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State and Professions:

A Study of Lawyers and Doctors in Reform China

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A thesis submitted for the degree of Doctor of Philosophy of The Australian National University

June 2002
Statement

I hereby declare that this dissertation has never previously been submitted for any degree, and is the result of my own original work. The thesis contains no material previously published or written by another person except where due reference is made in the dissertation itself.

Eva Po Wah Hung

7 June 2002
Abstract

This dissertation adopts an institutionalist paradigm to examine the relationship between the state and the lawyers and doctors in reform China. It seeks to explain the two professions’ differing courses of professionalization in terms of their evolving relationship with the state over the past two decades by looking at the macro, meso, and micro institutional environments in which lawyers and doctors are located in the reform era. It argues that there is no linear relationship between economic development and professional development. The favorable conditions opened up for the professions at the macro level are essentially mediated by the different constellations of state interests at the meso level. As a result of the historical past in the legal and medical sectors, the state imposed differing logics in the institutionalization of law and medicine in the reform era. This shaped concrete reform policies at the micro level, particularly in the arenas of education and professional practice, and this in turn presented different institutional opportunities and constraints for lawyers and doctors to act upon and different niches from within which they could gain different senses of being a “profession”. The dissertation argues that professionalization in China must be understood in such an interlocking institutional complexity, and that the interests and actions of actors, including both the state and professions, must be interpreted in terms of their institutional embeddedness.
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## Abbreviations

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<th>Description</th>
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<tbody>
<tr>
<td>ANHS</td>
<td>Quanguo weisheng tongji nianbao ziliao [Annual National Health Statistics]</td>
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<tr>
<td>BR</td>
<td>Beijing Review</td>
</tr>
<tr>
<td>BYD</td>
<td>Beijing qingnian bao [Beijing Youth Daily]</td>
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<tr>
<td>CD</td>
<td>China Daily</td>
</tr>
<tr>
<td>CCP</td>
<td>Chinese Communist Party</td>
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<td>CCN</td>
<td>Zhongguo xiaofezhe bao [China Consumer News]</td>
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<tr>
<td>CEY</td>
<td>Zhongguo jiaoyu nianjian [Chinese Education Yearbook]</td>
</tr>
<tr>
<td>CHP</td>
<td>Zhongguo weisheng zhengce [Chinese Health Policy]</td>
</tr>
<tr>
<td>CHS</td>
<td>Zhongguo weisheng jie [China’s Health Sector]</td>
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<tr>
<td>CHY</td>
<td>Zhongguo weisheng nianjian [Yearbook of Public Health in the PRC]</td>
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<tr>
<td>CHE</td>
<td>Zhongguo gaodeng jiaoyu [China Higher Education]</td>
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<tr>
<td>CL</td>
<td>Zhongguo liishi [China Lawyer]</td>
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<tr>
<td>CLN</td>
<td>Zhongguo liishi bao [China Lawyer News]</td>
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<tr>
<td>CSY</td>
<td>Zhongguo tongji nianjian [China Statistical Yearbook]</td>
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<tr>
<td>CYD</td>
<td>Zhongguo qingnian bao [China Youth Daily]</td>
</tr>
<tr>
<td>ESYC</td>
<td>Zhongguo jiaoyu tongji nianjian [Educational Statistics Yearbook of China]</td>
</tr>
<tr>
<td>HN</td>
<td>Jiankangbao [Health News]</td>
</tr>
<tr>
<td>LCHR</td>
<td>Lawyers Committee for Human Rights</td>
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<tr>
<td>LD</td>
<td>Fazhi ribao [Legal Daily]</td>
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<tr>
<td>LYC</td>
<td>Zhongguo falü nianjian [Law Yearbook of China]</td>
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<tr>
<td>MOH</td>
<td>Ministry of Health</td>
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<td>MOJ</td>
<td>Ministry of Justice</td>
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<tr>
<td>NPC</td>
<td>National People’s Congress</td>
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<tr>
<td>PD</td>
<td>Renmin ribao [People’s Daily]</td>
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<tr>
<td>PD-OE</td>
<td>Renmin ribao haiwaiban [People’s Daily Overseas Edition]</td>
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<tr>
<td>SCMP</td>
<td>South China Morning Post</td>
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<tr>
<td>YJA</td>
<td>Zhongguo sifa xingzheng nianjian [Yearbook of Judicial Administration in China]</td>
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Chapter One

Introduction

"The next generation of the Chinese leadership will definitely comprise lawyers, as in the West," a law professor from one of the prestigious universities in Beijing once said to me assuredly.

There are good reasons to be skeptical about this professor’s optimism. The present leadership is still by and large composed of technocrats; and the Chinese state is more interested in engineering a “strong” China in economic and scientific and technological terms than in building a society where everyone is guaranteed individual rights enforced by a sound system of rule of law. But Chinese lawyers did increasingly become a visible group in society, with an enhanced social status. Unlike during the 1950s through 1970s, Chinese lawyers today have gained a legitimate place in society. By the mid 1990s more than 400 lawyers were elected to people’s congresses at all levels and more than 500 were members of the Chinese People’s Political Consultative Conference committees at all levels (PD-OE 16/11/96: 6).

Their role became particularly notable when the Chinese government assured its people that China is establishing itself as a “lawful society” (fazhi shehui). To lend support to this legal enterprise, the legal profession has been developing in a vigorous way: the numbers of lawyers and of law firms increased more than four-fold and
thirteen-fold respectively during the first two decades of reform (PD-OE 16/11/96: 6; CSY 2001: 751). Not only has law become a hot discipline sought after by potential entrants to universities, the occupation also ranks high in studies on occupational prestige in China (e.g. Cai and Zhao 1995). Foreign trained Chinese lawyers are given privileges to practice and even to open their own law firms in China. In notorious criminal cases, the right of the accused to defense attorneys is also underscored. As the economy develops, Chinese lawyers are also playing their part in this economic boom by contributing to the establishment of a regulated market structure. Lawyers are therefore seen as one of the important bridges in China's striving to link up with the rest of the world (yu guoji jiegui). They are becoming increasingly visible and organized. They are outward looking, and their role in economic development unambiguous.

Chinese doctors, on the other hand, are much less visible within the context of China's reforms. Compared to the legal profession, doctors have faded from the public scene, hidden in their daily routines in public hospitals and clinics. If they are noted, it is more often through complaints about their relationship with patients, or about their pocketing “red packets” (hongbao). Although health reform also tops the reform agenda, the role doctors could have played is largely disregarded, and they are seen as peripheral. Their voices regarding the policy and direction of health reform are little heard. Although an established profession since before the founding of the People’s Republic, their presence in the wave of reforms is largely invisible.

Studies of occupations and professions have commonly used doctors and lawyers as case studies (for a specific calculation see Abbott 1993: 193; more generally see for example Freidson 1970; Heinz and Laumann 1982; Starr 1982; Abel
and Lewis 1989; Wilsford 1991; etc.). Still others have used them for comparative purposes (e.g. Rueschemeyer 1972; May 1983; Macdonald 1995; Krause 1996; etc.). One reason is that law and medicine are the most well-established professions. In the Middle Ages, when all “learned men” were in some sense religious specialists, law and medicine stood out as ecclesiastical specializations and, along with the clergy, were regarded as the traditional professions. With the decline of the church and the rise of universities, intellectual training and technical competence became central in defining the professions (Parsons 1968). The clergy was marginalized in this process, whereas law and medicine, together with engineering and the university professoriate (cf. Krause 1996), are now considered central to our understanding of the organization of modern professions. In studies of occupational prestige, these professions also tend to rank high. Another reason to account for the focus on law and medicine is that many studies stress the way specific professions shape public discourse (e.g. “justice” and “health”) and the private lives of ordinary citizens (e.g. “illness” and “individual rights”). In this regard, engineering and university professoriate are considered to have lesser influence.

The differences in the professional standing of lawyers and doctors in China in the reform era therefore makes good comparative case. This is particularly so if we take into account their differing histories: law suffered a lacuna of two decades whereas medicine enjoyed a continuous presence during the tumultuous years of the 1960s and 1970s. The different situations of lawyers and doctors in China pose a challenge to popular wisdom that economic development and market liberalization allow professions the opportunities to develop (cf. Macdonald 1995: 72). Arguably, if “an industrializing society is a professionalizing society” (Goode 1960), one would
surmise that medicine should be in a better position to benefit from economic reforms, since it was better established than law at the beginning of the race. But the two decades of reforms show that law is now far ahead of medicine in the professional project of collective upward mobility. Whilst there is little doubt that professional development in China is state-led, economic development seems also to exert a differing effect on the development of lawyers and doctors.

This dissertation argues that while the overall macro institutional environment, i.e. economic development, is favorable to overall professional development, its exact impact on professions is mediated by the meso-institutional environment, including differently implemented reforms in different sectors. While legal reform is seen as one of the priority objectives in China’s overall reform agenda, health reform is only remotely related. The logic behind these two areas of reform also differs: while the health sector reform inherited, at least on the surface, the Maoist ideology to “serve the people”, law’s pivotal role in economic development means the rationality of reform here is necessarily one of “serve the economy.” (“Serve the people” is supposed to serve as a larger ideal whereas “serve the economy” is the more immediate concern since it is instrumental to the rhetoric of “linking up with the globe”.) It is precisely this differing rationality that drives state involvement in the two sectors apart. Drawing on Peter Evans’ *Embedded Autonomy* (1995), I argue that in socialist China state involvement is basically a given fact in every arena of development. Thus it is more meaningful to look at how state involvement differs than to ask how much the state is involved. Given the differing kind of state involvement and rationality in the two respective areas of sectoral reform, I will argue that lawyers are pretty much “reactive actors” in legal reform while doctors are at best
inactive actors” in health reform. State involvement in turn sheds light on the
everyday micro-institutional environment in which the two professions exist. The
arenas of education, workplace, and the structure of professional practice open up
differing opportunity structures the two professions could act upon. The new
institutionalist approach thus equips us to see how actors’ actions and perceptions are
structured by their immediate environment.

The Sociology of Professions Revisited

The sociology of professions is a sub-field of the sociology of work and
occupations. One of the fundamental issues in studying the professions involves the
question of how the occupations commonly known as the professions come to be
known as such. In popular usage, the term “profession” conveys an aura of prestige,
respect, and positive evaluation. To speak of a particular kind of work as a profession
is to accord it a high position, and hence individuals, as professionals, also generally
assume a high social status in society. To refer to a person as unprofessional is to
charge that he or she is incompetent. But what counts as a profession? In the
literature there are basically two views. The earlier approach adopts an essentially
static view in that it was preoccupied with delineating the fundamental characteristics,
or traits, that define the professions. Criticisms have been leveled at this static view
and later approaches take a more dynamic view by examining how some occupations
actually succeed over time in claiming the status of professions.
The Static View

It has long been suggested that "an industrializing society is a professionalizing society" (Goode 1960: 902) and a professional class eventually becomes "the heart of the post-industrial society" (Bell 1973: 374). The rise of such a professional society has been regarded as a "third revolution" in the modern world (Perkin 1996). But to speak of a professional society we are necessarily confronted with a core definitional exercise, "What constitutes the professional class?" Discussion therefore essentially starts with identifying the professions as such -- outlining the traits and attributes that differentiate them from other occupations that are also aspiring to seeking the title. This preoccupation with definitions resulted in the monumental volume by A. M. Carr-Saunders and P. A. Wilson (1933). They surveyed some thirty vocations that were then considered as professions in England, and concluded that the chief distinguishing characteristic was "the application of an intellectual technique ... acquired as the result of prolonged and specialized training" (p. 491), and that "professions can only be said to exist where the practitioners come together in free associations. Desire to associate and ability to do so are the pre-requisites of professionalism" (p. 495; see also Goode 1957).

Other defining attributes are more normative and evaluative. The "ethical approach" widely held before the 1930s maintained that professional people were altruistic (cf. Marshall 1964) and that the professional community was a "disinterested" one (Haskell 1984). Professionals also were supposed to enjoy work autonomy, on the assumption that their self-regulation and self-control through professional associations differentiate them from other work groups that do not have the freedom and power to regulate their own work behavior and working conditions.
Hence a profession is of itself a “community” (Goode 1957). It is generally agreed that the cognitive dimension of an expertise based on theory and knowledge, a normative dimension of a professed ethics of serving the public, and an evaluative dimension of organized autonomy in and monopoly of the service, are the shared attributes of the professions (Johnson 1972: 23; Larson 1977: x; Pavalko 1988: 19-29). But a survey of the literature points more to a lack of consensus among the trait theorists than about what actually “defines” the professions (Millerson 1964: 5).

By delineating the attributes of the professions, the trait approach also suggests an end-state to the ideal of professionalism, and that there exists an order or a natural history of professionalization (Hughes 1958: 133-7; Goode 1969). After examining the history of eighteen occupations, Harold Wilensky (1964) uncovered an order of “events” through which the established professions developed:

Men begin doing the work full time and stake out a jurisdiction; the early masters of the technique or adherents of the movement become concerned about standards of training and practice and set up a training school, which, if not lodged in universities at the outset, makes academic connection within two or three decades; the teachers and activists then achieve success in promoting more effective organization, first local, then national – through either the transformation of an existing occupational association or the creation of a new one. Toward the end, legal protection of the monopoly of skill appears; at the end, a formal code of ethics is adopted (pp. 145-6).

On the basis of how far occupations moved along this process, Wilensky classified the professions into four types: namely, the established professions (e.g., law and medicine), professions in process or marginal (e.g., librarianship and nursing), new professions (e.g., city planning and hospital management), and finally doubtful professions (e.g., advertising). Wilensky thus instilled a temporal dimension to the study of professions, and even critics agreed that the process he identified “does have
a certain regularity” (Abbott 1991: 379). Nonetheless, his model takes as a given the validity of the trait approach, that professionalization ultimately involves acquiring the traits at the idealypical end of the continuum (Pavalko 1988: 35). In this vein, studies of professions and professionalization are tautological because surveys on professions to examine and evaluate the characteristics of professionalism essentially helped to construct and further reinforced the existing professions as the professions (Freidson 1994: 23).

Emphasis on traits to some extent overlaps with the functionalist approach, which until the 1960s dominated the sociology of the professions. In the main, functionalists considered the professions as stabilizing elements in society. To paraphrase Carr-Saunders and Wilson (1933),

That professional organizations are stable elements in society... their members are conscious of the past; they are aware of a long chain of endeavours towards the improvement and adaptation of the technique. The old formula presses upon them; they inherit, preserve, and hand on a tradition. They know that nothing is to be achieved in their own sphere by destruction or revolution, and they assume that the same applies in other spheres. ... They engender modes of life, habits of thought, and standards of judgment which render them centres of resistance to crude forces which threaten steady and peaceful evolution. ... The family, the church, the universities, certain associations of intellectuals, and above all the great professions, stand like rocks against which the waves raised by these forces beat in vain (p. 497).

The functionalist approach is in particular informed by Emile Durkheim’s (1958) contribution on professional ethics. In his view, the formation of moral communities based upon occupational membership is a positive force in societal development and helps save a society from a breakdown in moral authority. Other functionalists have emphasized the professions’ socially functional traits. T. H. Marshall (1939) argued that a service ethic such as altruism was central to the nature of professionalism. The
view that professions were actuated by the common good was restated by Talcott Parsons (1954), who pointed out that professions were to be distinguished from business by their collectivity-orientation rather than self-orientation.

What the trait model thus reveals is a highly value-laden perspective of professions. It implies that professions are intrinsically desirable, and professionalization something actively sought after by other occupations. But Eliot Freidson (1994: 24) has pointed out that the "essence" of a profession should cease to be an issue. A "profession," as he succinctly put it, is pretty much a folk concept and is therefore phenomenological in character. It is a folk concept for lay people in the society to determine whether an occupation is or is not a profession, or is a semi-profession (cf. Etzioni 1969), or is more or less professional than other occupations. To ascertain an occupation to be a profession is therefore a constructed enterprise. In other words, no occupation is *sui generis* a profession. It is always up to social theorists to construct why one occupation is regarded as a profession and others excluded. The social construction of professions therefore involves a dual process. One is the effort, conscious or unconscious, by the professionals themselves to claim such a status in society. The other is the effort by social theorists to construct and formulate theories to explain the profession. Sociologists, however, should do more than just outlining the traits but instead should focus on how a particular occupation becomes a profession. Instead of adopting a static view to define what a profession is, one should opt for a more dynamic view that involves both action and process to examine how the professions have arrived at their present status.

Freidson (1986) pointed out that the problem of defining professions lies in the attempt "to treat professions as if it were a generic concept rather than a changing
historic concept with particularistic roots in those industrial nations that are strongly influenced by Anglo-American institutions" (p. 32). As such, the present study adopts Macdonald’s (1995) definition of professions that simply refers to them as “occupations based on advanced, or complex, or esoteric, or arcane knowledge” (p. 1). Thus, even though critics might argue that doctors and lawyers in China are devoid of the kind of ideal of organized autonomy, they can be treated as professions defined by knowledge. Terms like professionals and professions therefore get used as a kind of shorthand and not a closely defined technical term.

The Dynamic View

Starting from the 1960s critiques have been leveled at the functionalist “trait” approach. Critics argued that the trait approach failed to answer the questions of why professions came to be structured in the way they are, and how they acquired the status and influence they have. To illuminate these questions, one must look at the process of how the groups made their claims in order to gain legitimacy. In the words of Everett C. Hughes (1958):

In my own studies I passed from the false question “Is this occupation a profession” to the more fundamental one “what are the circumstances in which people in an occupation attempt to turn it into a profession and themselves into professional people?” (p. 45)

In studying “process” a power perspective came to dominate the field, in which “the key to the nature of the professions is thus the possession of power” (Hall 1983: 12). This power perspective is best embodied in the work of Eliot Freidson
According to Freidson, professions are fundamentally a phenomenon of labour market organization. Their basis "lies in the capacity of occupations to become organized groups independent of firms and other occupations in the same class or stratum" (1994: 75-6). Through the monopoly of knowledge and gatekeeping, the professions achieved dominance and extended this over other kindred occupations. Another variant of the power perspective derives from Terence Johnson's *Professions and Power* (1972), which focused on the relations between producer and consumer of professional services and the extent to which the producer could or could not control the relationship and thereby benefit from it. In his view, "Professionalism arises where the tensions inherent in the producer-consumer relationship are controlled by means of an institutional framework based upon occupational authority" (p. 51).

Building on the power perspective, Magali Sarfatti Larson explored the question of process in a matrix of historical complexities. Her seminal work, *The Rise of Professionalism* (1977), represents a major departure from earlier emphasis on structure to that of action. Instead of addressing the functional question that was so prevalent in previous literature of "What part do the professions play in the established order of society?" Larson shifted to ask "How did the occupations that we call professions organize themselves to attain market power?" Larson conceptualized the rise of professionalism as a conscious attempt on the part of the professionals to engage in a "professional project," which involves two aspects. First, professionalization is the process by which producers of special services sought to constitute and control a market for their expertise; and second, professionalization is

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1 For a review of Freidson's work see Brint (1993).
also a collective assertion of special social status and collective upward social mobility. In other words, professionalization entails both market control and social mobility, and the professionals are seen as conscious actors in this project. Larson summarized her approach as follows:

Professionalization is thus an attempt to translate one order of scarce resources—special knowledge and skills—into another—social and economic rewards. To maintain scarcity implies a tendency to monopoly: monopoly of expertise in the market, monopoly of status in a system of stratification. The focus on the constitution of professional markets leads to comparing different professions in terms of the "marketability" of their specific cognitive resources. ... The focus on collective social mobility accentuates the relations that professions form with different systems of social stratification; in particular, it accentuates the role that educational systems play in different structures of social inequality (p. xvii).

Andrew Abbott, on the other hand, sees the study of professionalization as entirely misleading because it looks at form rather than content. In his *The System of the Professions* (1988), Abbott started with the question; "what work do professionals do?" In his view, it is the content of work and the control of work and the differentiation of work which give rise to internal occupational divisions and to conflict with other occupations, and hence to a conflict over jurisdiction. Professions therefore develop when there are jurisdictional vacancies, which may happen because they are newly created or because an earlier tenant has left them altogether or lost its grip on them. He asserted that "a fundamental fact of professional life is professional competition. ... It is the history of jurisdictional disputes that is the real, the determining history of professions" (p. 2).

Regardless of whether it is a collective social mobility project or a competition over jurisdiction, both pointed to professionals as social actors actively engaged in the project. These authors followed Freidson's line of inquiry as to how professions come
to achieve power and dominance. But one element is conspicuously lacking in these analyses of the dynamics of professionalization: that is, the role of the state. Hence, if Larson and Abbott symbolize a bottom-up approach that places the professions at centre stage, a state-centred view (Rueschemeyer 1989) represents a top-down approach that argues for the pivotal role of the state in the process of professional development.

The Role of the State

Douglas Klegon (1978) has stated that the ability to obtain and maintain professional status is not only related to concrete occupational strategies but also to wider social forces, which he referred to as external dynamics. Economic growth and change is one such external factor. For instance, Klegon pointed out that development in the late nineteenth century, with the growth of railroads and increased capital investment etc., gave American lawyers ample opportunities to apply their legal expertise to the needs and problems of large corporations. Lawyers thus contributed to the growth of these corporations and also succeeded in claiming their professional status through their relationship with corporate power. In addition to changes in the economy, however, the role and power of the state also constitutes an important external factor, but this is generally ignored in the work of both Larson (1977) and Abbott (1988).

Both Larson and Abbott are concerned with the conscious effort of the professions themselves as a group to attain their market position and thus consolidate their privileged status in the society. Both portrayed professionals as groups relatively free from state intervention. Although Larson (1977) did refer to the state, it was
treated at most as a background factor only. However, all professions, in their pursuit of monopoly and privilege, have to enter into a special relationship with the state. To establish a legal monopoly professions generally require the state’s mandate in a licensure system (Zhou 1993). For the lawyers in particular, the relationship with the state often goes beyond merely securing a monopoly in practice, but involves actually becoming integrated into the state apparatus. As Terence Halliday (1987) also argued, since lawyers have a specific relationship with the judicature, this gives lawyers an interest in the law itself which could lead them to act in ways which have nothing to do with the pursuit of monopoly but are in fact public-spirited.

Studies on professional autonomy have assumed that autonomy held an inverse relationship with intervention. However, even in Anglo-American societies, where it is recognized that professionalization is “spontaneous” in the sense that it has largely been the result of voluntary association (Neal and Morgan 2000), the state was instrumental in shaping the development of professions (Fielding and Portwood 1980; Johnson 1982; Krause 1996, etc.). More specifically, Terry Johnson (1982) has argued that the professions emerged as an aspect of state formation, which was a major condition of professional autonomy. He found that the state was actively instrumental in the development of the professions in the nineteenth century. Along this line of inquiry, it is argued that even in liberal democratic society the state is needed to provide the legal environment in which the professions practice their autonomy. For instance, in the United States,

The state uses the profession as its source of guidance, exercising its power in such a way as to support the profession’s standards and create a sociopolitical environment in which the profession is free from serious competition from rival practitioners and firmly in control of auxiliary workers. Within that state-protected environment, the
profession has sufficient power of its own to control virtually all facets of its work without serious interference from any lay group (Freidson 1970: 44).

Other theorists on the professions stressed the role of the state by noting that the Anglo-American experiences where there was minimal state intervention could not be easily transposed to other countries (e.g. Cleaves 1987; Jarausch 1990; Krause 1991, 1996). For instance, in Continental Europe the state serves as the professionals’ prime employers and thus plays a more active role in initiating the institutionalization of some professions and reorganizing others. Thus, unlike their counterparts in the Anglo-American setting, professions in Germany are the “unfree professions” (Jarausch 1990), as professional development has been a state-sponsored one. There is therefore no unilineal process of professionalization that is of universal applicability (Johnson 1972: 29). Instead, professionalization must necessarily be time- and context-bound (Jarausch 1990: 6).

This is all the more true when we turn to look at the professions in socialist societies, where the central role of the state is a given fact and state intervention is expected. The significance of the state goes well beyond its status as an employer; it also shapes the general environment in which all occupations operate. For instance, in the former Soviet Union “the state-supported monopoly grants professional autonomy solely to determination of the technical content of work. Administrators and policy-makers representing the state control the economic terms of work, its location, and its social organization, leaving the profession no option but to accept their terms.” (Friedson 1970: 44). This is also true of other socialist societies such as China, where the omnipresence of state power exists in almost every facet of life. This study therefore echoes Elliott Krause’s (1991) dictum that “Sociological approaches to the
study of professions are incomplete if they do not focus on a central aspect of their existence – their relation to the state” (p. 3). Krause also suggested a continuum of profession-state relations, “ranging from the essentially ‘private’ professions with limited state involvement and employment (the American example), to the state-involved professions of Western Europe, to the primarily state-located and state-employed professions” of socialist societies (p.4). These three kinds of relationship correspond to three patterns of state-society relations: pluralism, corporatism, and state socialism (Gu 2001).

In asserting the role played by the state, however, several qualifications need to be made. First, taking note of the state does not mean a reversion to a wholly structuralist view that perceives professionals as entirely recipients of whatever the state has endowed upon them. States are, for sure, “weighty actors” (Skocpol 1985: 3) but as Barkey and Parikh (1991) have noted, even a state-centred analysis does not preclude the role of society. The nature of the state-society relationship has always received attention. In the case of socialist China, whereas state interventions are crucial to the creation of a regulatory environment in which the transitional market economy operates, the Communist political order does not stand apart from the society. The very gradual pace of reform in China, in contrast to the big-bang policy in Eastern European societies, reflects the very cautious stance of the Chinese government, and almost every policy step taken depends on a reaction generated from society. The state is bound to society through a concrete set of institutionalized channels for the continual negotiation and renegotiation of goals and policies (Evans 1995: 12). In this vein, state policy in restructuring the professions is not seen entirely in hegemonic terms and as entirely unresponsive to societal demand. Rather, the state
and society is always relational and the interaction dialectical. The state enjoys only "embedded autonomy" (Evans 1995) and is therefore a "limited state" (Migdal 1997). It is in this sense that Migdal et al. proposed a state-in-society approach which "focuses on the process of state engagement with other social forces [and] highlights the mutual transformation of the state and other social groups, as well as the limitations of the state" (Migdal 1997: 232; see also Migdal et al. 1994).

Second, in analyzing the state and industrial transformation in three newly industrializing countries, Peter Evans (1995) noted that "state involvement [in the contemporary world] is a given." As already noted, therefore, the appropriate question is not to ask "how much state involvement" but to address "what kind of state involvement." To deal with this, one must look at both the general environment shaped by the state as well as the specific policies that work to facilitate or constrain professional development. What is at issue is to see how the state is actually constituted, the particularities of its institutional arrangements, and the institutional junctures of state and society in the arena of professional development.

State structures are "crystallized," in that the state in different societies took on different forms in relation to various aspects of political and other power networks (Mann 1993). Variations in involvement are conditioned on these differing "crystallizations" of state structures, which in turn create different capacities for action (Evans 1995). This pointed to a third issue. To say that professionalization in China is necessarily state-led does not answer the question of why state action differs in the development of lawyers vis-à-vis the doctors. The state must therefore be disaggregated (Migdal et al. 1994: 3). The state is not a single entity but must be conceptualized as a constellation of diverse and at times conflicting interests. While it
is long recognized that the Chinese state is far from a unified one, previous studies often made the distinction along the administrative lines of hierarchy between the central state and the local state agents (e.g. Oi 1989; Walder 1995). Less apparent, however, is the state’s fractures at the ministerial level across sectoral lines.

The above qualifications about the role of the state point toward the adoption of an institutionalist paradigm to ascertain how the state and professions actually interact and their relationship as mutually transformative. To assert that professional development in China necessarily hinges on the state’s mandate is not to lose sight that the way professions react and respond to state policies could also result in a negotiation and renegotiation of the policies. Thus, although professions are acting within the parameters set by the state, the way they react would also shape the boundaries of the parameter.

**The State and Professions in Pre-reform China**

For a long time in China no particular distinction was made between “professions” and “occupations.” Professionals arose at the turn of the twentieth century as a new breed of educated Chinese. With the abolition of the imperial civil service examination and the establishment of Western-style schools, new career paths were opened to the educated in which they could pursue roles different from the traditional literati. During the Republican era, the Nationalist Party used the term *ziyou zhiye zhe* to identify professional groups, including doctors, lawyers, accountants, journalists, engineers, and professors. Professionalization therefore was a concomitant process of modern state building at a time of rising nationalism in the
face of foreign privileges and aggression. Xiaoqun Xu's (2001) study of journalists, lawyers, and doctors and their interaction with the Republican state revealed that the relationship was mutually dependent and interpenetrated: “both the state and society struggle to define themselves in relation to each other with overlapping and shifting boundaries. ... Legitimacy and authority on either side were often contingent and contested; private, group, and public interests and cross-purposes overlapped and negotiated” (p. 271). Xu therefore referred to this rich and complex process as a “symbiotic dynamics in the state-society relationship.” This early process of professionalization, however, came to an abrupt end when the Communists came to power in 1949.

The Western social sciences discourse normally perceives intellectuals as the highly educated who “create, distribute, and apply culture, that is, the symbolic world of man, including art, science, and religion,” and hence “professionals like physicians and lawyers” are regarded as a peripheral group only because they “apply culture as part of their jobs” (Lipset 1969: 311). In socialist China, however, professionals were all collapsed into the broader category of “intellectuals,” due largely to the fact that Communist ideology defines the composition of society as comprising three social groups only, namely, intellectuals, workers and peasants (cf. Lane and Kolankiewicz 1973). Social demarcation of groups was very crude. Occupational or professional groups were not customarily used as classificatory categories, and relatively few studies were done using the professions as the unit of analysis. Even when occupational groups were occasionally alluded to, the analysis was essentially about

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1 However, sometimes a fourth group, the bourgeoisie, is also included.
2 But see White (1981) for a study of the teaching profession.
the peasants, intellectuals, students, the industrial managers and workers, the military, and party and government bureaucrats etc. (cf. Oksenberg 1968).

In Chinese, the notion of “intellectuals” (zhishi fenzi, literally meaning “elements of knowledge”) is very inclusive and refers to all mental labor. In the 1950s the Organization Department of the Central Committee of the CCP proposed three definitive criteria for the term “intellectuals”: (i) state cadres holding a diploma from technical high schools or above; (ii) those holding technocratic titles; and (iii) teachers. These three criteria were restated again in 1985 (Zhang and Hu 1989: 261). Because of this loose definition, in China the term “higher intellectuals” (gaoji zhishi fenzi) largely designates professions in the cultural and scientific realms. Writers and artists who do not have college degrees are also included in this category.

The existing literature on Chinese intellectuals is numerous but, most of the writings tend also to focus on the higher intellectuals in the literary and cultural realm: on their relationship with the state (e.g. Goldman 1967, 1981; Hamrin and Cheek 1986; Goldman et al. 1987, 1993; Cheek 1989, 1992; Franklin 1989; Ding 1994); and on their self-perceptions and experiences (cf. Link 1992). There are two reasons for the stress on their relationship with the state. First, even though in the post-Mao era intellectuals were allowed greater autonomy in their work, the party-state still adopted a zigzag policy, oscillating between periods of repression (shou) and relaxation (fang). This was more the case in the party’s stance towards intellectuals in the literary-ideological realm than in the scientific and technological sphere (Goldman
Second, intellectuals in the humanities are more often outspoken and more politicized. While the political bent of such intellectuals is also true for their Western counterparts, in particular for the intelligentsia in Soviet societies (e.g. Kagarlitsky 1988; Shlapentokh 1990; Torpey 1995), the political activism of Chinese intellectuals is complicated by the cultural and historical legacy of their intellectual predecessors, the literati, who felt a duty to serve the state but at the same time sometimes took on a role as moral critics of the ruler. There is therefore an inherent historical distrust of intellectuals on the part of rulers. In a country such as the People’s Republic where state policies have been guided by ideological concerns, intellectuals in the humanities have regularly been suppressed and hence have gained further scholarly attention.

Compared to the cultural intellectuals, the professional elite has been relatively apolitical. They have defined themselves more on the basis of their respective professions and their possession of technical knowledge than in terms of any ideological commitments. But they were by no means immune from the party-state’s skepticism towards intellectuals at large. During the Hundred Flowers Campaign (1956-57), quite a significant number of them demanded the right to practice their professions without political interference, arguing that they would be better able to serve their country. This invited the suspicion of the Party, which saw their demand as posing an implicit political threat (Goldman and Cheek 1987: 6). In the subsequent Anti-rightist Campaign and the Cultural Revolution, many professionals, including lawyers, doctors, and scientists, were singled out as targets.

\[\text{\footnotesize 4 Both the Anti-Spiritual Pollution Campaign in 1983 and the Anti-Bourgeois Liberalization Campaign in late 1986 and early 1987 were targeted towards intellectuals in the literary realm, even though Fang Lizhi, an astrophysicist, is a key figure in the 1986-87 campaign.}\]
Only a few were co-opted to work with the power elite, but even some of these suffered from direct political interference. Professions in the conceptual sense therefore were non-existent.

Even though professionals from the 1980s onwards have gradually gained in recognition and respect, and their assertion of professional norms has been welcomed due to China’s modernization drive, they have still been working within the confines of state control.

An Institutional Framework

In expounding Max Weber’s idea of rationalization, George Ritzer argued that the professionalization process is itself a rationalization process. Along this line of logic, bureaucratization is not antithetical to professionalization since bureaucratization is itself a process of rationalization (Ritzer 1975). More importantly, the professionalization process is at the same time an institutionalization process whereby norms, values, and expectations about forms and practices are shared, diffused, and taken for granted. I will argue in this dissertation that to understand the intricate state-profession relationship one must look at the institutional specificity that constrains the choice of action of both parties.

The analytical tools of this study are influenced by new institutionalism, which takes the analysis of institutions as critical determinants of political and economic performance as well as objects of inquiry in their own right. There exist four different branches of scholarship that differ in terms of the problematic, the inquiries of conditions and mechanisms of institutional change, and the
epistemological and methodological conventions. The four schools are: (1) rational choice institutionalism in general political science (Shepsle 1989); (2) historical institutionalism in comparative politics (Steinmo et al. 1992); (3) sociological institutionalism, which has arisen primarily in the field of organizational studies (Powell and DiMaggio 1991); and (4) discursive institutionalism, which initially emerged in the analysis of public policy and economic performance among corporatist countries in Scandinavia (Table 1.1) (see also Hall and Taylor, 1996; Immergut 1998). Despite their differences, they stem from a common critique of behavioralism that focuses primarily on observable behavior as the basic dictum of analysis. Behavior occurs in the context of institutions, the new institutionalists contend, and can only be so understood. They share in common the view that there exist diverse sources of individual and collective interests and that institutions influence their articulation and expression in politics. Thus, the core question is how social choices are shaped, mediated, and channeled by different institutional arrangements. The shared system of rules within the institutional environment serves to constrain the inclination and capacity of actors to optimize their interests and privilege some groups but not others. Thus, institutions shape the contexts in which individuals can act, and goals and strategies get structured in a fashion that alternatives cannot be conceived. In this sense, then, "institutions do not just constrain options: they establish the very criteria by which people discover their preferences" (DiMaggio and Powell 1991:11). Institutions are therefore both constraining and enabling (DiMaggio 1988).

This dissertation mainly adopts an historical institutionalist approach to analyze the state and professions in China. The study takes note of the recent call for
Table 1.1  A Comparison of the Four Schools of New Institutionalism.

<table>
<thead>
<tr>
<th></th>
<th>Rational choice</th>
<th>Historical</th>
<th>Organizational</th>
<th>Discursive</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Major field of study</strong></td>
<td>General political science</td>
<td>Comparative politics</td>
<td>Organizational studies in sociology</td>
<td>Public policy</td>
</tr>
<tr>
<td><strong>Problematic</strong></td>
<td>How rationally motivated actors build institutions to solve problems of exchange and collective goods production</td>
<td>How variations in political or other institutions shape actors’ capacities for action, policy making, and institution building</td>
<td>How rationality and the rationalization of institution are culturally and cognitively constituted and legitimized</td>
<td>How institutions are constituted, framed, and transformed through the confrontation of new and old discursive structures</td>
</tr>
<tr>
<td><strong>Conditions of change</strong></td>
<td>Actors transform institutions when material factors shift and they perceive that the benefits of doing will exceed the costs</td>
<td>Actors perceive that it is in their political or economic interests to pursue change notably in times of crisis; Contradictory institutional logics</td>
<td>Increased environmental uncertainty prompts actors to adopt whatever culturally appropriate practices; Political-cultural shifts</td>
<td>Perceived political-economic crisis; Presence of alternative discourses</td>
</tr>
<tr>
<td><strong>Mechanism of change</strong></td>
<td>Interest-based struggle, conflict, bargaining, or strategic gaming</td>
<td>Interest, idea, and ideologically-based struggle, conflict, bargaining</td>
<td>Imitation, diffusion, translation</td>
<td>Translation and displacement, through discursive alliances or bricolage</td>
</tr>
<tr>
<td><strong>Epistemology and methodology</strong></td>
<td>Positivist deductive search for general theory</td>
<td>Comparative inductive search for historically specific theory</td>
<td>Positivist deductive search for theory; Interpretive inductive search for historically specific explanation</td>
<td>Interpretive inductive search for historically specific explanation; Archaeology of texts</td>
</tr>
</tbody>
</table>

Source: Adapted from Campbell and Pedersen (2001: 8-14).
a "second movement" in institutional analysis (Campbell and Pedersen eds. 2001) which argues for "a more constructive dialogue among paradigms in order to identify complementarities and explore the possibilities for rapprochement, cross-fertilizations, and integration" (Campbell and Pedersen 2001a: 2). Analytical strategies include linking the causal arguments, blending the insights, identifying the common analytical problems, or even subsuming one school under another (Campbell and Pedersen 2001b). The dissertation will wed this to a particular interest in the themes of power and interests and how their representation is shaped by collective actors and institutions that bear traces of their own history. It is for this last reason that I will be adopting an historicist approach. More specifically, I will argue that in the Chinese professions' interactions with the state, they have been very much embedded in institutional arrangements that shape how they could act. This institutional environment is "characterized by the elaboration of the rules and requirements to which individual organizations must conform if they are to receive support and legitimacy. The requirements may stem from regulatory agencies authorized by the nation-state, from professional or trade associations, from generalized belief systems that define how specific types of organizations are to conduct themselves, and similar sources" (Scott and Meyer 1991: 123). The institutional environment therefore encompasses the cultural belief systems, normative frameworks, and regulatory systems that provide meaning and stability to a sector (Scott 2001). In this sense, the environment creates the lenses through which actors view the world and the very categories of structure, action, and thought (DiMaggio and Powell 1991: 13).

In the context of professional development in China there exist three analytical levels of institutional environment: namely, the macro-, meso-, and
micro-institutional environments (Table 1.2). They provide the frames of reference for the professions’ reaction or inaction towards state policies. In theory the state’s mandate to bring about economic reform and to bring China onto the global stage – the macro-institutional environment – facilitates professional development. In reality the impact of this overarching project is mediated at the meso level by the differing reform agendas each professional sector: i.e., legal reform and health reform. These differing logics of rationality at the meso level are defined by different constellations of state interest as a consequence of the state’s own historical past. Rationality is itself the defining institutions that structure the opportunities and constraints opened up at the micro level – the respective arrangements in education, certification, work setting, and the structure of professional practices – which vastly differ in the two professions. How they frame their interests are therefore institutionally embedded and their rationality context-bounded. I argue that the professional development of the doctors and lawyers and their evolving relationship with the state must be understood in terms of their institutional embedment and context-bounded rationality.

Arguing that the perceptions and action of the two professions are necessarily bounded does not mean that the relationship between institutions and individual action is one-sided. In fact, the state and the professions are highly interactive and mutually constitutive (cf. DiMaggio and Powell 1991: 22-4; Hall and Taylor 1996: 948-9). Although individuals’ choices of action are embedded in the institutions, institutions also change as a response to individual action. For instance, we will observe in the ensuing discussion on the legal profession’s development in China that the government’s changing policies vis-à-vis the legal profession are to some extent spurred by the lukewarm responses of Chinese lawyers in the initial stage.
Table 1.2 A Sketch of the Institutional Paradigm.

<table>
<thead>
<tr>
<th>Macro-institutional environment:</th>
<th>Meso-institutional environment:</th>
<th>Micro-institutional environment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic reform provides the context in which professions emerged</td>
<td>Sectoral reform defines the policy parameter within which the profession responds</td>
<td>Immediate social environment confines and constrains professionals’ choices of action</td>
</tr>
<tr>
<td>A general trend towards “expertocracy”: (i) Depoliticization of the cadre system; (ii) Formation of a competitive labor market</td>
<td>State interest</td>
<td>Education</td>
</tr>
<tr>
<td></td>
<td>Logic of rationality</td>
<td>Certification</td>
</tr>
<tr>
<td></td>
<td>Model of institutionalization</td>
<td>Employment structure</td>
</tr>
<tr>
<td></td>
<td>Institutional actors</td>
<td>Workplace setting</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professional practice</td>
</tr>
<tr>
<td>Legal reform:</td>
<td>Technical</td>
<td>Quantitative expansion</td>
</tr>
<tr>
<td>“Serve the economy” represents both “logic of instrumentality” and “logic of appropriateness”</td>
<td>State and reactive lawyers</td>
<td>Relatively lax</td>
</tr>
<tr>
<td></td>
<td></td>
<td>An emergent professional labor market</td>
</tr>
<tr>
<td>Health reform:</td>
<td></td>
<td>Private law firms increasing</td>
</tr>
<tr>
<td>“Serve the people” represents “logic of appropriateness”</td>
<td></td>
<td>Public hospitals and clinics predominates</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professional practice actively encouraged by the state</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lack of institutional support in private practice</td>
</tr>
</tbody>
</table>
The conceptual schema laid out above is necessarily parsimonious since it focuses mainly on the role of interest and agency. It is parsimonious in the sense that it provides a relatively simple but concise explanation that will attempt to account for the observed phenomenon. The mode of reasoning will therefore be inductive and interpretive.

Outline of the Dissertation

Chapter Two posits a resurgence of professionalism in China in the context of the broader economic reforms under way since the late 1970s. Economic reform calls for greater efficiency and efficacy in every aspect of life and hence a general tendency towards "expertocracy" is deemed by the state to be warranted. This essentially gives rise to a process of depoliticizing the cadre system as well as the formation of a competitive labor market. Within this context, the chapter will identify who the professionals are in China and how they are represented in official records and in society.

Chapters Three to Five form the backbone of this study. By way of voluminous documentary materials as well as interview data that I collected during field trips to Beijing, I aim to present a picture of how the state's interests in institutionalizing the practice of law and of medicine have produced different policy frameworks within which the respective professions act and react. Professions are not mere recipients of state policies, and it will be seen precisely how their relationship with the state has been mutually constitutive in the sense that the way they responded to particular reform policies also represents a subtle negotiation with state power.
Chapter Three lays out this politics of legal and health reform in China in terms of the underlying rationalities.

Reform policies at the sectoral levels opened up niches, opportunities, and constraints in the immediate environment in which these two sets of professionals were embedded. Chapter Four deals with the realms of professional education and certification. Because of the general trend towards "expertocracy" since the 1980s, the higher education sector has been expanding in order to meet the demand for highly qualified manpower. However, because of the interest of the state to produce a specific target of lawyers to serve the needs of economic development, the balance between quantitative growth and quality control could not always be guarded, and institutional irregularities and sudden shifts in the size of enrolments became evident in the provision of legal education. The certification process allowed the state leeway to increase or restrict the numbers of lawyers when deemed necessary. By contrast, medical education emphasized upgrading quality and the prolonged specialized training that this called for. In addition, because most doctors are assigned directly to work in public hospitals or clinics they were more indifferent towards the licensing system than were the prospective lawyers.

Chapter Five will examine the institutional arrangements that shape the professional practice of lawyers and doctors in China. It singles out the employment structure, including the structure of the professional labor markets and the structure of a professional practice, to compare how lawyers and doctors are faced with a different set of opportunities and constraints that shape their perception of alternatives to state employment.
Chapter Six concludes the dissertation. It argues that to understand the complexity of state-society relations in transitional China one must not simply look at the larger picture as a coherent whole. Neither models of civil society nor of state corporatism hold since both look at the state and society as a whole. Instead, one should take note of the institutional circumstances upon which the state and society act and interact. Emphasis on institutional specificity will also raise the attendant issue of whether there exists a distinct pattern of “sinicizing” professions.

Note on Sources and Methodology

In addition to a voluminous amount of materials found in compilations of documents as well as Chinese newspapers and periodicals, this study is based upon interviewing. The methodology adopted deviates somewhat from the mainstream sociology of the professions in view of the fact that most of the literature employs historical and documentary materials alone, without attempting to probe into the social world of individual professionals. Documentary material very often deals only with collectivities and their elites but not the ordinary individual members whose voices too often go unheard. Whereas the internal diversification within a profession has readily been acknowledged, thus far too few attempts have been made to bridge the gap between individual aspirations and collective action. In other words, if we are to relate the individuals to collectivities we need to take heed of what the rank and file members within the collectivity really think and perceive and whether they actually identify with the action and strategy taken up by the collectivity claiming to represent them. In essence, we need to understand how the action taken by the collectivities is
made intelligible from the individuals' point of view. Such an attempt would also shed light on the consolidation of the profession as a political community.

Second, in the case of China, documentary materials represent the official and "politically correct" view and the unofficial view has far less chance to be recorded. By talking to individuals we can obtain a glimpse of how far their perceptions and opinions diverge from the official/collective scenario.

Third, while the western sociological literature on the emergence of the professions normally focuses on the past, as the emergence occurred in an earlier historical period, in China the process of professionalization commenced only with the relatively recently reforms and are therefore still an on-going process. It becomes possible to see through interviewing how individual members actually participate in the present process of construction.

Interviews were conducted during a six-month span in China in 1997 as an ANU-Beijing University Exchange Scholar. Most of the time I was therefore stationed in Beijing, but I also took the opportunity to spend a couple of days in Sanhe, Hebei. There, I conducted interviews with doctors and lawyers working at the township level so as to provide comparisons and contrasts with professionals working in metropolitan Beijing. Altogether fifty-six informants were interviewed, more than half of whom are practicing professionals. These include twenty-three lawyers and twenty-one physicians. The others are from a variety of other categories, such as professors and students at the universities, officials from the ministries and professional associations etc. Casual comments by knowledgeable people over the dinner table are also recorded but they have not been classified as informants.
Most of the informants were located through the friendship networks that I developed in Beijing. A few of the interviewees were referred by the original informants. For informants of different backgrounds, a variety of different questions were asked. For the practicing professionals, questions were asked about their educational background, their career path, their opinions and understanding about state policies, about the arrangements in their work unit, their participation and identification with their respective association, their perception and evaluation of their own economic and social status, etc.
Chapter Two

The Rise of Professions in China:
Setting the Context

The suggestion that professionalization goes hand in hand with industrialization (cf. Goode 1960; Bell 1973) implies that the rise of professions marks the distinction between pre-industrial, industrial and post-industrial societies; that only in modern societies is knowledge unified and autonomous; and that only with the existence of free markets are there opportunities for professions to emerge (Macdonald 1995: 72). The rise of professions and of professionalism is also seen as representative of the unquestioned progress of modern societies toward greater rationality in decision-making and in organizing societal activities. However, such a sense of inevitability might essentially blind us to a critical assessment of the specific historical and socio-political trajectories in which the rise of professions is made possible in different societies. This section therefore sets the socio-political context in which the (re)emergence of professions and of professionalism is to be understood in contemporary China.

The reform policies of the past two decades saw China moving from an authoritarian to a regulatory state. Decision-making has been decentralized and social control over people’s lives has been relaxed. Societal activities have become more diversified and new social groupings have emerged. Before the 1980s the social
demarcation of groups was very crude in Chinese writings, and occupational, not to mention professional, groups were not often referred to. In ordinary daily lives people were more readily identified by their work unit, the danwei, than by the actual work or occupations they engaged in. Analysis of the rise of professions in China has to be located in the interlocking complexity of a vastly changing society. I argue that two distinctive trends in the reform era are most conducive for the full emergence of professions: first, a depoliticized cadre system, and second, the gradual formation of a competitive professional labor market. The chapter will identify the professionals in China and, in particular, the lawyers and doctors in the contemporary context.

The Depoliticization of the Cadre System

One of the main premises put forward in this study is that the rise of professions and of professionalism in China has to be understood in the context of a depoliticized cadre system. The depoliticization of the cadre system is at the same time a move towards greater rationalization and professionalization in the political process. After all, in communist societies "the party was the profession at the head of all the professions" (Simirenkop 1982: 23, italics in original). In China it denotes a reversal of policy in the reform decades to place more emphasis on merits and credentials instead of political virtues in the selection and promotion of cadres, a move from "virtuocracy" (Shirk 1982, 1984) to meritocracy and "expertocracy" (Hendrischike 1994). This is best exemplified in the series of efforts in the civil service reform beginning in the 1980s to give expertise precedence over redness.
The term cadre in Chinese has always been regarded as very general and all embracing, including “all those, both Party members and non-Party cadres, who hold any post as a functionary in the bureaucratic hierarchies in China, from top to bottom” (Barnett 1967: 39). The bureaucratic hierarchies include not only Party and government organs but also state enterprises and service organizations (shiye danwei). In this vein, lawyers and doctors were state cadres. The cadre was ideally expected to be both “red and expert” (Schurmann 1968: 8). But “red and expert” is itself a contradiction, which was correctly identified by Mao Zedong as one of the major contradictions in the society. In its manifested form it is a competition between two elites, the political cadre and the educated professional. In reality, however, Mao’s idea of “politics in command” in almost every sphere of life meant that the cadres’ expertise, if any, had to be subsumed under their “redness” in the decision-making process.

In 1956, there were efforts on the part of the Party to be more professionalized by trying to admit more intellectuals to become Party members; and it was proposed that year that even intellectuals who were not Party members were to be given a larger role in decision-making, and that in certain specific areas specialists should be consulted in policy research. Throughout 1956 and early 1957, press reports indicated that the policy-making process was in fact becoming more professionalized, and that economic problems were being discussed more actively and openly in meetings with non-Party specialists (Harding 1981: 107). But this effort to professionalize decision-making was tarnished and rolled back in the subsequent Anti-Rightist Campaign and then the Cultural Revolution. The next two decades
witnessed a highly politicized Chinese bureaucracy, with an intensification of the pursuit of political virtue and loyalty. In essence, political virtuocracy dominated.

After Deng Xiaoping returned to power in 1976, the Cultural Revolution decade was blamed for economic stagnation, and a decisive effort was made to shift toward meritocracy. Although the 1983 *Handbook on Party Organization Work* made it clear that the fundamental principle of cadre management is Party management (Manion 1985: 207), in reality in the move towards greater rationalization, the Party did retreat somewhat. With the open-door policy and the pursuit of economic development officially enunciated in late 1978, the Party progressively began to decentralize personnel administration and transferred greater formal authority over personnel matters to state institutions. Moreover, to manage a more complex economy, there also began a process to select and promote professionals and specialists based more on their technical qualifications and job performance. The Party had therefore begun to place personnel management in the hands of experts competent to assess the qualifications and work of their peers, and directly in the hands of the institutions that employed them, although the extent of this by the close of the 1980s remained somewhat limited (Burns 1989: 741). This process of professionalization nonetheless saw a shift of power, status, and income from the generalists to the specialists. Expertocracy gained recognition and a process of “intellectualization of the bureaucracy” was in place (Szelenyi and Martin 1991).

Hence, instead of stressing commitment to revolution, a staff member’s ability and productivity were more frequently mentioned as important qualities for a cadre after 1978. Before this shift *Renmin Ribao*, on 2 March 1978, had proposed five criteria for leaders: (1) support of the pragmatic policy of revolutionary cadres, (2)
Party spirit, (3) personal integrity, (4) ability, and (5) understanding the real-life conditions of the masses (quoted from Lee 1991: 229). The news media soon thereafter became more explicit in saying that cadres should possess some practical and functional knowledge. This was officially endorsed by Deng Xiaoping in January 1980: “Regardless of position, every [cadre] has to have a certain amount of specialized knowledge and work ability in a functional field. Those without such knowledge must study. Those with some amount must continue to study. Those who cannot or are not willing to study must be changed” (Deng 1984: 208-24). Although “redness” was to be insisted upon, Party cadres (and Party members generally) were now expected to undergo the “four transformations” (si hua): i.e., to be “revolutionized, rejuvenated, intellectualized and professionalized (geminghua, nianqinghua, zhishihua, zhuanyehua)” (White 1993: 186). In 1980, Hu Yaobang publicly stated that “Cadres should be recruited from the graduates of colleges, middle schools, and specialized schools or equivalent ones. [We should] generally not directly select [cadres] from among workers and peasants who have little education” (quoted from Lee 1991: 231). Although political factors were still operative, there was a decisive emphasis on age and formal education as recruitment criteria of cadres. This was further strengthened in persistent efforts from the mid-1980s onwards to implement open and competitive examinations when recruiting Party and government officials, in a move towards establishing a state civil service system. Thus, after thirty years of revolutionary turmoil, emphasis on political qualifications waned and professional capabilities topped the agenda in the recruitment of cadres.
The fact that the regime was prepared to introduce a civil service system indicates its determination to develop rational, efficient, and competent corps of administrative bureaucrats. This determination was also reflected in terminological changes. The term “civil servants” was adopted, to imply that government officials are “public servants” who will manage public affairs as the guardians of public interests, whereas the term “cadres” refers to those leadership abilities necessary to lead the masses in revolutionary struggles for social change. The term “civil servants” also connotes a merit-based recruitment, whereas the cadre’s role requires political skills and ideological consciousness (Lee 1991: 381-2). The end result of these reform measures did in fact witness an increase in the educational levels of cadres. For instance, in 1989, 22.9 percent of state cadres in government organs had a university education or above, while in the various organs under the State Council university graduates or above accounted for 58.8 percent of all the cadres (Zhongguo renshi nianjian 1988-89: 738). A parallel trend towards “expertocracy” could also be seen in the recruitment drive of Party members with higher educational qualifications or technical expertise. Starting in the 1990s increasing number of Party members were classified as professionals and technicians. In 1992 this amounted to eight million, although the exact percentage of those having a tertiary education was not given (cited from Hendrischike 1994).

In addition to the emphasis on age and formal education in the recruitment of cadres, their promotion was to be based on a performance appraisal, including measures like assessment of the cadres’ competence (jianding and kaoche), a political investigation (shencha), and screening (kaocha liaojie) (Manion 1985: 224-9). Although these measure have not always been carried out in an objective and
standardized way, the need for an adequate performance appraisal system was at least recognized.

In essence, the depoliticization of the cadre system means greater role specialization, greater autonomy for the officials in their own areas of expertise, and shifts in the criteria for occupational recruitment. Henceforth, it was to be expected that professional politicians and administrators, managers, accountants, and so on would emerge, each with their own precise roles, their own area of autonomy and their own standards of professional competence. In fact, in the case of lawyers, the state has moved a step further by allowing them to cease becoming state employees. Without the connotation of being state cadres and with the blessing of the state, lawyers can now engage in private or semi-independent practice. This move, as will be seen in later chapters, enhances the lawyers' status as members of a profession and encourages greater professionalization.

**Formation of a Competitive Professional Labor Market**

One of the drastic changes in the transition from a planned economy to the officially endorsed "socialist market economy" is the commodification of labor, in particular the commodification of professional labor, and it will be seen that this has led to the gradual formation of a competitive professional labor market. Before the 1980s, labor markets were virtually non-existent in two senses: labor was not considered a commodity; and the labor force was not allowed to flow freely between jobs. Once a person was allocated to a work unit she or he was virtually guaranteed a life-long "iron rice bowl". Transfers among work units were extremely difficult and
labor mobility was seldom observed. But the two decades of reform policies have seen the "iron rice bowl" gradually crushed, a labor market is in formation and horizontal labor mobility across different occupations has become more frequent (Zhongguo gaige bao, 17/9/96: 2). The gradual formation of a professional labor market has much to do with the drastic changes occurring in the educational sector. Two aspects are of particular importance: the marketization of higher education and the concomitant abolition of the national job allocation system for university and college graduates.

One important aspect of the marketization of higher education in China is the emergence of fee-paying students (Yin and White 1994). Prior to the 1980s, higher educational institutions were in the tight grip of the Ministry of Education, as the training of professional manpower was seen as primarily serving national construction. Ever since the dual system of a national unified examination for university admission and a nation-wide job placement for all graduates was instituted in 1955, higher education had been shouldering the responsibility for adjusting to the precise needs of industrialization and socialist nation-building. Each year, the Ministry had drawn up quotas of the number of students who could be admitted, and candidates were distributed to different institutions according to their academic standing. The cost of university and college education was entirely covered by the state, and all students were guaranteed employment upon their graduation. Each year, a detailed job placement (fenpei) plan would be mandated from the central government. When the plan was transmitted, the tertiary institutions began to allocate their graduating students to designated locales and positions. By centralizing the allocation of jobs the state was able to match graduates in a mechanistic way to posts
in state enterprises and government ministries (Hayhoe 1996: 87). Thus, it was almost certain that students would assume the identity of state cadres upon finishing their studies. The system did not leave much choice for the students, and they were constantly admonished to “subordinate their own needs to those of the state, obey the assignment and go wherever they are needed” (Du 1992: 84). One of the functions of the job placement system was to guarantee the supply of manpower to remote areas where graduates might not want to go voluntarily (Wang 1998: 25). It gave the state even more control over meaningful employment opportunities for the educated than did the famous imperial examination system that for millennia tied Confucian elites to the state (Perry 1992: 159).

In the early stages of state-building in the PRC, this system did serve the purpose of assigning graduates to industries in need of personnel and helped in socialist construction. But the overcentralization of this job allocation process has always met with difficulties when there was a disparity between the supply of students in different fields of study and the needs of the enterprises. The state had therefore resorted to administrative means to allocate graduates to specified work units regardless of whether the jobs matched with their specialties. For instance, among the graduates of 1981 and 1982, i.e., the first two batches of graduates after the resumption of university entrance examinations in 1978, some ten to fifteen percent reported a mismatch between the student’s specialty and the resultant job, and some twenty percent were considered overqualified or not appropriate for the job and hence were made idle (CHE 7-8/93: 38).

As China prepared to embark on the Four Modernizations in 1978, it came to be recognized that these problems stemmed largely from excessive governmental
control. Thus, in the early 1980s, the Ministry of Education proposed some sweeping changes in the higher education sector. First, higher education was to open up to students who are not financed by the state. These fee-paying students generally fell into two categories: commissioned students (weipei) whose expenses are paid through contracts with enterprises, and private students. This was formally endorsed in the 1985 reform statement, “Reform of China’s Educational Structure: Decision of the Central Committee of the Party,” which declared that in addition to state-planned enrolments for higher education, the enrolment scheme would be extended to contract training and self-paying enrolments, the so-called regulatory enrolments.

Second, universities were to be given a greater role in the deliberations over job placements for regular students, and a “meeting between the demand and supply sides” (gongxu jianmian), involving student applications and interviews with work units, was to be promoted. Then in 1989, an interim reform proposal on job assignments made it clear that in the long term the state envisaged only an advisory and policy role in the job markets, and graduate employment would be based on the mechanism of competition. Employing units would have to attract graduates on mutually satisfactory terms. The general policy thus advocated is “mutual selection” (shuangxiang xuanze) between the employer and the graduate, though students enrolled at state expense would have certain privileges in terms of job opportunities in the state sector over those enrolled under the alternative funding methods. In relation to both groups, the state’s role was merely to be a regulatory one (Hayhoe 1993: 2). This was a breakthrough away from the all-encompassing dual system over students’ enrollment and job placement. Coinciding with this, from 1992 onwards the
proportion of regulatory enrollments increased tremendously and thus the method of “mutual selection” spread further (CHE 7-8/94: 21).

But the trend towards a more marketized higher education sector was not without setbacks. Especially in the aftermath of the student movement in 1989 the government showed a brief tendency to slacken the pace in recruiting fee-paying students (Yin and White 1994: 220). In the area of job placement, some hard-line ideologues argued that even with the economic reforms, market regulation should always be secondary to the planned socialist economy. University graduates, being the most important component of human resources in production, should always remain in the tight grip of the state or else China would deviate from the socialist ideal (CHE 7-8/93: 38). Because of this there was a return in practice to more directive policies in 1991 and 1992. But essentially the opposition gave way to the more pressing concern to rationalize the allocation of human resources. Especially after Deng Xiaoping’s southern tour in 1992 the call for a socialist market economy was reinforced and the market mechanism was recognized as a key to distribute all resources, including of course human resources and the deployment of professional personnel. Finally, in a document issued in 1993 entitled “Program for China’s Educational Reform and Development”, it was proposed that the conventional practice of the state covering all expenses of higher education would gradually be changed to a tuition-fee-paying system, and the system of post-graduation job allocations would eventually be abolished. A small proportion of graduates would still have jobs arranged by the state, but a large proportion would have to find jobs on their own (CHE 7-8/94: 21). Essentially, higher education being non-compulsory, the extension of a market logic to this sector confirmed. A labor market for professional
personnel has been in formation ever since, although whether it is genuinely competitive is debatable, as will be seen in later chapters.

There has been skepticism as to the over-hastiness of abolishing the job placement system without first establishing a proper mechanism for fair competition (Wang 1998: 33). Concerns were also raised over the disparities between central and hinterland regions in their relative advantages and disadvantages in attracting needed educated talent for development (Hayhoe 1993: 9). Nonetheless, a definitive move towards greater professional mobility was in sight and more career opportunities have become available for the graduates. As will be observed, this certainly has played a role in enhancing the emergence of more identifiable professional groups and their striving towards greater professionalization.

The eventual abolition of the job placement system has also exerted an enormous impact on student career aspirations. In the 1980s students did not have much of a career aspiration since under centralized state planning it was not up to them to decide their future jobs. In effect they were more concerned with the work units they were allocated to than with the actual job content (e.g. Lin and Bian 1991). A study done in 1988 and 1989 showed that a large proportion of the youth surveyed were quite ignorant in their choice of specialties and careers. Even though many of them would prefer to choose a job they like, in the end 77.9 percent of the respondents had landed their job through the allocation system. When asked if they would choose the same specialty or career again if given a chance, more than half of the respondents (56.2 percent) reported that they would choose differently (Yao 1990). In contrast, students admitted in the 1990s were more certain in the choice of their specialties. In view of the gradual change to tuition-fee paying in higher education and the need to
hunt for a job by themselves upon graduation, students would be more clearheaded in their fields of study and career aspiration. It is expected that a career or a profession would be the most important factor shaping the life course of the younger generation.

Relaxation of the *hukou* system also contributes to the mobility of professional labor and hence the formation of a professional labor market. Although the *hukou* system still is in place, in essence the restrictions are much relaxed and people are not nearly as bound by it as before. Non-local university graduates usually deal with the *hukou* problem in two ways. Some students look for jobs which can help them get a *hukou* in a desirable city regardless of whether they like the job or not. Some, however, would take on jobs they like in a locale regardless of whether the work units can promise them a *hukou* or not. In private enterprises, where a local *hukou* is not usually guaranteed, the students’ dossier would be sent back to their hometowns but they can always secure a temporary residency permit as long as they are verified by the new work unit. In essence, the *hukou* ceases to pose a restriction on mobility for people at this level of education, and university graduates are allowed a greater chance to develop a career without bothering so much about the residential permit.

To summarize, although the rise of professions in China can be understood in the broader context of an industrializing and hence modernizing society, this conceals from us a more nuanced critical assessment of the concrete state policies that led to such a rise. In the end, what is suggested in this dissertation is that changing state polices have unintentionally opened up opportunities that make it possible for professional groups to assume a more distinct identity and to allow for professional mobility and professionalization. The different courses of professionalization depend,
though, very much upon how the professional groups make use of this opening up to maneuver and advance their interests as a group.

The Professionals in China: Who Are They?

In China’s official population census, Chinese people are categorized into eight classifications according to the nature and field of work they engage in. These in turn are divided into 59 major groups and a further 306 sub-categories (Table 2.1). Since statistics from the Fifth National Population Census conducted in 2000 are not yet fully available, references can only be made here to the Third and Fourth National

<table>
<thead>
<tr>
<th>Classifications:</th>
<th>Major groups</th>
<th>Sub-categories</th>
<th>Percentage of total(^a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Professional and technical personnel</td>
<td>11</td>
<td>84</td>
<td>5.07 5.31</td>
</tr>
<tr>
<td>2. Heads of government agencies, parties, social organizations, enterprises and institutions</td>
<td>4</td>
<td>16</td>
<td>1.56 1.75</td>
</tr>
<tr>
<td>3. Office clerks and related staff</td>
<td>4</td>
<td>14</td>
<td>1.30 1.74</td>
</tr>
<tr>
<td>4. Workers engaged in commerce</td>
<td>4</td>
<td>8</td>
<td>1.81 3.01</td>
</tr>
<tr>
<td>5. Workers engaged in service trades</td>
<td>4</td>
<td>22</td>
<td>2.21 2.40</td>
</tr>
<tr>
<td>6. Laborers engaged in farming, forestry, animal husbandry and fishery</td>
<td>8</td>
<td>23</td>
<td>71.98 70.58</td>
</tr>
<tr>
<td>7. Workers engaged in industrial production, transportation and related activities</td>
<td>27</td>
<td>138</td>
<td>15.99 15.16</td>
</tr>
<tr>
<td>8. Other laborers not otherwise classified</td>
<td>1</td>
<td>1</td>
<td>0.09 0.05</td>
</tr>
</tbody>
</table>

Note: *Figures not add up to 100 because of rounding.
Population Censuses, conducted in 1982 and 1990 respectively. In both censuses, more than seventy percent of China's workforce were engaged in primary production. Professional and technical personnel accounted for only about five percent of the total. Compared with the early 1980s, the Fourth National Population Census in 1990 found only a slight increase (0.24 percent) in the makeup of professionals.

Professional and technical personnel are further classified into eight major groups. These are: scientists and social scientists, engineering and technical personnel, administrators in scientific fields, pilots and mechanics, physicians and other medical personnel, economic personnel and administrators, lawyers and legal workers, teachers, artists, athletes and coaches, cultural workers and, lastly, religious personnel (Table 2.2). Education, notably, is not the defining attribute of professionals. Although a trend towards intellectualization and professionalization was clearly seen, in 1990 university graduates or above still accounted for just about 22 percent of all professional and technical personnel. Up to half were graduates of high schools or two-year technical colleges only, and slightly less than five percent received only an elementary education or even no formal schooling at all. They are, therefore, regarded as professionals because the state has defined them as such.

Among the eight professional groups, scientists and social scientists had the highest educational level. More than eighty percent of them had a university education or above. For personnel in medicine and law, the Fourth National Population Census in 1990 showed that college and university graduates accounted for only 16.21 percent and 34.91 percent respectively. In the area of law, however, the percentage of legal workers with a college or university education increased by
Table 2.2. Educational Levels of Professional and Technical Personnel, 1982 and 1990. (%)

<table>
<thead>
<tr>
<th>Professional and technical personnel:</th>
<th>College or above(^a)</th>
<th>Technical College and High School(^b)</th>
<th>Junior High School</th>
<th>Elementary School</th>
<th>No Formal Schooling(^c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Scientists and social scientists</td>
<td>13.05</td>
<td>21.79</td>
<td>44.45</td>
<td>49.47</td>
<td>32.49</td>
</tr>
<tr>
<td>2. Engineering and technical personnel</td>
<td>77.10</td>
<td>80.35</td>
<td>16.65</td>
<td>15.58</td>
<td>3.72</td>
</tr>
<tr>
<td>3. Administrators in scientific fields</td>
<td>42.37</td>
<td>46.14</td>
<td>36.57</td>
<td>36.51</td>
<td>13.61</td>
</tr>
<tr>
<td>4. Pilots and mechanics</td>
<td>7.66</td>
<td>45.34</td>
<td>49.01</td>
<td>35.59</td>
<td>37.85</td>
</tr>
<tr>
<td>5. Physicians and medical personnel</td>
<td>9.72</td>
<td>10.60</td>
<td>22.06</td>
<td>24.74</td>
<td>29.08</td>
</tr>
<tr>
<td>6. Economic workers and administrators</td>
<td>10.06</td>
<td>16.21</td>
<td>38.03</td>
<td>49.80</td>
<td>36.19</td>
</tr>
<tr>
<td>7. Lawyers and legal workers</td>
<td>1.90</td>
<td>9.51</td>
<td>36.25</td>
<td>50.60</td>
<td>45.19</td>
</tr>
<tr>
<td>8. Teachers</td>
<td>8.94</td>
<td>34.91</td>
<td>33.71</td>
<td>43.48</td>
<td>46.34</td>
</tr>
<tr>
<td>9. Artists, athletes and coaches</td>
<td>13.91</td>
<td>25.33</td>
<td>58.05</td>
<td>56.10</td>
<td>25.86</td>
</tr>
<tr>
<td>10. Cultural workers</td>
<td>5.76</td>
<td>12.67</td>
<td>32.54</td>
<td>57.43</td>
<td>41.45</td>
</tr>
<tr>
<td>11. Religious workers</td>
<td>19.99</td>
<td>35.30</td>
<td>40.86</td>
<td>41.52</td>
<td>32.12</td>
</tr>
</tbody>
</table>

Notes:  
\(^a\) Figures derived from adding up "university graduates" and "studying at universities" in 1982 and "university" and "college" in 1990.  
\(^b\) Figures in 1982 contain only entries for "high school".  
\(^c\) Entered as "illiterate and semi-illiterate" in census statistics.

almost four-fold, from about 9 percent in 1982 to 35 percent in 1990, suggesting a greater effort is being made to upgrade the legal realm.

This trend towards expertocracy is clearly seen in the increasing emphasis on professional qualifications. This is manifested in the forms of executing a professional qualifying examination and a certification system. This is linked to another aspect of the state’s definition of professions. Since the first national lawyers’ examination was implemented in 1986, the state has also designed qualifying examinations for a number of other professions, in part in order to promote their status. This includes the accountants, architects, engineers, pharmacists, teachers, statisticians, and even economists. Altogether there are now 35 occupations requiring certified qualifications in order to engage in professional work (Editorial Group 1998).

It was widely acknowledged in the late 1980s that the professional elites, and the larger group of intellectuals, were not at all happy about their social and economic situation. A commonly observed syndrome was their initial dissatisfaction with the Chinese leadership’s program of reforms. Their dissatisfaction was particularly reflected in their complaints about the wage disparities between intellectuals and private-sector people in the service trades (nao ti dao gua), that there existed an inverse relationship between the degree of one’s mental labor and the income they received. They complained that they were not getting their fair share as the value of their contributions to society was not realized in monetary returns. This was expressed in the following widely known doggerel (shunkouliu):

The one who operates on the brain makes less than the one who shaves the scalp;
The one who plays the piano gets less than the one who moves it; 
The missile researcher makes less than the egg seller.

However, as the evolving reforms proceeded into the 1990s the dissatisfaction of the professional elite gradually ceased. This was particularly true after the wage reforms in 1993. The professionals found that they were doing far better than workers as the reforms accelerated, with the latter suffering from massive lay offs in the restructuring of state enterprises.

A recent national survey on social stratification in China ranked the professional and technical personnel fourth among the ten strata identified (Lu Xueyi 2002). The professionals came after the state administrators, the managerial class, and the private entrepreneurs. The industrial workers now ranked seventh in this new schema of social classes. The professionals achieved a far higher status and a more secure income by possessing “cultural capital” (wenhua ziyuan) that enables them to maintain an advantageous position in the changing market economy. In 2001, when the survey was conducted, it was estimated that the professional stratum constituted just about 5.1 percent of the total population. In the economically developed cities, however, they could add up to 10 to 20 percent. For instance, in Shenzhen they represented 19.9 percent of the population, with an average monthly income of about 5,800 yuan (pp. 11 and 27). The professional class was also the most educated. Their average years of education amounted to 14.25, whereas the state administrators and the managerial stratum had attained 13.80 and 13.46 years of education respectively (p. 32).
Lawyers and Doctors in China

In social surveys conducted in China, lawyers and doctors are very often classified as "high professionals" alongside scientists, university professors, engineers etc. (cf. Walder 1995), presumably because they have had a higher educational level. The 1990 Population Census showed that almost 60 percent of the lawyers and 35 percent of the doctors had achieved a college or university education (Table 2.3). Two different interpretations of these figures should be noted. First, considering that law as a profession was only reestablished in 1978, such a high concentration of college and university graduates suggests that the state put in a great effort to develop the legal profession in order to serve the larger purpose of economic development. Second, the data suggest that lawyers in general are a more urban profession than doctors. This again has to do with the state's mandates about how to utilize law and medicine. Law is to serve the economy and to link China up with the rest of the globe and therefore requires highly educated personnel, who presumably would be concentrated in the cities. Medicine, on the other hand, serves the larger population, and a significant proportion of the populace reside in the countryside and require health care. The almost 33 percent of doctors who have graduated from technical colleges (Table 2.3) are likely to serve in medical clinics and hospitals at the county and rural township levels.

As in other "civil law" countries in Europe (e.g., Germany, France, Italy etc.), the state dictates the division of the legal professions. Although the Chinese term, lüshi, is generally translated as lawyers, it has a much narrower meaning than its American counterpart and the boundary is very clearly delineated. There is a much
Table 2.3. Educational Levels of Lawyers and Doctors, 1990.

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th>Doctors</th>
</tr>
</thead>
<tbody>
<tr>
<td>University</td>
<td>19.24%</td>
<td>16.36%</td>
</tr>
<tr>
<td>Tertiary College</td>
<td>40.49%</td>
<td>18.80%</td>
</tr>
<tr>
<td>Technical (secondary) College</td>
<td>11.74%</td>
<td>32.96%</td>
</tr>
<tr>
<td>High School</td>
<td>18.75%</td>
<td>11.57%</td>
</tr>
<tr>
<td>Junior High School</td>
<td>8.80%</td>
<td>17.21%</td>
</tr>
<tr>
<td>Primary School</td>
<td>0.91%</td>
<td>3.04%</td>
</tr>
<tr>
<td>No Formal Schooling</td>
<td>0.07%</td>
<td>0.07%</td>
</tr>
</tbody>
</table>

Note: *Figures do not add up to 100 because of rounding.

greater splitting of the roles that are combined among American lawyers. Graduates in law do not constitute a corporate group. Instead, under the national job assignment system, graduates were streamlined into different careers in law. Either they could become judges (in the court system), procurators (in state procuracy), lawyers (state law firms), legal counsels (state enterprises), or simply civil servants in the bureaus of justice (state organs). Lateral mobility among these occupations did not exist until the privatization of law firms got under way in 1992. Moreover, job mobility is uni-directional: i.e., many judges and procurators have become private lawyers but the reverse is not found. Regardless of the state’s formal definition, the Chinese term lūshi in common parlance today by and large refers to lawyers working in law firms, which is the subject of this study.

Before the 1990s, lawyers as well as the members of all of the other legal occupations were state employees. The 1982 Lawyers’ Regulations defined lawyers as “state legal workers” and their duty was to “serve the legitimate interest of the state, the collectives, and the citizen” (Article 1). To cope with the changing economy,
however, starting from 1989 the Ministry of Justice began to draft a new Lawyers' Law, which was not promulgated until 1996. The law shifted its definition of lawyers away from the nature of their status to an emphasis on professional qualifications: lawyers are “practitioners who have obtained lawyers’ license to practice and provide legal services to the society” (Article 2).

By contrast, the Chinese term for doctors, *yisheng*, is very embracing. In colloquial daily usage Chinese doctors are also called *daifu*, which is actually the more traditional form of the professional title of doctors. In any case, both *yisheng* and *daifu* are honorific titles only. Chinese people tend to address anyone who treats other people’s sickness as doctors. Thus, the “barefoot doctors” who receive only elementary training in the provision of health care also enjoy the title of “doctors.” As early as 1985 the Ministry of Health had been drafting a Doctors’ Law, one of the main aims of which is to regulate the expanding team of medical personnel. This law was not promulgated until 1998. Similar to the lawyers, the government now defines the doctors according to the professional qualifications they obtain. Accordingly, doctors are “practitioners who have obtained a doctor’s license to practice and register in medical, preventive, and health care organizations” (Article 2). Doctors in this study refer to registered physicians who work in hospitals and health clinics.
Chapter Three

Differing Rationalities:
The Politics of Legal and Health Reform

“Serve the people” (wei renmin fuwu)!

In the early years of the People’s Republic these few words could be seen almost everywhere. Originally a speech made by Mao in 1944 to commemorate the death of Zhang Side, a loyal communist army officer (Mao 1986: 587-8), the phrase later was translated into one of the guiding principles of the party’s work. “Serve the people” conveys a sense of selflessness and a willingness to work for the common good of the society. Members of the communist party, therefore, were expected, or demanded, to selflessly serve the interest of the larger and general public. However rhetorical it was, the ethos of “serving the people” was particularly prevalent in the arena of medical and health services. In the first national conference on health in 1950, the minister of health proclaimed that the principal stance of health workers was to “serve the people,” that is, the workers, peasants, and the military (Liu et al. 1998: 146). A study of medicine in pre-reform China also suggested that “[the ethic] seemed not at all an empty cliché” (Sidel and Sidel 1973: 202).

When reforms were introduced in 1978, however, ideological rigor began to give way to pragmatism. Mao’s emphasis on “politics in command” – where every decision, no matter whether political, economic, or social, is essentially of a political
nature – was no longer favored in a society marching towards a market economy. In its place came “economism in command,” i.e. economic construction should be put at the center of all activities (yi jingji jianshe wei zhongxin) and every step forward or every policy decision taken was to be broached within the hegemonic discourse of economic development.¹ In most areas, the policy stance gradually shifted away from “serve the people” to one that instead prioritized the need to “serve the economy.” This is best illustrated by reforms in the legal sector, which are predominantly concerned with establishing a stable environment for the economy to further develop. Scholars on China’s legal system have generally acknowledged that the state adopts a very pragmatic approach to law, that law is explicitly meant to function as a tool of the state (e.g. Alford 1994; Brown 1997; Potter 1998; Lubman 1999). At the beginning of the reform period, Deng Xiaoping openly called for a “two hands policy,” which meant that on the one hand the economy must be developed while on the one hand, the legal system must be strengthened (Chen 1999: 40). In line with this, one of the first laws to be adopted during the early reform period was the Economic Contract Law in 1981. Law was, and still is, treated as an instrument serving the goal of economic development, which was illustrated by the CCP policy that all government leaders and economic units must use legal means, supplemented by other means, to maintain economic order. Besides, law in China is not understood in terms of morality and rights and freedom. Instead, legislation is legitimated primarily by the actual needs or the actual conditions (shiji) as defined by the party, and in the reform era general

¹ The use of the word “economism in command” over “economy in command” has to do with the overriding ideology of “putting economic development first” in the past two decades of reform, which has become an everyday, but hegemonic, discourse.
economic construction and the needs of development are the guiding “actuality” (Yu 1989: 42).

Yet, in the area of medical care delivery the ethos of “serve the people” does retain its hold. However formalistic it is, reform in the health sector is still largely framed by the rationality to better serve the public. In particular, the rhetoric of medicine as a “life-and-death” matter predominates. Time and again the government has reiterated its commitment to ensure that every person in the country would be able to enjoy the provision of health care. Although raising economic efficacy is one of the prime concerns, the health of the population is not to be compromised by the logic of the market. Medicine in China, therefore, still is rhetorically committed to “serve the people.”

Hence, reform in China does not have just one logic and one direction but must be understood in a multiplicity of reforms. In their study of the postsocialist pathways in East Central Europe, David Stark and László Bruszt (1998) argue that even within one single country “there is also not one transition but many occurring in different domains and the temporality of these processes is often asynchronous and their articulation seldom harmonious” (p. 81). The actual processes involve the introduction of new elements “in combination with adaptation, rearrangements, permutations, and reconfigurations of already existing institutional forms” (p. 83). They therefore choose to speak of transformations over transition, since the word “transformations” does not presuppose a hypothesized end-state. Stark and Bruszt’s skepticism about cookbook capitalism is useful here. Reform in China has always been incremental in the sense that wholesale replacement by capitalism had never been considered. There were not any substantive and detailed blueprints nor a
coherent theoretical formulation but only some guiding principles – even the formulation of “socialism with Chinese characteristics” together with a “socialist commodity economy” was only vaguely conceived when the terms were initially introduced in 1987. China is therefore not imitating any “ism” by design but is pretty much “open-ended” (Lin 1989; see also Naughton 1995). The reform process itself is governed by its own internal logic rather than any predestined objectives. At the sectoral level we can find transformations in different domains ruled by differing rationalities. The pace and strategies of the reforms reflect the constraints imposed by not only the existing institutional configurations but also the underlying logic of rationality in the process of institutionalization. “Institutions,” therefore, “limit the field of action, preclude some directions, and constrain certain courses. But institutions also favor the perception and selection of some strategies over others” (Stark and Bruszt 1998: 81). It is within this context that the institutionalization of law and medicine in China follows two differing logics of rationality, i.e. “serve the economy” versus “serve the people”. I shall argue that these differing rationalities are to be explained by an interest-based argument that emphasizes a different constellation of state interests in the institutionalization process.

Rationality is defined as “the controlled and unified mapping of human activity around purpose and the corresponding segregation of this activity from the more irrational, chaotic, or corrupt aspects of social life and activity” (Meyer 1992: 261). On expounding the Weberian distinction of formal rationality and substantive rationality, Habermas points out that formal rationality involves both “instrumental rationality” and “the rationality of choice,” in contradistinction to substantive evaluation of the value systems underlying the preferences that characterizes the
substantive rationality as value-rationality (Habermas 1984: 168-85). In cases where the choice does not reflect the underlying preferences, the formal rationality deviates from the substantive rationality and inconsistencies and incompatibility might arise. The logics of rationality therefore operate in two respects here: first, among the different logics of formal rationality of reform at the sectoral level; and second, between the formal and substantive rationality in an area of reform. On the one hand, competing logics of rationality and their locus underlie different areas of sectoral reform across China. On the other hand, the logic of rationality governing the policy directives of an area of reform may or may not adhere to the overall rationality of the larger economic reform, which defines the substantive rationality.

Paul DiMaggio (1988) has commented that institutional theory would be limited in the scope of organizational changes it purports to explain if it does not pay explicit attention to the role of interest and agency. Institutionalization should not be taken only as an outcome but also a process, and, as a process, it “is profoundly political and reflects the relative power of organized interests and the actors who mobilize around them” (p. 13). In the model of institutionalization I propose here (Figure 3.1), I argue that how the state interprets its interests has an essential bearing on the kind of rationality it adopts in the areas of legal and health reform. Although both sectors face common institutional pressures to reform as the national economy progresses at the macro level, an orientation towards “serving the economy” versus “serving the people” results in divergent paths in the process of institutionalization of law and medicine respectively. Consequently, we find that the profession as a target included in the reform package is more prevalent in the legal sector than the health sector. While professional development in a socialist context is necessarily a
state-sponsored one and the active engagement of the professionals is therefore not called for, Chinese lawyers are found to be more *reactive* to the reform policies whereas doctors are largely *inactive* towards the reform agenda in the health realm.

**Figure 3.1** A Model of Institutionalization

| Interests | Logic of rationality in reforms | Patterns of institutionalization | Concrete reform policies | Role of professionals |

**Differing Rationalities: The Politics of Institutionalization**

The institutionalization of law follows a technical model while that of medicine an institutional model. These divergent tracks are primarily results of the different interpretations and representation of interests. Historical institutionalists have argued that actors' interests are very much shaped by collective organizations and institutions that bear traces of their own history. Consequently, not only the strategies but also the goals that actors pursued are shaped by the institutional context (Steinmo et al. 1992). Ellen Immergut (1992a, 1992b) finds that the same proposal of national health insurance yielded varied outcomes in France, Switzerland, and Sweden not so much because of the differing demands and resources of social groups but rather as a result of the specificities of the legislative process in these countries. It was the different "rules of the game" established by the political institutions that

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2 For a comparison of historical institutionalism with other schools of institutionalism, see for example, Hall and Taylor (1996), Immergut (1998), and Campbell and Pedersen (2001)
actually constructed and formulated actors' interests and hence their representation. Thus, different institutional frameworks create different constellations of interests and different cleavages and political conflicts, the corollary of which are different responses to a common problem. Drawing on the insights in the studies of historical institutionalism, I employ an interest-based argument here to account for the different models in the "institutionalization project" (DiMaggio 1988: 14) of the legal and health enterprises in China. In the two areas of reform the state holds different constellations of interest, inasmuch as the legal and medical histories differ. In this sense, the divergent tracks are also path-dependent.

The Institutionalization of Law to "Serve the Economy"

When legal reform started in 1978, it was less about restoring the legal system than building up an entirely new one as a result of a virtual vacuum in the legal system for two decades (e.g. Chiu 1994). In the early years of the People's Republic, efforts had been made to establish a stable legal order. A State Constitution and organic legislation for the courts and procuracy were passed during the first session of the NPC, and a series of procedural and substantive laws were also enacted. Efforts were also made to draft civil, criminal, and procedural codes. All these efforts, however, were brought to an abrupt end when Mao launched the Anti-Rightist Movement in 1957. Legal scholars and officials who dared to suggest that law should not succumb to politics during the Hundred Flowers Campaign were branded as rightists and purged. Lawyers ceased to practice; law schools not only were reduced in number but the curriculum was also increasingly politicized; and the Ministry of Justice was also abolished in 1959. The legal system was further paralyzed during the Cultural
Revolution when “smashing the Public Security, the Procuracy, and the Courts” (gōng jianfa) was the slogan of the day. Procuratorates were formally abolished in 1969 and law schools were closed down. Thus, the Cultural Revolution marked an era of legal anarchy “bereft of the laws of man or heaven” (wūfā wǔtiān).³ It was not until after the arrest of the “Gang of Four” that the Cultural Revolution officially came to an end was the legal system revived.

Legal reform had included the reestablishment of some institutions - procuratorates were resurrected in 1978 and the Ministry of Justice re-instituted in 1979, but a lot more had to do with the creation of entirely new legal institutions (Lubman 1996: 3).⁴ The new leadership headed by Deng Xiaoping now appealed to the consolidation of law so that political power could be upheld more firmly and the past errors of the Maoist era would not recur (Chen 1998: 34-5). In the interest of restoring order and also to steer the modernization program, strengthening of the legal system was seen as tantamount to providing a secure and orderly environment for economic development. As noted by Ronald Brown (1997), law has been functional and instrumental ever since China committed itself to reform:

The uses of law began to evolve in three discernible stages: (1) the 1979 Open Door policy and national drive for modernization, including the use of laws as an inducement for foreign investment; (2) the 1990’s transition to a socialist market economy - using laws as a means to achieve increased competitive efficiency and certainty for economic development in the international market; and (3) the government’s move into global participant and leadership - which required ‘membership’ in this club,’ adherence to international standards and rules, including meaningful law enforcement (p. 115).

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³ For a review of the legal history in the Mao era see Wu Jianfan (1983), and Chen (1998: 20-38).
The reform era therefore witnessed an explosion in legislative activities since 1978. Up to 1988 the NPC and its Standing Committee has enacted 67 laws and the State Council has also issued more than five hundred regulations (Chiu 1994: 6). Among these are the Law on the Joint Ventures Using Chinese and Foreign Investment (1979), Economic Contract Law (1981), Trademark Law (1982), Patent Law (1984), and Foreign Economic Contract Law (1985). During the eighth session of the NPC (1993-98), 111 laws or decisions on related laws have been approved, accounting for 39 percent of the 319 laws adopted by the NPC and its Standing Committee since late 1978. And most of these 111 laws have to do with the economy (BR 29/9/97: 13), in line with the saying that “the market economy is an economy governed by law” (shichang jingji shi fazhi jingji).

As it strives towards legal modernization, the Chinese state appeals to a set of numbers as the yardstick of how far legal development has gone and how well it serves the increasing volume of economic and business transactions and in particular transactions with foreign investors: the number of laws promulgated in each NPC session, the number and the educational credential of lawyers, and the number of civil and economic cases brought to the courts, etc. In one sense this echoes the “late industrialization syndrome” in which numerical figures rule. The interests of the state are therefore material and the process of institutionalizing law technical, in the sense that reforms in the legal sector are only a means whereby the ends of economic development could be guaranteed.

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5 See Chiu (1994: 6-9) for a list of the major laws, decisions, and regulations promulgated during this period.
Such a technical model of institutionalization is therefore institutionally constituted. Measures in the legal reform are mapped in a unified means-ends relation leading to goals, defined by the state as providing a stable environment for China to further develop. To employ March and Olsen's (1989) term, "serve the economy" represents not only the "logic of instrumentality" but also the "logic of appropriateness." It therefore entails both formal (instrumental) and substantive (value) rationality. Such a model of institutionalization in turn impacts on the concrete reform policies pertaining to the development of the legal profession.

The Institutionalization of Medicine to "Serve the People"

Studies on health care systems in liberal democracies find that they are the results of particular historical circumstances (e.g. Starr 1982; Wall 1996). Similarly in China, the health system is also an historical contingent. To develop a strong and powerful China required first of all a healthy population. As Foucault (1980) has argued, since the eighteenth century "the emergence of the health and physical well-being of the population in general [has become] one of the essential objectives of political power" (p. 170). This was compounded by the Soviet ideology that people's health was a resource to the society (Field 1967). Against this backdrop Mao placed health care on the priority list as early as the 1930s. Mao's orientation to "serve the people" could further be seen in the charges laid against the Ministry of Health just prior to the onset of the Cultural Revolution. In 1965 Mao criticized the ministry as serving only fifteen percent of the population and ignoring the medical and health needs of the rural masses. Subsequently, medical education was drastically shortened to three years, urban doctors were sent down to villages to practice, and a large
number of barefoot doctors were trained to serve the vast rural population (Sidel and Sidel 1973: 29-31). It could be concluded that “serve the people” was not just rhetoric but actual practice at that time (Croizier 1975).

During the period of socialist construction public health was seen as an element of national strength and human welfare, and tremendous efforts were made to improve the nation’s health status. The “first health care revolution in China” (Jamison et al. 1984) did achieve noticeable results. Life expectancy doubled from 34 years in 1931 to 69 years in 1981. Infant mortality rate had been dramatically reduced to 34.7 per 1000 live births. The ratio of hospital beds to population increased fifteen-fold, and the ratio of physicians to population doubled (Yang et al. 1985: 482). In 1949, China possessed only 84,000 hospital beds and 540,000 medical workers. By 1983, the number of hospital beds had risen to 2.11 million and the number of medical personnel totaled 4.09 million (BR 14/11/84: 24; MOH 1988: 1). These figures clearly indicate that China has indeed developed a vast network of health care services albeit with very limited resources.

Contrary to the technical model in legal reform, this history of health development in the first three decades of the People’s Republic renders the state to adopt a different model in the institutionalization of the health enterprise. When China espoused health reform in the 1980s, it built substantially on the rhetoric and achievements of the past three decades. “Serve the people” still topped the principles of health development, with a gradual policy shift from the rapid expansion of the “quantity” of medical personnel and institutions to an emphasis on “quality” of health care provisions. While pressures unleashed by the general economic reform compel the state to also observe cost-containment and efficacy in the health sector, its moral
and political commitment in the health of the population makes it not possible to adopt a wholesale marketization in its delivery of health services. Not only is it against the socialist ideology but also politically illegitimate and therefore not viable. In fact, the Ministry of Health had guarded against a turn to a profit-orientation by public hospitals. A directive issued in August 1985 made it clear that health care provisions should not pursue profits in the interest of upgrading economic efficacy, but must “uphold the principle to serve the people” (MOH 1988: 7). The introduction of a “contract responsibility system” (cheng bao zhi) also sparked a decade-long debate about the nature of medicine. Although scholars and health administrators alike invariably dismissed the Maoist system which treated health care as entirely a government welfare benefit, there were questions as to whether the accommodation of different forms of health care provisions would turn medicine into an economic product and hospitals into business enterprises. Some maintained that medicine should be treated as a public good, while others argued that hospitals should become more entrepreneurial. At the center of the debate was the social responsibility and moral commitment of the state. The debate was drawn to a close when the National Health Conference held in December 1996 finally concluded that “medicine serves primarily the cause of public good (gongyixing) and the government practices welfare policy towards the delivery of health services” (HN 10/12/96: 1). Health reform therefore involves an “ethical dimension” (HN 26/1/97: 2). Consequently, “serve the people” is not only ideological but moral and political, and it continues to dominate the agenda of health policy reform. Although the actual practices of doctors and

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hospitals might seem otherwise, the formal rationality of the state in health reform is unmistakable here.  

Hence, the institutionalization of the health sector follows a different logic and a different route from that of the legal sector. Since the state is committed to the provision of health care to the population, its interests are normative and the model of institutionalization an institutional one: health reforms call for a change in the system and are mainly about hospital reform and health insurance reform. Even though reform policies also include the "re-professionalization of medicine" and "investment in high-technology medical care" (Henderson 1989), on the whole the policy orientation is more "communal" than "clinical" (Scott 1985). Whereas a clinical orientation would aim at securing individual practitioners the right to decide and act in an autonomous manner, a communal orientation seeks to improve and rationalize the delivery of medical services. Consequently, Chinese doctors are under far more constraints in the reform of the healthcare sector.

Hence, concerns with organizational legitimacy and the normative pillar of institutions (Scott 2001) prompted the health sector to follow the "logic of appropriateness," that the state sees it as obligatory to shoulder the social and moral responsibility for the populace's health. Even if the state has been under huge

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7 Disagreements could have been raised about the notion that health reform is dictated by the "serve the people" rationality. True, provision and delivery of health care in China has been marketizing and thus privatizing, and stories are abound about doctors demanding "red packets" (hongbao) on the operation table and that hospitals require a good sum of money as down payment before treating patients. However, what is needed to make clear is to distinguish here the state ideology in putting forward health reform and the actual practices by doctors and hospitals in the craze of marketization. Even though the state is implementing a fee-for-service program in the health sector, the idea behind is to make the delivery of health care services more cost-effective and efficient so as to better serve the public. Thus, the "serve the people" rationality here juxtaposes with the "serve the economy" rationality in the area of legal reform and development.
budgetary constraints, at least it commits itself to ensure the health of its urban population. "Serve the people" therefore rules here. Although the substantive rationality would be to follow the kind of pragmatism endowed by the national agenda of economic reform to raise efficiency and efficacy, the moral commitment to its urban population compels the state to adopt a formal rationality to "serve the people." Thus, not only we see the logic of rationality of health reform departs from that of legal reform, but the formal and substantive rationality also diverge here.

The Politics of Reform and the Role of the Professionals

The differing models adopted by the legal and health fields are institutionally constituted. Consequently, the orientation of concrete reform measures differs and professionals find their own roles vary in these two areas of reform. Following John Meyer (1978: 357), the power and resources a given professional group has depends upon its links to the environment and the dependencies on the environment that it controls and mediates. In this vein, the meso institutional environment – the specific measures of sectoral reforms – defines the niche in which Chinese lawyers and doctors can maneuver, and whether they can protect or expand their niches depends on their interaction with the environment. As reform measures are dictated by the state, it assumes an active role in defining and determining the parameters in which the two professions could act and react. Two types of institutional actors could be identified. To draw on DiMaggio (1988) again, the state is an "institutional entrepreneur" with sufficient resources to realize interests that it values highly and to carry the logic of rationality through, whereas the two professions are "subsidiary
actors” who “provide legitimacy to the new organizational form by providing resources that render its public accounts of itself plausible” (p. 15).

In the realm of legal reform, the state sees a greater need in soliciting lawyers to (re)establish the legal system. Many policy changes and reform measures targeted growth in the ranks of lawyers as an indicator of how far the legal system has been moving towards serving economic construction and in particular to link up China with the global world (yu guoji jiegui). While lawyers per se still cannot themselves introduce any proactive reform initiatives to develop themselves into a professional group, they respond to the reform policies as “reactive lawyers,” and as a distinguished and visible professional group in society they are able to hope for a tacitly negotiated outcome. In contrast, since health reform in China calls for a systemic change that comprises mainly hospital reform and health insurance reform, doctors consequently only have a peripheral role to play. Even though early on there were provisions allowing doctors to go into private practice, in reality the number of private doctors was subject to strict control, a result of the “serve the people” rationality that the state needs to make sure that “quality care” would be provided to the general public at affordable prices. In sum, doctors are “inactive” in the realm of health reform and the logic of “serve the people” works to the disadvantage of doctors going private, an important indicator of their circumstance as a professional group.

*The Politics of Legal Reform and “Reactive Lawyers”*

To serve economic construction, lawyers are seen as both functional and instrumental to an increasingly complex economic environment. The rapid development of lawyers from the 1980s onwards has been attributed to the attention
given to the three areas of international commercial transactions, the representation of
criminal defendants, and management of the domestic economy (Feinerman 1987).
The reiteration in the 1990s that lawyers should be proficient in their mastery of law,
knowledgeable in economics, and fluent in foreign languages further reinforces these
emphases.

Before the complete abolition of the legal profession during the Anti-Rightist
Campaign of 1957, there were some 2,900 full- and part-time lawyers practicing in
about 800 legal advisory offices throughout China (BR 17/11/80: 4; Lan Qurppu 1995:
304). When the profession was re-instituted again at the start of economic reforms, it
had to start virtually from scratch, with only 212 lawyers and 79 legal advisory offices
(SCMP 22/6/98). The Ministry of Justice therefore faced a grim task in attempting to
develop an adequate corps of legal specialists to “serve the economy.” Consequently,
the reform objectives were technical and targets of quantitative growth were set. The
institutional environment upon which the legal profession develops must of course be
attributed to the policy parameters set forth by the state. Since lawyers themselves are
the policy target, they however have the niche to choose to react to some policy
changes with skepticism and to others with enthusiasm, in a way that helps push
forward reform in the direction that the lawyers themselves see appropriate.

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8 The Lawyers’ Regulations (1980) stipulated that the business organization where lawyers worked
were “legal advisory offices” (fālù guwenchu). Since 1984, however, the term “lawyers’ firms” (lǐshì
shìwùsuǒ) has been adopted.
Figure 3.2 shows the changes in the numbers of lawyers over the past two decades. Three phases of development can be discerned: 1979-1988, 1988-1992, and 1992 till the present. Table 3.1 gives a list of selected laws and decisions that impact on the development of the ranks of lawyers during these three phases.

**Phase I (1979-1988)** The profession grew only modestly during the first phase of legal development.⁹ The Ministry of Justice faced a paucity of lawyers when it was

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⁹ The abrupt decline in the total number of practitioners in 1986 is more a definitional than a real one. Before 1986, part-time lawyers included also part-time legal workers who had not obtained lawyers'
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reestablished in September 1979, and in December it issued a notice urging regional governments to quickly establish legal advisory offices in large and medium cities. By October 1980, 381 such offices were established with more than 3,000 full-time lawyers (Lan Quanpu 1995: 308). These lawyers were recruited through various channels. About 15 percent had practiced law during the 1950s; forty percent had had experience in various judicial organs, and the remaining 45 percent were drawn from various other government organs as well as state enterprises and other public credentials. For instance, in 1985 there were 18,218 part-time lawyers, of which 11,645 were categorized as legal workers. Exclusion of this category in the statistical definition since 1986 therefore resulted in the seeming decline, camouflaging the actual increase in the number of part-time lawyers from 6,573 in 1985 to 7,046 in 1986.
institutional units (Lan Quanpu 1995: 313). Most of these new recruits had good political credentials, but less than one fifth of them possessed a higher education in law (Lan Quanpu 1995: 318). The low percentage of old lawyers returning to practice suggests that many of them were still not regarded as politically reliable by the authorities, and they themselves also reportedly had doubts about the new political turn (BR 20/7/79: 4).

The Ministry of Justice initially set a target of having at least 36,000 full-time lawyers by the end of 1985 (Lan Quanpu 1995: 313; Zhang Geng 1997: 14). In reality the growth of the profession fell far short of the proposed agenda, and the set target was not achieved until 1993. The Lawyers' Regulations (1980) defined lawyers as state legal workers on the state's payroll. Law firms, as institutional units (shiye danwei), were to be part of the state apparatus and were therefore subject to the overall personnel management of the state. Any income (not profit, as institutional units are supposedly non-profit-making) went entirely to the state treasury while all expenses in operating the firm, including lawyers' salaries, were provided for in the state budget (Zheng 1988: 495; Lan Quanpu 1995: 343; Chen 1998: 133). For a legal advisory office to recruit an additional lawyer, it would first need to secure an extra establishment quota (bianzhi) from the state budget in order to cover the lawyer's salary and welfare benefits etc. This arrangement also meant that law firms were subject to the system of national job assignments for any new staff. This fundamental linkage between the profession and the state thus put a paradoxical constraint on the development of the ranks of lawyers. To deal with this problem, in 1984 the Ministry of Justice suggested that regional governments should provide extra quotas from local institutional establishments for the expansion of the number of full-time lawyers so as
to supplement those allocated directly from the central government. These lawyers would have their salaries covered through the local government budgets (Tong Baogui 1996: 184-8). This in essence decentralized to local governments the responsibility for developing the profession, making it contingent on the latter's initiative to provide for necessary institutional support.

At the same time, the Ministry of Justice also experimented with other forms of financial management. Instead of being wholly state-funded, law firms, depending on their own financial well-being, were encouraged to become self-supporting or having the state subsidize them only to make their accounts balance. But this was sometimes done in an autocratic manner that invited the dismay of lawyers. For instance, two lawyers from a city in Hebei said in an interview with me that the state law firm in which they originally worked was in effect forced to become self-supporting in 1985, when the local financial bureau made an agreement with the bureau of justice to cease funding the firm without its knowledge and consent. They were therefore shocked to learn that they had all suddenly become "unemployed" almost overnight and had lost all their welfare benefits.\(^\text{10}\) Apparently the lawyers themselves were unprepared to be liberated from state employment.

Between 1981 and 1988 the number of full-time lawyers grew only very slowly. Lawyers were largely receptive to policy changes and their growth was mainly state mandated. During this period the state relied on a pool of part-time lawyers in order to ameliorate the shortage of legal practitioners. In 1984, the Ministry of Justice called for a greater development of part-time lawyers, and

\(^{10}\) Interviews Nos. 54 and 55, 1997.
regulations governing part-time and specially-invited (teyao) lawyers were formally issued (Tong Baogui 1996: 182-4). Apparently the growth of the profession had been so slow in previous years that the Ministry of Justice saw the development of part-time lawyers as a desirable complementary measure, and the number of part-time lawyers was increased two-fold from 1984 to 1985.

Phase II (1988-1992) Later periods of expansion and contraction reflect, on the one hand, the state's revised vision of its relationship with the profession in order to keep in line with the broader economic reform (Alford 1995: 31), and, on the other hand, a changing attitude towards part-time and specially-invited lawyers. In 1988 the Ministry of Justice put forward an experimental program for collective law firms (Tong Baogui 1996: 251-5), 11 which represented a key breakthrough for legal personnel to dissociate themselves from mandatory government employment and to shift closer to the market. Lawyers were encouraged to organize among themselves to form co-operative law firms and to share both profits and losses pro rata without any kind of financial intervention by the state. They were to be administratively and economically independent without receiving any state funding nor taking up an establishment quota, thus solving the fundamental problem that had inhibited the development of the profession in previous years. As long as the firms were financially capable they could hire extra lawyers. They also had more autonomy in hiring procedures in the sense that they were no longer part of the national job

11 It was said that the trial program had actually begun a year earlier (LCHR 1998: 34). For a discussion of the development of co-operative law firms in this period see Gelatt (1991: 789-92), and Chen (1992: 134-5).
allocation system. Moreover, to ease lawyers' suspicion and hesitation about this new move, they were allowed to retain their position with their salary suspended (tingxin liuzhi) during the trial period instead of resigning altogether from their original job. Among the lawyers who chose to go into co-operative law firms, 41.9 percent actually resigned from their former positions while 55.8 percent opted for the alternative (Qing Feng 1997: 223). At the end of 1988, 41 law firms of this kind were established nation-wide (LYC 1989: 26), with the number increasing to seventy firms in the following year, containing some 300 lawyers (LYC 1990: 60). In Beijing, the first co-operative law firm was set up in July of that year by five lawyers, a product of "the mandates of the Beijing Bureau of Justice." Several of my informants admitted that they were not enthusiastic about this change as the ownership structure of co-operative law firms was less than clear. Whereas lawyers themselves were not employed by the state, it was not clear who actually owned the law firm. Because of this organizational murkiness, by 1989 only four such law firms were found in Beijing and the number of full-time lawyers increased only incrementally.

However, the ranks of part-time lawyers experienced a period of substantial growth. In 1988, the first nation-wide qualifying examination for lawyers was held, through which people working in other professions could obtain a lawyer's credentials and became available to practice law on a part-time basis. But the Ministry of Justice apparently changed its mind regarding the pool from which part-time lawyers should be drawn. A provision issued in October 1988 stated that only legal educators in law institutes could apply to become part-time lawyers (Tong

12 Interview No. 15, 1997.
Obviously this had to do with the oft-heard complaints about the malpractice of some of the part-time lawyers, who were accused of using their social connections (guanxi) instead of proper legal means to do their business. The provision, in a sense, reflected "the PRC's effort ... to create what is at least in organizational terms an independent legal profession" (Gelatt 1991: 768). By limiting the pool of adjunct lawyers, it was hoped that they would be less subject to influences in their own immediate work environment. But this was clearly not checked strictly in reality, and the number of part-time lawyers continued to climb.

In the aftermath of the 1989 protest movement the trial program of cooperative law firms almost came to a halt as a result of the return to political conservatism. In November, the Ministry of Justice issued a notice on tightening up the supervision of lawyers' work, thus setting the tone for stricter monitoring of lawyers and of law firms (Tong Baogui 1996: 292-6). Subsequently, a rectification campaign to clamp down on professional misconduct was launched. Subsidiaries of law firms as well as firms other than those approved by the Ministry of Justice were all to be shut down (Tong Baogui 1996: 322-5). Development of adjunct lawyers was also controlled (LYC 1991: 45). The consequence was clear. The total number of practicing lawyers plunged from 45,942 in 1989 to 41,383 in 1990, and further again to 33,441 in 1991 – an overall drop of 27 percent.

Phase III (1992-) The real explosion of the profession occurs only after 1992. That year marks one of the most important in reform China. It signifies China's

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13 The campaign lasted for seven months, beginning from August 1990 and ended at February 1991. It was reported that "unnecessary subsidiary offices" of 365 law firms were shut down pursuant to this notice (CD 22/5/91: 3).
emergence from the economic and political conservatism of the years after 1989. Early that year, Deng Xiaoping made his famous southern tour (nanxun) during which he re-asserted the need for a market economy and called for an acceleration of reform. Deng’s remarks were subsequently incorporated into official policy. Later that year, the Ministry of Justice proposed ten measures for the reform of lawyers’ work, one of which was to expand the trial program of co-operative law firms alongside state-run ones (CL 3/92: 3). This proposal was subsequently consolidated in a document detailing the directions of further reform (CL 5/92: 4-9). Still, this failed to greatly expand the number of non-state-employed lawyers and of law firms. In Beijing, only fourteen new co-operative law firms were set up in 1992, the teams of non-establishment lawyers totaled only 110 (Dangdai sifa 5/95: 21).

Deng’s speeches during his southern tour made a great impact on the ideological squabble over the supposedly capitalist nature of China’s reform program. Deng made it clear that the concepts of “capitalism” or “socialism” had no direct bearing on a planned or market economy. Lawyers’ lukewarm responses towards the cooperative law-firm system also forced the Ministry of Justice to adopt a more pragmatic approach in the reform of the lawyers’ system. In June 1993, the then Minister of Justice, Xiao Yang, proposed to cease defining law firms in ownership terms (CL 8/93: 3-6). This was subsequently put into words in the program of deepening reform issued at the end of the year, in which law firms were encouraged to determine for themselves their firm’s proper organizational form and internal management, and its method of allocation of profits and losses (Tong Baogui 1996: 507-14). Establishment of partnership law firms therefore found its terms of
reference, although this organizational structure was not formally recognized till the promulgation of the Lawyers’ Law in May 1996.

In any case, from 1994 onwards the number of new law firms rose dramatically, the majority of them being partnerships. For instance, 46 partnership law firms were established in Beijing in that year alone, amounting to 42 percent of all the non-establishment law firms (YJA 1995: 106). Among my informants who founded their own law firms, almost all of their firms were set up in 1994. The composition of the founders also suggests that the development of partnerships helped draw legal talents to join the rank of lawyers. For example, one informant was a research director in the Beijing Bar Association before setting up his law firm.\(^{14}\) Another originally taught law at a university and two other partners in his firm had worked in state organs.\(^{15}\) A third one was originally a division chief in a bureau of justice, and one of his co-founders was a procurator.\(^{16}\) The greater potential for partnerships represents a step towards greater autonomy of the profession, and lawyers were not laggard to seize this opportunity to place some distance between themselves and the state.

The urgency to provide China with sufficient numbers of lawyers for the vast populace also overrode the Ministry of Justice’s concern to maintain the “organizational independence” of part-time lawyers. The 1993 program of reform expanded the pool of possible adjunct lawyers to the wider society other than just law institutes, though employees in the judicial system and state civil servants at large

\(^{14}\) Interview No. 16, 1997.  
\(^{15}\) Interview No. 28, 1997.  
\(^{16}\) Interview No. 48, 1997.
were prohibited from filling the role. Thus, the ranks of part-time lawyers took on a growth momentum again and the number has kept increasing ever since. The pace did slow down somewhat in 1994, partly because of an ongoing discussion about having part-time lawyers gradually phased out. In Beijing, the Bureau of Justice formally announced it would restrict the development of part-time lawyers as a measure to encourage potential lawyers to turn full-time (CLN 9/8/94: 2). The immediate effect was that the number of part-time lawyers was reduced by almost 38 percent in 1995 (YJA 1996: 51). But overall, the ranks of adjunct lawyers continued to expand at a faster rate than that of full-time lawyers, and by 1996 they made up more than forty percent of the profession.

The vibrant economy since 1992 also brought forth a huge potential market for legal services, in particular in terms of an increasing number of daily legal transactions as well as economic and civil cases. For instance, in 1995 there were 2.7 million civil cases and 1.3 million economic cases, but lawyers were involved in only about 12 percent and 27 percent of these cases respectively (LCHR 1998: 85). In court cases (including criminal, civil, and economic cases), representation by lawyers has consistently been below twenty percent (Table 3.2). The pressure generated by this huge market has no doubt contributed to the increasing pragmatism of the Ministry of Justice’s reforms. However predominant the state is, its policy-making gradually reflects a realistic recognition of the existence of market forces. Hence, whereas the rapid growth of lawyers is a direct response to relaxed state control, the policy changes are also mediated by the realities of the market.
Table 3.2 Court Cases Represented by Lawyers, 1990-2000.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total court casesa</th>
<th>Number of cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>3,129,774</td>
<td>580,991</td>
<td>18.56%</td>
</tr>
<tr>
<td>1991</td>
<td>3,131,375</td>
<td>472,183</td>
<td>15.08%</td>
</tr>
<tr>
<td>1992</td>
<td>3,283,064</td>
<td>632,142</td>
<td>19.25%</td>
</tr>
<tr>
<td>1993</td>
<td>3,630,253</td>
<td>690,223</td>
<td>19.01%</td>
</tr>
<tr>
<td>1994</td>
<td>4,196,604</td>
<td>766,663</td>
<td>18.27%</td>
</tr>
<tr>
<td>1995</td>
<td>4,818,468</td>
<td>863,584</td>
<td>17.92%</td>
</tr>
<tr>
<td>1996</td>
<td>5,636,575</td>
<td>979,301</td>
<td>17.37%</td>
</tr>
<tr>
<td>1997</td>
<td>5,636,030</td>
<td>1,162,416</td>
<td>20.62%</td>
</tr>
<tr>
<td>1998</td>
<td>5,791,072</td>
<td>1,273,395</td>
<td>21.99%</td>
</tr>
<tr>
<td>1999</td>
<td>6,130,747</td>
<td>1,367,586</td>
<td>22.31%</td>
</tr>
<tr>
<td>2000</td>
<td>5,823,121</td>
<td>1,438,175</td>
<td>24.70%</td>
</tr>
</tbody>
</table>

Note: a Cases of first and second instances.
Sources: Lyc, various years.

**Reactive Lawyers**

The agenda to expand the legal profession gives lawyers a role to play in legal reform. During the course of legal development, once the institutional barrier (the establishment quotas) was removed lawyers have reacted actively to subsequent policies that pertain to their own professional development. Even though the profession acts largely in reaction to changing state policies, the relationship is less than mechanical. Attention should be given to the differing reactions from the lawyers at every policy turn. Although lawyers in China might not themselves put forward any reform plan, they react to some policy changes with more enthusiasm than others, which helps shape the direction of reform to their own advantage. Lawyers are therefore "subsidiary actors" in the institutionalization process. For instance, when the program of co-operative law firms was first put forward in 1988 it received only lukewarm responses. But lawyers apparently took
more initiatives in forming partnerships when this began to gain recognition in 1994, indicating that they saw greater autonomy, both in organizational and in institutional terms, in the latter than the former. As a result, the period between 1992 and 1994 witnessed the fastest growth in the number of lawyers, with their ranks rising by more than eighty percent. In Beijing, more than half of the practicing lawyers joined the profession only after 1992, and many of them went directly to work in partnership law firms, suggesting that they saw this organizational form as promising.

The development in the numbers of Chinese lawyers also raised several interesting issues to studies of occupational recruitment and retention (e.g. Simpson et al. 1982, Evans and Laumann 1983). First, in addition of the growth of the legal market, Chinese lawyers apparently see the possibilities of dissociating from the state and the prospect of “independence” as a major “opportunity structure of an occupation.” Second, the continual growth after 1992 illustrates the profession’s strong retentive power, but it would be better explained in terms of “rewards” than “shelters,” since the licensure system does not yet confer any advantages to the practicing lawyers. Third, the composition of the founders of partnership law firms discussed above implies that the retentive power of other legal occupations, like judges, procurators, or even law professors, is not as strong. Fourth, contrary to what Simpson et al. (1982) suggest, that occupations with higher educational requirements would likely recruit young workers than older ones, in China many people are well beyond their mid-thirties when they switch to become lawyers, indicating that factors other than just educational attainment are to be taken into account in the make-up of work qualifications. All these indicate that alternative explanations to occupational recruitment and retention must be assessed vis-à-vis the specificities of the
institutional environment and that a different operative logic is at work in a socialist labor market. This will be elaborated in chapter five.

The Politics of Health Reform and "Inactive Doctors"

In contrast to the reforms that were underway in the legal sector, health reform developed a different momentum. Although a reversal of the anti-professional ideology called for the recruitment of medical experts to chair hospitals and departments (Henderson 1989), the state put less emphasis on the development of the profession. Increasing the number of doctors appears to be a response to a swelling population, and the ratio of doctors to the population is still low (Fig. 3.3 and Table 3.3). Although there is a provision for private medical practitioners, in reality there are very stringent controls on who could join the ranks. Instead, the Chinese government stresses revamping the hospitals and the health insurance system.

In response to the macro economic agenda to observe efficiency and to raise productivity, the health sector calls for an improvement in the management of hospitals and the health insurance system in order to "serve the people" in a more cost-effective way. Irrespective of the market orientation, however, the state at the same time maintains that health care is a public welfare good. Consequently it guards against entrepreneurial efforts by hospitals. Caught between this conflict between the market principle and socialist values, doctors find themselves having only a peripheral role to play and they have a weak niche to promote their own interests in the agenda of health-sector reform.
Healthcare reform begins with the notion of abandoning the Soviet practice of "socialized medicine,"\textsuperscript{17} the centerpiece of which was "the removal of 'capitalistic' medical practice whose earmark was the private practice of medicine and the fee-for-service payment" (Field 1991: 50). Under socialized medicine the cash nexus between the patient and doctor was eliminated and vigorous attempts were made to equalize accessibility and to provide almost universal basic care, although differential access to health care across regional and "class" differences was still found (Parmelee et al. 1982: 1394). But the purge of intellectuals during the Cultural Revolution together with Mao's edict to put the emphasis of health care in rural areas had resulted in both a bloated yet substandard medical team and increasing difficulties in

\textsuperscript{17} For an introduction to Soviet socialized medicine, see Field (1967).
Table 3.3  Ratio of Doctors to Total Medical Manpower and to Population

<table>
<thead>
<tr>
<th>Year</th>
<th>Doctors as percentage of total medical manpower</th>
<th>Number of doctors per 1,000 population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>41.9</td>
<td>1.07</td>
</tr>
<tr>
<td>1982</td>
<td>41.6</td>
<td>1.29</td>
</tr>
<tr>
<td>1983</td>
<td>41.6</td>
<td>1.33</td>
</tr>
<tr>
<td>1984</td>
<td>41.3</td>
<td>1.34</td>
</tr>
<tr>
<td>1985</td>
<td>41.4</td>
<td>1.33</td>
</tr>
<tr>
<td>1986</td>
<td>41.2</td>
<td>1.34</td>
</tr>
<tr>
<td>1987</td>
<td>41.1</td>
<td>1.36</td>
</tr>
<tr>
<td>1988</td>
<td>43.5</td>
<td>1.46</td>
</tr>
<tr>
<td>1989</td>
<td>45.1</td>
<td>1.52</td>
</tr>
<tr>
<td>1990</td>
<td>45.2</td>
<td>1.54</td>
</tr>
<tr>
<td>1991</td>
<td>45.7</td>
<td>1.56</td>
</tr>
<tr>
<td>1992</td>
<td>44.4</td>
<td>1.54</td>
</tr>
<tr>
<td>1993</td>
<td>44.5</td>
<td>1.55</td>
</tr>
<tr>
<td>1994</td>
<td>44.8</td>
<td>1.57</td>
</tr>
<tr>
<td>1995</td>
<td>45.1</td>
<td>1.58</td>
</tr>
<tr>
<td>1996</td>
<td>45.0</td>
<td>1.59</td>
</tr>
<tr>
<td>1997</td>
<td>45.1</td>
<td>1.61</td>
</tr>
<tr>
<td>1998</td>
<td>45.2</td>
<td>1.60</td>
</tr>
<tr>
<td>1999</td>
<td>45.9</td>
<td>1.67</td>
</tr>
<tr>
<td>2000</td>
<td>46.2</td>
<td>1.68</td>
</tr>
</tbody>
</table>

Source:  *CSY 2001*: 735.
accessibility to health services in urban areas. Hospitals were also running into huge deficits. Health sector reform in the eighties was therefore geared to rectify these problems. Moreover, the health transition and demographic changes underway in China called for a shift in health policy from emphasizing prevention to the control of chronic diseases in order to meet the mounting demand for treatment (World Bank 1992). Policies of cost-containment and cost-recovery were therefore introduced.

The healthcare enterprise in China has undergone tremendous changes in the past two decades. Private and joint-venture health institutions now exist alongside public ones. Management responsibilities are decentralized to the hospitals, and the state now assumes only an indirectly administrative role. In personnel arrangements, a competitive labor market is allowed. And the fixing of prices is no longer solely determined by administrative decrees and market mechanisms are also taken into consideration (CHP 2-3/94: 2-3). Table 3.4 shows the major policy platforms of healthcare reform promulgated by the state at different times, among which the three most significant areas of reform can be identified.

Hospital Reform Health reforms aim first of all to restructure the management and financing of hospitals. In order to promote greater efficiency in hospitals, the state introduces a responsibility system through which hospital chiefs are allowed to exercise greater autonomy and bonuses are given to medical staff to reward attendance and hard work. At the same time, the state reduces its direct subsidies to hospitals and limit reimbursements for hospital deficits, so that hospitals must find ways to contain costs. Table 3.5 shows that the state’s contribution to health care relative to its overall budget together with Mao’s edict to put the emphasis of health care in rural areas had resulted had risen only during the first few years of reforms.
<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Document</th>
<th>Major Policy Platforms</th>
</tr>
</thead>
</table>
| 25 Apr 1985  | *MOH Report on Several Policy Problems of Health Reform* | i) Expanding existing facilities and allowing doctors to work privately in off hours;  
                   ii) Decentralizing management responsibilities;  
                   iii) Encouraging development of private practitioners;  
                   iv) Consolidating health services in rural areas;  
                   v) Reforming the fee system and the health insurance system. |
| 14 Feb 1987  | *A Synopsis of Health Reform During the Seventh Five-year Period* | i) Encouraging multiple forms of health care provision;  
                   ii) Rejuvenating health clinics and strengthening health organizations at the township and village level;  
                   iii) Insisting on the decentralization of management responsibilities;  
                   iv) Supporting private practitioners and allowing doctors to work privately in off hours;  
                   v) Putting prevention first and providing primary care on a fee basis;  
                   vi) Expanding education on traditional Chinese medicine, improving medical schools at the county level, and enlivening medical research institutes;  
                   vii) Reforming the fee system on a cost-recovery basis. |
| 9 Nov 1988   | *An Opinion on Expanding Medical and Health Services*     | i) Insisting on the contract responsibility system;  
                   ii) Allowing doctors to work privately in off hours;  
                   iii) Furthering reform on the fee system;  
                   iv) Encouraging hospitals to develop service-sector products (*disan chanye*);  
                   v) Upholding the principles to “serve the people” and to provide quality care. |
| 23 Sept 1992 | *Several Opinions on Deepening Health Reform*             | i) Reforming the management system and upgrading the provision of health services;  
                   ii) Expanding the sources of health finance and improving the fee system;  
                   iii) Expanding managerial autonomy on personnel arrangement;  
                   iv) Expanding the scope of serve-sector products and strengthening the economic power of hospitals;  
                   v) Reforming the health insurance system. |
| 15 Jan 1997  | *State Council's Decision on Health Reform and Development* | i) Upholding the principle to “serve the people” and striking a balance between social efficacy and economic efficacy;  
                   ii) Reforming the urban labor health insurance system;  
                   iii) Developing community care;  
                   iv) Strengthening the provision of health care services in rural areas;  
                   v) Integrating Chinese and Western medicine;  
                   vi) Strengthening the team of medical personnel;  
                   vii) Expanding the sources of health finance;  
                   viii) Improving the system of health legislation. |
<table>
<thead>
<tr>
<th>Year</th>
<th>Healthcare Budget (100 million yuan)</th>
<th>Healthcare as Percentage of Total State Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>22.42</td>
<td>2.02</td>
</tr>
<tr>
<td>1980</td>
<td>30.16</td>
<td>2.49</td>
</tr>
<tr>
<td>1981</td>
<td>32.74</td>
<td>2.94</td>
</tr>
<tr>
<td>1982</td>
<td>37.66</td>
<td>3.27</td>
</tr>
<tr>
<td>1983</td>
<td>41.95</td>
<td>3.25</td>
</tr>
<tr>
<td>1984</td>
<td>48.16</td>
<td>3.25</td>
</tr>
<tr>
<td>1985</td>
<td>54.81</td>
<td>2.97</td>
</tr>
<tr>
<td>1986</td>
<td>64.28</td>
<td>2.79</td>
</tr>
<tr>
<td>1987</td>
<td>59.46</td>
<td>2.45</td>
</tr>
<tr>
<td>1988</td>
<td>71.86</td>
<td>2.65</td>
</tr>
<tr>
<td>1989</td>
<td>74.40</td>
<td>2.45</td>
</tr>
<tr>
<td>1990</td>
<td>79.47</td>
<td>2.30</td>
</tr>
<tr>
<td>1991</td>
<td>86.40</td>
<td>2.27</td>
</tr>
<tr>
<td>1992</td>
<td>103.81</td>
<td>2.36</td>
</tr>
<tr>
<td>1993</td>
<td>119.38</td>
<td>2.26</td>
</tr>
<tr>
<td>1994</td>
<td>146.97</td>
<td>2.54</td>
</tr>
<tr>
<td>1995</td>
<td>163.26</td>
<td>2.39</td>
</tr>
<tr>
<td>1996</td>
<td>187.57</td>
<td>2.36</td>
</tr>
<tr>
<td>1997</td>
<td>209.20</td>
<td>2.27</td>
</tr>
<tr>
<td>1998</td>
<td>225.10</td>
<td>2.08</td>
</tr>
<tr>
<td>1999</td>
<td>235.60</td>
<td>1.79</td>
</tr>
</tbody>
</table>

Note: a Healthcare budget does not include reserves for public insurance program.

Sources: CHY, various years.
Although a lot more money was being spent, there has been a relative decline in the health budget since 1984. State investment in health care includes operational grants to hospitals, subsidies to health clinics, funding for prevention and maternal-child care programs, professional middle schools, and training of hospital administrators etc. (World Bank 1997: 75). But direct state financing of hospitals has been reduced dramatically and covers only some of the basic personnel wages and new capital investments, which total approximately 25 to 30 percent of hospital expenditures (Hsiao 1995). In a cancer hospital in Beijing, the direct state subsidy was only three million yuan in 1996, whereas wages for the team of 1,700 staff alone cost 16 million yuan. While enjoying greater autonomy, hospitals are left to their own devices to secure the requisite revenue for daily operations. Medical expenses therefore surge as reform proceeds.

Although the Ministry of Health together with the State Pricing Bureau have twice raised medical fees, in reality the charges are still substantially below cost. A surgical operation that requires several medical staff to work for seven to eight hours charges only about 100 yuan (CHP 9/95: 11). In Beijing, registration fee cost just 0.5 yuan and surgery such as appendectomy cost only 75 yuan in 1997 (CCN 11/6/97: 3). The state’s commitment to keep health services accessible and affordable results in a fee structure determined largely by political and ideological instead of economic considerations. Because of the unreasonably low prices for consultations and surgical operations, hospitals find major sources of income from fees charged for diagnostic examinations and prescriptions. This results in "the rapid proliferation of hi-tech

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18 Interview No. 8, 1997.
medical equipment in hospitals [and] the over dispensing of drugs” (Yuen 1996: 218). Because of the higher profit margins from diagnostic examinations, hospitals tend to invest more on medical equipment but relatively less on human capital (CHP 2-3/94: 22). Consequently even county hospitals have advanced equipment found only in major hospitals in other countries. For instance, Beijing has more computerized tomographic (CT) scanners than the whole of England, and hospitals in Nanjing have three times the number of CTs as in London (SCMP 25/1/99). A hospital administrator admitted to me that his hospital started to make ends meet only with the purchase of a CT scanner. Medical expenditure in 1978 cost 2.7 billion yuan in China, whereas in 1994 this amounted to 55.8 billion yuan (BR 29/4/96: 5). Pharmaceutical expenses account for more than sixty percent of the medical bill (CHP 10/94: 6), whereas registration fees make up only two to three percent and consultation fees ten percent of hospital income (CHP 9/95: 11; CCN 14/4/97: 1). In the cancer hospital mentioned above, medicine contributed 48 percent of the hospital’s 150 million yuan of income in 1996. A doctor earned only about sixty to seventy yuan a month from consultations, which he sarcastically commented that it should not be regarded as income but just “a kind of consolation.” As it is stipulated that hospitals can charge a mark-up of fifteen percent of the drug price, doctors also tend to prescribe expensive drugs, and problems of receiving kickbacks from pharmaceutical manufacturers are rampant (BYD 22/8/97: 1).

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19 See also discussion in Hesketh and Zhu (1997).
20 Interview No. 51, 1997.
21 Interview No. 8, 1997.
Hospitals in China are put in a quandary under the reforms, that they enjoy relative fiscal independence but not market autonomy. To promote greater efficiency and efficacy hospitals are asked to be financially independent of direct state subsidies. At the same time, in order to “serve the people” the fee structure is heavily regulated by the state, and hospitals enjoy little autonomy in utilizing existing resources both in terms of manpower and technology. To contain cost escalations and to curb the problems of kickbacks from pharmaceutical companies, beginning from the mid-1990s there were calls to stop hospitals from selling drugs. Instead patients should get the prescriptions from separate pharmacies (yiyao fenjia). Under such a proposal, hospital income would definitely decline and doctors predict that they themselves would be economically worse off.22 A hospital administrator made it plainly to me that such a proposal would wipe out the bonuses of his staff, since in his hospital prescriptions account for seventy percent of the medical bill in internal medicine and fifty percent in surgical treatment.23

Privatizing Medicine  A direct corollary of the introduction of the responsibility system in hospitals is the privatization of medicine. Despite the effort to socialize medicine in the Maoist era, a small number of individual medical practitioners (geti xingyi) had long been allowed to exist alongside state-run hospitals. In 1958, there were about 41,000 individual practitioners throughout China. However, the majority was forced to give up their practices during the Cultural Revolution and less than two thousand of them, predominantly traditional herbalists, were allowed to practice

22 Interview No. 8, 1997.
23 Interview No. 53, 1997.
legally (Pang Ruicong et al. 1992: 5). In 1980, the Ministry of Health again allowed
the legal practice of individual practitioners, but restricted the pool to those who had
practiced in the past but were currently unemployed, or who qualified but currently
were not working in any state or collective health organizations, or who were the
retired medical personnel (MOH 1982: 201-6). In order to expand the supply of
health services, the development of private practitioners and private clinics was

However, the state imposes strict controls on who can undertake private
practice. To preserve enough manpower in state health enterprises, university-trained
doctors are generally not allowed to move to the private sector. Thus, private doctors
are mostly at a lesser level, i.e. graduates from secondary medical schools, and they
normally practice at the county and township levels. A study of the registered private
practitioners in Guangzhou finds that fewer than twelve percent of the private doctors
were graduates of medical universities. Moreover, private practitioners constituted a
mere 1.5 percent of the doctors in the city, and the volume of care they deliver was
only around 0.3 percent of that delivered by the state (Yuen 1992). Thus, the private
medical market remains insignificant in the major cities. Moreover, private medical
practitioners in China have already earned a bad reputation, which works to put off
qualified doctors from joining the ranks despite a relaxation of controls in recent years.
Cases of unlicensed, substandard, and corrupt practices are often reported, and
concerns about fraudulent activities have been raised (e.g. PD 21/1/99: 10). Doctors
currently working in public hospitals also cite the lack of institutional support as
constraining them from going private. This will be discussed in chapter 5 on the practice of doctoring.

The 1985 policy document also allowed doctors to work for a fee in their spare time but charges must be in line with the rate set by the State Pricing Bureau and doctors were not supposed to receive more than sixty yuan a month from this (MOH 1990: 959-60). A policy directive in 1989 further restrained doctors from participating in part-time services to not more than one working day, cumulatively, in a week (MOH 1993: 434-6). In any case, the doctors themselves do not seem enthusiastic about moonlighting, as one of them commented that "good doctors would not have the energy to moonlight." Thus, privatization does not seem to endow doctors the kind of opportunities and privileges enjoyed by lawyers, nor help in pushing forward their own professional development.

Health Insurance Reform A third area of health reform involves the social health insurance program, which is blamed as the culprit of malpractices in drug prescriptions and hence a surge in medical expenses. There are two main types of health insurance schemes in urban China. The Government Employee Health Insurance (gongfei yiliao) covers civil servants and employees in public agencies, college students, and disabled army serviceman. They receive largely free outpatient and inpatient health services at designated hospitals, and the charges are supposed to

25 Interview No. 8, 1997.
26 The following describes the official policies of medical insurance in the urban area. In reality, however, it is found that the extent of the medical insurance coverage and the benefits provided by the seemingly uniform public and worker programs vary by individual and regional characteristics as well as by province and degree of urban development. See Henderson et al. (1995).
be reimbursed by the scheme’s managing fund. In 1995, 30 million people were beneficiaries of this scheme and the expenses totaled more than seven billion yuan (CHS 2/95: 7).

The Labor Health Insurance (laobao yiliao) covers employees in state as well as some collective enterprises whose dependants also enjoy a fifty-percent coverage. The Labor Health Insurance scheme is organized and financed by individual enterprises. Workers in large enterprises normally seek outpatient and inpatient services within their own hospitals. Most medium-sized enterprises also have their own clinics, which provide free outpatient services to their employees. Inpatient services for these and for smaller enterprises are provided by contracted hospitals and the charges will be reimbursed by the enterprises. In 1995, this scheme provided coverage for 140 million people and the expenditures amounted to 40 billion yuan (CHS 2/95: 7). These two schemes taken together, the medical bill came close to eighty billion yuan by 1997 – an increase of twenty-eight fold compared to 1978 with an average rate of 19 percent a year; whereas the average rate of increase in government revenue is only 11 percent a year (CYD 7/12/98; Yu Shui 1999).

Such an explosion in medical costs was partly attributed to the provision of better quality care and the increasing use of sophisticated technology. Other factors such as a demographic transition and the increasing number of beneficiaries were also contributing to the escalation in costs (Liu and Hsiao 1995; Zuo Xuejin et al. 1999). But abuse of the system was also mounting. The indiscriminate use of expensive drugs as well as extended stays in hospitals were definitely drawbacks of the insurance schemes. As medical expenses were all covered, it was not unusual to find households stockpiling their first-aid boxes with all kinds of drugs they did not really
need (SCMP 25/1/99). To combat the malpractices and to reduce wastage in hospitals, the government began to experiment with pilot programs in different cities, with a focus on improving incentives in the system through provider payment reforms and coinsurance (World Bank 1997). Aiming at providing "wide coverage but at low cost," in 1996 the government introduced a national pilot program modeled after earlier experiments in Jiujiang and Zhenjiang (two medium-size cities on the Yangzi River in Jiangxi and Jiangsu provinces) by integrating "overall medical funds with a small personal contribution" (BR 29/4/96: 5). A risk-pooling fund was established and employees were also required to contribute from their wages a percentage to their personal account. The immediate result is a reduction in medical expenditure. Between 1990 and 1998 the cost of medical service per person increased by 25.9 percent each year, but the margin of increase dropped to 14.8 percent in 1999 and further down to 8.6 percent in 2000. Increase in the cost of medicine also dropped to 6.1 percent in 2000 compared to an annual increase by 24.5 percent before (CD 25/1/02).

Inactive Doctors Recent studies have found that, internationally, doctors are not as influential in health policy-making as traditionally thought (Wilsford 1991; Immergut 1992a, 1992b), but they are nonetheless active participants in the discussion and formulation of national health insurance programs, and their voices are heard as an interest group. Chinese doctors, however, are relatively inactive in terms of the entire health reform agenda. Their relative dormancy is illustrated by the fact that many of my informants seemed unconcerned about a proposal that was being raised at the time of my research for a unified qualifying examination for doctors. In addition, they seemed indifferent to the imminent promulgation of the Doctor’s Law,
which was eventually passed in June 1998 and was to take effect in May 1999. Even after the promulgation of the Law there was relatively little discussion about it in Jiankangbao (Health News). This was in contradistinction to the case of lawyers, since discussion about the Lawyer’s Law proliferated in the Zhongguo lüshi bao (China Lawyer News) for a long time before and after its promulgation.

Although the state, as an “institutional entrepreneur,” has taken an active role in the development of health care services, doctors as the direct carrier of health services did not seem to have benefited much in their own professional development. The health sector in China is so heavily regulated and led by the state that doctors are not allowed any niche to push forward their own agenda. Instead, it is the organization where doctors work, the hospitals, rather than the doctors themselves, that the state draws in as the “subsidiary actor” in the institutionalization process. Consequently, the role of the doctors is only peripheral.

Concluding Remarks

Economic development at the macro level has generated common institutional pressures for all sectors to reform. The actual processes of reform at the sectoral level, however, follow their own inner logics that may not be entirely in line with the rationality of the larger economic reform. Drawing on insights from historical institutionalism, this chapter depicts the first “moment” of institutionalization of the sectoral models in China. In the area of law and medicine, I argue that reforms in these two arenas are path-dependent as a result of the differing histories. Whilst the medical system was regarded as an “achievement” under Mao, the legal system had
been dismantled and was (re)established almost anew when reform began in 1978. Consequently, the interest of the state in legal development is largely material and the pattern of institutionalization technical; whereas in the area of medicine the state could not possibly shed its past commitment to "serve the people" and hence its interest has to be normative and the institutionalization process an institutional one. Thus the meso-institutional environment facing the two professional groups is vastly different, and the extent of lawyers and doctors being able to participate in the reform of their own sector also varies.

Adoption of different institutional models at the meso level generates important implications for the concrete policies pertaining to the development of the professions at the micro-level – the immediate institutional environment where the second "moment" of institutionalization occurs. In the next two chapters, we shall see how lawyers and doctors face different institutional opportunities and constraints in the contested realms of education and practice.
Chapter Four

Supplying New Entrants:
Professional Education and Certification

The professionalization literature invariably sees an effort to limit the supply of practitioners one of the central tenets of the “professional project.” Quality control is the explicit concern but restricting competition is the implicit aim (cf. Larson 1977). This process is best captured in the Weberian notion of closure in status group formation. Frank Parkin (1974) reminds us that “by social closure Weber means the process by which social collectivities seek to maximize rewards by restricting access to resources and opportunities to a limited circle of eligibles” (p. 3). This process of the appropriation of market opportunities is later developed by Parkin in terms of exclusion and usurpation (1974, 1979), and by Randall Collins in his elaborate analysis of educational credentials as the prime gatekeeper for organizational monopolies (1979, 1990).1 This “strategic approach” (Torstendahl 1990) has been seen by a number of other writers as the principal form of professional formation and hence collective social mobility (e.g. Berlant 1975; Parry and Parry 1976; Macdonald 1985; Witz 1992; Meiksins and Smith 1993). In the words of Parkin (1979),

Professionalization itself may be understood as a strategy designed, among other things, to limit and control the supply of entrants to an occupation in order to safeguard or enhance its market value (p. 54).

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1 For a further critique and elaboration of the closure theory see Murphy (1988).
Thus, the professional projects are "projects of occupational closure" (Witz 1992: 39). The most commonly used exclusionary mechanism is that of education, and the battlefield is invariably located in the realm of higher education (Åmark 1990).

In this literature, the agent of the professional project primarily rests in the occupational groups themselves. The analytical focus is usually framed in terms of interest group politics, and the questions are: How did the professional groups organize their interests? How did they contest the jurisdiction over a defined area of work? And, how did the group strategically maneuver to bolster its collective social mobility and material rewards (see in general Larson 1977; Starr 1982; Abbott 1988)? The role of the state has largely been ignored, or, if recognized, only when the occupational groups seek official recognition as well as enforcement of the use of credentials as social closure. An institutional perspective, instead, would be interested to see how actors, in this case the professionals, are acting within constraints embedded in the wider institutional environment that essentially structure their perceived interests and hence the subsequent choice of action. In socialist China in particular, these constraints are necessarily imposed by the state. Closure is not a professional strategy undertaken by the professionals themselves or their respective organizations. Instead, it is the constellation of state interests that determines the supply of professionals and the required credentials for professional practice, by maintaining a macro control over the educational realm as well as the licensure system.

This and the following chapter therefore address the following questions: How do institutions at the meso level shape actors' capacities for action, policy-making,
and institution building at the micro level? How does state interest define and structure the course of professional development? More specifically, this chapter asks: To what extent does professional training and certification serve the agenda of sectoral reforms? How do institutional arrangements in legal and medical education open up differing opportunities and constraints for the professions? How does this in turn shape the interests of lawyers and doctors and hence their perception of choice of action? I argue that the differing logics of sectoral reforms structure the niches opened up to the legal and medical professions by setting the parameters and the course of change in the arena of professional education and certification. Professionals are acting within constraints, and the kind of rationality they adopt must necessarily be context-bound. What is of interest is professional training and occupational licensing as the contested realm between the state and the professions.

_Higher Education in China_

The changes in the provision of professional education in China must necessarily be understood in the wider context of the structure of the higher education system. This is complex. Not only do there exist different types of higher institutions, there are also different jurisdictions governing these institutions. Thus, higher institutions in China can be characterized along different lines. First, China practices a two-tiers higher education system: a higher tier of universities (_daxue_) which usually offer four-year degree courses (_benke_); and a lower tier of colleges (_dazhuan_) which normally offer two to three-year diploma or associate degree courses (_zhuanke_) and are less prestigious.
Second, higher institutions in China are also differentiated by the way they structure knowledge (Hayhoe 1991). The comprehensive universities (zhonghe daxue), for example, Peking University and Fudan University, offer a wide range of arts and science disciplines. The polytechnical institutions, for example, Tsinghua University and Shanghai Jiaotong University, offer a broad range of applied sciences as well as engineering sciences. In addition to these two types, there are also institutions divided along sectoral lines for the service of specific sectoral needs, like medicine, law, finance, the production of steel etc. Beijing Medical University and the Chinese University of Political Science and Law fall into this category.

Third, higher institutions in China are also structured according to the administrative hierarchy, which determines their principal sources of funding. At the top of the hierarchy are a small number of universities directly under the State Education Commission of the central government (renamed the Ministry of Education in March 1998). The next tier comprises universities and colleges governed by other central ministries. At the lowest tier are universities and colleges under the jurisdiction of provincial and municipal authorities. Table 4.1 shows the distribution of regular higher education institutions in 1989, 1994, and 1998 according to these different characterizations.

Like many other spheres of activity in China, higher education has for long been controlled by the state and is taken as a tool to achieve the goals defined by the CCP. During the politicized years of the Cultural Revolution, higher education was largely to serve the political-ideological goals of the party. When reform began in 1978, the goal of higher education policy has shifted to serve economic production. C. Montgomery Broaded (1983) has found that references to economic development and
the creation of a strong country topped the goals of higher education mentioned in the *People's Daily* in 1978, suggesting the instrumental nature of higher education in China.

Table 4.1  Number of Regular Higher Education Institutions According to Different Characterization, Selected Years.

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>In terms of programs:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Degree course</td>
<td>616</td>
<td>627</td>
<td>591</td>
</tr>
<tr>
<td>Diploma course</td>
<td>459</td>
<td>453</td>
<td>431</td>
</tr>
<tr>
<td>In terms of the structure of knowledge</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comprehensive</td>
<td>49</td>
<td>70</td>
<td>72</td>
</tr>
<tr>
<td>Polytechnical</td>
<td>286</td>
<td>297</td>
<td>271</td>
</tr>
<tr>
<td>Sectoral</td>
<td>740</td>
<td>713</td>
<td>679</td>
</tr>
<tr>
<td>In terms of administrative hierarchy:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEdC / MOE</td>
<td>36</td>
<td>36</td>
<td>45</td>
</tr>
<tr>
<td>Central ministries</td>
<td>317</td>
<td>331</td>
<td>218</td>
</tr>
<tr>
<td>Local authorities</td>
<td>722</td>
<td>713</td>
<td>759</td>
</tr>
<tr>
<td>Total</td>
<td>1,075</td>
<td>1,080</td>
<td>1,022</td>
</tr>
</tbody>
</table>


Since the 1980s, higher education in China has been expanding in order to meet the demand for qualified manpower in economic production. The government has relaxed its controls regarding the financing, student intake and course content of higher education, allowing greater institutional autonomy for universities and colleges. The 1985 program of educational reform delegated greater decision-making
power to higher institutions to accept students outside the state plan, and to take in
students for “commissioned training” financed by enterprises\(^2\) or self-paying.
Establishing new local institutions for short-cycle courses and adult education was
also given a boost (Cheng 1986; Hayhoe 1991; Yin 1993; World Bank 1997b). A
1993 policy document deepened the reform by strengthening the fee-paying system,
and privately-run tertiary institutions were given explicit support (CHE 10/94; Wu
and Hayhoe 1995).

The first wave of higher education reform in 1985 led to a proliferation in both
the number of established institutions and of student enrollment. In 1985, there were
1,014 higher institutions in China (Hayhoe 1991: 120). By 1989, there were 1,075
(Table 4.1), and the number of students enrolled in university degree programs was
1.32 million, with another 760,921 in diploma or associate degree programs. The
student enrollment increased to 1.52 million and 1.28 million respectively in 1994.
Note in particular the surge in the proportion of commissioned enrollment and
self-supporting students from 11.86 percent of total enrollment in 1989 to 28.63
percent in 1994 (Table 4.2). Irrespective of this expansion of higher education,
however, in China the percentage of population who has a tertiary education remains
low. In 2000, only 3.88 percent in the population aged over six have had a college
University and college enrollment accounted for only 2.5 percent of all students at
various levels of the education system (CSY 2001: 657).

\(^2\) In commissioned training, enterprises paid the full cost for students whom they undertook on
graduation. In 1985, about 50,000 fell into this category; and the number increased to more than
226,000 in 1993, accounting for around 40 percent of the total students admitted (Wu and Hayhoe
1995).
Table 4.2  Enrollment in Regular Higher Education Institutions, Selected Years.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Undergraduate enrollment</td>
<td>Total enrollment</td>
<td>Undergraduate enrollment</td>
</tr>
<tr>
<td>SEdC / MOE</td>
<td>215,103  16.28%</td>
<td>240,578  11.55%</td>
<td>222,757  14.69%</td>
</tr>
<tr>
<td>Central ministries</td>
<td>524,463  39.70%</td>
<td>673,263  32.34%</td>
<td>628,524  41.43%</td>
</tr>
<tr>
<td>Local authorities</td>
<td>581,624  44.02%</td>
<td>1,168,270 56.11%</td>
<td>665,590  43.88%</td>
</tr>
<tr>
<td>Total</td>
<td>1,321,190 100%</td>
<td>2,082,111 100%</td>
<td>1,516,871 100%</td>
</tr>
</tbody>
</table>

Enrollment Arrangement:

- Enrolled according to state plan
  - 1,231,172 93.19% 1,799,977 86.45% 1,370,328 90.34% 1,992,964 71.21% 2,160,375 96.68% 3,219,275 94.44%
- Commissioned enrollment
  - 71,197 5.39% 172,939 8.30% 70,505 4.65% 482,450 17.24% 30,310 1.36% 87,991 2.58%
- Self-financing
  - 14,658 1.11% 74,089 3.56% 73,950 4.87% 318,674 11.39% 40,940 1.83% 96,178 2.82%
- Training courses for teachers and cadres
  - 4,163 0.31% 35,106 1.69% 2,088 0.14% 4,551 0.16% 3,022 0.13% 5,320 0.16%
| Total                     | 1,321,190 100% | 2,082,111 100% | 1,516,871 100% | 2,798,639 100% | 2,234,647 100% | 3,408,764 100% |

Beginning from 1992 the government tried to reshuffle the higher education sector by merging some of the higher institutions. And this restructuring was later extended to universities originally under the jurisdiction of different ministries, as part of a larger effort of the State Council to reshuffle the organization of its ministries and commissions (CD 10/11/98). One notable example is the merging of four universities in Zhejiang, namely, Zhejiang University, Hangzhou University, Zhejiang Agricultural University, and Zhejiang Medical University, into a colossal new Zhejiang University (CEY 2000: 935). Thus, in 1998 there was a decline in the number of higher institutions while the total student enrollment rose. The decrease in the number of commissioned enrollment and self-supporting students is attributed to the fact that the state in recent years has enlarged the enrollment quota within the state plan. For instance, in 1999 the Ministry of Education planned to admit 2.75 million new students, of which 1.59 million would be placed in regular higher institutions (CEY 2000: 182). The fee levels for students financed by the state, enterprises or themselves were also unified in 1994, and fees were raised across the board (World Bank 1997b: 3).

Thus, in addition to the reforms underway in the legal and health sector, discussion of legal and medical education in China must also be situated in this broader context of the reform in the higher education sector. Up until March 2001, 194 universities offered degree programs in law, and five of these were under the direct administration of the Ministry of Justice. In medical education, 99 universities offered various degree programs, and eleven of these were under the direct jurisdiction of the Ministry of Health (MOE 2001). In 2000, the total undergraduate enrollment was 147,963 in law and 304,984 in medicine (CSY 2001: 653).
Educating the Professionals: Quantitative Growth or Quality Control?

Expansion of higher education in China is contradictory to the professional project, where restricting the supply of practitioners is one of the central concerns. Given the state control over higher education, professional training in China essentially falls short of the ideal-typical professionalism depicted by Eliot Freidson (2001), where the training of recruits is fully under the control of the occupation. Instead, educating the professionals lies primarily in the hands of the state, and it is up to the state to determine and control both the quality and quantity of new entrants, defined by its perceived interests.

Quantitative Expansion in Legal Education

Most countries impose stringent educational requirements of lawyers in order to control entry into the profession. As early as the nineteenth century a university degree in law was required in most continental European countries. The American system is even stricter, as legal education is provided only at the graduate level, and an aspirant needs to complete four years of prior tertiary education.

In China, however, in order to serve the economy the government called for an expansion of the legal profession, which was accomplished largely through the expansion of legal education at various levels. Thus, the process of closure is not evident among Chinese lawyers. Moreover, the legal profession is still very much

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under the auspices of the state, and the lawyers' association is yet to establish its role in defining and defending the profession.

Parkin (1979) has made it clear that any exclusionary measures have to be buttressed by state sanctions (pp. 138-41). Although the Ministry of Justice has been raising the educational standards of lawyers in recent years by implementing a national qualifying examination, its persistent concern to rapidly expand the profession makes it reluctant to adopt a closure strategy. In fact, the “credential” of lawyers has been compromised on behalf of quantitative growth. This is clearly seen in the fact that a formal university legal education is not a prerequisite for becoming a lawyer. First, any individuals who hold a university (four-year daxue) degree, which need not necessarily be in law, are eligible to take the national qualifying examination; alternatively, a legal education in two- or three-year colleges (dazhuan), which results in a diploma or an associate degree in law, also suffices.

In China, where the proportion of the population attending universities remains small, one might expect that a formal university education in law should provide students with the privilege to join the ranks of lawyers. This is, however, not true. The fact that there are not many law graduates in China does not give them any relative advantage to get into the profession. If education, and hence the monopoly of knowledge, is one of the pre-eminent features of professionalism, then Chinese lawyers score low in this respect. Legal education in China’s higher institutions has yet to assume the kind of ritualistic function that Randall Collins talks about in facilitating the process of market closure. This is well reflected in the educational standards of Chinese lawyers, which remain relatively low over the years and do not live up to the sort of professional standard that one would have expected. For instance,
in 1996 only about thirty percent of the some 50,000 full-time lawyers held a formal law degree from universities, while another 55 percent had attended only a diploma or associate degree course in law at colleges (*PD-OE* 16/11/96: 6). If we look at the ranks of lawyers as a whole, in 1997, only 25 percent had met college standards, while just 1.5 percent were up to graduate levels. Only lawyers in cities like Beijing and Tianjin come closer to the professional norm. In Beijing, for example, among the almost 5,000 lawyers in 1998, 90 percent had a college education or above, of whom about 65 percent held a university degree and eighteen percent a post-graduate degree (*CYD* 12/3/99). Note, however, that the degree these lawyers held might not necessarily be in law. Even in the economically developed coastal region of Guangdong, just about two percent of the total 120,000 legal practitioners held a degree in law (*LD* 3/10/97: 3), and presumably they were concentrated in major cities like Guangzhou and Shenzhen. In smaller cities it would be rare to find lawyers with a university law degree. In fact, one of the lawyers I spoke with is not even a college graduate but studied law only at a technical school (*zhongzhuan*). He was assigned to a state law firm in 1987 and sat for the qualifying examination in 1988. As provisions delineating the eligibility of candidates was not issued until 1992, he could be admitted to sit for the exam in 1988 in accordance with Article 11 of the Lawyers’ Regulation, which would define him as someone who has gone through “professional legal training.”

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4 Notwithstanding these low figures, the Ministry of Justice was actually hoping to have one third of Chinese lawyers at the master’s level by 2010 (*Renmin luntan* 1/96: 10-2). In comparison, in 1996 about eighty percent of the judges and 54 percent of the procurators were up to college standard (*LYC* 1997: 49, 187). However, many of them could have attained this level through the internal training programs provided by the courts and the procuracy respectively. For a study of Chinese judges see He Weifang (1995).

5 Interview No. 54, 1997. For a note on the possibly broad interpretation of the clause on “professional legal training” see Zheng (1988: 488).
In comparison, approximately 95 percent of the Soviet advocates had a higher education in law in the early eighties. Although this figure is somewhat misleading because higher education covers a wide spectrum of programs, members of the younger generation had mostly completed a five-year university law degree. And it was suggested that the Soviet *advokatura* would be universalized with university-level education in twenty years’ time (Husky 1982: 202). This is, however, less likely to be achievable in China in view of the present complexities and irregularities found in the educational realm.

As a public enterprise, higher education in the PRC has always been in the tight grip of the state. With an overriding concern to produce as many legal personnel as possible so as to overcome the shortage of lawyers, legal education had been given a boost. This has in effect resulted in legal education being plagued with institutional irregularities, making it ill-suited to serve the gatekeeping function of market closure.

First, professional legal knowledge is delivered by a variety of institutions of differing levels. Although the number of universities offering a four-year undergraduate degree in law has increased from 44 in 1988 to 140 in 1995 and then again to 232 in 2001 (Lan Quanpu 1995: 101-2; *CD* 23/1/02), the number of law graduates churned out is consistently low (Table 4.3). Even if we include law graduates from three-year colleges, this still represents just about two percent of the overall graduates every year (Tang Nungsong et al. 1995: 441-7). In terms of student enrollment, about 2.2 percent of all university and college students majored in law in 1997 (*SCMP* 7/1/97; *LD* 3/10/97: 3). In 1996 the minister of justice spoke of increasing the number of legal courses offered by universities and colleges, and to have law students making up five percent of all university and college students by
Table 4.3  Number of Graduates in Law, 1982-2000.\(^a\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>University</th>
<th>College</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>1,238</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1983</td>
<td>3,113</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1984</td>
<td>3,103</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1985</td>
<td>5,367</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1986</td>
<td>7,329</td>
<td>4,161</td>
<td>3,168</td>
</tr>
<tr>
<td>1987</td>
<td>12,639</td>
<td>5,251</td>
<td>7,388</td>
</tr>
<tr>
<td>1988</td>
<td>12,490</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1989</td>
<td>13,030</td>
<td>6,907</td>
<td>6,123</td>
</tr>
<tr>
<td>1990</td>
<td>12,094</td>
<td>6,467</td>
<td>5,627</td>
</tr>
<tr>
<td>1991</td>
<td>11,894</td>
<td>7,504</td>
<td>4,390</td>
</tr>
<tr>
<td>1992</td>
<td>9,430</td>
<td>2,069</td>
<td>7,361</td>
</tr>
<tr>
<td>1993</td>
<td>10,725</td>
<td>6,268</td>
<td>4,457</td>
</tr>
<tr>
<td>1994</td>
<td>17,650</td>
<td>8,270</td>
<td>9,380</td>
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<tr>
<td>1995</td>
<td>23,170</td>
<td>9,393</td>
<td>13,777</td>
</tr>
<tr>
<td>1996</td>
<td>25,852</td>
<td>10,501</td>
<td>15,351</td>
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<td>1997</td>
<td>28,270</td>
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<td>1998</td>
<td>29,649</td>
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<td>14,817</td>
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<tr>
<td>1999</td>
<td>31,500</td>
<td>16,363</td>
<td>15,137</td>
</tr>
<tr>
<td>2000</td>
<td>44,124</td>
<td>19,806</td>
<td>24,318</td>
</tr>
</tbody>
</table>

Note:  
\(^a\) Figures include only graduates from regular state-funded higher institutions.

The actual number of graduates majoring in law between 1982 and 1993 may be even lower than what the table shows, since before 1994 the broader category of *zhengfa*, which literally means political science and law, was used in official statistics. The term *zhengfa* also implicitly connotes the politicization of law in legal studies.

Sources:  
Tang Nungsong et al. (1995: 445); CEY, various years; ESYC, various years; CSY 2001: 654.
2000 (Renmin luntan 1/96: 10-2). This entailed the rapid development of adult education and vocational education, which are mostly conducted on a part-time basis, including correspondence courses, television courses, and part-time universities (BR 6/5/85: 22-5, 33; Pitney 1988: 354-6; and Tang Nungsong et al. 1995: 456-61, 599-613). In particular, the part-time correspondence schools have become an important source for the production of lawyers – in 1996 more than 16,000 graduated and another 60,000 students were enrolled in the correspondence courses administered by regular state-funded higher institutions alone (ESYC 1996: 24). This was essentially the same strategy employed by the Soviet Union in the 1930s when it sought to professionalize the legal system, which eventually resulted in a surfeit of lawyers (Husky 1988: 205-6). But the same has not yet happened in China, albeit one correspondence centre has already trained more than 400,000 people since it was founded in 1985. In 1995 the Ministry of Justice decided to further boost the potential pool of lawyers by holding national examinations for these correspondence students (Xinhua 8/5/95). While students were awarded a diploma in law at the college level upon passing all the requisite examinations, the entry requirement for these correspondence courses was quite lax, needing only graduation from high school in order to be admitted (LYC 1990: 983-4). Thus, the system of legal education in China is drawing students from two extremes. On the one hand, because of the increasing popularity of law in recent years, competition to enter law schools is

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6 The All China Lawyers Correspondence Training Centre (Zhonghua quanguo lüshi hanshou zhongxin) was set up by the Ministry of Justice. The Centre established a three-year program equivalent to the college level in 1988. In this and the following years almost 76,000 students enrolled in this program. (LYC 1990: 983-4). In 1995, the Centre set up a new specialty on “lawyering” (lüshi zhuanye) which is two and a half years. Upon fulfilling all the required courses students are recognized as college graduates and are eligible to sit for the national qualifying examination for lawyers (CLN 25/3/95: 3; 6/5/95: 3; and 3/6/95: 3). Among the 400,000 students trained, about 10,000 had successfully obtained a diploma in law and 6,000 got through the national qualifying examination (CLN 11/11/95: 1).
getting fiercer. At Peking University, the entry grade to the Department of Law remains one of the highest. The class of 1996 included eight students who had received the highest mark in the national university entrance examination in their respective provinces. On the other hand, legal education that is provided outside of formal universities is accepting students of differing standards, many of whom might not get through the university entrance requirements but nonetheless could enroll in the correspondence program. In addition, a training centre for lawyers was set up by the Ministry of Justice in 1994. It not only runs on-the-job training for licensed lawyers but also conducts a Masters degree program. Its graduates are approved as lawyers without necessarily sitting for the qualifying examination, and in effect supersedes the formal legal education. Essentially, undergraduate training in law has failed to assume a dominant position. Instead, the main channel of legal education is quickly expanding outside the universities.

Even among the regular universities, a major in law takes several forms, with the time spent in studying legal knowledge spanning two to four years. The most common form is the normal four-year degree course. The second is a double degree which altogether takes six years. This is practiced at a few renowned universities in Beijing such as Peking University, People's University, and the Chinese University of Political Science and Law. Students from other disciplines can apply to study law in their third year. They will then go through the entire degree course in law and will be awarded two degrees, from both disciplines, upon graduation. The third form of legal education is practiced by Tsinghua University. Emphasizing the production of

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7 Interviews, 1997.
8 For a background of this training centre see CLN (25/10/94: 1; 6/1/96: 1). See also Wang Zhenmin (1996: 94).
interdisciplinary legal graduates and an orientation towards a training in common law and foreign law, the School of Law admits only third-year undergraduate students from other departments. They will be awarded an LLB after a further training in law for two years (Tsinghua University School of Law 1995). The fourth method is one degree with two specialties, which at the time of this field research was being contemplated by the Central University of Nationalities. The idea is to coordinate the law program with the foreign languages department. The first two years would focus on training in foreign languages and the later two years in law. Another plan is to coordinate with the department of economics. The fifth is a second degree in law, which also takes only two years. Since all enrolled students already hold a university degree, the courses are designed in a very compressed way. For instance, a course on criminal law which carries 92 credit hours in a normal undergraduate four-year course takes about thirty for this second-degree course. In view of all these different forms of training, leading to the same bachelor’s degree in law, there are good reasons to believe that standards vary greatly among the degree-holders. The same problem also exists for the graduate programs (Fang Liufang 1997: 48-50).

In addition, the institutional arrangement of the legal curriculum is inherently very complex. Up until 1998 students generally specialized in just one area of law – a result of the establishment specialties (zhuanye) within a department to cater for the very specific needs of centralized state planning in the 1950s. For instance, the Law Department of Peking University had offered four specialties in law: namely, law,

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9 Since there are discrepancies between the Chinese and English texts, reference here is made to the Chinese version.
10 Interview No. 18, 1997. The first plan had already been approved and the second one at that time was being considered.
11 Interview No. 24, 1997.
economic law, international economic law, and international law. Potential students applied to a specific specialty offered by the Department. This kind of specialization further weakened undergraduate training in law as an integrated whole. Changes were implemented in 1992, however, to allow students to apply to the Department directly and then to freely choose any one of the four specialties after admission. Students reported that they usually chose to do two specialties in order to increase their market value after graduation,\(^\text{12}\) reflecting that they saw it as too narrow to know just one specialty. Because of the apparent defects of this system of specialties, in 1998 the Ministry of Education reshuffled the whole system into eleven major academic disciplines and 71 departments, and the number of specialties was reduced from 504 to just 249. In the area of law, original specialties like law, economic law, international law, international economic law, labor reform, commercial law, and criminal justice were incorporated into one general specialty in law (PD 18/8/98: 11).

A structural corollary of these institutional irregularities and complexities in the realm of legal education is the relatively weak sense of professional identity within the legal community. Chinese lawyers do not display a high degree of homogeneity and consensus characteristic of a “community within the community” (Goode 1957). The failure of law schools in universities to monopolize formal legal training has significantly undermined its role as a socializing agent for a homogeneous self-image. The very diverse academic structures, including specialties, courses, credits, degrees etc. introduce far too many variables for students to possibly develop a common sense of occupational identity and to aspire to the same career in

\(^{12}\) Interviews, 1997.
law.\(^{13}\) This is compounded by the structure of the curriculum, which is not oriented towards professional and vocational training. The image and professional experience of lawyers and of other legal personnel like judges and procurators are seldom presented in the classroom. There is little structural connection between law schools and the wider legal community (Wang Zhenmin 1996), and a sense of identification with the wider legal community is not cultivated at schools. Consequently very few graduates actually choose law as their first posting.

Since the mid-1990s some Chinese legal scholars have begun to voice their skepticism about this strategic expansion in legal education. In contrast to the government stance of stressing the quantitative development of lawyers and hence a multifarious training in law, legal scholars began to speak for quality control. They saw the system as grossly mismanaged and in urgent need of overhaul. They were calling for a standardization in the provision of legal education, stressing the importance of a proper undergraduate training in law as a minimum requirement for entry into the legal professions, and suggesting that legal education should be positioned as professional training, with more emphasis on practical skills so as to foster a closer link between legal education and a career in law (e.g. Liu Zuoxiang 1994; Wang Zhenmin 1996; Fang Liufang 1997; He Weifang 1997; Su Li 1997). Thus, a sense of professional closure was beginning to form.

These proposals about the proper positioning of legal education all the more reflect the structural crisis faced by the legal community. Z. Bankowski and G. Mungham (1978) argued that “a political economy of legal education can usefully

\(^{13}\) For a study of the development of occupational identification among graduate students see Becker and Carper (1956a, 1956b).
function as a prolegomenon to a political economy of the legal profession itself" (p. 449). They showed that the debate over the content of legal education had coincided with one or more of the following three factors: when the profession has expanded sufficiently to create new centers for professional education, or a transformation of old ones; when the “material base” of the profession is threatened; and when previously “disenfranchised” groups demand access to professional services. In China, however, the crisis arises more from a disjuncture between knowledge and practice. Because of the formalistic character of the Chinese legal system, legal training has tended to emphasize the rote-learning of black-letter laws with little attention devoted to skill in legal analysis and problem-solving. Consequently, a university education does not necessarily confer the students with any relative advantages in the actual practice of law. Law graduates are ill-prepared to work in an increasingly complex legal environment of a rapidly changing market society.

Arguments over the reform of legal education and commitment to notions of a professional education versus a purely academic one show that law schools in China are beginning to seek a more active role in the construction of the profession. But their attempt is essentially constrained by the fact that the forms and contents of legal education are still largely subject to the governance of the Ministry of Education as well as the Ministry of Justice. Thus, although Burrage et al. (1990) see universities as one of the actors in determining the course of professionalization, the role the law schools in China could play is still to be seen. Moreover, while the reform proposals

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14 “Formalism ... means that the content of law is assumed to represent reality, with little if any inquiry permitted into gaps between the content and operation of law” (Potter 1998: 39).
15 See Bankowski and Mungham (1978) for a discussion on the tension between “academic” and “professional” orientations in education and training for the professions.
can be taken as a potential first step in the direction of professional closure, perhaps more importantly they represent a conscious attempt of the scholarly community to protect the "material base" of university legal education and in effect to enhance its status. But this effort would be in vain so long as the state is intent upon expanding the supply of lawyers. Any closure attempt is also likely to face strong resistance from the middle and lower rungs of the profession itself as well as from the wider society, since a large number of practicing lawyers are not university-educated, and since many of the colleges also have vested interests in the provision of legal training.

_Tightening Quality in Medical Education_

During the early years of the People's Republic, the mandate to "serve the people" called for increasing the quantity and upgrading the quality of doctors and other health professions. The years between 1950 and 1965 were characterized by a period of consolidation and development. All existing medical colleges became state funded, some were combined and some relocated, and as a result the number of medical colleges declined from 44 in 1950 to 31 in 1955 (Qian Zhongxin 1992: 892). Student enrollment, however, increased five-fold from 15,234 in 1949 to 82,861 in 1965 (Gao et al. 1999: 769). In 1954, the Ministry of Health asserted that doctors' education should be concentrated in higher education. At the same time, medical universities were insulated from the burden of having to train lower-level medical personnel but could remain more in line with international standards of the day. They enrolled graduates of high schools for a period of study of five to six years, including an internship year. In this way, the medical profession was assured that the quality of medical education would not be compromised by its expansion. Elite schools like
Peking Union Medical College were allowed to maintain their high admission standards and previous curricula (Burris 1991: 68-9). The training of primary and intermediate-level health workers were left to secondary health schools (weisheng xuexiao) at technical middle school level (zhongzhuang), which enrolled mostly graduates of junior high schools for a period of study of three years, and graduates could work as assistant doctors (yishi). This category of assistant doctors was modeled largely on the Soviet feldshers – medical workers similar to military corpsmen (Sidel and Sidel 1982: 29). In 1965, 88,972 students were enrolled in these health schools (World Bank 1992: 96).

This kind of professionalism in medicine resulted in a longstanding conflict between the profession and Communist Party administrators (Lampten 1977). During the Cultural Revolution, the elitist and urbane orientation of doctors came under severe attack, and there were deliberate attempts to deprofessionalize and proletarianize the medical profession. To “serve the people,” doctors were mobilized to go to the countryside to serve the vast rural populace and to train local peasants as “barefoot doctors” to attend to medical needs in the villages. A young peasant needed only to have some basic formal education (usually primary or junior high school education) in order to be trained as a barefoot doctor. The training courses comprised prevention, diagnosis, treatment and nursing (Pickowicz 1973). About 1.5 million barefoot doctors were trained during that period (Deng Yizhong 1990: 513).

Medical universities ceased admitting students and were closed during the turmoil of the Cultural Revolution. In 1970, some medical universities reopened, but the curriculum was reduced to three years, and there were also no entrance examinations. Students admitted came mainly from the worker-peasant-soldier
(gongnongbing) classes. In 1975, there were 88 medical colleges and these had a student enrollment of 86,336. The figures for secondary health schools were 480 and 139,113 respectively (CHY 1983: 71).

The main dilemma in medical education in the early reform period was the decline in the quality of young doctors. University graduates from the Cultural Revolution period were compared unfavorably to the assistant doctors of earlier times, and upgrading courses were being developed to improve their knowledge and skills (Sidel and Sidel 1982: 67). A doctor who graduated at that time also admitted that he had not undergone any systematic training, and he was indeed grateful that the society had not cast aside his cohort entirely.16 In contrast to legal reform, the quantitative supply of new entrants was less of an issue in the area of medicine (Table 4.4). The gradual increase in the number of graduates in the reform era was largely due to the expansion of student enrollment in the higher education sector.

Since 1976, medical education has swung back towards higher-level training, with more emphasis placed on tertiary education. Similar to higher education in general, higher medical education comprises both university degrees and college associate degrees. Whereas the curriculum of three years of study for an associate degree in medicine was fairly standardized at the college level, the years of study required varied among medical universities in the early 1980s. Most universities offered a five-year curriculum for bachelor-level clinical training, but in some key-point universities it was six. In 1988 the curriculum was unified at five years. As an informant from Beijing Medical University, which originally practiced a six-year

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16 Interview No. 52, 1997.
Table 4.4  Number of Graduates in Medicine, 1977-2000.\textsuperscript{a}

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>University</th>
<th>College</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>34,860</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1980</td>
<td>17,656\textsuperscript{b}</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1982</td>
<td>25,963</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1986</td>
<td>27,907</td>
<td>22,098</td>
<td>5,809</td>
</tr>
<tr>
<td>1987</td>
<td>21,124</td>
<td>23,903</td>
<td>8,221</td>
</tr>
<tr>
<td>1989</td>
<td>38,366</td>
<td>28,118</td>
<td>10,248</td>
</tr>
<tr>
<td>1990</td>
<td>42,881</td>
<td>30,177</td>
<td>12,704</td>
</tr>
<tr>
<td>1991</td>
<td>46,028</td>
<td>30,332</td>
<td>15,696</td>
</tr>
<tr>
<td>1992</td>
<td>10,537</td>
<td>693</td>
<td>9,844</td>
</tr>
<tr>
<td>1993</td>
<td>48,559</td>
<td>32,571</td>
<td>15,988</td>
</tr>
<tr>
<td>1994</td>
<td>47,090</td>
<td>29,355</td>
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<tr>
<td>1995</td>
<td>55,711</td>
<td>29,278</td>
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<td>1996</td>
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<tr>
<td>1997</td>
<td>61,239</td>
<td>--</td>
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<tr>
<td>1998</td>
<td>61,379</td>
<td>33,027</td>
<td>28,352</td>
</tr>
<tr>
<td>1999</td>
<td>61,545</td>
<td>35,090</td>
<td>26,455</td>
</tr>
<tr>
<td>2000</td>
<td>59,857</td>
<td>37,045</td>
<td>22,812</td>
</tr>
</tbody>
</table>

Note:  \textsuperscript{a} Figures include only graduates from regular state-funded higher institutions.  
\textsuperscript{b} This reduction in number of graduates is the result of lengthening the program from three to five or six years.

Sources: World Bank (1992: 96); CEY, various years; ESYC, various years; CSY 2001: 654.
curriculum, explained, the award of the same degree with varied lengths of study caused controversies in the evaluation of job titles and wages. When the university switched to a five-year curriculum, there was essentially no major change in the curriculum structure, but courses were made more compressed and intensified.17 The prestigious Peking Union Medical University, however, has always retained an eight-year curriculum. Although the training is regarded as bachelor-level training, students would be awarded a doctorate degree upon successful completion.

In 1985 the Ministry of Health proposed to select a few key-point universities to try out a new seven-year curriculum mainly in western-style clinical medicine, and graduates would be awarded a masters degree upon completion. The rationale was that China was not lacking in bachelor-level doctors, but needed doctors at the graduate level who could become specialists. In 1988 fifteen universities were selected to implement this new curriculum plan (CHY 1989: 202). This is clearly an effort by the Ministry to upgrade the quality of doctors. Moreover, in the mid-1990s the Ministry has planned to gradually phase out secondary health schools. In cities like Beijing and Shanghai the training of assistant doctors at health schools already had ceased in 1996. As the minister of health pointed out, it was necessary to raise the minimum entry requirement to become doctors at the associate degree level, and thus better serving the medical needs of a society in demographic transition (HN 29/2/96: 1, 7/3/96: 1). A hospital administrator whom I interviewed said that his hospital, which was located at the county level, no longer recruited assistant doctors graduated from

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17 Interview No. 21, 1997.
secondary health schools.\textsuperscript{18} Thus, in the area of medicine we are actually seeing an attempt of professional closure initiated by the state.

Contrary to popular belief that professionals would welcome the project of closure, this endeavor towards upgrading quality by the Ministry has actually drawn criticisms from within the profession. First, there was a humane concern about the rural population. Many of the doctors I talked to agreed that there was not a shortage in the supply of doctors in China but merely an uneven distribution across the nation since they tended to cluster in city-level hospitals. They commented that it would be impracticable to abolish secondary health schools, and hence assistant doctors, as few university graduates were willing to work in the countryside.\textsuperscript{19} As one of them said,

\begin{quote}
It is not meaningful to talk about upgrading the entry level of doctors without first improving the conditions of hospitals. If we are to abolish secondary health schools, the precondition was that small and low-level hospitals no longer exist. I myself of course agreed that the higher the academic qualification of doctors, the better. But China’s national situation doesn’t yet allow that.\textsuperscript{20}
\end{quote}

Second, some doctors did not see the elevated quality as actually serving their own interest, and dismay was shown towards the new seven-year degree program. The concern is a practical one. Medical graduates of the normal five-year program need to work as resident physicians (\textit{zhuyuan yisheng}), the lowest-level physician in the hospital, for five years before they can sit for a state promotion examination to become an attending physician (\textit{zhuzhi yisheng}) upon passing. Graduates of this seven-year program are, however, given the job title of attending physician once they

\textsuperscript{18} Interview No. 53, 1997.
\textsuperscript{19} Interviews, 1997.
\textsuperscript{20} Interview No. 21, 1997.
are assigned to hospitals because of the higher academic degree that they have. This might therefore block the chances of promotion of existing physicians already in practice because hospitals also have quotas for promotion. Since most doctors are institutionally bounded to the hospitals, they therefore see this new institutional arrangement of medical education as threatening their own interests. Moreover, doctors lamented that these graduates might not be competent enough to assume the position of attending physicians. As one said,

> There is a big gap between the regulations and reality. It is very important for doctors to accumulate necessary clinical experience before they could become attending physicians. To be a doctor requires actual practice, and these graduates fall far short of that. Even if they hold a masters or even a doctorate degree, the internship year is still far from adequate for them to perform the job in a competent way.\(^{21}\)

In terms of student intake, it is generally acknowledged even within the profession that medicine does not attract the best students. In contrast to law, foreign languages, or finance etc., medicine is not considered a “hot” discipline sought after by students. The reason is clear. Although doctors command a relatively high status in society, medical practice in China does not offer the graduates a lucrative return. One doctor admitted,

> Being a doctor in China is a hard job. The working hours are long but the wages are low, and the welfare benefits are also not good. The only advantage is that the job, and the pay, is still relatively stable. Any society has to have doctors, so it is not affected by any changing economic conditions.\(^{22}\)

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\(^{21}\) Interview No. 8, 1997.

\(^{22}\) Interview No. 30, 1997.
Thus, unless students have a particular calling in medicine it is rare for medical universities to attract the kind of top students that were admitted by, say, the Law Department in Peking University. Newspapers reported that in 1995 medicine again became a hot discipline only because others like economics and finance had cooled down somewhat. That should have meant greater competition to get into medical schools. But the actual figure suggested something otherwise. For instance, Shanghai Medical University planned to admit 510 undergraduate students, but the admission rate was 2:1, which meant fifty percent of the applicants would be accepted. In Beijing Medical University, the admission rate was even higher at just 1.5:1 (HN 9/7/95: 2). And both universities are considered key-point universities in the medical system. Whilst the pool of applicants was self-selective and "mediocre students would not dare to apply," this admission rate said something about the quality of medical students per se.

**Career Aspirations: “Boys in Suits” vs. “Boys in White”**

Research on law and medical students in the 1950s in North America found that the latter were more committed to a career in their profession and that they could not conceive of practicing anything but medicine (Thielens 1957). Similar findings were yielded when the study was replicated in the 1990s in the United Kingdom (Cavenagh et al. 2000). The authors argued that doctors are more available as role models as compared to lawyers in the students' formative years. Moreover, a degree

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23 The use of the word "boys" here merely paraphrases Howard Becker's classic study, *Boys in White: Student Culture in Medical School* (1961). It by no means suggests that students in law and medicine in China are predominantly male.
in law is more versatile and allows students to pursue many other career opportunities, whereas medical training provides no viable exit option for medical students. In short, the “boys in suits” – to paraphrase Becker (1961) – have a much wider spectrum of career choices, whereas their medical counterparts – the “boys in white” – have much restricted choices. Similar observations can be found in China.

Discussion of career aspirations among university graduates was possible in China only after the Chinese government abolished its centralized job allocation system in 1992. Before that, graduates did not have much autonomy in deciding what kind of a career they wanted to pursue. Whereas doctors were relatively clear about what lay ahead for them when they graduated, many lawyers in their thirties and forties spoke of being a lawyer as accidental, that they were simply “by chance” allocated to a state law firm upon graduation. By the 1990s students could exercise their free will to choose a career that they wanted to advance. Thus their career choice reflects all the more the kind of professional socialization they obtained, and their choice is essentially structured by the institutional arrangements of legal and medical education.

Because of the institutional explosion in legal education and because a career in law not confined to law students, when they entered law schools many students did not see the study of law as a particular calling. Future prospects in law were seldom taken into account. Law, to them, was just another degree option that would allow them a wide choice of possibilities. As a law student put it,

I was very determined to get into Peking University but did not have the slightest idea what law was about. I did arts in high school and there were not many choices for arts students. I am definitely not interested in economics, and it seems to me that anyone could study
Quite a number of other informants spoke of similar experiences. It is thus left to the law schools to craft what they want these students to turn into. But, as one law professor commented, law schools in China also did not have clear ideas of what they wanted to produce for the market. As mentioned before, legal education in China is not oriented towards professional training. Consequently, professional socialization is weak. Rather, "extra-curricular" influences (Atkinson 1983; M. Johnson 1983) play a greater role in shaping students' career aspirations. In recent years increasingly more law students have worked as student helpers in law firms out of practical concerns. In fact, among some of the younger lawyers I spoke with, many started "helping out" at law firms when they were in their third or fourth year at law schools, and their early experiences with the work of lawyers tend to exert positive influences on their future career choice.

Thus, unlike medical students, who usually have a good idea of what medicine is about and their career aspirations are therefore more clearly defined, not many law students in China actually choose to work as lawyers upon graduation. The strategy to expand legal education in order to boost the ranks of lawyers is apparently misplaced if law graduates, even if they have already sat for the qualifying examination, do not go directly into practice. Law students usually identify four possible career prospects for themselves: becoming licensed lawyers; state cadres in the judicial systems; corporate legal counsels; or simply working in the public sector or private

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24 Interview No. 32, 1997.
corporations. While these are common career choices for law graduates in other countries, what is distinctive in China is the extremely small number of graduates who chose to work as apprentices and then become licensed lawyers right away. Comparative figures are revealing. In Britain, roughly sixty percent of law graduates practice law in the private sector (Bankowski and Mungham 1978: 452). In Venezuela, a third of those who qualify enter private practice. In Brazil, 44 percent of law graduates became legal professionals in 1980 (Abel 1989: 94). In America, roughly about a third of law graduates are admitted to the Bar, and presumably strive towards a career in law (Abel 1988b). In China, however, among the 180 law graduates at Peking University in 1997, only about five or six students went to work in law firms directly. The others mostly chose to work in banks or enterprises, or to become civil servants in state organs. And this did not imply that they worked as in-house counsels in private corporations or as government lawyers. Lawyers employed by the government as civil servants to advise on legal matters, to be distinguished from employees in the Ministry of Justice and the various bureaus of justice as well as lawyers in state law firms, were very few. For instance, in 1996 Shanghai only hired 28 lawyers to work full-time as lawyers for the government (CLN 17/4/96: 1).

Ultimately the career choice of law graduates is an interaction between personal self-selection and organizational recruitment (Ladinsky 1963). While many students saw their choices of careers other than law as a demonstration of their own free will, as they were no longer subject to the national job allocation system, their choices were also highly structured by the present institutional constraints in getting employment in law firms. I shall elaborate this in the next chapter.
Thus, the "suit" that law students wear allows them a wide spectrum of job opportunities and they are not confined to a career specifically in law. The "boys in white," on the other hand, are more focused towards a career goal their white gown destined them to.

Contrary to conventional wisdom that young men are more likely to aspire to become medical doctors, a study of career aspiration among junior-high students in 1992 in China found that substantially more girls than boys wished so (Broaded and Liu 1996). This might have to do with the perception of doctors as a "caring" profession, and hence woman's work. Several female doctors whom I interviewed admitted that it was their parents who made the choice for them, and who apparently held misguided conceptions about medicine. Two graduates of Beijing Medical University told me why they studied medicine:

It was my parents' decision for me to go to medical school. In their view, girls are more appropriate to study medicine. And the entry competition was less fierce than, say, in the science and technical subjects in Tsinghua University. Medicine could be easier, and the workload could also be lighter. I myself didn't have any particular feelings - I didn't know much about medicine at that time. I didn't realize that studying medicine also requires a lot of hard work.26

My parents thought that doctors are a caring profession and therefore suitable for girls. In the past, doctors also had stable jobs. Now of course it is a different story.27

Unlike law students, the job prospects in medicine constitute an important consideration for potential medical students. A doctor observed,

I did make a calculation about the job prospects when I applied to study medicine. There are now too many layoffs in other jobs, and

26 Interview No. 30, 1997.
27 Interview No. 31, 1997.
people have to find their own way out. My parents were both university graduates, but they got laid-off too. To become a doctor is relatively stable. The job is relatively secure, and the housing condition is also not bad. I didn’t think much about the low wage. Yeah, there are now many new rich, but you don’t know when the policies would change again.\(^{28}\)

Even for those who did not have a clear idea about medicine, once they got admitted they were socialized to become a doctor, since the several years of medical training did not leave them much choice in other jobs. A greater problem lies in a brain drain. In contrast to law graduates being drained to enter the commodity sector of the economy, medical graduates were drained abroad. A student at the prestigious Peking Union Medical College reported that since 1993 students were required to sign an agreement with the school. The agreement stipulated that they were not to quit in the middle of their medical training and go abroad, as many of their predecessors had done.\(^{29}\) A doctor whom I interviewed mentioned that two thirds of his classmates went to the United States upon completing the undergraduate training.\(^{30}\) How many of them would eventually go back to China to “serve the people” is unknown, but presumably their eventual return should help boost the professionals in the collective upward mobility project, and locally trained physicians might find themselves at a disadvantage.

\(^{28}\) Interview No. 21, 1997.
\(^{29}\) Interview No. 38, 1997.
\(^{30}\) Interview No. 21, 1997.
Occupational Certification and Licensing

In addition to education, the licensing system constitutes an important part of the process of professional closure. It is one of the strategies that an occupation employs in its continuing efforts to achieve and maintain the collective professional status and income of its members (Parkin 1979; Simpson et al. 1982; Macdonald 1985). In addition, licensure also functions as a measure of informal social control, for it seeks to maintain the professional status by disciplining its members for malpractice or misconduct. In most countries where the licensing system is administered by the professional bodies, both functions carry equal weight as they reinforce each other. However, in socialist society where the state commands an almost omnipotent control over the society, the system of licensure fits very well into the overall schema of social control over the professional members. In this vein, the function of control far outweighs the initial function of restrictive competition and legal monopoly over the production of goods and services.

Certifying the Lawyers

From the outset, registration of lawyers in China was mandated by the state. Chinese lawyers have needed to be licensed ever since the legal system was reinstituted, and the provision was subsequently tightened up and formalized in 1989. This licensing system involves two processes: an individual needs first to obtain a lawyer’s credential and then to undergo a period of apprenticeship. There are two means to get a credential: one is through the national qualifying examination held since 1986, initially every other year and later annually since 1993; and the other is
through “approval” (kaohe). This qualifying process poses an even greater challenge to the function of legal education in professional closure because a proper education in law is not regarded as a necessary prerequisite for one to be admitted to the ranks of lawyers.

In countries where universities already serve an important gatekeeping function, further examinations might seem superfluous (Abel 1988: 9-18). This is not the case in China. Since the role of a formal university education in law is only peripheral in China, the Ministry of Justice increasingly saw the need to tighten up the net as it realized that many practicing lawyers were substandard both in terms of experience and competency. A process of institutionalizing more objective determinants of competency was thus warranted. While in 1986 the examination was restricted to those who were already working as full- or part-time lawyers, it has been open to eligible candidates society-wide since 1988 (LYC 1989: 26). A university degree in law is not required. Instead, anyone who has acquired three years of legal education in an institution of higher learning or an undergraduate education in other disciplines can sit for the exam (Tong Baogui 1996: 397).

The qualifying examination has gained immense popularity in recent years and candidates come from all walks of life. Anecdotal newspaper reports suggested that over the years there have been quite a number of non-law trained candidates.

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31 Kaohe literally means “assessment”. Following Randall Peerenboom, it is translated here as “approval” to emphasize the fact that it is up to the relevant authority to decide and approve whether the applicant is qualified to practice (LCHR 1998: 17-8).

32 In addition, Article 5(5) of this document provides that officials from state organs and the military etc. were also eligible candidates. Although this provision no longer holds, Article 6 of Lawyers’ Law stipulates that people who attained “an equivalent professional level” are likewise accepted, essentially making the clause susceptible to possible arbitrary interpretation. In the 1996 exam the Ministry of Justice clarified that one is also considered eligible by passing 14 subjects in the correspondence program organized by the All China Lawyers Correspondence Centre (CLN 15/6/96: 1).
getting through the qualifying exam, and they gave the impression that it was possible

to prepare for the exam in just a couple of months’ time. Although many legal

scholars argue for the necessity of would-be lawyers to have a formal university

education in law, surprisingly many of the law students I spoke with did not see the

need to preclude non-law majors to sit for the exam. Most of them shared the

government’s view that it would be impractical to impose such a restriction as China

was still developing the profession. Moreover, they genuinely believed that the

thoroughness of the test and the “low” pass rate have already assured the competency

of those who made it. They also saw themselves as having little advantage over those

without a law background, since in their view law was more about practice than about

what one learnt at school.33 While this may of course be true, it again illustrates that

law schools lack a jurisdictional command (cf. Abbott 1988) over the production of

lawyers.

From 1994 onwards the Ministry of Justice began to highlight the importance

of establishing the examination system on a basis that is “fair, just, competitive, and

selects the best” (LD 28/6/94: 2). No matter how the Ministry of Justice tries to

institutionalize the qualifying examination as a fair and competitive mechanism to

choose the most suitable, the concern to expand the profession is so predominant that

it inevitably poses a paradoxical constraint on how well the exam could actually

exercise its gatekeeping function. Table 4.5 shows that for most years the pass rate

was well over ten percent. Moreover, this pass rate was very much subject to the

manipulation of the Ministry of Justice. For instance, the pass level in both 1995 and

1997 was set at only 240 out of a total of 400 marks (CLN 27/1/96: 1; PD 14/12/98: 3.).

33 Interviews, 1997.
In 2000, the Ministry changed the rule to instead certify a fixed number of candidates and hence the passing mark was lowered to 231 (CYD 13/12/00). Clearly the examination allowed much room for the authorities to decide how many candidates it wanted to inject into the profession. Thus, given the loose requirement for eligibility to sit the exam and the sheer volume of successful candidates turned out every year, the qualifying examination might be little more than “a coarse filter” (Alford 1995: 34).

Table 4.5 Number of Candidates Passing the National Qualifying Examination.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Applicants</th>
<th>No. of Successful Candidates</th>
<th>Passing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>92,322</td>
<td>15,523</td>
<td>16.81%</td>
</tr>
<tr>
<td>1990</td>
<td>~ 80,000a</td>
<td>12,756</td>
<td>~ 15.95%</td>
</tr>
<tr>
<td>1992</td>
<td>~ 80,000a</td>
<td>~ 10,000a</td>
<td>~ 12.50%</td>
</tr>
<tr>
<td>1993</td>
<td>88,120</td>
<td>10,646</td>
<td>12.08%</td>
</tr>
<tr>
<td>1994</td>
<td>116,378</td>
<td>11,600</td>
<td>9.97%</td>
</tr>
<tr>
<td>1995</td>
<td>117,859</td>
<td>13,350</td>
<td>11.33%</td>
</tr>
<tr>
<td>1996</td>
<td>127,111</td>
<td>4,238</td>
<td>3.33%</td>
</tr>
<tr>
<td>1997</td>
<td>114,636</td>
<td>14,192</td>
<td>12.38%</td>
</tr>
<tr>
<td>1998</td>
<td>142,284</td>
<td>15,102</td>
<td>10.61%</td>
</tr>
<tr>
<td>2000</td>
<td>185,169</td>
<td>21,700</td>
<td>11.72%</td>
</tr>
</tbody>
</table>

Note: *Exact figures are not available.
Sources: Zhang Zhiming 1995: 169; CD 17/6/98, 8/12/98; PD 14/12/98: 3; CL 12/98, CYD 13/12/00.

In most countries where professional examinations are administered, taking the exam not only is the only route into the profession but it is also meant only for candidates who are drawn to the profession. Very often this is so not only because of the strict eligibility requirement but also because of the elevated status of the exam itself. Thus the examination is not only meritocratic but also exclusive - exclusive not
only to those who are not up to the standard but also to those who do not find a calling in the profession. In Randall Collins’ terminology, the exam is a social ritual through which the profession is made “sacred” (Collins 1990). The qualifying examination for lawyers in China, however, does not function to exclude and deter those who merely want to get one more certificate for future career choice and may not necessarily join the ranks of lawyers. This can be illustrated by the composition of candidates. In the 1998 qualifying examination, forty percent were civil servants from party and state organs whilst another seventeen percent were staff from corporate enterprises. Only about nineteen percent of the candidates were university law graduates; and eighteen percent were without a law background (CYD 11/10/98; CL 12/98). In 2000, the percentage of university law graduates taking the examination slightly increased to twenty percent; but still 28 percent came from party and state organs. The qualifying examination, as well as the work of lawyers, has yet to make the lawyering profession a “sacred” realm.

Getting lawyers’ credentials through “approval” (kaohe) raises an even bigger threat to quality control. In the early years, all lawyers came to practice through approval. Between 1982 and 1986, about 10,000 lawyers were qualified by approval (LCHR 1998: 30). But even after the establishment of the national qualifying examination in 1986, the system of approval continued to serve the function of flexibly adjusting the supply of lawyers. For instance, because of the desire to develop a pool of lawyers who were well versed not only in law but also in economics, foreign languages, and technology, in 1993 the Ministry of Justice decided to exempt individuals from taking the examination if they had obtained from abroad a bachelor’s degree or above in law, finance, economics, real estate, intellectual property rights, or
business management (Tong Baogui 1996: 467-8). The reform program issued later that year further outlined the conditions of granting lawyers’ credentials through approval. Consideration would be given to experienced staff of judicial bodies, legal research and educational institutions, as well as specialists in banking, patent and marine affairs. Individuals who held a master’s degree in law and had already worked in a law firm for a year would also be given licenses (Tong Baogui 1996: 511-2).

However, as the qualifying examination took shape, the continued existence of the approval system became subject to quite a lot of discussion over the years (CL 6/96: 31-2). While its role and function is confirmed in the Lawyers’ Law, the pool of experienced personnel from which approval could be made has shifted mainly to the faculty of law schools. Article 7 states that:

A person applying to practice law who has acquired an undergraduate legal education in an institution of higher learning, or higher qualification, who is engaged in professional work such as legal research and teaching, or who has a senior professional title or is of an equivalent professional level, shall be granted qualification as a lawyer, upon approval by the judicial administration department under the State Council after evaluation and verification in accordance with the prescribed conditions (my italics).

But the latter part of the clause still allows room for indiscriminate interpretation. Essentially, it leaves the door open to judges and procurators to be qualified as lawyers without sitting for the examination. In fact, in the first draft of the Lawyers’ Law it had been suggested that judges and procurators with more than fifteen years’ experience could be exempted (Zhang Geng 1997: 84). But objections were raised by members of the court system and the procuratorate on the ground that the standard
was too tough (LCHR 1998: 65). Whereas in many other countries the switch of roles among judges, prosecutors, and lawyers might not constitute a problem, as they form a relatively homogeneous legal profession with similar educational backgrounds, China has a specific historico-political background. In the past, demobilized military personnel have been transferred to the courts, and most of them did not have any legal training prior to their assumption of the role of judges. Many lawyers I spoke with expressed their disdain towards those judges-turned-lawyers, saying that their only assets were their old guanxi with the courts instead of any professional competency. Moreover, although the Ministry of Justice has specified that the authority to grant approval rested only at the provincial level (CL 4/97: 56), the exact criteria have never been clearly spelled out. Thus, the system of approval will remain a threat to the gatekeeping function of the qualifying process.

Would-be lawyers in China are required to undergo apprenticeships before they can apply for a lawyer’s license. The Lawyers’ Regulation specified the period of apprenticeship as two years. But it has been reduced to one year ever since the introduction of the national qualifying examination. This was reaffirmed in the 1996 Lawyers’ Law. Apparently the requirement of a one-year apprenticeship is generally agreed upon, as there was little discussion about it during the course of drafting the Lawyers’ Law, although after its promulgation there was a suggestion that two years

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34 One informant has said that they were still required to have eight years experience in judicial work, but he also mentioned that this is not written down on papers. Interview No. 18, 1997.

35 The practice to place demobilized soldiers in the courts began in 1952 at a time when political reliability overrode all other concerns. As one informant commented, while it is not required for the courts to receive university graduates, they must take in demobilized military personnel. Interview No. 18, 1997. For a discussion of the placement of demobilized military personnel in the courts see He Weifang (1995: 224-5), and Nanfang zhoumo (2/1/98: 9).

of apprenticeship might be more appropriate (CLN 2/11/96: 3). But this view failed to invite any discussion from the wider legal community, indicating that the apprentice system is yet to assume any significant role in its own right.

Subsequent regulations on apprenticeship give detailed instructions about the system. A law firm receiving an apprentice lawyer must file with the local judicial administrative organ that would carry out periodic inspections of the apprentice. The apprentice should be supervised by a lawyer with at least three years' practicing experience and good political credibility, and the law firm should assess the apprentice in light of his or her personal conduct and professional capability. Upon completing the one year apprenticeship, the individual should submit a written application to the law firm which, together with its own recommendation, would be handed to the local bureau of justice for approval. However, whether these procedures are strictly followed in reality is open to doubt. For instance, an informant who held a full-time job in a state investment corporation but at the same time worked as a part-time apprentice lawyer freely admitted that he could always apply for the license as long as the law firm endorses his fulfillment of an apprenticeship. Since the bureau of justice seldom checked, and more importantly, the son of the law firm's director was his good friend, he saw little problem in obtaining it. Yet, his status as a part-time apprentice lawyer poses some ambiguity.

A notice issued by the Ministry of Justice in 1985 clearly explained that an apprentice lawyer could not be appointed on a part-time basis (Tong Baogui 1996: 203). But the complementary regulations of the Lawyers' Law on part-time lawyers

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become self-contradictory in this respect. Article 2 states that part-time lawyers refer to those who have already obtained a lawyer’s credential and practicing licenses, and that they do not need to leave their original positions but practice law on a part-time basis. Article 6, however, states that those who apply to practice law part-time should undergo a year’s apprenticeship in the law firm that he wants to join. How this one-year apprenticeship is possible on a part-time basis is unclear. The case presented above is apparently not an isolated one, as another informant, a graduate student in law, was also a part-time apprentice lawyer, although he commented that his part-time status did not make any difference to the law firm as he spent most of the time there.\(^{38}\)

For an individual who has passed the qualifying examination and fulfilled the required one-year apprenticeship, obtaining the license is just procedural. In China, licenses are issued only to practicing lawyers. However, given the fact that China’s legal system allows laymen to act as representatives in civil and economic cases, the licensing system clearly does not claim the function of a “legal monopoly”. Quite the contrary, Chinese lawyers are being “penalized” for registering with the authorities. In the words of a former official of the Beijing Bar Association,

Full-time lawyers have to pay 4,500 yuan and part-time lawyers 3,500 for the registration fee. ... In reality many “lawyers” do not register. If a “lawyer” specializes in economic cases there is little chance for the license to be checked upon. It is only in criminal defense that the lawyer needs to present the license to the security bureau and/or detention centre when he visits the accused. Of course, honest lawyers would also register.\(^{39}\)

\(^{38}\) Interview No. 24, 1997.

\(^{39}\) Interview No. 16, 1997.
To register naturally means to succumb to the watchful eyes of the authorities. The yearly registration is an effective control mechanism that makes it easy to exercise punishment for recalcitrant behavior. A case in point is a lawyer who had her license to practice revoked for life because she called for the release of her husband, a political dissident (LCHR 1993: 47-8). In other cases involving human rights activists, defense lawyers often face the threat of having their licenses revoked (China Labour Bulletin, 9-10/98: 17). Thus, the licensing system in China clearly does not aim to provide shelters for its members. The retentive power of the profession should therefore be explained in terms of the relatively high economic rewards in the work of lawyers instead of any advantages conferred by the license (cf. Simpson et al. 1982).

Certifying the Doctors

Similarly to the legal profession, the power to certify the doctors lies not in the hands of the professional body but the state. In the past, because medical schools were all state funded and graduates practiced medicine within the state system, there were essentially no licensing examinations or certification procedures. During the early 1980s unified examinations were carried out for graduating students but only had it aborted after a short trial period. An official from the Ministry of Health explained that the ministry initially saw it necessary to ensure standardized quality of medical graduates in the aftermath of the Cultural Revolution. But then the examination ran into several problems: on the one hand, the exam could not actually assess the clinical aspect of doctoring; on the other hand, because of the emphasis put
on the exam by medical schools, it in effect affected the internship of graduating
students. Because of this, the ministry formally cancelled the exam in 1983.40

At the time of the field research, there was again call for a national unified
certifying examination for doctors. But my interviewees seemed generally indifferent
about it. There are two factors accounting for their apathy. First, Chinese doctors are
very embedded in their work, so much so that they are surprisingly parochial in their
social world. My interviewees did not seem to be interested in anything other than
their immediate work and happenings in the working environment, i.e. the hospital.
Most of them were unaware of such a proposal in certifying their juniors. Nor did
they have any knowledge about the imminent promulgation of the Doctors’ Law,
which is supposedly a law intending to professionalize the medical profession. Only
one interviewee had heard about it but he too simply dismissed it as trivial.41 To some
extent, their ignorance could be attributed to the fact that very little discussion about
the law actually appeared in medical periodicals and newspaper.42 This also showed
that doctors as a social and professional group had little voice even over the drafting
of law pertaining to their own practice.

Second, to incumbent doctors their disinterestedness about such a unified
national examination was also understandable since they would not be affected by it.
Moreover, they themselves were required to undergo continuous assessment in order

41 Interview No. 35, 1997.
42 In fact, the Doctors’ Law seemed to be drafted entirely in secrecy. In the annual Zhongguo weishang
nianjian (Yearbook of Public Health in the People’s Republic of China), only a very small paragraph
could be found describing the progress of the draft law. And the official from the Ministry of Health
did not even want to grant me an interview but only agreed to talk about it very briefly over the
telephone. In fact, he seemed surprised to learn that I knew such a law was being drafted.
promoted in the hospital system. Because of this, they did not perceive the proposal as contributing to their status enhancement nor adding any extra burden on the new entrants. In fact, one doctor reported that her hospital had required all new recruits after 1996 to sit for an examination in their specialty every year.\textsuperscript{43} Thus, quality maintenance seemed already actively enforced in the hospital system.

Arguably medical students should be more concerned about such a proposal to certify them since it affected them directly. But similarly to their seniors, students were not particularly anxious or enthusiastic about it. Again, since in recent years the hospital system had implemented various examinations for assessing new entrants, some students were already desensitized about it and merely likened the new proposal with the original graduate exam.\textsuperscript{44}

The proposal about a unified national certifying examination for doctors therefore failed to exert any broader implications on status enhancement or consolidating doctors as a professional group. Nevertheless, the proposal was attended to in the Doctors' Law, which was promulgated in June 1998 and took effect in May 1999. Article 8 stipulates that the state shall practice a certifying examination system for doctors, to be implemented by the Ministry of Health and administered by provincial health bureaus. This clause also suggests an anticipation of the gradual diversification, or in essence privatization, of the higher education system and hence the necessity to maintain quality control at the entry level of would-be doctors (Standing Committee of the NPC and MOH 1998: 30).

\textsuperscript{43} Interview No. 17, 1997.
\textsuperscript{44} Interview No. 21, 1997.
Article 9 of the Doctors' Law delineates the prerequisites to sit for the qualifying examination. Candidates are required to have at least a university degree in medicine and have undergone a one-year apprenticeship under the supervision of a licensed doctor in registered medical institutions. For those who do not meet the above requirements, however, the Doctors' Law also allows them to be certified according to the appraisal system by health bureaus at the county level or above. According to the Ministry of Health, this clause serves to protect traditional medicine and at the same time thwart substandard and unlicensed practitioners (Standing Committee of the NPC and MOH 1998: 40). But similarly to the lawyers by approval, this appraisal system in medicine in reality also provides a loophole for unqualified practitioners to get the necessary certificate. As my interviewees commented, "Anything goes [in China]." One doctor readily admitted that having the necessary guanxi with the health bureau was sufficient enough to get a license and establish a private clinic. It is therefore hard to imagine if the promulgation of the Doctors' Law would make any significant difference.

Chapter Five

The Practice of Lawyering and Doctoring

This chapter deals with the second aspect of the micro institutional environment that has had an impact on the development of lawyers and doctors in China. This is the structure of their professional practice. By structure of professional practice I refer not to the actual work of the professionals but to the institutional arrangements that shape the practice of lawyering and doctoring in China. This includes the employment structure, the workplace setting and the alternative opportunities in private practice, the possibilities in job mobility, and the issue of work autonomy, etc.

To embark on a career in law or medicine requires that an individual first get a salaried position in the profession. Before the 1990s university graduates were all assigned a job by the state. The national job allocation system required graduates to sacrifice their individual aspirations in return for the guarantee of a job after graduation. Even their choice of study in universities was very often not a voluntary decision by themselves. Informants spoke of taking majors at that time “independent of our own wills.” Instead, it was up to the school leadership, after taking into consideration students’ political activism (biaoxian) and their class background, to make the choice for them. Thus, among the lawyers I spoke to who began to practice in the eighties, most had embarked on a lawyer’s career merely because they had been
assigned to a legal advisory office upon their graduation from university. Many of them would have preferred a job in the judicial system, which was considered "very stable" at that time compared to becoming lawyers. To these lawyers, then, their career path was not deliberately planned but only an unintended consequence of the state's assignment. Their "social biographies," defined as the relation between an individual's personal biography and the common experience of his cohort (Heinz and Laumann 1982: 173), are therefore very different from those who entered the labour market during the 1990s. Although students in the nineties could enjoy more autonomy in aspiring towards a future career, the abolition of the national job allocation system also made them pay a greater individual effort in order to compete in the labour market after graduation. Thus, for fresh graduates in the nineties, getting employed involved a lot of hassle not experienced by their predecessors of earlier cohorts.

Coupled with the shrinkage in the job allocation system is the rise of labour markets. Because of the different institutionalization of law and medicine, the labour markets for lawyers and doctors vary in the ways they are organized and controlled. Drawing on Eliot Freidson's (2001) distinctions regarding a free labour market, a bureaucratic market, and an occupational market, we can speak of an "emergent professional labour market" for Chinese lawyers and a "bureaucratic labour market" for doctors. The constitution of these labour markets plays a part in facilitating or constraining the recruitment process of new entrants into the profession.

Sectoral reforms in law and medicine also impact on how the work setting is structured, which in turn defines and constrains lawyers and doctors in different ways and to varying degrees. Since the onset of legal reforms, law firms increasingly have
lost the functional importance of the typical socialist work unit. This in effect allowed Chinese lawyers to quickly move into private practice once the state opened up that opportunity, which represented a step further away from state control but closer to professional independence. The monetary rewards available from a law practice also makes it possible for lawyers to move outside the work unit for the satisfaction of goods and services conventionally delivered by the state through membership of the socialist institution. On the other hand, doctors in China are more confined to public hospitals which still retain the features of a socialist work unit. Although its functions have also been declining, doctors’ dependence on it, or, to put it in a more categorical way, their perceived dependence on it, has worked to structure their perceptions of alternatives outside the hospital: that is, to engage in private practice. Consequently, the two professions have exhibited very different career lines.

**Getting Employed**

Occupations differ in their recruitment patterns. The recruitment process tends to reflect and reinforce the values and reference group orientation of the occupation. Once an individual is recruited, the occupation offers him a distinctive career line: i.e. there exists certain regularities in the sequences of jobs people have over time in a particular occupation. These sequences are very often defined by the structure of the occupation as well as the labour market (Spilerman 1977). Previous studies of recruitment aimed to account for the variables affecting successful recruitment, or the relationship between industrialization and the formalization of the recruitment process. Ida Simpson et al. (1982) found that expanding occupations and occupations that require high educational levels tend to recruit mainly young
employees. Whereas Jonathan Marx (1988) argued that it was misleading to conclude that formal recruitment procedures predominate in modern societies, since recruitment involves both information dispersion and selection and these work differently depending on the size and the cultural setting of firms, I shall argue that these factors are all dependent variables of the actual constitution of a labour market. In the case of China, the differing recruitment pattern of lawyers and doctors emerges as a result of the way the labour markets are organized and controlled.

The Logic of the Emergent Professional Labour Market for Lawyers

According to Freidson's typology of "the occupationally controlled labour market," the occupation itself maintains control over the determination of qualifications for particular kinds of work and thus of the definition of the work (Freidson 2001: 72-3). At first glance, Chinese lawyers do not match this description. Lawyers as a group do not enjoy an exclusive right to determine the qualifications for performing legal work nor control over its own numbers. Instead, it is the state that unilaterally sets the requisite credentials for the pool of potential applicants to join the profession. But many lawyers are now engaging in private practice outside the state apparatus, and the state also interferes less in their daily routine of work. Lawyers can now freely engage in a direct remunerative relationship with individual clients and firms. As private practitioners, lawyers themselves are now employers in the labour market, and they can impose additional criteria upon the minimum entry level set by the state. The assessment of lawyers has also shifted from the hands of the state to the lawyers' association, which is supposed to be a professional association representing the lawyers. Thus, lawyers are increasingly gaining hold of the labour market, even
though it is still far from an occupationally controlled one. A professional labour market can therefore be described as emerging.

Although lawyers do not have control over the qualifications and the number of potential new entrants, they seek to control the labour market by operating a different logic in the recruitment process. The "emergent professional labour market" of Chinese lawyers is to admit the most resourceful. If educational credentials are the dominant form of professional closure in other societies, then closure based on social capital, or social power, represents a variant in China. On the theory of social closure, Raymond Murphy (1988) has commented that one serious limitation common to the work of all closure theorists is their neglect of the relationship among the different rules of closure and hence their failure to analyze how rules of closure are structured. Education by itself, as Murphy suggested, rarely gives entry to the most privileged class. Instead, the propertied classes determine the necessity, value, and nature of the credentials required for positions, thereby structuring the very nature of credentialed groups. Drawing insights from Murphy, social capital as a different rule of closure can give us a glimpse into how the law profession in China is actually structured.

Social capital here refers to an individual's social resources. Although it is not explicitly defined as a closure strategy, it operates as an implicit closure mechanism nonetheless. The operative logic of the labour market for Chinese lawyers is thus less about educational credentials, although to an extent it is important, but more about whether the individual is resourceful or not in terms of his/her social networks. And here the prevalent theme of social connections, guanxi, in Chinese society creeps in (cf. Yang 1994; Yan 1996; Kipnis 1997). In contrast to the suggestion that the significance of guanxi has been diminishing in an increasingly legal-rational context
of economic development (Guthrie 1998), it is precisely the relative lack of guanxi on the part of new entrants that discriminates against their joining the private profession. Here, guanxi operates at two levels: first as an institutional substitute for the flow of information; and second, as social resources embedded in one’s social networks.

Although individual job applications are becoming more prevalent by the early 1990s because of the gradual withdrawal of the state’s involvement in urban job allocations, the job market is less than an open one. An open network for the flow of job information and a fair system of job competition are not yet established, and job applications and examinations are not formally regulated. Public job advertisements are not often found in newspapers. A survey in China in 1998 found that whereas getting a job through a state assignment had fallen sharply in the 1990s, at only 39 percent compared to over 90 percent in the seventies, only about seven percent of the respondents found their jobs through advertisements. Twenty-two percent reportedly got their jobs through their social connections, in other words, guanxi (CYD 5/11/98). Although the so-called personnel exchange centres (rencai jiaoliu zhongxin), where those seeking new jobs can directly contact enterprises needing particular skills, are becoming more popular, these are ultimately very localized and hence regionally segregated. The same is true for job fairs (rencai zhaoping hui) organized by universities as well as the personnel bureaus for graduates and potential employers. Occasionally a bureau organizes job fairs for personnel in its own system. For instance, in 1995 the Beijing Bureau of Justice held a job fair in which seventy law firms participated (CLN 17/6/95: 1). Yet, open recruitment is still not widely

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1 The first such personnel exchange centre was set up in Shenyang in 1983 as a test case to allow increased rates of turnover and a more individual choice of jobs for engineers, economists, statisticians and other technical skilled staff in state industry (Davis 1990: 90-1).
practiced. On the contrary, direct job applications and personal networks became the predominant ways for job seekers to learn about desirable jobs in the 1990s (Bian 1999: 269). Among all the lawyers I spoke to who had started practicing in the 1990s, only two got into a law firm in response to open recruitment; the others all landed their jobs through some kind of guanxi. Consider the following experience of a young lawyer:

I got into this law firm by sheer chance. I had a casual acquaintance with a judge from Nanjing while he was taking a short-term course at Peking University, and it's through his introduction that I got into the firm. This was just a lucky coincidence and was not something planned. This judge was having meals with a partner from the law firm and he mentioned that he knew of a fellow Nanjinger who was studying at Peking University and his ability was alright. And the partner thought, OK, let's come and have a try. This was how I got recruited. Of course, getting introduced to the firm was sheer good luck. But being able to stay has to do with one's capability.

And he went on to justify the use of guanxi:

This kind of recruitment practices needs to be understood in terms of the present institutional arrangements in China. There is basically no assessment in the recruitment process. One's academic credentials do not carry much weight and therefore it is not necessary to examine them very formally. If one is not up to the standard one will quit the firm voluntarily. Very few law firms would advertise in the newspapers; if they do, it is because they could not reach out to get candidates. Many of my colleagues were recruited in strange ways. Very often it was through some very loose connections that they got into the firm for a probationary period. Some, however, just rang up the firm and got invited for an interview.²

Another lawyer spoke of a similar encounter:

I knew that one of the partners in the law firm was elected as one of the Ten Best Lawyers Nation-wide in 1995 and was very determined to get into the firm, but didn't get my way. Later on I got a job interview with another law firm and the interviewer, on knowing that my second

² Interview No. 32, 1997.
language is Japanese, suggested that Z.L. (the law firm) might be more appropriate. So he rang it up. It so happened that the lawyers there were very busy and really in need of assistance, so they asked me to go over and try. So here I am, working in the law firm that I longed for, purely through luck and coincidence.  

The above accounts resonate with Mark Granovetter’s (1973, 1974) renowned thesis on “the strength of weak ties”. Whereas in the eighties, when job allocations were centrally imposed and strong ties were used more frequently to influence the job-control agent to secure a position in a desirable work unit (Bian 1997), people in the nineties more often found jobs through loose guanxi networks that made possible the dissemination of a wide range of information about jobs. The use of guanxi here must therefore be understood as an institutional outcome of the market transition in a socialist setting. Because of the decentralization of employment restrictions, there was an organizational void left by receding state regulations at a time when the new logic of the labour market had not yet been established. This created a niche for the use of guanxi as an institutional substitute for the flow of job information. Given that systems for advertising jobs were still in formation and the flow of job information not entirely open, the recourse to guanxi should therefore be seen as a rational alternative.

But guanxi as an institutional substitute for the flow of information also works in another sense. Its predominant use in the employment process also had to do with the fact that a universalistic rationality in job competition, that is, through academic credentials, was not formally recognized. As explained by the young lawyer quoted above, academic credentials do not weigh much in the recruitment process. A study in Britain similarly found that “recruitment to private law firms is often decided by a

3 Interview No. 33, 1997.
resort to particularistic and personal criteria” which “was accompanied by a certain distrust/suspicion of any evidence of real academic ability/achievement shown by a candidate” (Bankowski and Mungham 1978: 454). Whereas in England this was due to the social characteristics of older lawyers being trained outside of the university system, in China this might be partly explained by the increasingly rampant problem of inflated credentials (PD 22/9/98: 9; also Mingpao 11/2/99). In fact, a partner of a law firm made it clear that he never practiced open recruitment for new staff but relied only on “referrals” through friends and colleagues.4 Apparently there was an element of trust in this system of “referrals.” In this vein, guanxi also works as an institutional substitute for the employer to obtain information on how capable the applicant is. While Bian (1994b) suggested that “guanxi ... will prevail in manipulating job placement and job mobility process” (p. 999) in the years to come, this is not just because of a relaxation of bureaucratic controls over jobs or the difficulty to obtain job information on the part of job searchers. Instead, because of the existing irregularities in the labour market, potential employers also need the necessary guanxi to ascertain whether a candidate is suitable or not. Hence, the use of guanxi in getting information works in both ways.

Guanxi also operates at a second level in the employment process: that is, as social resources embedded in one’s social networks. Whereas the foregoing discussion is pertinent to all of the emergent labour markets in China, guanxi as social resources that affect the employment opportunities of newcomers is more peculiar to the legal realm. Although Beijing was one of the cities with the largest number of lawyers, it was often said that law firms there found it very difficult to hire potential

lawyers (CLN 28/1/95: 1). At the same time, school-leavers complained that there were few openings for them to embark on a law career right away. Thus, the path to becoming a lawyer seems to be quite winding, as a young attorney explained:

In China, the career path of a lawyer is not a straightforward one. If someone enters a law firm immediately upon graduation, it is likely that he would be looked down upon. People would think that he got in simply because of guanxi. ... For really good lawyers in China, their career path usually goes like this: getting a degree from abroad; or gaining some working experience in state organs or other foreign trade-related enterprises such that they would have built up a certain extent of social relationships before becoming practicing lawyers. 5

The mismatch between supply and demand is obvious – most law firms want an experienced and multi-talented lawyer while new entrants can only find work as an apprentice for a year before becoming a fully qualified lawyer. Apprenticeships apply largely to the comparatively big and well-established law firms. Small firms, which constitute the bulk of the law firms, are usually unwilling to take in apprentice lawyers because of their constraints in both finances and manpower. In 1995, eighty percent of the law firms in China comprised less than ten people, including both full-time and part-time lawyers (Lushi yufazhi 11/95: 13-4). In 1997, more than 150 out of the 227 law firms in Beijing comprised less than ten lawyers, 51 had 11 to 20, and only 21 law firms had more than twenty people (CLN 25/6/97: 2-4).

But more importantly, fresh graduates from schools are not “resourceful.” Resourcefulness can be understood in two senses. First, to employ their own term, fresh graduates did not have an ‘yuan – which literally means “sources of business” – that is, they did not have the necessary guanxi in the wider society that could bring in

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5 Interview No. 32, 1997.
prospective business for the law firm. This has to do with the institutional arrangement of the law firm, which according to the Lawyers' Law is to function as a collective entity. Lawyers in China are not supposed to accept cases by themselves. All cases should be undertaken exclusively by the law firm, which would then authorize and commission a lawyer to handle the case (Tong Baogui 1996: 13). Thus, a resourceful lawyer would not only bring in business to himself but to the entire firm. While in reality this is not very often observed – many lawyers still receive cases by themselves and the procedure of going through the firm is a mere formality – there is then still a problem of income and revenue. Except for apprentices and assistant lawyers, who receive a fixed monthly salary, other lawyers in salaried positions are paid through commissions (ticheng). A lawyer explained the normal practice in Beijing,

A lawyer gets fifty percent of the charges if the case comes from his own networks, and the remaining fifty percent goes to the firm. If the case comes from someone else in the firm but is commissioned to the lawyer, he gets twenty percent only. This is generally the principle used in Beijing.6

Thus, a lawyer who was not resourceful would find it very difficult to sustain him or herself. This was also what deterred most law graduates from engaging directly in practice. Even if they go through the one-year apprentice, their social networks would still be limited to those of the law firm. It pays off to instead first spend a few years either in an enterprise or a state organ to widen their social and occupational networks and thus enrich their resources.

6 Interview No. 24, 1997.
The emphasis laid on the resourcefulness of new entrants to the benefit of the law firm also takes on a second meaning: that is, good interpersonal relationships, again guanxi, as social resources. A lawyer who worked in a property development company for a couple of years before practicing law articulated the difficulty facing fresh school-leavers:

In China, fresh graduates from universities would not know how to practice law... This has to do with the way the society is run. Graduates here must first go to work for an enterprise in order to understand how businesses actually operate... Otherwise it would be almost impossible to represent an enterprise or an individual client in legal activities. In other countries you have rules and regulations to follow. In China even if we also have many rules and regulations we don't often follow them. Very often we work according to some non-institutionalized logic.7

It is clear that he was referring to human factors that are crucial in conducting legal business, such as good relationships with personnel in both the courts and the government. In fact, another lawyer who responded to an open recruitment advertisement suggested that it was his “five years of work experience in the court” which really got him the job among the more than twenty applicants, some of them graduates from elite law schools like Peking University and some back from overseas. In his view, his past work experience no doubt earned him the necessary social connections that were deemed to be useful by the law firm.8 This, however, also poses an obstacle to the professionalization of lawyers in China. Randall Peerenboom observed that “many lawyers find it easier and often more effective to rely on personal relations and connections rather than legal analysis and arguments to achieve their goals” (LCHR 1998: 66). It is not so much a problem of the lawyers but the

7 Interview No. 46, 1997.
8 Interview No. 24, 1997.
institutional reality in China that such connections are often necessary to obtain information from the courts and various government organs. A new entrant without any work experience in state organs or the wider society would be disadvantaged in this respect.

*The Logic of the Bureaucratic Labour Market for Doctors*

Except for a few who practiced traditional Chinese herbal medicine, doctors who began practicing before the 1990s were, similar to all other occupations, almost all assigned by the state to work in hospitals. The abolition of the national job allocation system in 1992 did not radically change this recruitment pattern. Unlike the lawyers, doctors in China need not resort to means other than their academic credentials to get their first post in medicine, since the labour market is still by and large a bureaucratic one. According to Freidson (2001), a centrally planned market goes hand in hand with a bureaucratic labour market on the national level. A bureaucratic labour market is created by staff members of a hierarchy, specialists in personnel management, design, and planning who are responsible to the ultimate authorities of the bureaucratized state ... rather than to the producers or consumers of their products. ... [I]t is monocratic in structure with a systematic division of labour composed of positions or jobs whose tasks are defined by written rules and which are arranged hierarchically (or vertically) as well as functionally (or horizontally). Access to those positions or jobs, as well as to transfer and promotion between them, is determined by specified impersonal criteria of competence as well as by other formal personnel policies (pp. 67-8).

In this type of labour market, the division of the labour force is planned, and wages are specified for each officially established and recognized category or worker.
Whereas the Chinese economy is no longer centrally planned after two decades of reform, the national health system is still very much planned, financed, and supervised by the Ministry of Health. In this regard, medicine is still a bureaucratic service largely under the control of the bureaucratic state. Private practice is only allowed to a limited extent. Chinese doctors have few alternatives but to work in hospitals and thus put themselves under the direct control and supervision of hospital administrators. In terms of job allocation, the system of “mutual selection” (shuangxiang xuanze) instituted after 1992 did not alter much the recruitment process for fresh medical graduates. In fact, an administrator of a county hospital confided that up until 1997 central allocations of candidates were still practiced at his hospital. Graduates from medical colleges and universities and even some from secondary medical schools were assigned to the hospital regardless of the hospital’s actual need. In his view, the hospital must still be subject to the authority of the higher jurisdiction and was therefore obligated to carry out the duties of job assignments. The hospital, indeed, did not enjoy much autonomy in personnel matters.\(^9\)

Even when the system of “mutual selection” is practiced, the recruitment pattern is still defined by specialized training and educational credentials. Due to the very specific nature of medicine, and since the Ministry of Health has seriously guarded against a relapse to the rapid but substandard expansion of medical personnel during the Cultural Revolution, medical institutions must necessarily draw their formally-trained talents from medical schools. Moreover, private medicine constitutes only a tiny proportion of medical provision in China. Figures from the Ministry of Health show that in 1995 there were only 71 private hospitals nationwide,

\(^9\) Interview No. 53, 1997.
providing a total of 3,289 hospital beds (ANHS 1995: 42). As the majority of hospitals in China are state-run, the pool of clients is basically guaranteed and does not depend on the doctors' own resourcefulness. They thus face much fewer institutional constraints in this regard.

Another feature of the bureaucratic labour market for doctors concerns the subsystem of hospitals within the broader health system. As higher education institutions are organized along different lines, so too are hospitals. For instance, medical universities under the direct jurisdiction of the Ministry of Health are affiliated with hospitals in the same administrative hierarchy. Recruitment to these hospitals tends also to favor graduates from the affiliated university. A doctor reported that when she graduated from Beijing Medical University in 1994, she and many of her classmates were recruited by the same unit since it is affiliated with the university. 10 Graduates of Peking Union Medical University also tend to work at Peking Union (Xiehe) Hospital, Fuwai Hospital, and Zhongliu (Cancer) Hospital, since they are of the same subsystem. 11 Thus, mutual selection or not, both the hospitals and the graduates have only limited choices. Moreover, as hospitals have a more established institutional history than law firms, the demand for doctors is much greater than the supply of new entrants. For instance, Shoudu (Capital) Medical University in Beijing reported in 1994 that the number of their graduates was not enough to fill up the places left by retiring doctors at its nine affiliated hospitals (HN 12/6/94: 2). Zhongshan Medical University in Guangzhou also reported that in 1995 the supply and demand ratio for its graduates was 1:1.2 (HN 9/7/95: 2). As a

10 Interview No. 30, 1997.  
11 Interview No. 38, 1997.
consequence, there is a good reason why labour market for doctors is still very much controlled by the bureaucratic state.

The Workplace Setting: Firms Versus Work Units

The organization of the workplace also structures the way lawyers and doctors perceive the differing opportunities and constraints in their own development and hence their choice of action. Discussion of the recruitment pattern in the last section suggests that the operating logic of the emergent professional labour market for lawyers poses an institutional barrier for fresh law graduates. However, for incumbent lawyers, the immediate work environment – the law firms – has allowed them the leeway to take advantage of the relaxation of policies in legal reform. By contrast, although fresh medical graduates find it relatively easy to embark on a career in medicine, the hospital setting works to limit their perceived alternatives. Taking an institutional approach, the difference shall be explained by changes in one of the fundamental socialist institutions, the work unit, or the danwei system.

Post-Mao reforms have not only brought about the rise of labour markets but also wreaked havoc on the institutional structure of work units. Before the onset of a market economy most urban Chinese worked in a danwei, which served both political and social functions (cf. Walder 1986; Bian 1994; Shaw 96; Lü and Perry 1997). The danwei took care of its people from cradle to grave. It not only encouraged employees in the unit to develop an organized dependency on their superiors but also on the danwei for collective consumption. The danwei was also highly politicized. The
cellularization of Chinese society had enabled the party-state to exert considerable political and social control over its urban populace.

Moreover, employees were allocated to work organizations rather than to types of occupations. Occupational attainment was pursued only after a person entered a work unit. Thus, the first job became the most important component of an individual’s career development, and getting into a good work unit became all the more important (Lin and Bian 1991; Bian 1994).

However, since the 1980s the functions of a self-sufficient work unit have been in decline. The acceleration in the transition to a market economy has diminished the need for the provision of goods and services by the work unit. Thus, the work unit as an institution is less constraining than before. When a work unit ceases to provide medical care and retirement pensions, the functional importance of the work unit on individuals recedes. This is precisely the case with the evolution of law firms in China.

*From “Legal Advisory Offices” to “Law Firms”*

When law firms were first re-established in the late 1970s they were called “legal advisory offices” (*falü guwenchu*). The 1982 Lawyers’ Regulation defined legal advisory offices as institutional units (*shiye danwei*) under the organizational leadership and professional supervision of the judicial administrative organs of the state (Article 13). Institutional units are non-production, non-profit-making units. Stipulating a law firm was to be an institutional unit and not an enterprise unit meant that the provision of legal services was to serve social rather than economic causes
(Chen 1992: 132-3). It also rendered law firms financially dependent upon state funding. Thus, an early law firm resembled the typical socialist work unit. They were under the tight control of the government, and membership was restricted according to establishment quota (bianzhi) and the system of job assignment. Lawyers, as “state workers,” received their salaries as well as a wide array of welfare provisions from the state.

In 1983 Shenzhen took the initiative to change the name of legal advisory offices to “lawyers’ firms” (lǐshì shìwùsuǒ), the use of which was later legitimized at a national conference of judicial administration in 1984 (Zhang Geng 1997: 20). While many commentators regarded these two terms as having no substantial difference (e.g. Pitney 1988: 325; Chen 1998: 132), the change should be taken as more than just semantic. It represented a recognition of the full range of services provided by lawyers. It also served the purpose of differentiating law firms from the legal advisory units within enterprises and governmental organs. According to a comment in Gaungming Daily, “Lawyers should not identify with the state organs like the Security or the Procuracy, they should not perform a dictatorship function” (quoted in CNA 1988: 9). The term “lawyers’ firms” also implies that China needs more than just “legal workers” but lawyers who have the expertise to offer their services to society at large.

Concomitant with this change in name was that since 1984 newly established law firms were encouraged to be responsible for their own profits and losses, rather than be financed by the state. Whilst this relaxation of state control helped spur a growth in the number of law firms and of lawyers, since a personnel quota and state funding was no longer required, it also meant that the social and welfare functions
long associated with a work unit were also declining. Although in 1986 the Ministry of Justice specified that lawyers were still entitled to free medical services and a pension at public expense, in reality not all bureaus of justice followed this rule. As a lawyer noted to me, from 1986 onwards they were essentially denied their previous but received only a monthly salary from their state law firm. To these lawyers therefore, the *danwei* as a fundamental socialist institution has lost much of its significance. When state employment no longer suggests financial stability and welfare security, there is no reason for them to stay with the state law firm if they can find alternatives. This explains why many lawyers were quick to jump at the opportunity to dissociate themselves from state control by establishing private law firms in the 1990s.

**Hospitals as Work Units**

In his seminal study of medicine, Eliot Freidson (1970) has discussed how the organization of the work setting affects the professionals’ performance as well as job satisfaction. But the work setting of hospitals in China affects doctors more than that. The structure of hospitals as work units not only has a bearing on doctors’ professional lives but also their private lives. Gail Henderson and Myron Cohen (1984) have documented how a Chinese hospital, as a work unit, impacted both the formal and informal lives of its members and their relations with patients from outside the unit. As their study was conducted during the late 1970s, we could expect that much of what they described would have changed when reforms proceeded into the nineties. Because of the relatively relaxed political environment, political and

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12 Interview No.54, 1997.
administrative controls over individual members have lessened. Members are allowed chances of mobility which were normally denied in earlier decades. More importantly, because of the fiscal restructuring of the health system, hospitals are now responsible for their own financial well-being and cannot rely entirely on state funding. Welfare provisions in the hospitals are declining, but this is compensated by changes in the incentive system which allow staff at the hospitals a higher wage than before. Despite these changes, however, hospitals in China, unlike the law firms, still retain much of the institutional structure of a work unit.

The rationality to "serve the economy" in legal reform is carried through by the lawyers. To foster a greater momentum for the development of the ranks of lawyers, law firms are restructured to allow more people to join the team. In medicine, it is another story. The rationality to "serve the people" in health reform rests basically with the hospitals as the functioning units. This essentially stipulates that public hospitals are to remain as institutional units – non-profit but service oriented. Hospitals remain therefore under the jurisdiction and close supervision of the Ministry of Health. For instance, during the mid-1980s there was a campaign to identify "civic-minded hospitals" (wenming yiyuan) – an aspect of hospital reform directed to "serve the people." Medical staff was demanded to serve the populace wholeheartedly and to put social efficacy as the first priority (CHY 1986: 125). Regardless of whether hospitals carried out the campaign only in the rhetorical sense or not, the issue here is that hospitals, as work units, continue to be a vehicle through which party and state policies are pursued.

In terms of welfare provisions, although the functional importance of hospitals has also been declining, doctors still consider this as important. Many of the doctors I
interviewed had been allocated an apartment by the hospitals, as most of them were middle aged doctors and had worked in the hospitals for more than ten years. In addition, welfare benefits such as medical care and a retirement pension are still provided for. Hence, to those already on the beneficiary list this aspect of the hospital as a work unit still structures their perception of alternatives, and they perceived few parallel perquisites in private practice.

The Opportunity Structure in Private Law Practice

Reforms of the system for lawyers since the mid-1980s have made the notion of law firms as institutional units fall short of reality. In 1993, without explicitly abandoning the notion of institutional units, law firms were re-categorized as professional intermediate organizations serving the socialist commodity economy (LYC 1994: 1-9). Clearly the state shies away from recognizing the entrepreneurial nature of legal practices even though the private sector in law is gaining a bigger share. The legal definition of lawyers has also changed accordingly. The 1981 Lawyers Regulation defined lawyers in China as “state workers.” When the Lawyers Law was promulgated in 1996, it recognized lawyers as “practitioners who ... provide legal services to the society.” Although this still falls short of recognizing them as “free professionals,” it nonetheless endorses their distancing from the state and thereby legitimizes the legal status of private practice.

Private practice has been deemed to demonstrate a profession’s independence from the state. Although studies on solo practitioners showed that they usually make up the lower echelons of the legal profession (Ladinsky 1963) and thus are more
vulnerable to market forces and the control of their clients (Heinz and Laumann 1982; Anleu 1992), lawyers in China still see the possibility of engaging in solo practice as exemplifying the ideal of the autonomous individual relatively independent of the organizational control of the state. But solo practice is not allowed in China. A complementary regulation of the Lawyers’ Law on the registration and administration of law firms made it clear that all law firms, regardless of the nature of ownership, must comprise at least three full-time lawyers (CL 4/97: 54-5). Over the years there were recommendations that lawyers should be allowed to engage in solo practice, citing the unique nature of lawyering which requires only the lawyer’s professional knowledge and little else (Laodong zhoubao 12/3/93: 3; CLN 5/4/95: 4). But the provision governing solo practice was deleted at the last minute before the Lawyers Law was passed (Zhang Geng 1997: 178; see also LCHR 1998: 53-4). The Ministry of Justice argued that conditions were not yet ripe for lawyers to practice alone, thus essentially upholding the collective nature of law firms.

Law firms with sole proprietorships do exist although their development is not actively encouraged. In official accounts these individual law firms are referred to as “firms bearing a personal name.” At the end of 1995, there were about fifty such law firms in the country, representing about 0.7 percent of all law firms (Qing Feng 1997: 245). The first individual law firm was established in Shanghai in May 1988 with the initiation and support of the chief of Shanghai bureau of justice (Zheng and Li et al. 1997: 387-9; also Mingbao 17/7/98), at a time when the experimental program of co-operative law firms was just implemented but not yet widely practiced. The Beijing Bureau of Justice had taken a more cautious attitude, however, and the first sole proprietorship was approved only in April 1994. In three years’ time this
increased to seven. But development of individual law firms ceased thereafter. According to an official of the Ministry of Justice, these firms could not retain their best staff since those capable would not want to work under the name of a particular lawyer. Existing individual law firms were, however, allowed to continue to practice.\textsuperscript{13}

With the few exceptions of sole proprietorships, lawyers in general are either in salaried positions in state-funded or private law firms or partnerships. Reforms of the lawyer system has seen an increase in the number of law firms in China, and the rapid growth since 1992 is a direct response to state approval of setting up partnerships (Fig. 5.1). In 1991, the number of private law firms accounted for less than two percent of the total; in 1997, they accounted for more than one-third of all law firms (Table 5.1).

In the mid-1990s, newly formed private firms contributed to most of the growth in the professional legal establishment. In 1996, they accounted for all the growth in the numbers of law firms. By comparison, in 1996 the number of state-owned law firms experienced a small net decline for the first time (Pei 1998: 9-10). In Beijing, all state law firms were privatized in 2000; and Shanghai followed suit in 2001 (CYD 24/9/01). At present, it is estimated that up to half of the total law firms in China are private (CD 23/1/02).

\textsuperscript{13} Interview No. 40, 1997.
Figure 5.1  Growth of Law Firms, 1981-2000


Table 5.1  Growth of Private Law Firms, 1991-97a

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Percentage of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>73</td>
<td>1.95%</td>
</tr>
<tr>
<td>1992</td>
<td>198</td>
<td>4.74%</td>
</tr>
<tr>
<td>1993</td>
<td>505</td>
<td>9.85%</td>
</tr>
<tr>
<td>1994</td>
<td>1,193</td>
<td>18.59%</td>
</tr>
<tr>
<td>1995</td>
<td>1,625</td>
<td>22.42%</td>
</tr>
<tr>
<td>1996</td>
<td>2,655</td>
<td>32.12%</td>
</tr>
<tr>
<td>1997</td>
<td>2,927</td>
<td>34.68%</td>
</tr>
</tbody>
</table>

Note:  a From 1998 onwards the Yearbooks cease to provide separate figures for private and state law firms.

Sources:  LYC, various years.
The alternative of a private practice is not only facilitated by state sanction. Indeed, the work-unit system also helps to structure the perception of opportunities or constraints in private practice. The establishment of private law firms not only attracted lawyers from state law firms but also qualified personnel from the judicial and court systems. Those who switched to private practice are driven in part by the obliteration of welfare provisions in their original work unit, to the extent that they saw no essential difference between the two. Conversely, where benefits continued to be enjoyed by members of work units their choice is constricted. An official of the Ministry of Justice admitted that people of his age (mid-forties) had already got dependent on the unit, to the point that they did not see private practice as an actual alternative. In his words,

The major problem is housing. When you quit the government you will have to give up the apartment, and it could cost you three to five hundred thousand yuan to buy one in the property market, not that many people could afford that. And of course there is the problem of social welfare. I can’t afford to lose everything. To work in state organs is still relatively stable. Even though the wage is not high, the job is secure.\textsuperscript{14}

However, quite a number of his younger colleagues in their twenties and thirties had already quit to join private teams of lawyers since they were not yet high enough on the seniority ladder to benefit from the kind of welfare enjoyed by my informant. Even lawyers in state law firms tended to refrain from private practice if they were already the beneficiaries of state welfare. Consider the following:

If the opportunity arises I would also consider setting up a partnership law firm with friends. But now is not the right time. I already have housing from the firm. If I quit, I would have to return it. The salaries you earn from other law firms might not be enough for you to buy an

\textsuperscript{14} Interview No. 41, 1997
apartment in the property market. In Beijing, private lawyers generally earn an annual income of about 100,000 yuan. The better ones could earn 200,000 yuan. But it would still be difficult to buy an apartment with this level of income. Many lawyers in partnership law firms did not see this as a problem mainly because most of them are native Beijingers so their families are all in Beijing. So they already have their own housing, or their spouse has housing.\(^\text{15}\)

Private practice, however, offers lawyers the vision of relative work autonomy from state interference in their daily routines. State law firms are still very political in nature. One lawyer described how “state law firms are still under the jurisdiction of the district government as well as the supervision of the bureau of justice, and much time has to be spend on various meetings and conventions.” When he moved to a private law firm, he found that his time could be spent entirely on real work, and both his job satisfaction and performance were enhanced.\(^\text{16}\) From the vantage point of the partners, the firm also enjoys autonomy not only in personnel matters but also in administrative and financial matters. In their view, there are too many “grandpas and grandmas at state law firms,” meaning that they have many supervisory organs to report to.\(^\text{17}\) Private practice allows them the kind of autonomy that the professional ideal embraces.

Proliferation of private law firms also says something about the job mobility of lawyers. Consider the experience of the following lawyer:

I was originally teaching economic law at a university, and qualified as a lawyer in 1988. Afterwards I was practicing as a part-time lawyer and later became a full-time one. I had worked in partnership law firms, and later on founded a partnership with some friends. But it broke up after a year. Now I am working in an individual law firm.

\(^\text{15}\) Interview No. 49, 1997.
\(^\text{16}\) Interview No. 37, 1997.
\(^\text{17}\) Interview No. 27, 1997.
This is somewhat rare in Beijing because most would not want to assume a salaried position if they had been a partner.\textsuperscript{18}

Decentralization of the employment structure allows greater mobility between jobs. But the freedom to move around also creates problems. Published commentaries complained that the mobility of lawyers has been doing harm to the development of law firms. Comparison of law firms in Beijing between 1996 and 1997 presents some revealing evidence on this. Of the 220 law firms registered with the Beijing Bar Association in 1996, 41 did not appear on the public list of firms in 1997, either because they had disintegrated or had not passed the annual review process. In addition, 48 new law firms sprang up (\textit{CLN} 3/7/96: 3-4, 25/6/97: 2-4). The number of law firms swelled to 345 in 2000. Between 1998 and 2000 the number of law firms increased by 17.3 percent, whereas that of lawyers increased by 21.5 percent, presumably every single percentage increase in lawyers is accompanied by an almost parallel increase in law firms (\textit{CYD} 12/3/99; \textit{Beijing tongji nianjian 2001}: 502). Many lawyers admitted that job mobility at their firm is quite frequent. In Zhejiang province, for example, the number of law firms doubled between 1988 and 1995 while the number of lawyers grew by only 25 percent; of the 44 private law firms set up in 1993, more than half had undergone personnel changes in the composition of the partnership (\textit{CLN} 31/5/95: 4; \textit{Lushi yu faji} 8/95: 34-7). This kind of constant disintegration and collapse of law firms also renders them difficult to consolidate and to further develop. In fact, this has also been singled out as one of the challenges facing Chinese lawyers in China's accession to the World Trade Organization (\textit{CD} 23/1/02). A natural consequence of this is that young fresh graduates with law

\footnotesize{\textsuperscript{18} Interview No. 50, 1997.}
credentials also find it hard to get the necessary apprenticeship in law firms so that they could be trained to become qualified lawyers.

_The Institutional Barriers in Private Medicine_

Private medicine in China is called “managed-in-society medicine” (shehui ban yi), in contradistinction to public hospitals and clinics which are state-run. Although private medical practice has always been allowed in China, in reality private practitioners are constricted to traditional Chinese herbalists and lower level doctors. University graduates of Western medicine are few and far between among them. Development of private practitioners and private clinics was endorsed in a policy document issued in 1985, but it restricted the pool to the “idle medical personnel” including “ethnic doctors,” herbal practitioners, and retired personnel (MOH 1988: 1-6). In 1988 the government expanded the pool by detailing the eligibility and practice of private practitioners. Qualified personnel (defined by either educational level or by assessment) who had worked continuously in public hospitals for three years are eligible to apply for private practice (MOH 1990: 413). In 1995, there were about 170,000 private practitioners in China, accounting for only 3.3 percent of the nation’s medical personnel. More than half of them practiced in rural counties, thirty percent were doctors and 25 percent were assistant doctors (ANHS 1995: 42, 50). Half of the private practitioners had graduated only from technical schools and hence practiced mainly at the county and village level, thirty percent are retired personnel, and twenty percent are the original barefoot doctors, now renamed rural doctors (PD 21/1/99: 10).
In theory a doctor could resign from a public hospital and join a private team. In reality the work unit system renders “exit” an unrealistic choice. The work unit system presupposes permanent employment at the hospital. During the 1980s there was still a tendency in a work unit to “own” its staff (cf. Henderson and Cohen 1984: 82). To tender a resignation requiring the approval of the unit leader would prove difficult for doctors. In recent years the personnel system is more relaxed and greater mobility of medical staff is observed. Yet few doctors would contemplate the “exit” option. Major welfare provisions such as housing, medical care, and retirement pensions are still provided by the hospitals. To quit means that doctors have to forfeit all these, something few of them could afford. One who had worked in the hospital for 14 years before he was allocated an apartment was not ready to give it up.\(^{19}\) Others, as doctor themselves, were well aware that falling sick in China nowadays could be costly. A doctor explained,

> It is still more secure in a state work unit. We have worked in the hospital for so long that we grew to depend on it. You know, it costs a lot to be sick nowadays. Even if I am a doctor, when I fall sick I still need to attend a hospital. It is more convenient to be an insider.\(^{20}\)

The doctor went on to argue that their situations were not comparable to lawyers. Whereas the monetary reward from private legal practice could compensate for the welfare provisions lawyers would have to give up when they quit the state sector, in medicine the market is more regulated:

> Doctors are not like lawyers. The law is a new profession and in China there is no established model for it. It is therefore much easier for them to try anew and they can charge a high price for their service. In medicine it is another story. Medicine is so established that it is not

\(^{19}\) Interview No. 8, 1997.  
\(^{20}\) Interview No. 7, 1997.
possible to charge a high fee even in private practice. But to establish a private clinic requires a lot more capital input than a law firm. So the risk involved is greater.\textsuperscript{21}

The original work unit system constrains private medicine in another respect. The functional monopoly assumed by public hospitals in China renders doctors scant functional autonomy in their work. According to Freidson (1970), functional autonomy is defined as “the degree to which work can be carried on independently of organizational or medical supervision, and the degree to which it can be sustained by attracting its own clientele independently of organizational referral or referral by other occupations” (p. 53). Doctors in China lack autonomy in both aspects. On the one hand, the public work unit provides medical care facilities to its members and they must attend designated public hospitals in order to be reimbursed. It means that the pool from which private clinics or hospitals could draw their clients is limited to residents outside the work unit system. Doctors therefore worry that they would not be able to secure a sizable clientele in order to sustain their practice. In this vein, state medicine as an established institution structures not only patients’ choices but also doctors’ perceptions of the viability of practicing outside the state system.

In Beijing there are very few private practices. There is no market for it. Beijing has a high concentration of hospitals, far more than other cities, and many of them are also renowned. Private clinics would find it hard to survive here. There is also the problem of reimbursement. In the south where there are more private enterprises, private practitioners could find a niche.\textsuperscript{22}

On the other hand, the functional monopoly of public hospitals in China in the provision of medical facilities results in the lack of institutional support for private

\textsuperscript{21}Interview No. 7, 1997.
\textsuperscript{22}Interview No. 30, 1997.
medicine. Whereas hospitals everywhere provide a whole range of services from consultation to diagnostic formulation to therapeutic treatment, clinical laboratories and radiology etc. are also provided in the private market. In China, however, the hospitals monopolize even the most basic diagnostic examination, and a referral system between private clinics and public hospitals for laboratory tests is lacking. Given the tendency of both the doctors and patients to resort to diagnostic examinations, it is hard for doctors to imagine their role as providing only consultations and prescribing drugs. One doctor expressed her view in this way, "A doctor cannot open up a clinic just to check for the flu." Clearly they see the support of diagnostic examinations as integral to their practice, but these are lacking in the present institutional arrangement of private medical practice.

In addition, the relatively bad reputation held by private medicine in recent years helps to put off doctors to join a private team. In their view, this has to do with the lack of close institutional scrutiny at the local level. Problems identified in private medicine include unlicensed practices, over-prescription of drugs, poor services, and substandard facilities (HN 21/1/94: 3). In 1990, a rectification campaign was carried out, in which 3,727 private clinics and 12,739 individual practitioners were forced out of business (CHY 1991: 47).

Solo practices are especially held in low regard:

The size of the clinic is small and facilities are also substandard. Solo practitioners’ professional level is low. Mostly they are authorized by local health bureaus to open a clinic. There is supposed to be due

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23 Interview No. 4, 1997.
process to ensure they meet the requirements, but well, you know, here not everything works according to what is stipulated. 24

Because of the effect of the work unit system coupled with the lack of functional autonomy, horizontal job mobility of doctors is infrequent. Even though the state has relaxed much of its control over personnel since the nineties, it is still relatively rare for doctors to move among hospitals, not least because hospitals are still very much under the auspices of the government. Although doctors generally agreed that it was relatively easy to leave compared to before, they also confided that there was no better place to go than the hospital where they were working. A hospital administrator noted,

Very seldom would doctors quit a hospital. Now that it is a market economy, and given that our hospital is doing well economically, it is considered a decent place to earn a stable income. 25

Essentially he was noting not only the importance of job stability but that doctors might find it difficult to adapt to the competitive market economy outside the hospital. Some doctors have other explanations. A doctor, in their view, should strive for advancement in their professional skills, and this could only be attainable at established hospitals. A higher wage in the private sector is therefore not their concern. A doctor at a renowned specialized hospital said,

Now it is not difficult to leave the hospital at all. Although the personnel system has been relaxed a lot, seldom would a doctor quit, maybe fewer than one each year. Why? The small private hospitals do not have status, and doctors working there find it difficult to make their names known. They would have their skill easily discounted. 26

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26 Interview No. 8, 1997.
Other doctors observed that disappointment with doctoring did drive some people out of the profession:

There are doctors quitting the hospital, mostly the young fresh graduates. Some might join other hospitals. But more often they turn to pharmaceutical companies and become salespersons. The wages are higher and the job is less strenuous. ... When I was young I thought doctoring was a respected profession. Now I would think otherwise. 27

To the younger cohort, the monetary reward associated with doctoring can be a crucial consideration. An informant who aborted her medical career explained,

I didn’t expect that the work environment of hospitals was so boring and rigid. The everyday work was so ritualistic that it was not challenging at all. I simply felt that I was not interested and medicine could not realize my potential. At the time when I applied to the medical university I didn’t realize this. ... Now I work in a pharmaceutical company and I earn several hundred yuan more. ... It is very easy to leave the hospital. We attended universities as state-funded students, and at Beijing Medical University the “training fee” (peiyang fei) was 2,500 a year. When I was recruited by the hospital I signed a five-year contract. Since I breached the contract I had to pay back the training fee (minus the number of years already served in the hospital) and compensation fee (weiyuejin). The compensation fee varies among work units. For my original hospital it was 1,000 yuan a year. I served three years before I quit, which meant I had to pay 5,000 yuan of training fee and a 2,000 yuan compensation fee, which made a total of 7,000 yuan. According to policies one could go as one likes. It is just a matter of money. If, however, I switched to another hospital, I needed only to pay the compensation fee but not the training fee. ... Yes, once I quit I could not be a doctor again, but I don’t have any regrets. 28

Constraints imposed by the work unit system cease, however, when the doctors retire. Thus, we find many retired doctors from public hospitals joining the joint-venture hospitals in recent years. In fact, many doctors contemplate joining the

27 Interview No. 12, 1997.
28 Interview No. 31, 1997.
private market only after they retire. A doctor of thirty years who practiced at county level said,

I would consider joining private medicine when I retire. In China medical personnel retire at sixty. If they have a proper medical credential they could apply to the health bureau to become a private practitioner. … I don’t consider the clientele a problem at all. I have been working in the hospital for so long that I have developed a certain level of status. … The government is not really very strict towards private practice. At the county level one needs only to establish an outpatient clinic with one or two attending physicians. The government also has regulations specifying the size and the hygienic condition etc. But most of the time it is very easy to get around this provided that you have the necessary guanxi. 29

Career Lines

Given the differing employment structure and niches in private practice, we can expect that lawyers and doctors in China would exhibit very different career lines in terms of the common work history that members of the professional group share. Career patterns within the law firms or hospitals depend not only on the individual’s capability but also on the opportunities offered by the organizational structure as well as the structure of the internal labour markets, i.e. higher-level vacancies are only opened up to incumbent employees (Althauser and Kalleberg 1990; Rosenbaum 1990). Beyond the organizational boundary, however, members of the professional group share more or less the same career history.

29 Interview No. 53, 1997.
Fig. 5.2 depicts the career lines of lawyers and doctors in China. Whereas university graduates (not necessarily in law) could become practicing lawyers upon passing the qualifying examination and fulfilling the required apprenticeship, very few of them actually choose to do so. Instead, the “normal” career path is for them to first work outside the legal realm in order to gain not just work experience but also the necessary social networks. The chances of getting a salaried position in private law firms is mediated by one’s accumulation of social resources that can be brought into
the firm. Eventually some of them would be promoted to become partners or to set up their own partnership law firm.

To the doctors, however, alternative employment, i.e. to engage in private medicine, is normally foreseeable only after they retire. The institutional constraints exerted by the functional monopoly of public hospitals still exist, but retirees can contemplate joining a private, small hospital since they are at least free as retirees from the constraints imposed by the work unit system.
Chapter Six

Conclusion

In a very recently published article on the relationship between the state and professions in China, Edward Gu (2001) has set out to examine the question of "whether the state has incentives to take actions to impose or impede certain institutional changes aimed at promoting professional autonomy" (p. 171). This doctoral dissertation argues against Gu's contention that professional autonomy, even if in only a few sectors, is a conscious undertaking of the state aimed at instilling institutional changes. However close a profession is to the market-oriented reforms and hence the recipient of greater tolerance by the state in the development of professional autonomy, the profession can only gain such autonomy through its own active engagement with the state. Gu's argument generally ignores the professions as interested actors. The process of professionalization must necessarily entail both government sanctioning and government regulation. But if a profession achieves relative professional autonomy during the course of development, it is the result of tacit negotiation and renegotiation over the scope and direction of state policy changes. In this vein, one must look at the interconnectedness of state and society and to see both as active actors in themselves.

This study argues that the dynamics of professional development must be understood in terms of the actors' institutional embeddedness. It is through the
actions and reactions on the part of the state and the professions that the parameters of professional development are cultivated, shaped, and, in some instances, expanded. The dissertation contends that there is no fundamental causal relationship between professionalization and economic development. Instead, the broader context of China's reforms has exerted differing impacts on professions, mediated by the specific institutional arrangements at the sectoral level where an individual profession is located. One must therefore look at the institutional specificities that are conducive to the profession to develop in one arena but not in the other.

Arguably, professionalization in China must necessarily be state-led and the kind of professionalism at issue is essentially one of instrumentalized professionalism (Jarausch 1990). Law, being closer to the instrumental and pragmatic purposes of economic development, is understandably given a longer rein in its own development. Medicine, on the other hand, is still formally committed to the ethos to serving the people. But professions are not to be understood as mere instruments serving the larger purposes of the state. The rise of professions in China represents the increasing heterogeneity in society, which is no longer passively acted upon by the state. Although professions in China are still short of initiating changes of their own, depending on the specificities of the institutional environment their reaction or inaction towards state policies in effect helps shape their own course of development.

Making references to institutional specificities also bears on two broader issues. One concerns the study of changing state-society relationships in China, and the other concerns the Chinese routes to professionalism.
Retreating State, Fragmented Society

In the past decade or so studies of the state-society relationship in China have been dominated by the civil society versus state corporatism models. Proponents of the former found strong arguments for a civil society in China in the social changes unleashed by the economic reforms initiated by Deng Xiaoping more than two decades ago (e.g., Yang 1989; White 1993a, 1993b). One of the most important consequences of economic reform, they noted, is its creation of a significant space that allows the development of societal organizations. The urban private sector in China is burgeoning. Urban life in China has been changing and state control over residence, travel, and employment has over time been relaxed (cf. Davis et al. 1995). All this, they have argued, favors the development of civil society, which was taken very generally to mean a realm of autonomous activities outside the party-state structure (e.g. Ostergaard 1989; Gold 1990; Strand 1990; Sullivan 1990; McCormick et al. 1992; Perry 1992; Whyte 1992).

Transplantation of the concept of civil society onto Chinese soil is not without problems. The first problem has to do with the ideological overtones. Arguing for the existence of a civil society in modern China and then detecting signs of its revival in the reform era parallels earlier efforts in Chinese historiography to search for the "sprouts of capitalism" in pre-modern China. Essentially it echoes the same theoretical and comparative fallacy that there is only one universal path of historical development: that is, capitalism; or, in the present debate, the establishment and development of a civil society conducive to democratization. It does not take into consideration the differing historical and socio-political trajectories in different societies.
A more substantive problem has to do with the way civil society was employed and applied to the Chinese context. Very often the concept was used in an ambiguous manner, simply referring to the existence of a whole range of organizations outside the state apparatus. This goes beyond the most elemental sense of the term defined by Taylor as the existence of "free associations not under the tutelage of state power" (1990: 98). (Taylor noted that civil society in this minimal sense exists not only in the West but even under Leninism, thus making the concept devoid of any theoretical or explanatory significance.)

Another problem associated with the application of civil society to China has to do with its preconceived relationship vis-à-vis the state. It is generally seen as in direct opposition to the state. It is in this last critique that other scholars found a state corporatist model more appealing. Various studies have acknowledged that the state and civil society in China are not at all bifurcated. Rather, the boundary between the state and social organizations is often vague and indeterminate, their relationship ambiguous and in many cases a symbiotic one. In particular, it has been argued that the many intermediate associations that have arisen during the reform era are neither voluntary nor autonomous. Instead, they are highly dependent on the state and hence are very much subject to state penetration and control (cf. Chan 1993; Pearson 1994; Unger and Chan 1995 etc.).

However, a simple civil society or corporatist argument essentially blurs the rich diversity produced in the multiple arenas of the state and society. The nature of state power has been changing from authoritarian to regulatory. The more than two decades of reform policies have seen a retreat of the state from the organization of social life. The state is no doubt still domineering where it wishes to be, yet it is no
longer omnipresent as before. But the retreat of the state is not at the same pace or to the same extent in every aspect of organizational life. It is in this sense that we need to dissect the state and situate it in its specific social and institutional settings.

Similarly, although there have generally been gains in terms of societal autonomy as a result of the state’s retreat, the benefits are not shared evenly across the board by different constituencies. The economic reforms have advantaged some social groups at the expense of others. Both the civil society and state corporatist models have tended to project society as if it is a unitary whole autonomous from or penetrated by the state. Yet the two decades of reforms has resulted in a society far more fragmentary than before. For instance, we can no longer speak of a working class but of workers who are now very much divided among vastly different social statuses and opportunities. Likewise, even within the general professional class, professions operate in differing niches of institutional opportunities and of constraints in their interactions with the state. This kind of social fragmentation is qualitatively different from mere social differentiation in the sense that in a differentiated society, even though there exists a terrain of plurality of interests, there is also a conscious effort by different social forces to defend the interests of each other. This is the true essence of a democratic civil society which embodies not only institutions linked to fundamental rights like association, assembly, and speech that differentiate and stabilize it, but also movements in the forms of collective action required to defend, reproduce, and expand its potentials (Arato 1991: 5; see also Cohen and Arato 1992). Such a terrain, however, is lacking in China. In a fragmented society societal actors cultivate and pursue their own interests along the lines of social cleavages, but the
pursuit of alliances among social groups in defending their different interests is barely seen.

*On Professionalism*

Finally, in terms of professional development, this dissertation does not intend to argue which profession in China is more professional. Indeed, both lawyers and doctors fall short of being *the professions* if we are to adhere strictly to the traits delineated by the earlier approach of social scientists toward professions. This is especially the case since no professions in China can really claim to possess organized autonomy in the provision of their services. This study simply takes note that lawyers and doctors differ in their courses of professionalization, and the difference should be understood in terms of their embeddedness in specific institutional settings and their engagement with the state. But there is in fact no one single route of professionalization in China. There can be "imitation, involution, or innovation" (Stark and Brust 1998: 4), depending on how the professions interpret their interests and then organize their actions vis-à-vis their environments. What is at issue, and what this dissertation has stress, is to see how strategic choices, often highly contingent, are made and how they in effect shape further policy courses.
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