermediary organizations are the formal organs of justice. However, court generally remains an unusual and desperate last resort (Li 1977; Clarke 1991; Gao 1995). But even here in the formal institutions of law, as we will see below, mediation is typically the first step. The courts attempt to settle as many cases as possible through mediation. Often, even lawyers wear the hat of mediator. Thus, even formal law overlaps with the traditional web of intermediary, nonlegal organizations.

As we will see, however, in recent years the danwei's grip on the individual has loosened at the same time as alternative channels for pursuing and articulating interests, including grievances, outside the web of intermediary organizations have expanded and their use encouraged through various government campaigns, including the "popularization of law" (*pufa*) movement which has been ongoing for more than a decade. The Lawyer Bao columns get to the heart of this: the gradual liberation of the individual, be it happily or unhappily, from the grips of danwei control and the commensurately increasing reliance on outside institutions, including the market, when it comes to livelihood, and the law, when it comes to disputes. Publishing houses have been cashing in on this process, publishing books with such titles as *Approach Court with Courage, How to Take Marriage and Family Disputes to Court, Legal Advice on Divorce: 253 Examples, How to Take All Kinds of Disputes to Court* (rev. ed.), *How to Get Divorced, Women's Rights: 320 Questions on How to Exercise and Protect Them, Make Money Without Worry: The Precise Benchmarks of Legal Judgment: The Legal Boundaries of Crimes and Non-Crimes in the Domain of Contemporary Economic Behavior, How to Get Things Done Through the Civil Administration: 400 Questions from Ordinary People, Torts and Compensation: A Collection of Advice from Lawyers, 102 Questions on Product Liability and Consumer Rights, and Road Traffic: A Case Analysis of Practical Laws and Regulations*. These books are marketed to a population that is both increasingly self-reliant and increasingly reliant on formal law in resolving everyday problems. But, as we will see, the Lawyer Bao columns also reveal conditions under which traditional redistributive power remains entrenched.

Reflecting the rapid pace of development, formalization, and functional specialization of law, law school enrollment, lawyer certification, and the number of law firms have exploded. In the prereform era, law school enrollment reached its peak of 8,245 in 1957, after which it dropped and remained suppressed until the late 1970s:

By June 1957 China had established nineteen lawyers associations at provincial and municipal levels, and had more than eight hundred legal consultants and more than twenty-five hundred lawyers. This was an important factor for strengthening the country's legal system. Not long after, however, China's newly established attorney system was wrongly criticized because of erroneous "leftist" ideologies that broadened the scope of the anti-rightist movement in 1957. This resulted in the destruction of the two-year-old attorney system. (Du and Zhang 1990, 195)

Then, after this long slump, law school enrollment increased by almost 3,500 percent, from 1,299 to 41,634 between 1978 and 1994 (Figure 1). Corresponding to this, university law schools reached a prereform peak of six in 1957, after which they dropped to four, and then to two in 1966, the first year of the Cultural Revolution. Then, between 1978 and 1990, university law schools increased almost fortyfold, from 3 to 116 (Figure 2). Correspondingly, law firms in China increased by 158.4 percent between 1986 and 1996, from 3,198 to 8,265 (Figure 3). Not only did the ranks of lawyers multiply at breakneck speeds, but lawyers became increasingly professionalized. Licensed lawyers (i.e., lawyers who pass the lawyer certification examinations) as a percentage of all lawyers increased from 74.1 percent in 1988 to 99.9 percent in 1996 (Figure 4).

Paralleling the growth of the Chinese legal profession is a veritable litigation explosion and a concomitant diminished use of the more traditional People's Mediation Committees. While civil cases in the People's Courts grew by 70.4 percent and economic cases by 118.5 percent between 1989 and 1996, cases brought to People's Mediation Committees dropped by 21.0 percent in the same time period (Figure 5). While criminal and administrative cases also grew rapidly (57.6 percent and 705.0 percent, respectively), they account for a relatively small proportion of all court cases (Figure 6).

In addition to handling a growing volume of cases, the courts also became increasingly specialized. Put another way, law in China is behaving increasingly lawlike. This is part of the general process by which formal judicial organs are becoming more functionally specialized over time. Traditionally, the Chinese courts have mediated as many cases as possible rather than hearing cases and passing legal judgments. In this way, the courts served a redundant function. However, this changed dramatically within a short span of time. Between 1989 and 1996, the percentage of civil and economic cases accepted by the courts and spun off into internal mediation declined from 69.1 to 54.1 percent and 74.3 to 52.9 percent, respectively (Figure 7).

Another way to view the increasing lawlike behavior of formal law is in the treatment of divorce cases. Traditionally, divorces in China were very difficult to procure (Whyte and Parish 1984). A divorce case was likely to be dismissed, and the couple typically was sent home with instructions to patch things up. As the Lawyer Bao columns show, a high burden of proof of the extent to which

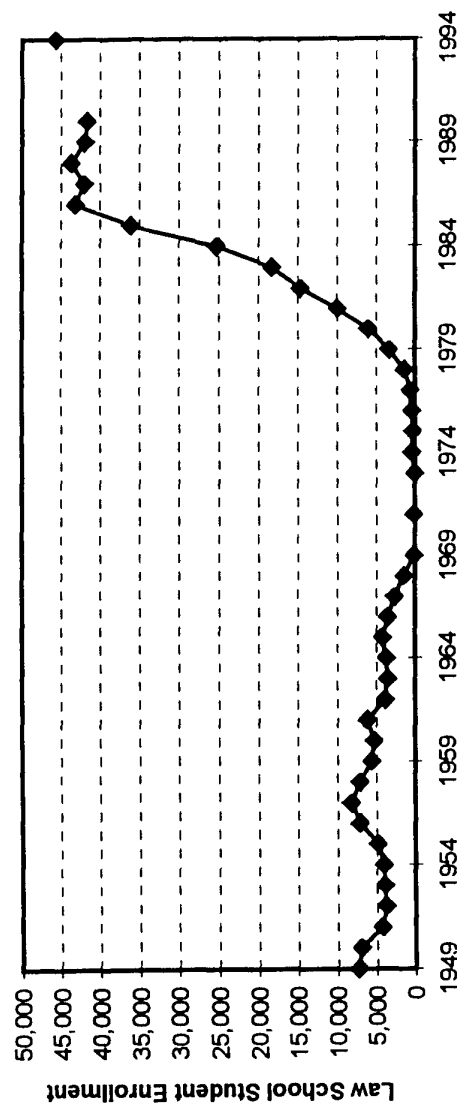
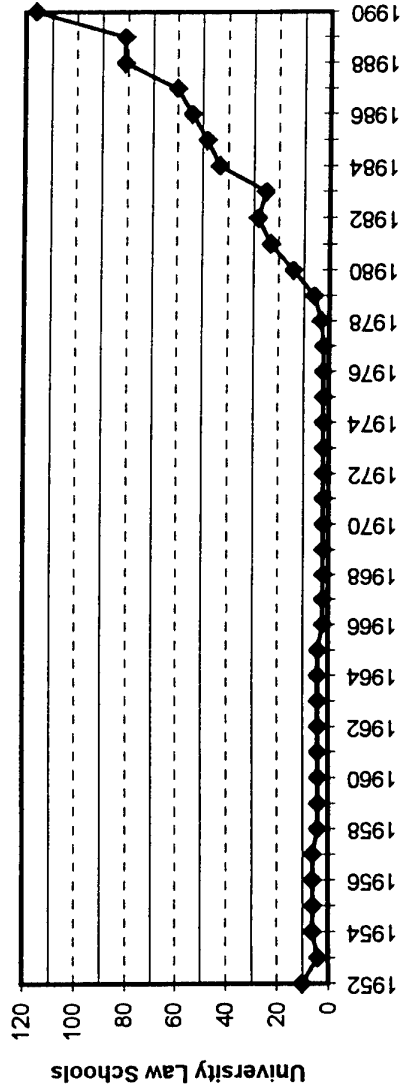


Figure 1. Law School Student Enrollment, 1949-1994

Source: ZFN 1987-97.

Note: Information is missing for the following years: 1970, 1972, 1991, 1992, and 1993. Information for years after 1994 are also unavailable.

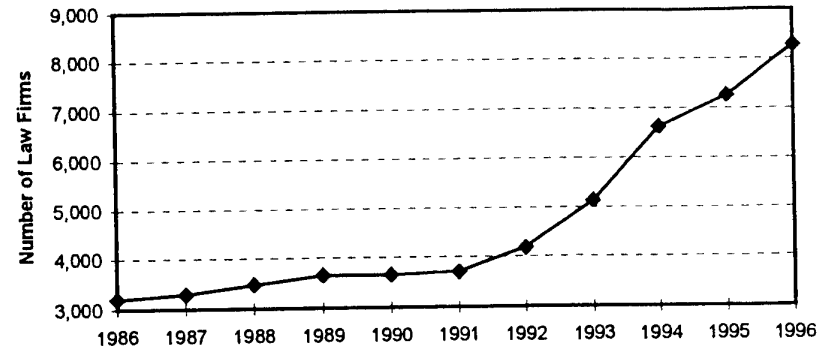
Figure 2. University Law Schools, 1952-90



Source: ZFN 1987-97.

Note: Information for years after 1990 is unavailable. Whether the drop from twenty-eight to twenty-five law schools between 1982 and 1983 is real or a typographical error in the official reports is unclear.

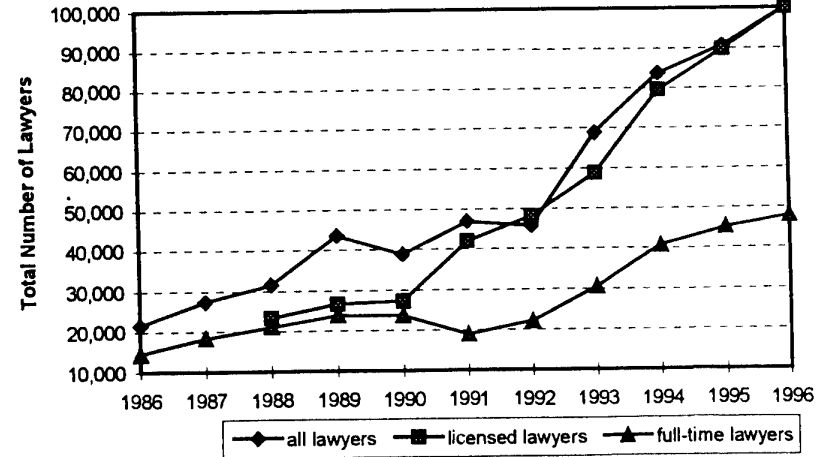
Figure 3. Law Firms in China, 1986-96



Source: ZFN 1987-97.

relations had fallen apart were required in order to obtain a divorce. However, the courts are now approving increasing numbers of divorces. The ratio of granted divorces to dismissed divorces increased from 2.85:1 in 1988 to 3.42:1 in

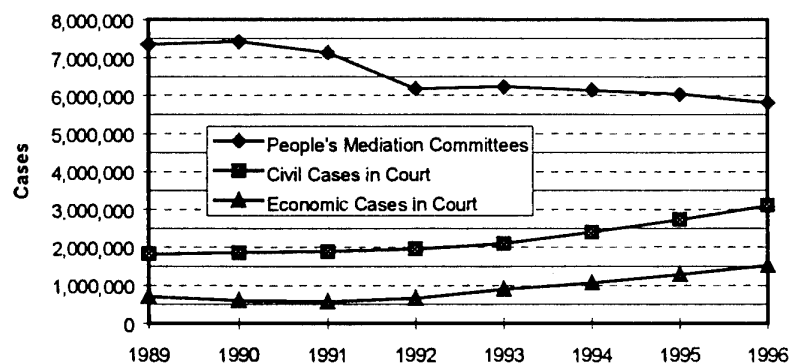
Figure 4. Lawyers, 1986-96



Source: ZFN 1987-97.

Note: Numbers of licensed lawyers before 1988 are unavailable. It is unclear how there were more licensed lawyers than total lawyers in 1992, but this is how it is officially reported.

Figure 5. Cases Accepted by People's Courts and People's Mediation Committees, 1989-96



Source: ZFN 1987-97.

Note: "Cases in court" refer to cases accepted as "first trials" as opposed to appeals.

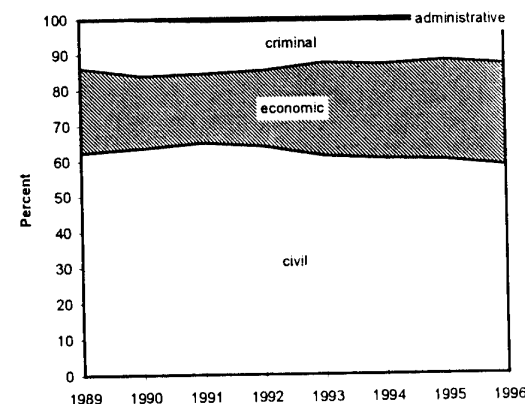
1996 (Figure 8). In short, the courts are increasingly likely to deliver the formal legal services its users demand.

These general trends reveal new avenues of action in dispute processing. Opportunities to utilize the formal legal apparatus are increasing dramatically. However, this is not where the value of the Lawyer Bao columns lies. Given the mandate of "Lawyer Bao," we would expect a high degree of discussion of how and when to use formal legal channels. Rather, the unique value of the Lawyer Bao columns lies in its exposing the lingering inertia of traditional intermediation in dispute processing despite the opening up and increasingly formal behavior of the courts. This is what I call the de facto legal jurisdiction of the intermediate organization, most notably, the danwei. As we will see, formal law frequently defers to the danwei and other nonlegal intermediate organizations. But before delving more deeply into the phenomenon of de facto legal jurisdiction, I will first outline the history of the Lawyer Bao column.

A Brief Biography of Lawyer Bao

The Lawyer Bao advice column appears in Thursday's "People and the Law" (*Ren yu fa*) page of the *Beijing Evening News* (Beijing wanbao) and carries on the long and important socialist tradition of newspaper "mailboxes" (Whyte and Parish 1984, 297). This page was the brainchild of Song Xi, a young journalist in the Politics and Law section of the *Beijing Evening News*. Largely because of his work on the People and the Law page, after many years serving as section deputy

Figure 6. Composition of Cases Handled by People's Courts, 1989-96



Source: ZFN 1987-97.

Note: "Debt" is contained within "civil"; "contracts" are contained within "economic."

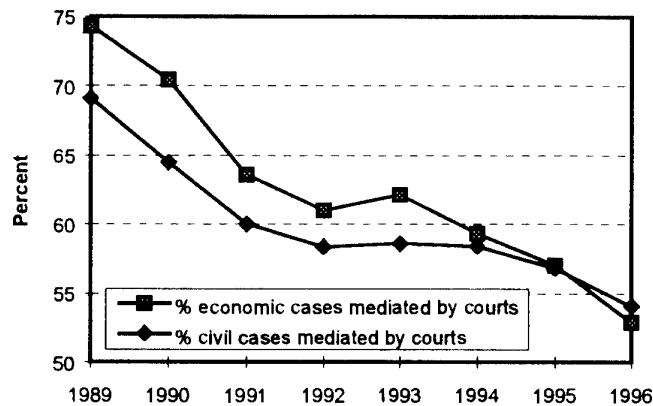
director, he was recently promoted to deputy editor-in-chief of the *Beijing Morning Post* (Beijing chenbao), a new newspaper launched by the same house that publishes the *Beijing Evening News* and the *Beijing Daily*.

The People and the Law page was inaugurated on the first Thursday of 1989 (January 5, 1989). Eleven weeks later (March 16, 1989) the first Lawyer Bao column appeared—"Is this way of settlement reasonable?"—in which the reader describes a colleague who fractured his sacrum at work when hitting the hard floor after his chair was pulled out by another colleague playing a practical joke. The matter was handled in the traditional manner—internally, within the danwei. The danwei decided the prankster was not responsible for providing compensation for medical expenses; the victim was left in the lurch. Lawyer Bao explained why this was unacceptable and that the victim had the right to take the case to court. The empowering advice supplied each week points out alternative avenues of action outside the workplace and encourages exploration of these alternative options in light of problems that are highly salient to the average reader. The popularity of this column grew quickly. By May 18, 1989, Song Xi, in a brief piece entitled, "Instructions for readers sending questions," established a protocol for sending queries:

1. Clearly write your detailed address for replies; make sure not to send money or other items, such as stamps or envelopes.
2. Questions in letters must be objective, complete, and, ideally, related to the law.
3. If a telephone is available, please clearly write the number so replies can be made by telephone.

Lawyer Bao
March 5, 1989

Figure 7. Cases Mediated by the People's Court, 1989-96



Source: ZFN 1987-97.

The etymology of Lawyer Bao lies with the historically eulogized imperial judge, Bao Qingtian. Bao Qingtian, who held office in the mid-eleventh century during the Northern Song dynasty, exemplifies impartial justice, righteousness, and clean government. In an article published on June 22, 1989, entitled "‘Lawyer Bao’ the Person," Song Xi mentions this in the process of introducing the original newspaper "Lawyer Bao" character:

When I established this page, I thought there should be a kind of "Legal Mailbox" column. However, since I felt there were already too many mailbox columns and since I wanted to give it a little more human feeling, I thought of "Lawyer's Advice," and I gave this lawyer a name: Bao.

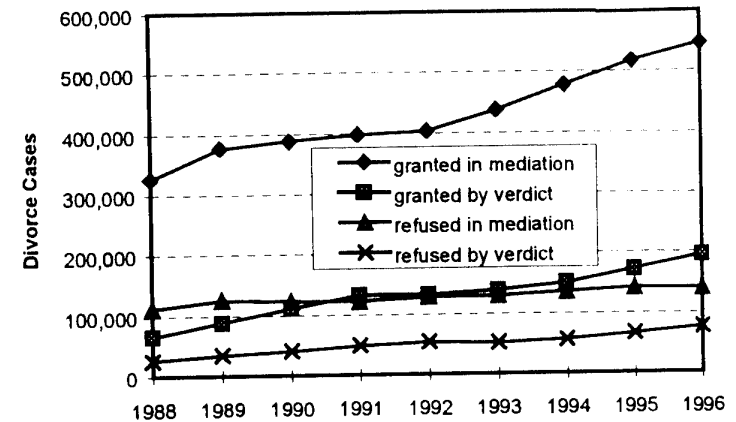
In addition to rhyming with the first character of "newspaper,"² he has the name of the historical figure, Bao Qingtian. The significance of this person is obvious.

Afterward it was merely a matter of finding a "Lawyer Bao." I had the idea of putting some lawyers in charge of providing the legal advice, but for various reasons the accuracy of the advice was hard to guarantee. So after a brief debut appearance, Lawyer Bao took a performance respite.

Then there came an unexpected opportunity. I learned that a guy named Ji Xiangsheng who works in the administrative office of the Shijingshan District People's Procuratorate and who has written for this newspaper many times in the past, had also worked as a lawyer. So I invited him to take charge of this column. He graciously agreed.

Ji Xiangsheng's face is big and round with fair, smooth skin. He jokes and laughs all day. He is a jovial and cheerful character. When I first met him, I thought he was a little older than thirty. When I asked him his age, I nearly fainted: he's forty! I kept shaking my head: "I can't tell; I really can't tell." I heard that the young people around him still call him "Little Ji." I believe his youthful appearance is in his cheerful, carefree personality.

Figure 8. Divorce Cases in People's Courts, 1988-96



Source: ZFN 1987-97.

Note: The total number of all divorce cases accepted by the courts is missing in some years, having been collapsed into a general "family" category. Total numbers of divorces cannot be reconstructed from the limited data available because "mediation" and "verdict" are not exhaustive methods of settlement. Furthermore, divorce figures from other publications cannot be used because they include court divorces as well as divorces procured from other organs—namely, marriage registration offices. Therefore, based on the published statistics at hand, it is impossible to calculate divorce case outcomes as percentages of all court divorce cases.

There is an episode that I think shows his personality: Once, when he was riding his bicycle home, he was smashed from behind and knocked down by a youth recklessly speeding on his bicycle. He, the victim, did not immediately get up off the ground. He wondered why the youth didn't help him up and console him. After a few moments he looked around and realized the culprit was long gone. This "Ji" was far from "upset."³ He did not get angry nor did he chase after the youth. He simply brushed the dust off his clothes, climbed back on his bicycle, and continued his leisurely ride home. This story left me dumbfounded. I asked him why he didn't pursue the other guy. As always, he smiled in his carefree manner: "Well, I didn't get hurt, so if he runs off, then he runs off."

Ji Xiangsheng is kindhearted toward people and works diligently. In putting him in charge of answering questions about the law, he always conscientiously refers to the legal sources in order to avoid any mistakes. Everyday there are three to four letters for "Lawyer Bao." This is truly too much for him to handle. This column is not under his name, the letters printed are only a tiny portion of all the letters he answers, his pay is low. . . . Once when I discussed his pay with him, he said, "Don't worry about it; our goal is to produce a good column."

Although his name does not appear on any of his columns, some people who know the real situation call him "Lawyer Bao." When he hears this, as usual, he smiles broadly. Clearly he is quite proud.

I hope there will be more "Lawyer Baos." I am sure the readers also carry this wish.

The letters continued to pour in. On April 26, 1990, Lawyer Bao appended the following to the bottom of his column:

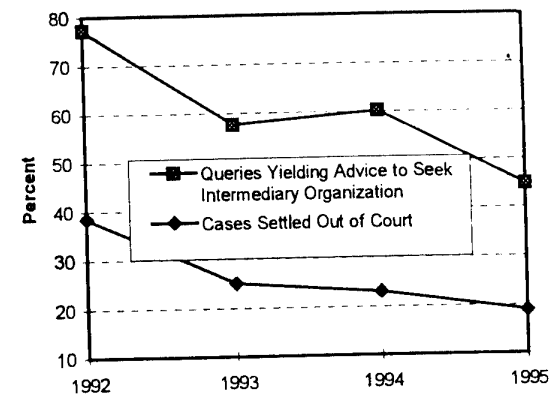
Since there are so many letters with this question, it is difficult to answer each one. This is why I am answering like this today. Also, since the number of letters from readers is increasing daily and there are limits to what we can write, it is difficult to write replies immediately. In light of this, we ask that, in the future, when readers write letters, that they please, in addition to clearly writing their postal code, also write a phone number so that we can answer their questions by phone, thereby saving us postage and time.

Song Xi's hope for more Lawyer Baos was realized two years later. With Ji Xiangsheng totally unable to make more than a small dent in the growing volume of legal queries, Song Xi found a law firm willing to undertake the column on a pro bono basis in exchange for the advertising value of a small banner printed in the column with the number of their telephone "hot line." Capitalizing on name recognition, this law firm took the name, Lawyer Bao Law Firm. The first hot-line banner appeared on July 30, 1992. By 1994 this law firm was the largest in its category ("basic-level legal service clinic") in Beijing, reporting 336 instances of civil representation, over 100 cases more than the next largest reported amount, and 11,203 instances of legal advice, over 8,000 more than the next largest reported amount (*BTN* 1995, 528).⁴ Further, in a random-sample survey of Beijing residents carried out in late 1994, Lawyer Bao had the second greatest name recognition of all lawyers in Beijing.⁵ In this same year, however, the Beijing Bureau of Justice decided that Lawyer Bao could not be used as the name of a law firm, so the name of the firm was subsequently changed to "Baocheng Law Firm,"⁶ and this change was announced in the Lawyer Bao column of January 26, 1995. Not long after the column was handed to Baocheng, the volume of work reached the point where a second law firm was recruited to handle the spillover. The phone number of the Huiyuan Law Firm was added to the hot-line banner on March 10, 1994. By June 1994 Baocheng had added a second dedicated hot-line. Today there are four dedicated "Lawyer Bao" hot lines. Director Tao and Song Xi estimate that between 1989 and 1995 there were several dozen lawyers sharing the Lawyer Bao nom de plume.

The Work of the Baocheng Law Firm

Director Tao of the Baocheng Law Firm keeps summary records of all cases formally undertaken. The summary sheets contain the following information: the lawyer handling the case, the nature of the case (one of eighty-eight categories), the opening and closing dates of the case, whether the case was settled in or out

Figure 9. Cases Settled Out of Court by the Baocheng Law Firm, 1992-95



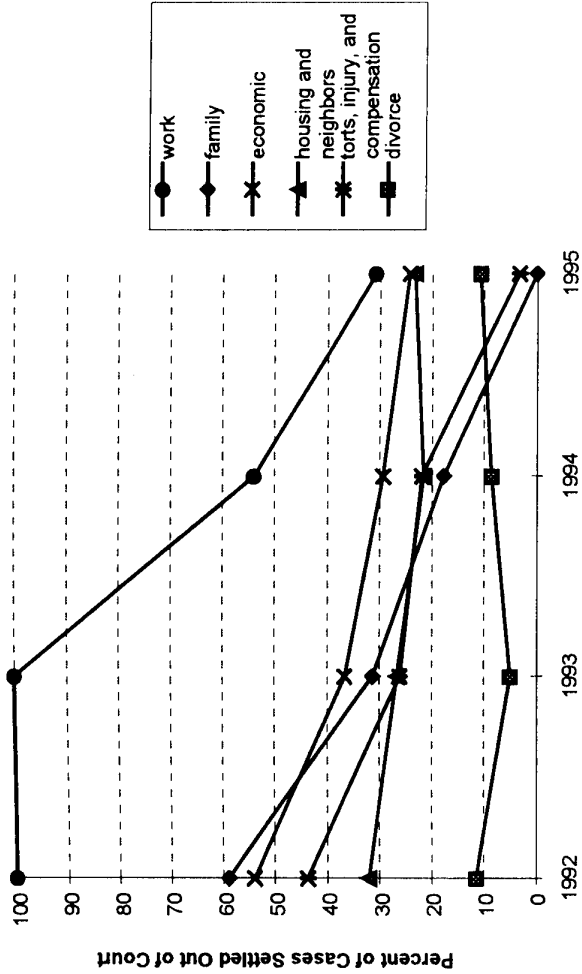
Note: Legal queries: N = 569; legal cases: N = 1,000.

of court, whether the case was an appeal, the name of the court, and the number of pages of legal documents generated. I analyzed this summary information on all 1,155 cases handled between 1992 and 1995.

The data show that the lawyers of the Baocheng Law Firm are becoming increasingly professionalized and, like the courts, more functionally specialized. Between 1992 and 1995, lawyers with certification accounted for 57.8, 55.4, 64.0, and 76.5 percent of all lawyers handling cases at the Baocheng Law Firm in each respective year, a total increase of 18.7 percentage points (or a 32.4 percent growth over this time period). Even those without certification carry out a wide array of legal services and call themselves lawyers. However, as these and the national figures in Figure 4 show, this situation is tightening up. This rise in qualification standards explains the decrease in the number of lawyers handling cases between 1992 and 1995: 34, 37, 29, and 24, respectively.

Throughout this time period, rising legal demand started squeezing lawyers' time, forcing them to drop much of their out-of-court work and to focus more on litigation. As we saw earlier with court-case trends, the traditional overriding principle of dispute processing, regardless of where it takes place, was first to try mediation, and, only when all else fails, to litigate as a last resort. This traditional principle also applied to the legal work of law firms. One-fourth of all cases handled by the Baocheng Law Firm between 1992 and 1995 were settled out of court (and only 1.5 percent of all cases were explicitly nondisputes, such as legal opinions and legal consulting). But these lawyers, paralleling the courts, reduced their rates of mediation and increased their rates of litigation over time. Between 1992 and 1995, litigation cases at the Baocheng Law Firm more than doubled, rising from 101 to 218, while cases settled outside court diminished by 19.0 percent, from 63 to 51 (Figure 9). The most dramatic drop in the incidence of

Figure 10. Cases Settled Out of Court by the Baocheng Law Firm, Disaggregated by Case Type, 1992-95



Note: N = 913.

mediation was with family-related cases (dropping from 58.2 to 0.0 percent) and work-related cases (dropping from 100.0 percent to 30.8 percent) (Figure 10). The average individual volume of cases handled through litigation likewise more than doubled between 1992 and 1995, increasing from 4.2 cases per lawyer in 1992 to 9.5 cases per lawyer in 1995. Meanwhile, in the same time period, the average individual volume of cases settled outside court remained constant at 3.2 cases per lawyer. Viewing this trend another way, the average percentage of all cases settled by litigation per lawyer between 1992 and 1995 was 58.2, 69.7, 74.4, and 75.5, respectively, or an increase of 17.3 percentage points (or 29.7 percent growth).

The increasing attention paid to cases settled in court is also reflected in the amount of time and effort devoted to cases of each settlement method. The average time to close a litigation case dropped by 10 percent between 1992 and 1995, from 130 to 117 days. However, over the same years, the average number of days to close a case settled out of court dropped much more precipitously, by 32 percent, from 137 to 93 days. Likewise, the average volume of legal documents generated per litigated case increased by 7 percent, from 22.1 to 22.6 pages, while aggregate volume increased by 131.0 percent, from 2,130 to 4,921 pages. At the same time, the average volume of legal documents generated per case settled outside court dropped by 16 percent, from 16.8 pages to 14.5 pages, with aggregate volume dropping by 31.4 percent, from 1,057 to 725 pages.

In short, if changes in the practice of law at the Baocheng Law Firm can be extrapolated to any degree, lawyers are doing more litigation and less mediation as their volume of work expands. But as we will see below, as well as in the Lawyer Bao columns, a large and systematically different population of disputing remains outside the domain of courts and law firms.

Counting and Categorizing Disputes

The division of the Lawyer Bao columns into two issues of this journal is necessarily somewhat arbitrary. Moreover, in a way, it matters little how they are divided; what the columns reveal about the basic organization of Chinese society, the kinds of problems deemed legitimate grievances, the lingering de facto legal jurisdiction of the danwei and other intermediary organizations, and so on, remain apparent regardless of how the columns are divided. Nevertheless, the two issues are roughly divided between family, marital, and divorce matters, and housing, torts, business, work, and criminal matters. Thus this first issue contains 78 columns divided into two parts: marriage and family; and divorce. The second issue contains 110 columns divided into five parts: housing and neighborhood; torts, personal injury, and compensation; business and economic institutions; work; and crime. The columns that appear here have been selected from a total of 332 columns published between 1989 and 1995. The selected columns, which account for 63 percent of all the published columns, are fairly representative; my only bias was in overselecting work-related problems and underselecting eco-

Table 1

Distribution of All Published Lawyer Bao Columns

Issue, part, section	Percent of columns presented here	Percent of all published columns
Issue 1		
Part 1. Marriage and Family		
A. Marriage Procedures and Problems	7.5%	6.0%
B. Filial Piety and Family Care	5.9	5.7
C. Hukou	3.7	3.6
D. Inheritance	6.4	6.3
E. Family Planning	4.3	2.4
Subtotal	27.7%	24.1%
Part 2. Divorce		
A. Divorce Laws and Procedures	3.2%	5.4%
B. Child Custody and Support	5.3	4.8
C. Property Division	5.3	4.2
Subtotal	13.8%	14.5%
Issue 2		
Part 1. Housing and Neighbors		
A. Ownership	2.7%	3.6%
B. Rentals	3.7	3.3
C. Demolition and Relocation	2.7	1.5
D. Neighbors	2.7	3.6
Subtotal	11.7%	12.1%
Part 2. Torts, Personal Injury, and Compensation		
A. Privacy	3.7%	2.4%
B. Gifts and Findings	1.1	1.5
C. Consumer Rights	3.7	3.3
D. Libel, Slander, Reputation Rights, Harassment	2.7	2.4
E. Personal Injury	2.7	5.1
F. Personal Property Theft, Damage, and Loss	1.6	2.1
Subtotal	15.4%	16.9%

Table 1 (continued)

Part 3. Business and Economic Institutions		
A. Debt, Money, and Banking	3.7%	7.2%
B. Contracts and Agreements	3.7	5.7
C. Intellectual Property, Copyrights, Trademarks, Patents	3.7	3.9
Subtotal	11.2%	16.9%
Part 4. Work		
A. Formal Scope of Danwei Authority	2.7%	2.4%
B. Implicit and Unspoken Danwei Authority	5.3	3.0
C. Labor Rights	3.2	2.1
D. Danwei Responsibilities	3.2	3.0
E. Corruption	3.7	2.4
Subtotal	18.1%	13.0%
Part 5. Criminal	2.1%	2.7%
Total	100.0% (188)	100.2% (332)

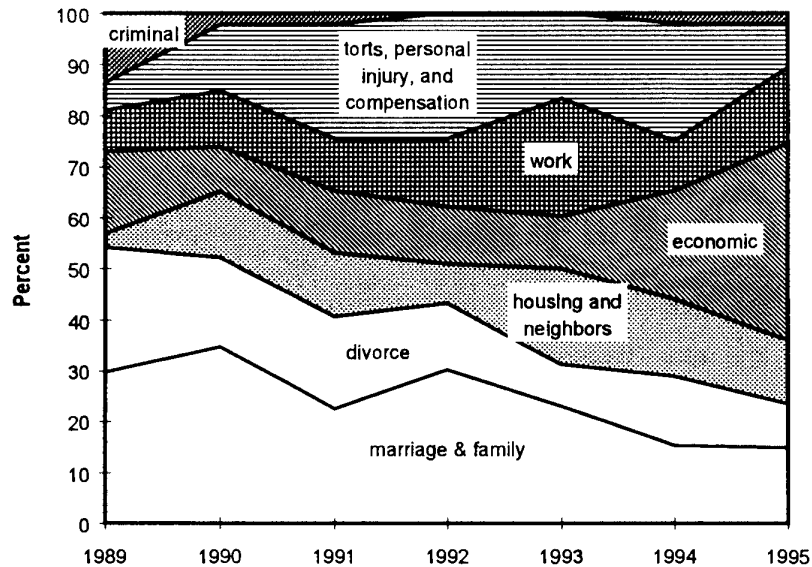
Note: Because of rounding, the statistics are slightly different from the sum of the parts; also because of rounding, the grand total in column 2 does not equal 100%.

economic problems. Each part contains sections. A list of all parts and sections within each of the two issues and the distributions of the columns is presented in Table 1.

The composition of columns changes between 1989 and 1995. The most significant change is the decline of columns addressing family-related matters and the increase of columns dealing with economic matters. Family matters (including divorce) declined from 54.0 percent of all columns in 1989 to 23.4 percent of all columns in 1995. Meanwhile, the proportion of columns addressing economic issues increased from 16.2 percent in 1989 and 8.7 percent in 1990 to an impressive 38.3 percent in 1995 (Figure 11).

Of course, these distributions should not be treated as absolute. There is much overlap across the sections within and between the two issues. For example, a housing problem frequently stems from inheritance or family division. Housing problems also emerge in cases of divorce. Finally, given that housing is typically controlled by the danwei, housing problems could also be defined as work-related. The multiplexity of the problems raised in the Lawyer Bao columns will become apparent.

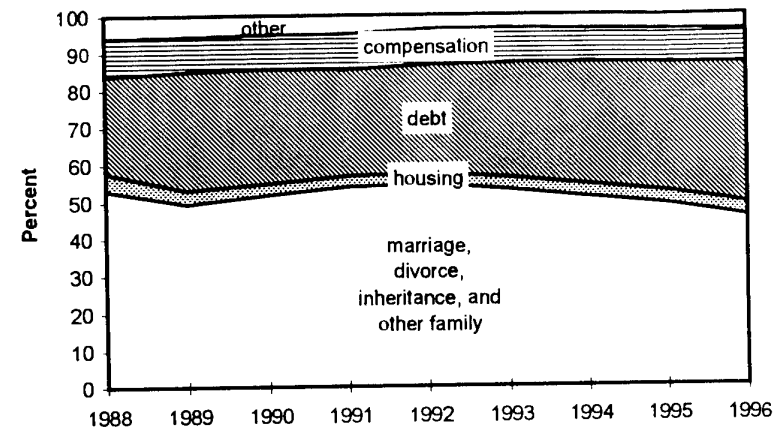
Figure 11. Distribution of All Published Lawyer Bao Columns, 1989–95



Note: N = 332.

Thus the question of how well these columns reflect the “true” distribution of disputes is a relatively intractable one. A further problem is the one of jurisdiction over dispute processing. What kinds of disputes are processed by the courts? By People’s Mediation Committees? By danwei leaders? Basically, the composition of case types varies across dispute-processing forums. The composition of disputes settled in court necessarily underrepresents those that are handled internally within the danwei and other nonlegal intermediary organizations. Thus statistics on the distribution of case types handled by the courts and by People’s Mediation Committees will underrepresent disputes that never leave the danwei. Housing and work-related grievances in particular are the least likely to leave the danwei. Between 1988 and 1996, housing only accounted for an average of 3.5 percent of all civil cases accepted by the courts, and this narrow slice was fairly constant throughout the period (Figure 12). Meanwhile, labor disputes accounted for less than one-tenth of 1 percent of all court cases classified as “economic” between 1988 and 1991 (while economic cases themselves accounted for less than 30 percent of all “civil” and “economic” cases combined), and the labor dispute category subsequently disappeared entirely in the official statistical publications (*ZFN* 1987–97). As the Lawyer Bao columns show, housing and labor disputes typically do not fall under the jurisdiction of the courts.

Figure 12. Composition of Civil Cases in Court, 1988–96



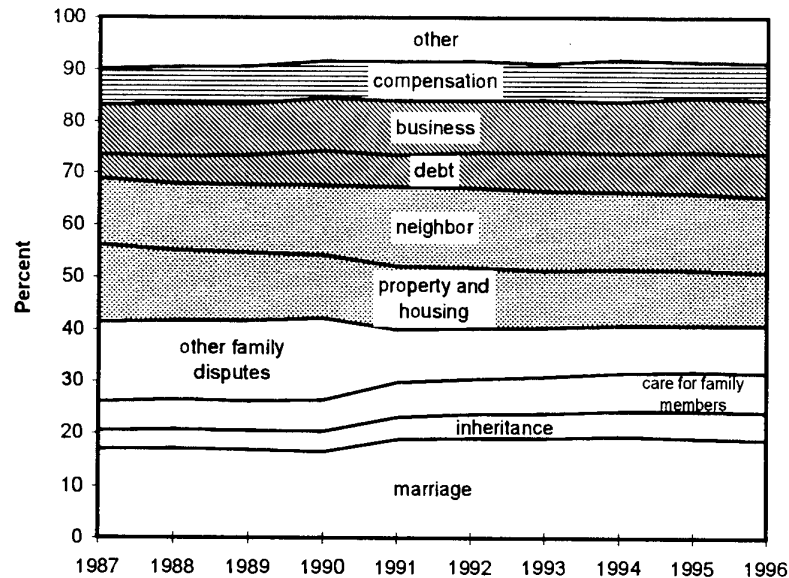
Source: *ZFN* 1987–96.

Note: Changes to the presentation of case-type categories do not permit the disaggregation of divorce cases from the “family” category.

Not surprisingly, work and labor disputes are also nonexistent in official People’s Mediation Committee statistics. However, “housing and property” accounts for a relatively steady average of 12.0 percent of all disputes between 1987 and 1996. Further, adding neighbor disputes on top of this yields a total average of 26.1 percent (Figure 13). However, “housing and property” (*fangwu zhajidi*) is a combined category, with “property” referring essentially to residential border disputes between neighbors of a village. Thus it is fairly clear, especially given that over 70 percent of China’s population in 1996 was residing in rural areas (*ZIZ* 1998, 30), that the “housing and property” slice of disputes would be far narrower if rural areas were excluded (which, unfortunately, is not possible using official statistical reports). In contrast to urban areas, the management of housing in rural areas typically is not contained by any unit; rather, housing is regarded and treated as private property. Thus, as opposed to housing and property disputes in the cities, such disputes in the villages are less anchored to any particular intermediary organization and are relatively free to percolate up to the People’s Mediation Committees and other outside dispute-processing forums.

The Baocheng Law Firm case data naturally also underreport the incidence of disputes contained by intermediary organizations such as the danwei. Lawyers are a nascent profession, and public knowledge and exposure remain limited. In 1994 there were only about 3,500 lawyers in Beijing—a resident to lawyer ratio of 3,320:1 (*BTN* 1995, 72, 526), which was still considerably smaller than the national ratio of about 14,000:1 (*ZTN* 1995, 681). As shown by the 1994 survey cited earlier on awareness and knowledge of lawyers, Beijing residents have a

Figure 13. Composition of Disputes Mediated by People's Mediation Committees, 1987-96



Source: ZFN 1987-97.

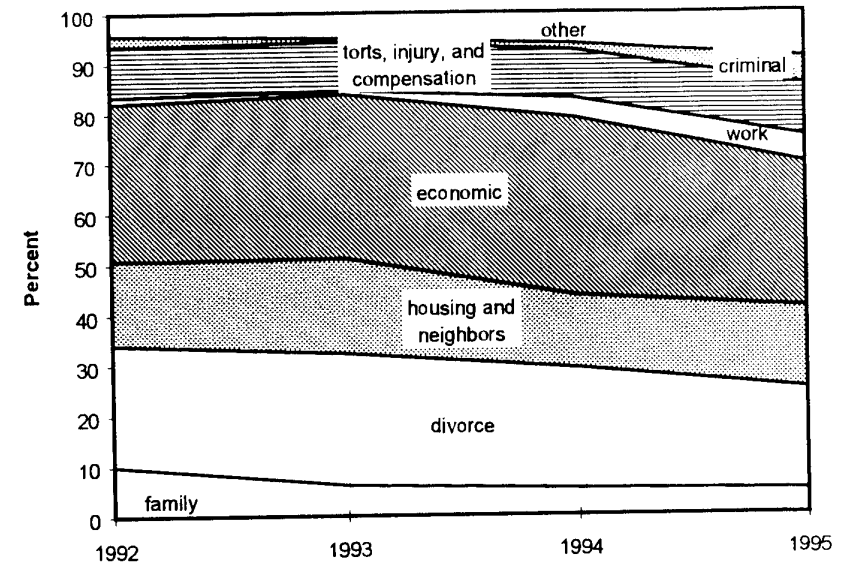
rather limited understanding of the scope of lawyers' work. Indeed, of all respondents, 4.1 percent had never heard of the word *lawyer*. And recall that 88 percent were unable to provide the name of a single lawyer. Similarly, a survey on legal consciousness conducted in the summer of 1994 (see Xia 1995) shows that 90.3 percent of those sampled in the urban districts of Beijing (N = 660) reported never having made contact with a lawyer, and 61.1 percent "couldn't say" whether lawyers were hard to hire (with the remainder split evenly between "agreeing" and "disagreeing"). Given this limited awareness of a small legal profession, it is clear that the composition of cases handled by lawyers (Figure 14) systematically hides much of the "true" landscape of disputes.

However, it is not merely a matter of people's limited knowledge and awareness of lawyers and law firms that inhibits the utilization of their services. Equally important is lawyers' deferring dispute-processing duties to intermediary organizations outside the courts, most notably to the *danwei*.

De Facto Legal Jurisdiction

In addition to the free telephone hot-line service in operation since June 1992, the Baocheng Law Firm also provides inexpensive face-to-face legal consultation.

Figure 14. Composition of Cases Handled by the Baocheng Law Firm, 1992-95

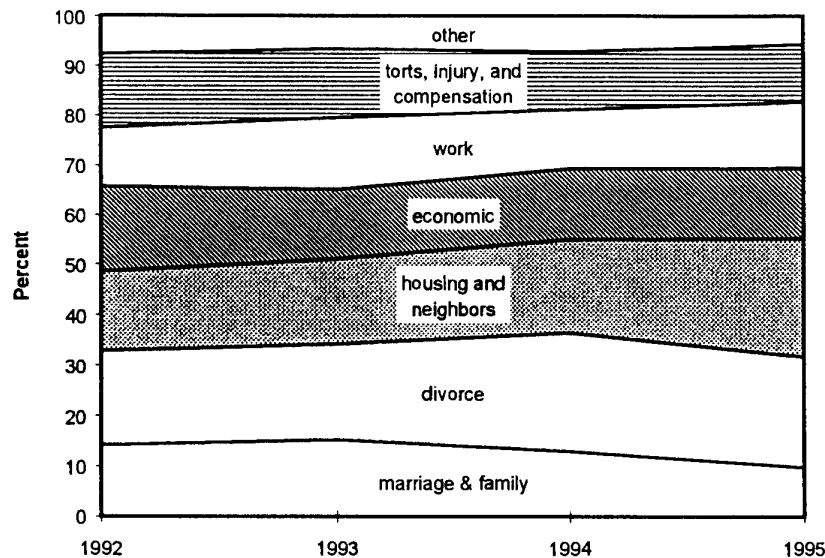


Note: N = 1,155: 1992, N = 229; 1993, N = 276; 1994, N = 365; 1995, N = 285.

The average fees charged for face-to-face legal consultations were 7.5 yuan, 10.3 yuan, 11.2 yuan, and 12.7 yuan in each respective year between 1992 and 1995 (see currency table in the appendix). Each consultation normally lasts about thirty minutes. The approximately thirty lawyers in the firm work obligatory legal advice service shifts. They are required to keep records of telephone calls to their hot line and of face-to-face consultations. The records contain information on the nature of the problems raised and the available legal options as presented by the firm lawyers. The date, the name of the lawyer fielding the query, the nature of the grievance (in varying degrees of detail), the advice (also in varying degrees of detail), and extremely sporadic demographic information on the advice seeker (sex, age, occupation, level of education, and residential location) are available. Between March and August 1996 I carried out a systematic random sample of one of every six records. I coded and recorded 1,108 records from the telephone hot line dated between June 1992 and November 1995, and 747 records from face-to-face consultations dated between January 1992 and December 1995, yielding a total sample of 1,855 legal queries. Since this sample is one-sixth of the total, the total number of records spanning the four years is approximately 11,130. From this sample, 569 queries contain legal advice information.

Since the records are all handwritten, I hired a Chinese research assistant to read the (virtually indecipherable) records aloud. The legal problems were coded using nested hierarchical categories I created on an ongoing basis throughout the

Figure 15. Composition of Legal Queries Taken by the Baocheng Law Firm, 1992-95

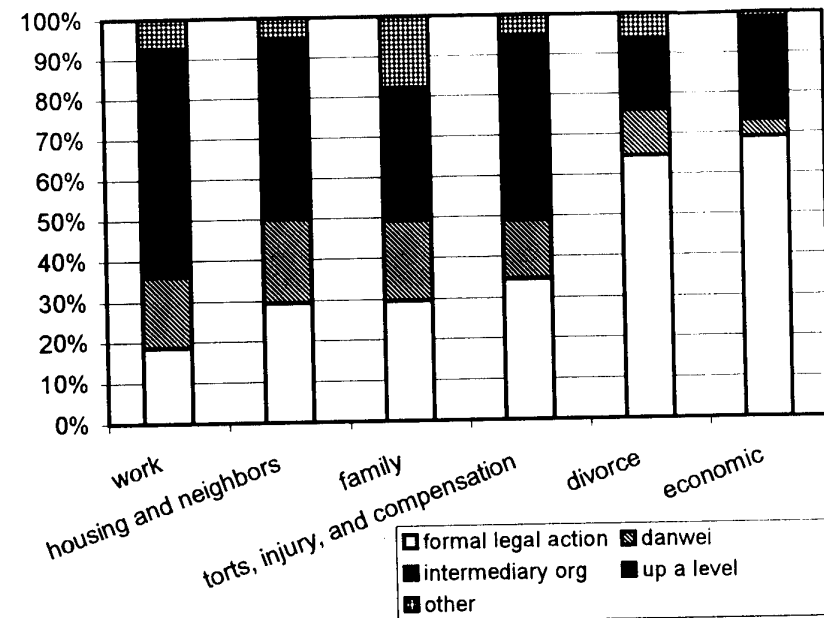


Note: N = 1,855; 1992, N = 457; 1993, N = 573; 1994, N = 417; 1995, N = 408.

entire process of reading and recording the legal advice records. In the end, 410 grievance-type categories were used. Given the ongoing, cumulative strategy of category construction, some redundancy, ambiguity, or otherwise problematic classification was inevitable. The problem raised earlier of multiplex problems spanning multiple domains is manifest.

Although any extrapolation of these legal query and advice data suffers from the same problem of limited popular legal awareness that afflicts the Baocheng legal case data, these data more than compensate in other ways. The Lawyer Bao legal query and advice records contain information on real-life problems that may never reach the stage of mediation, arbitration, or court. In other words, the questions are often, but not always, posed to the lawyers before any legal action is taken. Of course, many of these grievances will never evolve into full-blown disputes. For this reason they should give a more complete picture of the kinds of problems ordinary people confront daily compared to, say, court or mediation records. More important, they reveal circumstances under which lawyers defer legal jurisdiction to the danwei and other parts of the old redistributive system. Because they show grievances before action is taken, many disputes that ultimately remain contained by the danwei are included. Thus it should not be surprising that housing- and work-related problems figure more prominently in the legal query and advice data. Work-related problems average a fairly constant

Figure 16. Composition of Legal Advice by Query Type, Lawyer Bao Hot-Line and Face-to-Face Consultation Queries Combined, 1992-95



Note: N = 525; work, N = 108; housing and neighbors, N = 116; family, N = 61; torts, personal injury, and compensation, N = 90; divorce, N = 79; economic, N = 71.

12.8 percent between 1992 and 1995, while problems related to housing increase from 15.6 to 23.5 percent (Figure 15). Aggregating all problems with housing at their core, some of which are in divorce, inheritance, and work categories, the increase is from 21.4 percent of all queries in 1992 to 30.2 percent in 1995. Meanwhile, looking at the distribution of grievance types within all housing queries, the proportion accounted for by problems associated with demolition and relocation (*chaiqian*) projects increases progressively from 4.7 percent in 1992 to 32.3 percent in 1995. At the same time, the proportion of work-related grievances accounted for by problems associated with unpaid wages likewise increases progressively from 14.3 percent in 1992 to 36.9 percent in 1995. As we will see, these are problems lawyers tend to shy away from.

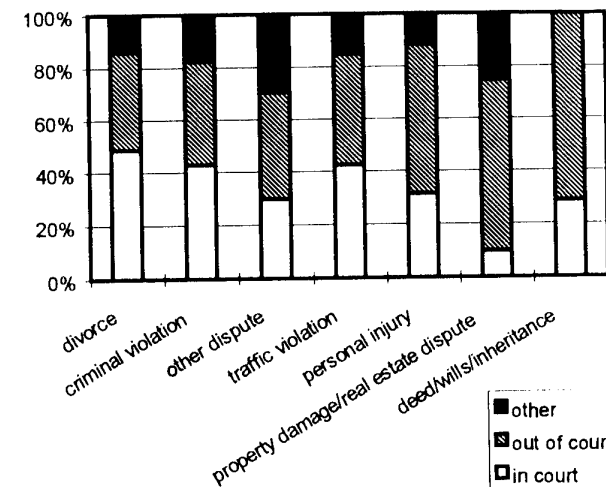
The data on legal cases handled by the Baocheng lawyers do, in a limited way, reflect lawyers' reluctance to bump heads with the old redistributive system. Figure 10 shows clearly that an out-of-court settlement between 1992 and 1995 was more likely in work-related cases (labor disputes, wage disputes, pension disputes, and job-transfer disputes) than in any other type of case. But the

legal query data show this with much greater clarity. The legal advice rendered by the attending lawyer was collapsed into seven categories: have family members mediate; approach danwei leaders; approach your union, Women's Federation, or similar danwei office;⁷ approach your local government; go up an administrative level; seek the relevant intermediary organization;⁸ and take formal legal action.⁹

Although the overall probability of a lawyer offering advice in any of the six extralegal categories (i.e., any category except "take formal legal action") declines progressively between 1992 and 1995, it nevertheless remained high at 44.8 percent in 1995 (Figure 9). Furthermore, in analyzing the composition of legal advice for each query type (Figure 16), the de facto legal jurisdiction of the intermediary organization emerges in high relief from these data. Work and housing queries are the least likely to elicit advice to take formal legal action (18.5 percent and 29.3 percent, respectively). Work-related grievances are the most likely to elicit the legal advice to go a level higher up the administrative hierarchy (20.4 percent, more than 10 percent more likely than any other query type). Of all problems associated with housing and neighbors, 20.7 percent elicited the advice to seek danwei leaders, a rate higher than any other query type and the overall average of 14.9 percent. The relatively low overall probability of lawyers suggesting formal legal action (38.1 percent) is significant given the strong incentive to solicit clients. According to Baocheng Law Firm rules, each lawyer must bill a minimum annual amount of legal services to remain part of the firm; and the lawyer attending the hot line or face-to-face consultation room has first dibs on the prospective client. Thus these legal query data reflect the strength and resilience of the traditional de facto legal jurisdiction of nonlegal institutions in China.

Of course, disputes never making it to court is not unique to China. We know that there exist intermediary dispute-processing institutions in the United States whose function is to deflect the threat of litigation away from large corporations (Nader 1979). We also know that American lawyers serve as filters, keeping many cases from reaching the courts (Mnookin and Kornhauser 1979; Sarat and Felstiner 1995). Indeed, according to a 1993 survey, the incidence of lawyers settling disputes out of court is remarkably high in the United States. Of the 464 respondents (out of a total of 1,004) who indicated hiring a lawyer "for a legal dispute or grievance like a divorce or child custody case, a personal injury lawsuit, a traffic violation, or a criminal complaint during the last five years" and who provided information on the nature of the dispute or grievance and the settlement method, 46 percent reported that their disputes or grievances were settled out of court by the lawyer (Miethe 1995).¹⁰ Furthermore, it seems plausible that the relatively high likelihood of settling personal injury and property/real estate disputes out of court (57 percent and 65 percent, respectively) is owing, in part, to lawyers' fear of challenging large corporate power (Figure 17). Of these personal injury and property/real estate disputes, 66 percent and 79 percent,

Figure 17. Settlement Method by Dispute Type, United States Sample, 1993



Source: Miethe 1995.

Note: N = 464; divorce, N = 198; criminal violation, N = 28; other dispute, N = 64; traffic violation, N = 33; personal injury, N = 51; property damage, N = 83; wills and inheritance, N = 7.

respectively, were plaintiff cases, a rate higher than the total average of 63 percent. And these kinds of plaintiff cases are somewhat more likely to be made against corporations (often insurance companies) with a large budget for legal counsel (e.g., in slip-and-fall, auto collision, tort, and liability disputes). Indeed, in both personal injury and property/real estate disputes, plaintiffs were 20 percent more likely than non-plaintiffs to settle out of court, while in all other dispute types plaintiffs were 20 percent less likely than non-plaintiffs to settle out of court (Miethe 1995). Thus Chinese and American legal practice both share a risk-minimizing rational behavior, but the adversaries they try to avoid in court are quite different. Chinese legal practice, insofar as it remains relatively undifferentiated from the state administrative structure, tends systematically to avoid posing a challenge to the system it is charged with protecting, the public sector.

Until this point I have shown mere summary statistics of the incidence of lawyers deflecting disputes away from the law. I will now describe in somewhat more detail the nature of some of these cases of lawyers deferring to outside, nonlegal organizations. The following are a sample of work-related problems that the attending lawyer dismissed as being beyond the scope of the law and within the bounds of danwei prerogative:

phone call, March 1992: This thirty-nine-year-old male cadre wants to know whether his wife's danwei's using her photo in promotional materials without her permission is an infringement of her rights. The lawyer expresses bewilderment that they even care about this.

phone call, July 1992: A woman is calling about her danwei's having stopped paying her wages while she is on bail awaiting trial. The lawyer replies that she is not entitled to pursue such a matter through legal channels.

phone call, October 1992: A man calls about wanting to transfer jobs (i.e., move to another danwei), but his danwei demands he pay a "training fee" (*peixun fei*) for releasing his personal dossier. The lawyer says the danwei is entitled to make this kind of demand.

visit, September 1992: A woman complains about her danwei's having stopped paying her wages because she is pregnant and temporarily not working. The lawyer says this is not a legal problem and that the courts will not accept this case.

phone call, February 1993: A woman asks whether it is legal that her danwei is tape recording its employees' personal phone calls and then punishing those who use obscene language. The lawyer says it is perfectly legal.

visit, March 1993: This twenty-year-old male describes how, when he was a child, he was hit by a car and permanently disabled. The danwei that owned the car agreed to pay a monthly allowance and arrange employment for him when he grew up. Now he is an adult and the danwei still has not arranged a job for him. The lawyer explains that the employment situation in Beijing is dire and that he should not expect a job.

visit, October 1993: A twenty-nine-year-old man describes how his father was beaten to death by a danwei leader and how the matter was covered up by the danwei's Party Committee for Inspecting Discipline, which closed the case proclaiming he died of cancer. The hospital confirmed that he did indeed have cancer, but that he would have lived at least a couple of more years had he not been beaten to death. The lawyer suggested approaching the Public Security Bureau. (This case differs from the others in that the lawyer recommended a genuine organ of the law; but, nevertheless, the lawyer would not take the case himself.)

phone call, May 1994: A man describes being falsely accused of stealing danwei property and being wrongly punished. The lawyer says that this is an internal danwei matter, beyond the scope of the law.

That lawyers, as well as the courts, rarely challenge the de facto legal jurisdiction of the traditional Maoist redistributive system is a function of organizational inertia. All systems require time to work out the kinks of major transitions. The period of the transition to law captured here is extremely tumultuous and dramatic. But more important, perhaps, the practice of law has been incorporated into the state structure. The judiciary is not an independent branch of government but rather is beholden to the state and Party, a situation that many legal scholars

are working to reform (Chai 1996; Han 1996; Huang 1996). Furthermore, buttressing state policy is an explicit function of Chinese lawyers; that is, Chinese law appears undifferentiated from the state (Gregg 1995). The following sums up the subordinate position of lawyers vis-à-vis the state:

Chinese lawyers are state legal workers. They are not professionals in the Western sense. They shoulder highly political and professional tasks and obligations. . . . In other words, politically lawyers should be patriots first and foremost, and, at the same time, they are revolutionaries who firmly adhere to the socialist road. By satisfying these two basic political requirements, lawyers working within socialist laws serve the fundamental interests of the state and the people by performing their services and guaranteeing the proper functioning of the socialist legal system. (Du and Zhang 1990, 195)

The undifferentiated and interpenetrating nature of the delivery of justice, the state, and the traditional redistributive structure is clear in the following examples from the Baocheng legal query data of housing disputes:

phone call, July 1992: A woman describes how her danwei violated her housing assignment agreement by attempting to take back her apartment. When she refused to vacate, her danwei started deducting 90 yuan from her monthly wages. The lawyer explains that this problem is beyond the scope of the law.

visit, December 1992: A forty-three year-old male peasant consults about the township government breaking his land-use contract and evicting him from his land. The lawyer says nothing can be done.

phone call, September 1992: A woman calls about the legality of her danwei's levying a fine for her delay in moving out of her apartment in a "housing adjustment." The attending lawyer replies, "You must unconditionally support the housing reforms."

phone call, November 1993: A man calls on behalf of a friend whose home is being seized by the municipal housing administration because he is abroad. The lawyer says nothing can be done.

visit, February 1993: A fifty-five-year-old man is being forced by his danwei to move out of his current (and unofficial) housing and into housing it just assigned to him, a housing assignment that is much smaller than his original non-danwei housing. The lawyer says he must follow the danwei's lead.

visit, June 1993: A forty-four-year-old man explains how his nephews live in his household but that his danwei will not take this into account when making a new housing assignment. The lawyer explained that nothing can be done.

visit, July 1993: The district-level Bureau of Finance took over this forty-year-old man's housing. Upon suing in court, the court ordered a three-room apartment as compensation. This man is dissatisfied and wants something better. The lawyer explains that nothing more can be done.

visit, July 1993: This forty-three-year-old man feels he got a raw deal from his danwei in a demolition and relocation project. The lawyer replies, "The danwei is correct."

visit, September 1993: A thirty-six-year-old woman complains that her danwei's wants to exchange her apartment for a smaller one after one of her parents died. The lawyer explains that this is legitimate action on the part of her danwei.

visit, November 1993: After resigning from his job, this man wants to keep his housing assignment, but his danwei is demanding it back. The lawyer tells him that he must return the apartment.

phone call, August 1994: A woman complains about being refused a housing assignment by her danwei. The lawyer explains how this is not a legal problem, but rather an internal danwei matter.

visit, January 1994: A thirty-nine-year-old man describes how his mother paid a deposit on housing but now, after his mother died, the danwei refuses to issue the housing. The lawyer suggests he continue negotiating with the danwei.

visit, April 1994: A thirty-three-year-old male chef explains that on his meager salary of 130 yuan per month he cannot afford to rent an apartment and is forced to sleep in the restaurant. However, his boss will not allow this. The lawyer sent him off to continue trying to work things out with his boss.

Summary and Conclusions

This introduction provides a general framework for the Lawyer Bao advice column. In addition to outlining the historical development of the column, I also provide an overview of the work of lawyers in the Baocheng Law Firm, the kinds of disputes the courts and People's Mediation Committees handle and changes thereto, and the kinds of disputes that never obtain access to formal law. The law is becoming increasingly formalized and specialized. The traditional practice of mediation is in great decline in general, as the work of the People's Mediation Committees tapers off. Furthermore, the practice of mediation in the courts and by lawyers appears in even greater decline as they increasingly specialize in litigation. This expansion of formal legal work is reflected in the Lawyer Bao columns.

However, and more important, these columns also show with great clarity how the law frequently defers jurisdiction over the delivery of justice to the danwei and other nonlegal organizations. In this way, disputes form a window to a fundamental feature of Chinese social organization: the tremendous scope of danwei authority. We see plenty of examples of the de facto legal jurisdiction of the danwei and other nonlegal organizations in the Lawyer Bao columns. The following are highlights of the kinds of statements we will see in the columns showing the undifferentiated relationship between the state and the law. Lawyer Bao proclaims in his column of July 4, 1991, that the reader's problem is not one the law is authorized to handle:

I should first make clear that this two-room apartment is not your common property, nor is it the male side's personal property. Rather, it is the danwei's public property and is normally referred to as public housing. In other words,

you only have use rights, not ownership rights. At the time of a divorce, the court lacks both the authority and the need to decide to whom the apartment should go!

In the December 27, 1990 column (to appear in the second issue):

Your letter describes someone privately opening other people's drawers and secretly looking and secretly taking other people's letters, documents, and so on. This is criminal behavior. However, the law has not constituted this type of behavior as criminal, and there are no stipulations on how to punish this kind of behavior. Normally, administrative leaders carry out education through criticism.

In the June 24, 1993, column (also to appear in the second issue), a reader describes how his sister was forced to retire after her danwei merged with another enterprise:

Regarding your older sister's plight that you described in your letter, under current circumstances she can continue to explain her difficulty to her enterprise leaders and demand that they try their best to reallocate her internally. At the same time she may consider the overall situation, reflect on the fact that the state and enterprises are also all having difficulties, prepare herself mentally, go through recuperation and medical recovery, restore her health, and look for new work or continue working with the help and support of her danwei.

The letter printed on February 21, 1991 (that will also appear in the second issue), describes a group of residents who want to file a class action suit against the telephone company for collecting deposits but delaying more than a year to install the telephone lines:

At the present time there is an imbalance in the supply and demand of telephone lines in the city, an imbalance that can be resolved gradually in the process of national construction. Beijing has not established an economic court. According to people's court rules of organization stipulations, the courts will not hear this kind of dispute.

The crucial point is not whether Lawyer Bao's advice is correct. Indeed, we can be certain that Lawyer Bao is occasionally wrong.¹¹ Rather, it is being wrong and being wrong in favor of outside nonlegal organizations—the state administrative structure and the public sector—that counts. Indeed, the contradictory advice offered by Lawyer Bao further supports this phenomenon. Newspaper columns suggesting formal legal procedures on the basis of detailed legal stipulations coexist with telephone, face-to-face, and newspaper advice to the contrary. The columns in part 1 of the second issue ("Housing and Neighbors"), particularly section C, "Building Demolition and Resident Relocation," show how available laws and procedures fly in the face of the prevailing legal practice of deferring to the danwei.

But this should come as no surprise. We know that American lawyers are more likely to advise avoidance or out-of-court settlements when the adversary is a large corporation with deep pockets for legal counsel. In the United States this is an economic calculation. In China it is also an economic calculation but even more a political calculation of lawyers to avoid a dispute with the very structure the upholding of which is their professional mandate.

So what is the bottom line? Despite the opening up of the courts, the emergence and development of a legal profession, and the litigation explosion, intermediary corporate power, especially at the danwei, remains strong. This is especially clear with regard to housing, which emerges in particularly high relief in Beijing. Danwei housing, as a proportion of all housing in 1990, was 68 percent in Beijing compared to a national urban average of 59 percent (Bian et al. 1997, 230). As the danwei continues to spearhead the housing reforms, the danwei's control over the individual is unlikely to disappear any time soon (Bian et al. 1997: 243-46). Furthermore, unless there is a dramatic change in the degree to which lawyers and the courts subordinate themselves to the interests of the state and the Party, there is no reason to believe they will start challenging the de facto legal jurisdiction of nonlegal organizations in the immediate future. But as China's transition to law matures, we will keep watch for opportunities for individuals to push through the retaining walls of their danweis and for lawyers and the courts to begin challenging the boundaries of these walls.

Notes

1. An index of all cited bodies of law, containing their Chinese names (in *pinyin*), the specific articles cited, and the Lawyer Bao columns in which they appear, is available on request.

2. "Newspaper" is *baozhi* in Chinese.

3. This is a play on words: The word *upset* in Chinese is also pronounced "ji."

4. This information was not reported in the years before 1994.

5. The 615 respondents were asked whether they knew the names of any lawyers. Only 12 percent were able to provide a name (50 percent said they would only be able to recognize a name, and 38 percent said they had never heard the name of any particular lawyer before). These 12 percent were then asked to provide the name of a lawyer. Of the 59 names that emerged, the most popular was Gong Sha, a female lawyer famous for representing two women illegally detained and searched by security guards in a foreign-owned supermarket. This case received substantial press coverage in 1994. However, the lawyer with the second greatest name recognition was Lawyer Bao. And the third was Lawyer Tao (Tao Jiwei), the director of the Lawyer Bao Law Firm (*Beijing qingnian bao*).

6. "Baocheng" means "guaranteed honesty," but, when spoken, it sounds more like "guaranteed success." Furthermore, Bao Qingtian's nickname, "Baozheng," is commonly pronounced "Baocheng."

7. This category includes Women's Federation, Supervisory Committee or Department, danwei Security Department, Party disciplinary organ, Political Committee, or labor union.

8. Outside intermediary organizations include the following: Public Security Bureau, Labor Bureau's Arbitration Committee, Bureau of Housing, Bureau of Sanitation, Copyright Bureau, Urban Construction Department, newspapers to publicize the problem, Bureau of Industry and Commerce, Bureau of Post and Telecommunications, Traffic Department, Department of Family Planning, Bureau of Education, the school in question, Telephone Bureau, Consumer Association, Quality Inspection Department, the demolition and relocation team in question, Bureau of Urban Planning, the hospital in question, or the Municipal Personnel Department. Local government includes your Neighborhood Committee or your Street Committee's Mediation Committee.

9. Legal advice that is considered formal legal action includes the following: file suit in court, approach the People's Procuratorate, approach a judicial organ, hire a lawyer, or see a notary public.

10. One should be cautious about making comparisons with the Baocheng Law Firm data. The Baocheng Law Firm data include both personal and corporate clients; a significant portion of its litigation work is representing firms. But the survey data from the United States does not capture business litigation, which, I expect, would significantly lower the overall incidence of out-of-court settlement.

11. According to legal scholars whom I consulted at the Chinese Academy of Social Sciences' Institute of Law, the People's Courts do handle economic matters, and the courts are empowered to hear cases against the Telephone Bureau. Further, certain judicial opinions on the *General Rules of Civil Law* would consider the infringement of privacy rights a criminal offense.

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Marriage and Family

A. Marriage Procedures, Marital Problems, and Dating

Did they commit the crime of bigamy? (May 25, 1989)

My friend left his family because of a love triangle. There are some legal questions on which I'd particularly like your guidance.

At the end of 1984 the male and female parties got to know each other at a middle-school cultural studies class organized by their danwei. At first they kept their relations hidden, but eventually they moved in together. At the time, both were already married, and their respective spouses were working in the city. Moreover, they both already had children. Afterward, because the resulting marital conflicts came to involve the local Police Substation, they received the educational assistance of their danwei. Following this, the male party had his job transferred outside the city, and the two were separated for two years. Then the female party's marriage completely fell apart, so she found the male party to continue their relationship, and they moved back in together. Because the male party's wife refused to get a divorce, he simply followed the female party. It is said that they found a place to live, but no one knows exactly where.

Not so long ago the male party's wife, together with his mother, approached his danwei leaders, but the workshop director told them, "There's nothing I can do about the situation they've already started."

What should be done about this situation? Does long-term cohabitation that results in de facto husband-wife relations count as bigamy? Can a case be made against the landlord who was clearly aware of the situation but did not report it? Should the landlord shoulder legal liability? Should the danwei be involved? I hope to receive an answer.

The editor replies:

According to Article 180 of *China's Criminal Law*, "Those who marry again already having a spouse or marry someone else clearly knowing he or she already has a spouse are subject to punishment of up to two years in prison or

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