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### Who are 'managing' the lawyers in China? Control and commitment in an evolving institutional and cultural context and gendered implications

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## Who are ‘managing’ the lawyers in China? Control and commitment in an evolving institutional and cultural context and gendered implications

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National legal systems are distinctive with strong institutional legacies and societal contexts. Research on the lawyers’ work and their operating environment in China has been limited. This study fills part of this gap by investigating the nature of work and career prospect, with gendered implications, in six Chinese law firms. We argue that the lack of commitment to each other between the employer and the lawyers is a result of the governance structure, culture and business process of the law firms, societal norms, market pressure and the active involvement of other stakeholders. The political, economic, social and physical insecurity that engulfs lawyers’ work environment undermines their ability to uphold justice for the weak, standards of the profession and ethical values of the society. The study has implications for western law firms operating in China as well as for Chinese law firms that intend to internationalize as part of an emerging trend of Chinese professional services firms. It also has broader implications for human resource management of professional services organizations in China.

**Keywords:** China; commitment; control; ethical values; gender; institutions; lawyers

### Introduction

Studies on lawyers’ work in the Chinese context remain insufficient (Komaiko and Que 2009). Nonetheless, there is now an emerging body of scholarly studies on this topic that were published in English language outside China (e.g. Cai and Yang 2005; Lo and Snape 2005; Liu 2006a,b, 2008; Michelson 2007a,b; Komaiko and Que 2009; Liu and Halliday 2009, 2011). These groundbreaking studies have shed light on the nature of lawyers’ work and the institutional and political constraints they encounter in the process. They have revealed how lawyers interact with other institutional actors within the broader legal and political system to gain ‘political embeddedness’ necessary to carry out their work and to protect themselves (e.g. Michelson 2007b; Liu and Halliday 2011). In other words, these studies have primarily focused on the external environment of lawyers’ work. This is understandable in that the sites at which individual lawyers work are largely outside their organizational premises. Nevertheless, these studies have highlighted mainly the tensions between the lawyers and the institutional environment. The likely tensions between the lawyers as employees and the law firms as their employers remain largely unexplored.

Few studies, if any, have investigated systematically the human resource management (HRM) practices within the law firms in China and their impact on lawyers’ career and organizational commitment. Nor have they examined the gender implications in lawyers’

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work as a type of professional services that spans organizational boundaries in which other non-employer institutional actors (e.g. the police, the procuracy, the court and the clientele) may play an important role. Meanwhile, studies of professional services that span organizational boundaries in the western context have highlighted the difficulties of employers to elicit commitment from their employees on the one hand (e.g. Rubery, Carroll, Cooke, Grugulis and Earnshaw 2004; Kinnie and Swart 2012), and the influential role of non-employer institutional actors (e.g. clients and end users) in co-shaping employment relations, often to the disadvantage of the workers, on the other (e.g. Legault and Bellemare 2008; Kessler and Bach 2011).

In some ways, the absence of studies on HRM in Chinese law firms is reflective of the relatively limited research attention paid to the HRM of professional services organizations in China thus far. This is an important research gap in our understanding of HRM in China, in part because national legal systems are distinctive with strong institutional legacies, societal contexts and cultural influences (Morgan and Quack 2005; Liu 2006b). These diversities mean that the specific forms of governance of law firms and the nature of work of lawyers may differ across societies. So much so that whilst the role of non-employer institutional actors may be present in most cross-boundary work, the precise manner in which they influence work and employment relations may differ significantly.

For example, existing studies of the lawyer profession in western societies examine their nature of work and employment outcomes with their independent political/institutional positions taken as a given. In these institutional contexts, legal professionals and their associations represent a powerful political group with a moral and legal responsibility to uphold social justice on the one hand, and the ability to influence key stakeholders to advance their self-interests on the other. Such a politico-institutional position cannot be taken for granted in China, the juridical environment of which has been known as difficult and the force of globalization has had little impact on diluting its national distinctiveness and encouraging convergence to international standards (e.g. Liu 2008).

In principle, lawyers and law firms play an important role in facilitating the transition of China from a system that is governed by political forces to one that is regulated by laws. In practice, the rising demand for law and order and the growth in the number of lawyers and law firms have been accompanied by a series of problems exhibited in the profession and industry. Poor governance structure, low level of management competence and the lack of training and career development opportunities for junior lawyers are some of them (e.g. Chen 2004a,b; Duan 2005; Li and Qiu 2009). However, what may be the causes that are structurally and socially embedded behind these problems? How is the governance structure of law firms determined and what impact may specific governance forms have on work organization and gendered employment outcomes? What constraints and opportunities do lawyers and their employers face in China's politico-economy? What choices do/can they make? And in what ways are tensions exhibited in the broader institutional and political environment for legal work played out in employment relations at the firm level through the struggle of control and commitment? In other words, how does the constant presence and intervention of the non-employer institutional actors in lawyers' everyday work mediate to strengthen or weaken the interdependent relationship between the law firm and the lawyer?

This paper fills part of the research gaps in the management of lawyers and law firms in China by addressing the above-mentioned questions. We do so through the case study of six law firms in a major city in south-western China. We draw on the notion of control and commitment in HRM theories (e.g. Guest 1987; Rubery, Cooke, Marchington and Earnshaw 2003) and the notion of emerging actors in employment relations (e.g.

Bellemare 2000; Heery and Frege 2006) as our analytical framework. We argue that the investigation of lawyers' work and their employment/career outcomes needs to take into consideration the evolving political/institutional context and the strategy of law firms on the one hand, and the capacity of individual lawyers in responding to/shaping this environment on the other.

### **Control and commitment in a cross-organizational context**

'The concept of organizational commitment is at the heart of any analysis of HRM' (Guest 1987, p. 42). Proponents of strategic HRM argue that a high level of employee commitment will lead to enhanced organizational performance in an increasingly competitive business environment (e.g. Becker and Huselid 1998). According to Gallie, White, Cheng and Tomison (1998), there are two main ways in which organizations may seek to influence workforce commitment: through its personnel practices, and through the culture of values which they communicate to their employees. However, the notion of shared collective goals within the employing organization that characterized the high-commitment model of HRM has been challenged by employment relationship that involves non-employer institutional actors in the everyday operations of the business or service delivery.

In a complex, multi-agency work environment that characterized many organizations in the contemporary world of work, employees may be subject to the control and demand simultaneously from several 'employers' (Earnshaw, Rubery and Cooke 2002; Rubery et al. 2003). Not only is the official employers' ability to exert control over their employees' work and behaviour called into question, but also the likely effect of any attempt to implement HRM practices that are aimed to elicit employees' identification with and commitment to the employer organization is uncertain (e.g. Rubery et al. 2004; Ball 2010; Kinnie and Swart 2012). According to Ball (2010), employees are actively engaging in a wage-effort bargaining, and the level of control employers can exert on their employees over their labour process, and the organizational commitment and identification the employers can elicit from the employees are all contingent upon the bargaining outcome.

Empirical studies on employee commitment have revealed the multiple foci of commitment, particularly in a cross-boundary employment setting (e.g. Bartel 2001; Becker 2009; Kinnie and Swart 2012). For example, employees may demonstrate commitment to their employer, their professional association, trade union, client organization and end users. Whilst these commitments may not always be mutually exclusive, their coexistence nonetheless puts into question of the ability, and willingness, of employers to adopt high-commitment HRM practices (Rubery et al. 2004; Kinnie and Swart 2012).

Recent studies on new actors in employment relations also accentuate the (often powerful) role of non-employer institutional actors in shaping the nature of work of those who work across organizational boundaries and their career prospects (e.g. Legault and Bellemare 2008; Kessler and Bach 2011). These new actors include client organizations, end users and professional associations. According to Legault and Bellemare (2008), a user may be involved in the co-designing, co-production and co-supervision of a service or goods, and consequently may influence the manner, effectiveness and outcome of the service/goods intentionally or unintentionally. In their study of IT professionals working in client firms in the Canadian context, Legault and Bellemare (2008) showed that client's

satisfaction proves crucial to individual professionals' future employment and their performance ensures their employers' competitiveness in the market.

### **Lawyers' work and gendered implications**

The notion of control and commitment in a multi-agency work setting is particularly relevant to the study of lawyers' work and HRM practices of law firms. Research evidence suggests that lawyers have to satisfy a diverse range of stakeholders publicly and privately. The shift of control from their employer to the 'market' over their performance (see below for further discussion) means that the deployment of emotional labour becomes more crucial for success (e.g. Harris 2002; Boon 2005). As Wallace and Kay (2008) observed, competition intensifies the 'tension between conflicting influences of professionalism and commercialism' (p. 1030), and threatens 'lawyers' service orientation, collegiality and loyalty to their chosen vocation' (p. 1042). This tension changes lawyers' behaviour and the nature of their work, which often undermines personal loyalty, purpose and resolution, and invokes a strong sense of disillusion with their career (Boon 2005). For lawyers and law firms, market advantage and winning are essential to survival (Mescher 2008). This has led to the adoption of more professional management in large law firms to 'leverage their critical resources, human capital and relational capital' (Hitt, Bierman and Collins 2007, p. 17).

The rise of professional partnership as a popular governance form of law firms is a response to this competition pressure. In this organizational form, partners are engaged in 'a business in common with a view to profit' (Greenwood and Empson 2003, p. 901), and 'the dual components of professionalism and partnership' are emphasized (Wallace and Kay 2008, p. 1034). Greenwood and Empson (2003) argued that partnership is superior to public corporations as a form of governance for the law firms in the delivery of professional services. In this form of governance, key individual lawyers play a vital role in shaping their organizational environment and individual outcomes (Greenwood and Empson 2003).

Within the firm, a hierarchical order exists which involves an important but highly imbalanced relationship between the senior and junior lawyers. The latter allows the former to exploit their labour in return for opportunities to connect with clients, to gain experience, to access work assignments that bring more lucrative financial returns and ultimately to win promotions. As such, senior lawyers act as informal mentors to their junior colleagues (e.g. Dinovitzer, Reichman and Sterling 2009). In other words, senior lawyers shape not only their own operational environment within the broader constraints, but also that of the junior lawyers. As Wholey (1985) observed, organizational and environmental factors are important in determining lawyers' career mobility. In particular, the 'ability of lawyers to get clients, i.e., to control a critical resource dependency, demonstrates how crucial organizational and environmental interactions are in explaining promotion and lateral entry' (Wholey 1985, p. 333).

In the management of lawyers and law firms in China, the notion of control and commitment takes on a new meaning not least because lawyers' work in the Chinese business and legal environment is highly relational driven and precarious. According to Liu (2011), China's 30-year legal reform has produced 'a fragmented legal services market with a kaleidoscopic variety of legal occupations' (p. 277), which is closely associated with the 'fragmented political structure of its state regulatory regimes' (p. 278). The emerging political liberalism for lawyers to carry out their work is still heavily constrained by authoritarian power (Liu and Halliday 2009). As Liu and Halliday (2011,

p. 834) observed, in order to obtain clients and to perform their everyday work effectively, lawyers need to be politically embedded through their previous work experience in the state justice system and through maintaining a close personal relationship with ‘the state agencies and actors that hold power in the legal system’. This ‘political embeddedness’, termed by Michelson (2007b), is a ‘spatially bounded relational concept’ that puts the emphasis of relationship building with the state (Liu and Halliday 2011, p. 834) rather than with the employer. The peculiarities of China’s institutional environment (see below) have a direct impact on law firms’ business strategy and undermine the internal hierarchical relations within the law firms, which make it difficult for the employer and employees to generate any mutual commitment. As such, the understanding of the nature of work of the lawyers and the management of the law firms in China needs to be situated in the broader politico-legal and social contexts of the country.

Existing studies on lawyers’ work have revealed the gendered nature in the law profession with particular reference to pay equity and career opportunities (e.g. Noonan, Corcoran and Gourant 2005; Dinovitzer et al. 2009). The long working hours, the emotional demand and the level of stress associated with the profession (e.g. Harris 2002; Boon 2005) may be seen as more taxing for female lawyers than their male counterparts. According to Boon (2005), women are seen as lacking aggression needed for corporate work and this has a negative effect on their career prospect. Interestingly, Feidakis and Tsaoussi’s (2009) study of the lawyer profession in Greece shows little gender difference amongst the Greek legal practitioners in negotiation. Individual characteristics (e.g. negotiation styles and social and emotional intelligence) and conformity of the group norms of the profession are seen as more important factors that influence negotiation outcomes. Nevertheless, Feidakis and Tsaoussi (2009) argued that women need to overcome their conventional gendered perception of their ability and gender role in order to compete with men in the legal profession. This is easier said than done in the Chinese context where gender stereotype continues to play an influential role in women’s work and life (Woodham, Lupton and Xian 2009; Cooke 2010). As we will see from the empirical data below, Chinese women lawyers face a unique set of challenges in their interactions with clients and other stakeholders in the legal system.

### **Lawyers as a profession in China: thriving in adversarial environment?**

The lawyers’ system (律师制) was established in the early 1950s after the foundation of the Socialist China. It was abolished in 1957 after a short period of time. The system was resumed in 1979 following the implementation of the open-door policy in 1978.<sup>1</sup> For the first 15–20 years, there were three ownership forms of law firms: state-owned, cooperative and partnership. The former dominated until the early 2000s. In 2000, a large number of state-owned law firms became privatized partnership firms, as requested by the State Council. By the late 2000s, private partnerships had become the dominant ownership form. Some firms went through mergers or formed strategic alliances to develop a strong market presence and branding (Duan 2005). By 2009, there were nearly 15,000 law firms and 156,000 lawyers in China (Chinese Lawyer 2010). But the size of the law firms remained relatively small, many of which had less than 20 practising lawyers (Tu 2008). By July 2009, the largest law firm in China employed only 319 lawyers (Chen 2010).

Research evidence showed that the majority of Chinese lawyers, especially junior ones, are struggling to make a living as law firms typically compete on price (e.g. Cai and Yang 2005; Michelson 2007a; Liu 2008). Case screening is common amongst lawyers to decline ‘commercially undesirable cases brought by socially undesirable prospective clients’

(Michelson 2007a, p. 180). Some law firms have no capital accumulation or reinvestment. All profits generated are shared and consumed immediately. Tax avoidance is common and lawyers have been found colluding with officials in the justice departments in corrupt behaviour such as bribery, falsifying evidence and creating false cases (Chen 2004a). In one of the most critical studies of the Chinese lawyers, Michelson (2007a) argued that the labour dispute lawyers he studied in Beijing were actually an obstacle to justice.

As the profession developed since the late 1970s, the political/legal status of lawyers evolved through administrative and legal regulations. In 1980, lawyers were classified as the 'legal workers of the state' in the Temporary Regulations on Lawyers of China (Wu 2008). In 1993, lawyers were labelled as 'specialist legal workers who serve the society' in the Plan of Deepening the Reform of Lawyers' Work by the Ministry of Justice (Wu 2008). Since the late 1990s, lawyers are recognized as a professional group independent from the state as China transits from a political country tightly controlled by the state towards a system that is governed by law and order. This creates space for the legal profession to grow. However, lawyers are still a weak professional and political group within the legal system (Cai and Yang 2005; Liu and Halliday 2011). This is in spite of the key amendment to the Lawyers' Law (1996, amended in 2007) by adding the personal protection right of the legal workers and the right to freedom of speech in their work.<sup>2</sup> It was reported that an increasing number of lawyers are avoiding litigation cases for several reasons, not least because of the high level of risks involved (e.g. Cai and Yang 2005; Liu and Halliday 2009, 2011). There are two aspects of the risk. One is that Article 306 of the Criminal Law specifies that lawyers will be prosecuted and sentenced if they are found providing falsified evidence in the process of handling the case. According to Yang (2007), over 500 lawyers had been incriminated in the whole country between 1997 and 2005, the majority of whom were found innocent. Another risk is that lawyers may be assaulted by the client when they lose the case, incriminated by the opposite party or even by the legal personnel from the justice department of the local court (see below for further discussion). The relatively low level of legal fees for criminal cases compared with other types of cases adds a further disincentive.

Tomasic (1983, pp. 448–449) argued that the theorization of the social organization of the legal profession needs to take into account three important aspects: (1) 'the kind of legal work undertaken by lawyers'; (2) 'the nature of their clientele'; and (3) 'the values, ideologies or legal-cultural orientations that lawyers conform to'. In the case of China, the institutional and sociocultural context undoubtedly determines the type of legal work lawyers choose to do, the kind of clients they provide services for, the way they are forced to conduct their work and the way they negotiate their pay package. As such, we argue that, the investigation of legal professionals' work needs to be situated in the societal context in order to understand the interactions between the institutional actors and the role of individual actors in shaping the dynamics of the legal system and the (mis)fortune of those who seek and provide services within the system (see Figure 1). The rest of the paper is devoted to this task.

### **Methods and background information of the case-study organizations**

Given the limited empirical studies that have been conducted on the management of law firms and the nature of work of the lawyer profession in China, we felt that the case-study approach was more appropriate than surveys for us to explore in-depth the issues we have identified earlier (Patton 2002; Yin 2003), some of which are highly sensitive. According to Siggelkow (2007, pp. 22–23), research involving case data 'can usually get much closer



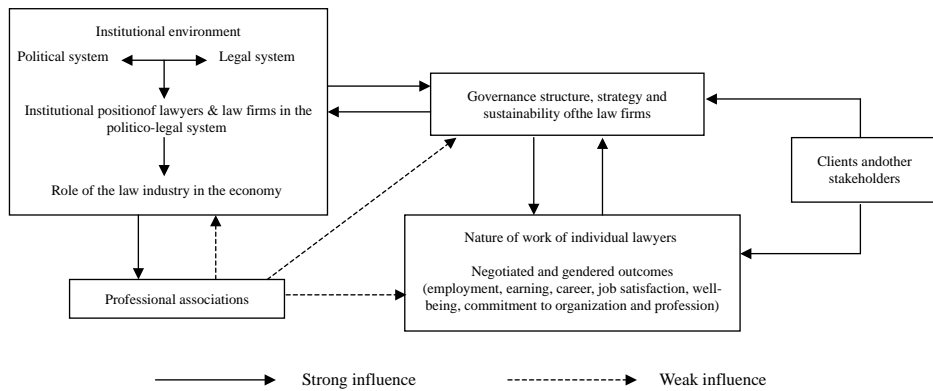


Figure 1. Institutional environment, law firms and lawyers.

to theoretical constructs and provide a much more persuasive argument about causal forces than broad empirical research can'. Such an approach has also been used by other researchers on lawyers' experience of work, for example, in Harris' (2002) study of emotional labour in the British jurisdiction. This study was informed by grounded theory approach (Glaser and Strauss 1967) since the data are collected (in this case from lawyers at different levels), analysed and coded one by one (see below). In many ways, this is a pilot study intended to identify patterns and generate avenues for future study by the authors and by those who are interested in the area.

The study was conducted in a major city (City Z) in south-western China during the period of July–September 2010. We chose this location because the region is less well-developed economically and much less studied compared with major cities such as Beijing, Shanghai and Guangzhou. Nevertheless, City Z plays a crucial political, economic and cultural role in the regional development. A total of six medium-large law firms were studied (pseudonyms as LawCo A, B, C, D, E and F; see Table 1). Access to these six case-study firms was provided via the provincial and municipal lawyers' associations with which one of the authors has strong personal and professional connections. The difficulty in gaining access to study organizational and management issues in China has been widely observed (e.g. Tsui 2004; Stening and Zhang 2007). This personal relationship proved crucial in gaining access to the case-study firms to research on what deemed to be rather sensitive issues. A total of 13 law firms were recommended by the chairpersons of the lawyers' associations for study. Recommendations were based purely on the possibility of gaining access to the firm for study, as the key contact of the firms and the chairpersons of the lawyers' associations have a relatively close relationship. However, after our initial contact with these 13 potential case-study firms and after we explained to the key contact (e.g. director of the firm) the purpose and scope of our study, seven of them (all small firms employing less than 20 lawyers) declined the invitation to participate in the study. Being too busy and staff shortage were the main reasons given, but we suspect it was to do with the perceived sensitive nature of the study. As a result, the six firms selected for study were the larger and amongst the better-managed law firms in the region (see Table 1 for their awards). For example, LawCo A is one of the largest law firms in China and has won numerous awards at the municipal, provincial and national levels. Over 90 of the lawyers hold masters or doctoral degree qualifications in law.

Table 1. Background information of the six case-study firms.

	LawCo A	LawCo B	LawCo C	LawCo D	LawCo E	LawCo F
Year of establishment	2000 (awarded National Model Law Firm in 2005)	2000 (awarded Provincial Model Law Firm in 2003)	1993	2001 (awarded Provincial Model Law Firm in 2010)	1981	2005
Motives for setting up the firm by the owner-partner(s)	As an investment and entrepreneurship to fulfil personal value and goals	Personal growth, increased income and entrepreneurship.	Entrepreneurship and profit.	Profit and entrepreneurship.	Be in full control of his own career and being able to fully utilize the resources (social networks, experience and knowledge) accumulated.	Prestige of being the owner-partner of a law firm, easier to attract cases.
Total number of employees (including administrative staff)	314	83	97	65	42	Better control of his own career.
In which: Partners Lawyers	24 (8 women) 120 (40 women) 162 (52 women)	13 (4 women) 49 (30 women) 9 (5 women)	17 (2 women) 50 (14 women) 24 (8 women)	19 (8 women) 38 (16 women) 3 (1 woman)	3 (all men) 27 (9 women) 5 (2 women)	To professionalize the law firm industry 45
Assistant lawyers	70–80 million yuan	11 million yuan	10 million yuan	12 million yuan	10 million yuan	5 (2 women) 32 (16 women) 3 (2 women) 7–8 million yuan
Annual turnover						

(Continued)

Table 1 – continued

	<i>LawCo A</i>	<i>LawCo B</i>	<i>LawCo C</i>	<i>LawCo D</i>	<i>LawCo E</i>	<i>LawCo F</i>
Types of business	Corporate	Comprehensive (litigation and non-litigation, domestic and international).	Comprehensive (medical, financial, international, civil commercial, real estate).	Comprehensive (but specialized mainly in private commercial businesses).	Comprehensive (but moving from litigation to non-litigation businesses, with enterprises affairs as the main business).	Specialized in construction and corporate legal affairs.
Governance structure	Commercial (financial, real estate, government legal affairs). International (office in Hong Kong). Partnered commissions	Partnered commissions	Partnered commissions	Partnered commissions	Partnered corporation	Partnered corporation
Number of people interviewed	6	7	6	6	7	4

Semi-structured interviews were used as the main method for data collection. [The sentence ‘Semi-structured interviews...’ has been changed to ‘Semi-structured interviews...’. Please check whether the change conveys the intended meaning and amend if necessary.] This was supplemented by a limited amount of on-site observations and secondary data from the media, company websites, government documents, academic journals and professional magazines. A total of 40 law professional informants were interviewed. Four of them were from the provincial and municipal lawyers’ associations (three of whom are (deputy) chairpersons of the associations). Each of these four informants (three are men) was interviewed twice in addition to multiple telephonic or face-to-face conversations during May–December 2010. These interactions enabled us to develop an understanding of the lawyer’s profession and backgrounds of law firms, and to expand on and validate the information obtained from the case-study firms.

At the law firm level, there were three broad grades amongst the legal professionals: partner, lawyer and assistant lawyer. The latter are primarily trainee/new lawyers who were not yet able to or allowed to work on cases independently. Amongst the 36 informants from the six case-study firms (see Table 1), four were directors (also partners) of the firm, four were partners, four were assistant lawyers and the rest were lawyers. Of the 36 informants from the law firms, 22 were married; 12 of them were in the age range of 20–29, 18 in the age range of 30–39 and 5 in the age range of 40–49. Fifteen of the non-partner informants had worked for less than three years for the firm at the time of the interview. Sixteen non-partner informants had worked as a legal professional in non-legal organizations prior to joining the law firm. These interviewees were identified by the key contact of the firm and based on the availability of the informants during our study period. Although a list of 8–10 lawyers at various levels was provided by the firm for interview, we only managed to interview about two-thirds of them in each case due to the unavailability of those who had been suggested for interview.

An interview schedule developed by the authors in consultation with the key informants from the lawyers’ associations was used to guide the interviews in the law firms. The consultation was necessary, given the national distinctiveness of jurisdictions, for the questions to reflect adequately the institutional context of the lawyer profession and the law industry. Interviews were conducted face-to-face individually at the informant’s workplace. Each interview was conducted by two researchers, one of whom is a co-author. Interviews typically lasted around 50–60 minutes with the lawyers and 60–80 minutes with the owner-partners and the key informants from the lawyers’ associations. During the interview, informants were asked to reflect upon their firm’s practices and compare them with those adopted in other law firms that they are familiar with. We did so to situate the findings in the broad context of the industry and to identify the extent to which practices found in the case-study firms are common in the industry. Given the high mobility of the lawyers and the highly networked nature of the profession, informant lawyers are generally well aware of the market situation.

Detailed notes were taken during the interviews (tape recording was not used due to the unwillingness of the informants despite the guarantee of confidentiality). Interview notes were typed up within 48 hours after the interviews. Follow-up telephone and email conversations took place with the informants to clarify information or seek additional information. Data collected were content analysed (Miles and Huberman 1994) independently initially by the two interviewers (one of them a co-author) and then by the first author. Discrepancies in the understanding of the data were fully discussed and clarifications were sought from the informants where necessary. Common interpretations and themes were drawn from the data to construct a social reality in the law industry in China. The benefits of using researchers, rather

than software programmes, to analyse qualitative data to generate insightful interpretations have been well argued by Suddaby (2006).

### **Findings and analysis**

The findings of this study not only echo some of the existing observations about the law industry and the lawyer profession in China, but also reveal the extent and level of the problems that are embedded in the system. In this section, we report how corporate governance and the distribution/reward system are shaped; how these arrangements in turn affect the nature of work and organizational commitment of the lawyers; and what opportunities and barriers exist for lawyers to develop their career. We also assess the gender implications of these organizational practices and institutional constraints. We do so with reference to the role of institutional actors in co-shaping the work environment of the lawyers, as outlined in Figure 1.

#### *Corporate governance and distribution/reward system*

Since the reform of ownership/governance structure of the law firms in the late 1990s as noted earlier, firms now operate in two major modes within the partnership form. One is the 'commissions system' (合伙提成制) in which lawyers are responsible for securing their own cases and pay the firm a proportion of the fees income (between 25% and 40%). Assistant lawyers are paid a basic salary, which is very low, in addition to a small amount of bonus. The other is the 'corporation system' (合伙公司制) in which lawyers are paid a basic salary as well as bonus based on their performance and other criteria. Under the corporation system, the firm is responsible for allocating cases to lawyers and as such those who bring the case to the firm may not be dealing with it. According to the Chairman of the Provincial Lawyers' Association, over 90% of the law firms in China adopt the first mode of governance and reward distribution (also see Michelson 2007b; Li and Qiu 2009).

All six law firms studied are partnered firms in one of the two above-mentioned modes of governance and reward distribution. LawCo A, B, C and D adopt the commissions system, whereas LawCo E and F adopt the corporation system for most of their lawyers, with some experienced lawyers being on commissions as they demanded. The main reason for the preference of the commissions system by most law firms is that this system, without much management function or responsibility, is believed to be easier to manage than the corporation system. It reduces the financial risk of the firm to the minimum as individual lawyers are responsible for securing and conducting their cases. In return, the firm provides only limited office facilities for the lawyers in addition to the perceived competitive advantage of being associated with a law firm instead of a solo practice.

Both partners and non-partner lawyers shared the view that the corporation system does not provide strong enough incentives for lawyers to attract cases and fees income. Whilst new lawyers who have no capacity to attract cases on their own favour the corporation system to secure a basic level of income, once they have secured a steady stream of cases, they tend to switch to the commissions system for a higher level of earning.

Whilst the majority of informants believed that pay distribution is fair in their firm, dissatisfaction was hinted from a small number of lawyers who have brought clients to the firm but this contribution has not been recognized in the reward distribution. Revenue is shared based on the cases that one has dealt with. There is no mechanism to recognize and reward those who have attracted cases for the firm in order to incentivize future revenue leverage.

All six law firms were managed by their owner-directors who are also practising lawyers. They are essentially loosely formed organizations that lack formal structure, governance, management systems and organizational capabilities. Directive decision-making tends to be the norm, and the main owner-partner maintains a decisive role in the governance of the firm. Despite the fact that profit is one of the major motives for setting up the law firms, most owner-partners interviewed expressed their unwillingness to expand the firm in terms of the number of lawyers employed. As the Director of LawCo C remarked:

It is not that we cannot grow the firm bigger, but that we are afraid of doing so because of the high risks involved [legal liability]. As a partner of a large law firm, you might lose your fortune and reputation, the whole lot, if one of your lawyers, whom you probably don't even know, made a mistake.

This risk aversion of the proprietors to a large extent constrains not only the size of the law firm but also the types of legal business that the firm ventures into. Unlike large law firms in the USA in which 'litigation and corporate law are markedly more important in most offices than are the other areas of law' in order 'to avoid being labelled as a paper tiger – an office that cannot or does not litigate' (Sherer 1995, p. 681), there is a tendency amongst all six firms to avoid litigation cases. At the time of the study, only two firms (LawCo B and LawCo E) dealt with litigation cases and LawCo E was moving away from it (see Table 1). Only four of the informants were dealing with litigation cases. In fact, as a trend, all six firms targeted corporate business because the profit level is higher and the risk is lower.

### *The nature of work for lawyers and gendered roles*

Informants revealed a number of risks associated with the lawyer profession. The biggest risk comes from litigation cases, as we noted earlier. Fewer and fewer lawyers are willing to take on criminal litigation cases because of the low fees, but more so because it is difficult to obtain evidence and to deal with the prosecution and justice departments. As one informant observed, 'The current [political] environment for lawyers to enforce laws and seek justice is very adversarial, if you reason with the government, they say you are against the government' (Informant No. 27, male, single, aged 30–39, LawCo E).

Another source of risk comes from the clients who may exert strong pressure and make demands that they must win the case. Lawyers may be subject to violent physical attacks from the clients when they lose the cases. In order to win cases and develop their reputation, individual lawyers may deploy unethical/illegal methods to develop networks and mobilize key contacts to influence court decisions. If caught, the consequence may be severe (e.g. heavy fines, removal of practising licence and prison sentence). This finding echoes that of Cai and Yang's (2005) study which revealed that lawyers are selective in taking cases (litigation case avoidance) and that the power of the state has hindered the development of a professional legal system in China.

Even in non-litigation businesses, there is a strong consensus amongst the informants that possessing social network (*guanxi*) is far more important than legal competence in attracting and winning cases. Since the ability to attract cases is the most important element for survival, lawyers tend to spend most of their time cultivating their social networks and relationships within and beyond the legal system. They take on whatever (non-litigation) cases they can secure disregarding their own expertise. Some of them are unwilling to share their cases with colleagues, even at the risk of losing the case, for fear of losing their social capital and sources for future clients. This form of competition hinged on individual survival is not conducive to the specialization of the profession and the development of specialist expertise for individuals. The competition amongst lawyers is

not so much on their legal competence, but on their networking skills and ability to secure cases (also see Chen 2004b).

Given the primacy of social relationship in lawyers' work, where and when the lawyers work is largely dictated by the clients, the court and the key personal contacts. In particular, entertaining clients/key contacts is mainly carried out in non-office hours and sometimes in a semi-illegal environment involving illegal activities such as gambling and prostitution. Many informants reported that their work can be both physically and mentally exhausting and that they often have no energy left to communicate with their family after work. Harris (2002) identified a number of private and public sources of emotional labour of lawyers during the interactions with solicitors, barristers, clerks and ushers privately and the clients, witnesses, judges, magistrates and juries in the public. The latter is often deliberately exercised to sway verdicts in their clients' favour. In China, lawyers' emotional labour is often carried out in private, hidden, and not allowed to be seen due to the nature of the interactions.

Given the nature of work, 36% of the informants (seven men and five women) believe that the lawyer profession is not suitable for women, compared to 29% who believed that women are suitable for the profession. The majority of them felt that single but experienced men are best suited for the profession due to the number of hours worked, the unsociable time when one needs to work and the amount of energy that is required to deal with all the complex situations involving the clients and the social networks. In particular, married women are considered ill-suited because of their family and marital commitment.

More generally, since one needs to be thick-skinned to attract and win cases, women are considered less likely to withstand this pressure. It was reported that some male clients do not trust female lawyers due to the male dominance in the cultural value and in the business world. Women are also believed to be unsuitable for dealing with male clients. Whilst male lawyers can entertain network contacts and potential clients by accompanying them to gamble, drink and play games, it is more difficult for women to do this. In addition, women lawyers may have to subject themselves to the sexual demands of their male clients or key contacts in order to win cases. It is difficult for women to secure large/lucrative cases through normal route. It is believed that some 80–90% of such cases are secured through some special deals. Some female informants revealed that they avoid sexual harassment from male clients by taking a male colleague with them when they meet with the client. Male lawyers revealed that whilst they take female lawyers with them on business, they try not to involve them when socializing/entertaining male clients because it is not appropriate (e.g. gambling, taking drugs, watching pornographic films and prostitution). 'These are embarrassing situations for female lawyers' (Informant No. 25, male, married, aged 30–39, LawCo D).

In spite of the perceived gender-related disadvantages, women are sometimes considered a better bait to win cases since the majority of the clients are men. Women are generally considered to possess a higher level of interpersonal skills and are able to deal with situations more smoothly. In divorced cases, which involve extramarital affairs, a female lawyer will be sent if the client is a woman because a male lawyer would be considered unsuitable. This gendered 'division of labour' is clear in team work, reflecting the traditional Chinese gendered norm (e.g. Cooke 2007) as well as pragmatic utilization of personal strengths and resources. For example, labour-intensive work will be done by men as they are seen physically stronger than women. Some tough cases (of masculine nature), such as rural migrant strikes events, are better dealt with by strong male lawyers rather than female lawyers because the latter appears to be weak (being feminine) and lacks the authoritative look needed to control the situation. However, teams usually consist of both male and

female lawyers as it is believed to be more acceptable by the clients. 'In situations where the team does not know if the client is or prefer male or female, sending a mixed gender team is a safer bet' (Informant No. 19, male, married, aged 30–39, LawCo C).

The perceived gendered nature of work in the lawyer profession has a direct consequence in the amount of work men and women lawyers are able to attract, even for those in the same grade with broadly similar experience. About half of the male informants reported that their workload was too high and no male informants reported that they were under-loaded. By contrast, only a quarter of the female informants felt that their workload was too high and 19% felt that they did not have enough work.

### *Training and development opportunities for lawyers*

On-the-job learning is a crucial way for new lawyers to learn their job and develop expertise and client base. However, informants revealed that once they entered the profession, it is very difficult for law graduates who have no social network or financial foundation to develop their career. There is a strong reluctance from the older lawyers to mentor new ones. Junior lawyers are often kept in the office to deal with paperwork instead of being taken to meet the clients and given the opportunities to handle cases directly to gain practical experience which is crucial to career development. The unwillingness of the senior lawyers to coach junior colleagues is apparently a common phenomenon in the industry.

From the organization's point of view, it takes three to four years to train a law graduate into a lawyer. Developing new lawyers requires the investment of time from experienced lawyers and other resources from the firm. This may become a sunk cost due to the relatively high level of turnover of newly trained lawyers who tend to move from smaller to larger law firms for development (as reported by LawCo B, E and F). Many smaller law firms are therefore keen to avoid being the training ground for larger firms and offer only minimum training. According to the training regulations issued by the government, law firms are required to provide a minimum of 40 hours of training on new laws and regulations to their lawyer employees each year. But few firms implement this in earnest.

With the exception of LawCo F, none of the other five law firms have a training and development programme in place to provide regular training for the lawyers. Training seminars are held on an *ad hoc* basis with reportedly average effect. There is no formal mentoring system in place in any of the firms. Junior lawyers rely on their personal relationships and goodwill of the colleagues for support when they have problems. By comparison, informants from LawCo F were the most positive about their firm's culture and management. It has a weekly training session that takes place on Friday mornings. It also has a company magazine in which everybody can contribute articles to share experience. Size of the firm and the motives of the owner-director in setting up the firm (see Table 1) partially explained the differences observed here between LawCo F and the other five firms.

However, measures taken by some law firms to improve the management function and organizational atmosphere or to regulate the behaviour of lawyers were actively resisted:

The businesses are obtained by us individuals, not the firm. So there is nothing that the firm can do to help. We have routine meetings. Originally, everyone must attend, absentees would be fined. But the lawyers objected to this. The firm did not give us salary after all, so how could it fine us if we did not attend meetings? In the end, the fine was dropped. The meetings are still held, but not everyone attends. (Informant No. 13, male, married, aged 40–49, LawCo B)

A pessimistic picture of the law firms as depicted by the informants is that they generally lack strong leadership and opportunities for personal growth, and they have a



poor organizational culture and a poor management and reward system. There is insufficient communication between the firm and the employees or interactions amongst colleagues to develop a collective identity due to the independent nature of their work. As a result, non-owner informants reported a low level of identification with and commitment to the firm. By comparison, LawCo F is the best in its people management and employee feedback, but even this achievement is slipping away due to the growing size of the firm and the increase of workload.

According to the key informants from the lawyers' associations, the role of the professional associations is limited in establishing the industrial norms to regulate and promote the industry or to provide career development opportunities for individual legal professionals. As non-profit organizations with no authority, they have little power over the management of the law firms or influence over individual lawyers. Two-thirds of the informants have not joined any professional associations. Those who joined did so out of a formality rather than real interest or perceived benefits.

There is a general consensus amongst the informants that a lawyer's career depends on his/her quality of networks, chance, legal knowledge and personal sacrifice to build relationship, as noted earlier. For male lawyers, 'personal sacrifice' means spending their spare time with key contacts and clients in entertainments such as drinking, karaoke, going to nightclubs and watching and playing sports. For female lawyers, this may, in some cases, include meeting men's (e.g. government officials, judges, clients and partners) sexual demands. As such, lawyer informants displayed a strong sense of disillusion about the profession. When asked how satisfied they were with their job, the average mean score was 3.44 (32 informants). In particular, younger lawyers are far more dissatisfied than their older counterparts. Young lawyers are in a precarious situation because of the lack of clients and social resources to make a living and to develop their professional career (also see Xu 2009). As an assistant lawyer observed:

Being a lawyer is difficult. It is like a fly on the glass window: the future is bright but there is no road to it. (Informant No. 16, female, single, aged 20–29, LawCo C)

## Discussion

Law firms and lawyers emerge and operate in a politically and financially hostile environment in China, reflecting the relatively poor legal environment in the country in general (e.g. Firth, Fung and Rui 2006). Evidence from this study suggests that commitment between the law firms and the lawyers, and commitment from the lawyers to the ideal of the legal profession are significantly undermined due to the interventions from other institutional actors who exert control, directly and indirectly, on the lawyers' work and career prospect.

### *Control and commitment between the law firms and lawyers*

Our findings revealed that neither the employer nor the employees demonstrate any commitment to each other, as each focuses mainly on short-term gains. On the employer's side, law firms are taking measures actively to de-risk themselves by adopting a commissions system, containing the size of the firm, providing minimum training and career development, and avoiding litigation cases and dealings with the agencies of the state. Law firms have little direct control over lawyers' labour process, nor are they willing or able to develop HRM practices to elicit the organizational commitment from the lawyers. This is because the conditions required to deliver good performance are granted

by the quality of the personal relationships individual lawyers may have with various institutional actors, rather than being provided by the employer.

On the employees' side, individual lawyers are following a similar pattern of self-protection by avoiding litigation cases, not sharing information with colleagues and not passing on knowledge and know-how to junior lawyers. Their work role is negotiated on a daily basis within a complex multi-agency environment. This supports Bartel's (2001) argument that employees' commitment to an employer may be influenced in a multi-agency setting. Only in this case, it is not by the prestige accorded to the employer as noted by Bartel, but by the perceived (limited) value of the employer and by the need to secure cooperation from powerful non-employer institutional actors for the lawyers to achieve favourable performance outcomes. Ironically, the fortune of the lawyer and the law firm are tied together, despite the fact that each is desperately trying to take control of its own future. Each client contract (legal case) is crucial to the individual lawyer's long-term employment and career and the firm's immediate revenue as well as long-term success.

### ***Commitment to the profession***

If heightened competition has led to the erosion of the professional ideals and lawyers' dedication to the pursuit of justice (Krieger 2005) in western societies, then the Chinese lawyer profession may have never had the opportunity to develop or practice such a vocational ideal as the profession was born with profound political insecurity. Since domestic law business has been largely sheltered from the waves of internationalization, it has not benefited from any potential positive influence from the international professional bodies to uplift the professional standards. On the contrary, the standard of the public legal services and the prospects for the poor and the wronged to seek justice are held down as a result of the various forms of insecurity, not least political, experienced by the lawyers in private employment. As Michelson (2007a, p. 172) pointed out, privatization 'has aggregated not only lawyers' financial vulnerability, but also their institutional vulnerability vis-à-vis the state'. Pursued by rent-seeking officials of state agencies and harassed by vindictive clients, lawyers respond by screening out undesirable prospective clients and by steering away from any involvement that may remotely challenge the interests of the state and its agents, formally or informally.

The use of ethically questionable tactics by lawyers to obtain business has been observed in western economies (e.g. Wallace and Kay 2008). In China, however, the use of such tactics is more common and more likely to escape legal and moral sanctions. Whilst not all are unethical, disenchantment with the profession and the employing firm is widespread amongst the lawyers and manifested in different ways. Young/junior lawyers are particularly hard hit as they face immense difficulties in establishing their career, having no structured training and development opportunities, no mentors and being lowly paid when they are in the most expensive stage of their life (marriage, housing and starting a family). Female lawyers may be even more vulnerable due to the risk of sexual harassment and other constraints. Whilst female professionals in western countries may also encounter similar situations, the chance for seeking protection or justice is much less in China.

### **Conclusions**

This study makes a number of related contributions. First, it fills an important gap in the study of HRM in the legal industry in China. Whilst a growing number of studies on

lawyers and the legal system have emerged, few of them have been conducted from the HRM perspective with law firms as the focus of study. Second, this study adds to the debate of the role of non-employer institutional actors in co-shaping the employment relationship and labour process in a multi-agency environment in the Chinese context – a site that has been under-explored in the debate (Cooke and Wood 2011). It also adds to the growing body of studies on commitment in a multi-agency setting. In doing so, we highlight several sets of tensions between the employers and the employees, and between the lawyers' work and the legal system and the market. Whilst a minority of well-placed and well-connected lawyers may have strong bargaining power with their employer, they are heavily controlled by the market (i.e. clients and those in the 'value chain' of the legal business). As such, lawyers are subject to multiple sources of control and evaluation, whilst seeking to maximize their control in the process to secure desirable performance outcomes. The nature of this multi-stakeholder engagement creates tensions and conflicts that are mediated by the interdependence of these actors, each seeking to leverage their resource power (e.g. economic vs. political) for their own benefits, often in the obstruction of justice. In particular, the role of the state remains crucial in shaping lawyers' work environment at the macro-level through regulations and at the micro-level through its various agencies. This study therefore responds to the call for greater attention to the role of the state 'to fully understand the politics and realities of understanding HRM' (Lucio and Stuart 2011, p. 3661).

This study has practical implications. Strong financial motive appears to be the main driver for setting up the law firm and the way it is managed. There is no clear long-term planning or business strategy in even the better performing law firms in China. Many law firms operate like a virtual company, in which the relationship between the lawyer and their 'employer' firm is largely transactional. The ability of the firm to leverage human asset from the lawyers is limited as the latter guards their proprietary knowledge and client sources closely. Instead, only financial capital could be partially leveraged through profit-sharing. There is hardly any mutual obligation or long-term commitment. This has strong negative implications not only for the human capital development of the profession collectively and career development for individual lawyers, but also for the growth, sustainability and long-term competitiveness of the firms themselves. These problems, however, cannot be easily addressed by the law firms alone.

The issues identified in this study also have implications for foreign firms that are either seeking Chinese law firms to provide legal services (as clients) or intending to operate in the law business in China (as supplier). The different approach to business ethics in China compared with that found in western societies may require cultural adaptation from foreign client and supplier firms when doing business in China. It may also bring a level of political risk to them back home due to the different standards of business ethics. Such a risk needs to be carefully managed to avoid legal implications and reputational damage of the firm. For foreign law firms operating in China, a key issue may be: what HR strategy and management practices can they adopt to develop their competitive advantage against their local Chinese competitors? What constraints may they encounter in doing so?

This paper contains a number of limitations. One is that the sample size of the informants and case-study firms is relatively small due to the difficulties in gaining access. However, we do feel that the information we obtained from the informants and secondary sources is sufficient for this exploratory study. In addition, Eisenhardt (1989) argues that a cross-case analysis involving 4–10 case studies may provide a good basis for analytical generalization (also see Gibbert, Ruigrok and Wicki 2008). A second limitation is that the

case-study firms are amongst the larger and better-managed firms. Those that are smaller and less well-managed may be even more problematic, with worse labour process and employment outcomes. A third limitation is that we have only studied firms in one location and these findings may not be representative of the practices in other localities. However, our findings seem to echo some of those revealed by studies conducted elsewhere in the country. In short, the contribution of our study lies in its analytical framework as much as the revelation of its substantive contents. It is therefore analytically generalizable (Harris 2002; Yin 2003) and has the prospect of creating comparative studies in other societal contexts, particularly in other less developed countries.

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### Notes

1. Also see Lo and Snape (2005) for more detail on the professionalization of the legal profession in the post-Mao period.
2. Also see Liu and Halliday (2009) on major statutes related to the criminal procedure law and lawyer representation, 1979–2004.

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