

Client Influence and the Contingency of Professionalism:

The Work of Elite Corporate Lawyers in China

ABSTRACT

This study examines how the professionalism of elite corporate lawyers is constructed in the lawyer-client interactions. The data presented include interviews with 24 lawyers from six elite corporate law firms in Beijing and the author's participant observation in one of the firms. In the Chinese case, foreign corporations, state-owned enterprises and private enterprises constitute the extremely diversified client types for the elite corporate law firms, in terms of internal structure, agency, attitude, and billing method. Consequently, lawyers' work becomes flexible and adaptive to accommodate the different demands of the clients. Such differences are found in every step of lawyers' professional work, including initial contacts, legal documents, and professional inference. Meanwhile, the form of professionalism, namely, the cultural machinery by which lawyers diagnose, infer, and prescribe, is relatively independent from client influence. The division of labor between partners and associates has important consequences for both the variations in the lawyer-client power relationship and lawyers' status within the corporate law firm.

Elite corporate lawyers are crucial actors in the legal profession's historical transformation and collective action (Auerbach 1976; Shamir 1995; Halliday 1999), but the activities of these lawyers in their workplace have not been well studied despite the thriving of research on the legal profession in recent decades. After Erwin O. Smigel's (1969) study of Wall Street lawyers, research on the social structure of the bar has flourished (Heinz and Laumann 1982; Abel 1988, 1989; Galanter and Palay 1991; Hagan and Kay 1995; etc.), but there have been much fewer studies on lawyers' professional work. The limited existing studies concentrate in the personal sector of the bar, including divorce lawyers (Sarat and Felstiner 1995; Eekelaar, Maclean, and Beinart 2000; Mather, McEwen, and Maiman 2001), personal injury lawyers (Rosenthal 1974), solo and small firm practitioners (Carlin 1962; Seron 1996; van Hoy 1997), and lawyers in ordinary litigation (Kritzer 1990). In contrast, the work of corporate lawyers, particularly those in elite firms, remains a black box to sociolegal studies. Most studies on corporate law firms still make social structure their primary concern (Galanter 1983; Nelson 1988; Gorman 1999; Lazega 2001; Uzzi and Lancaster 2004).

Why does the professional work of elite corporate lawyers arouse less research interest than its social structure or the work of other sectors of the bar? A practical answer is the problem of access – as secrecy has always been one of the central tenets of corporate law practice, few researchers could get the opportunity to closely observe how these high-status lawyers do their work (but see Flood 1987, 1991). Nevertheless, the professional work of corporate lawyers is a crucial component of research on the legal profession, especially considering that in recent

decades the corporate sector of the bar has been growing rapidly worldwide (Galanter 1983; Heinz et al. 1998, Hanlon 1999; Karpik 1999; Dezalay and Garth 2002). How do these corporate lawyers interact with their clients? Does the influence from powerful clients present a threat to their professional autonomy? How do the meaning of professionalism being constructed in this process? These questions are all of vital importance both theoretically and empirically, and they have been frequently asked in studies on the personal sector of the bar (e.g., Sarat and Felstiner 1995; Mather et al. 2001). To further our understanding of lawyers' professional work, it is thus urgent to explore these questions in the work settings of corporate law.

This study uses elite corporate lawyers in China as a case to disentangle the mystery of corporate legal work, with the emphasis in their interactions with the clients in the workplace. Mostly trained in Britain, the United States, Germany and Japan, many of them having work experience in world-renowned firms, these Chinese elite corporate lawyers nevertheless display distinct behaviors when dealing with different types of clients, namely, foreign corporations, state-owned enterprises (SOEs), and private enterprises. These different strategies run through every phase of lawyers' work, from the initial analysis of the client's problems to the final completion of legal documents. These observations raise the central empirical questions for the study: Why do these high-status corporate lawyers have developed different work strategies for different types of clients? To what extent is their professional work penetrated by client influence in such a diversified work environment? And, more theoretically, how can we reconcile their seemingly patronage behaviors with the image of professionalism?

By a comprehensive examination of lawyer-client interactions in six elite corporate law firms in Beijing, I argue that (1) the *content* of corporate lawyers' professional work is constantly being constructed by responding to client influence in initial contacts, legal documents, and professional inference; and (2) the *form* of professionalism, namely, the cultural machinery by which lawyers diagnose, infer, and prescribe, is relatively independent from such external influence. In a multi-cultural and diversified work environment, corporate lawyers adopt distinct methods and produce various legal products to serve the interests of different clients, yet the forms by which they transform the client's problem into legal issues, establish the link between these issues and possible solutions, and produce the final legal opinions to the client do not vary across different client types. Moreover, the division of labor in corporate law firms further complicates the meaning of professionalism: whereas partners usually have solid control over this cultural machinery of professional work, associates are largely stripped of it in their work and become vulnerable to client influence.

After theoretical discussions of professionalism and a brief overview of data and methods, the empirical part of the paper will be divided into three sections. First, various characteristics of the three major client types will be distinguished through lawyers' perceptions of their clients. Then I proceed to examine in detail different aspects of client influence on the work of corporate lawyers during lawyer-client interactions. Finally, the meaning of professionalism will be divided by comparing the variation between partners and associates in facing client influence.

Professionalism: Form and Content

The primary distinction to be made in understanding the legal profession, or professions in general, is the distinction between social structure and professional work¹. Since Talcott Parsons and Everett C. Hughes (see Dingwall 1983), theories of the professions diversify along these two dimensions with limited effort to connect them. While the structural or functional theories emphasize the functional role of professions in society (Parsons 1937, 1968; Goode 1957), the structural sequence of professionalization (Wilensky 1964; Millerson 1964), and the professions' monopoly of income and occupational status (Larson 1977; Berlant 1975; Abel 1988, 1989), the Chicago tradition adopts the ethnographic and ecological approaches and focuses on the way the professionals control their work (Freidson 1970) and the division of labor in the system of work (Hughes 1994) in which every profession holds a jurisdiction (Abbott 1988). As the crucial concept for understanding the professions, the meaning of professionalism has always been a central issue for theoretical debates ever since Carr-Saunders and Wilson's (1933) classic study of the professions in England and Wales. However, until the late 1960s, little progress had been made in theorizing this concept except for some functional or taxonomic descriptions (see Becker 1962; Roth 1974; Klegon 1978 for some critical reviews).

It is Eliot Freidson (1970) who offers the first systematic theory of professionalism. Freidson argues that the only truly important criterion for distinguishing professions from other occupations is the fact of autonomy, that is, a position of legitimate control over work.

¹ Note that in making this distinction I restrict the focus to the internal aspects of professional life and do not seek to incorporate the profession's external collective action in politics, civil society, or communities (see Halliday 1998 for a review).

Accordingly, professionalism “may be said to exist when an organized occupation gains the power to determine who is qualified to perform a defined set of tasks, to prevent all others from performing that work, and to control the criteria by which to evaluate performance” (Freidson 2001: 12). This argument implies an endogenous view of professionalism, that is, neither the social structure of the profession nor external influence (from the client, the state, etc.) has any necessary relationship to professional autonomy, as long as the profession has the sole legitimate power to inspect and evaluate its work.

This endogenous view is significantly challenged by Terence J. Johnson’s (1972) typology of professional power according to the control over the producer-consumer relationship, namely, collegiate, patronage, and mediation. Collegiate control is similar to Freidson’s concept of professionalism, but Johnson proposes patronage (control by the client) and mediation (control by the state) as two alternatives to it. Professional power or autonomy is always embedded in the lawyer-client or lawyer-state relationship – who controls these relationships determines the meaning of professionalism. Johnson’s typology provides an elegant analytical framework for understanding the profession’s external power relationship. In their classic study of the social structure of the bar, Heinz and Laumann (1982: 156-160) explicitly apply Johnson’s typology to the analysis of the legal profession and present the well-known “two-hemisphere” thesis. Their analyses demonstrate that the personal sector of the bar is more collegiate because the lawyers dominate their clients in their power relationship, whereas corporate lawyers resemble Johnson’s corporate patronage and enjoy less professional autonomy (Heinz and Laumann 1982: 171).

Different from this largely static view of professional-client relationship, later studies of the legal profession tend to put professionalism in a more dynamic light. This dynamic view of professionalism is best illustrated in two recent studies of divorce lawyers. Sarat and Felstiner (1995) argue that, in the course of divorce cases, the meanings given to professionalism do not emphasize technical expertise or disinterested service, but “the local and informal nature of the legal process, the relevance of individual character and personality in the way cases are handled and issues decided, and the pervasiveness of adversaries and the search for advantage” (Sarat and Felstiner 1995: 7). According to this view, professionalism has no fixed meaning other than those constructed during the lawyer-client interactions. Similarly, Mather et al. (2001) also suggest that the meaning of professionalism should be understood in its particularistic forms in practice, but their emphasis is in the “collegial control” of the professional communities of practice, ranging “from the bar as a whole, to lawyers who practice in a particular locality, to groups of specialists in family law, to law firm colleagues” (Mather et al. 2001: 6). This perspective resembles Freidson’s endogenous view of professionalism but focusing on the social construction of the collegiality in the workplace.

Susan P. Shapiro’s (2002) recent study approaches the issue of lawyer-client relationship through a unique angle, i.e., how lawyers deal with the conflict of client interests in their work. Incorporating a wide variety of conditions in legal practice ranging from large urban corporate firms to small-town law practitioners, she clearly demonstrates the various ways lawyers have developed to reconcile the ethical challenges they face when representing multiple clients with

conflicting interests. However, the study reduces the lawyer-client relationship to a fiduciary relationship in which lawyers always strive to satisfy client interests and overlooks the direct conflicts between them. Hence, although Shapiro seems to accept patronage as a universal image for lawyers' professionalism, her emphasis in workplace power and conflict is similar to the approach of Sarat and Felstiner (1995).

In contrast, existing studies on corporate lawyers offer little insight on the meaning of professionalism in the workplace, but they do indicate that the influence of powerful clients is almost omnipresent to corporate law practice, from entry into partnership (Hagan and Kay 1995) to managerial functions (Nelson 1988; Lazega 2001). Meanwhile, collegiality, the service ideal, and independence all tend to diminish with law firm growth (Galanter and Palay 1991). Marc Galanter even made the comment that the emergence of mega-law firms was from the beginning connected with "the rejection of a style of lawyering that emphasizes lawyers' claims of allegiance to public obligations independent of the interests of the client" (1983: 159).

The limitation of these structural analyses for understanding lawyers' professionalism lies in their overlook of the workplace as a crucial "arena of professionalism" (Nelson and Trubek 1992). If Freidson (1970) is correct in that professional autonomy is not affected even when the social structure of the profession is controlled by external actors, then merely showing how clients influence the management, growth, or promotion in the corporate law firm would not necessarily lead to the conclusion of diminished autonomy. Instead, we need to focus on how professionalism is socially produced in the workplace where corporate lawyers and their clients

jointly define the specific meanings of legal practice. However, even in Robert L. Nelson's (1988) classic study of four large Chicago law firms we find very little on workplace interactions, but a structural argument on professionalism, i.e., in large law firms the meaning of professionalism is tailored "to accommodate bureaucratic administrative and work-group structures" (Nelson 1988: 226). Although Nelson and Nielsen (2000) have nicely shown that the work of in-house counsel in large corporations is a combination of law practice, business consulting, and entrepreneurial behavior, whether the autonomy of outside corporate lawyers is similarly subsumed by the clients' business objectives and their professionalism endangered is still an open question.

----- Table 1 about here -----

Overall, as Table 1 demonstrates, major existing views of professionalism could be roughly differentiated by three dimensions: (1) arena (structure vs. workplace); (2) openness (endogenous vs. exogenous); and (3) stability (static vs. dynamic). Each perspective takes side in these three dimensions, but neither provides an analytical framework that is able to fully incorporate the complexity of professional work. In particular, for corporate lawyers working in large law firms, both powerful client influence and specialized division of labor in the firm make their professionalism even more complex than that of ordinary law practitioners or other individual professionals. Hence, focusing on workplace interactions, I propose a rather eclectic view of professionalism to explain the professional work of corporate lawyers, with the belief

that this view has the potential to be generalized to account for the variations of professionalism in other work settings of professional life.

At the heart of my theoretical framework is the distinction between the form and content of professionalism. The *form* of professionalism refers to the cultural machinery by which professionals solve a given problem, namely, the processes of diagnosis, inference, and treatment in professional work. I basically follow Andrew Abbott's (1988: 40-52) definitions of these three concepts in characterizing how professional knowledge is institutionalized in the workplace (Freidson 1986). Diagnosis takes the client's problem into the professional knowledge system and treatment brings the solution back out to the client. When the connection between diagnosis and treatment is obscure, inference is undertaken to establish this link in the professional knowledge system. Together these three elements constitute the "essential cultural logic of professional practice" (Abbott 1988: 40).

In contrast, the *content* of professionalism refers to the various temporal structuring of professional work during the interactions between professionals and external actors (the client, the state, etc.). In particular, clients may seek to input their demands on the professional's diagnostic process, react with strong preferences to the solutions the professional provides, or even impose their beliefs in the logic between problem and solution on the inference of the professional. Facing such client influence, a series of adaptive measures and techniques are also developed in the professional community to keep the control over professional work. Accordingly, as Figure 1 illustrates, the processes of diagnosis, inference, and treatment all

become “containers” for these interactions between professionals and their clients, where the specific meanings of professionalism are constructed.

----- Figure 1 about here -----

I hypothesize that, when client influence on professional work is strong and diversified, the *content* of professionalism varies according to different client behaviors, but the *form* of it stays the same. This process can be well illustrated by an analogy of chemical reactions. Suppose the client’s problem is a chemical substance flowing through the test tubes of diagnosis, inference, and treatment, where relatively fixed reagents and mechanisms for reactions (i.e., the cultural machinery of professional work) are set up. When the substance flows through these tubes, other reagents from the client (i.e., various kinds of client influence) are added to the tubes and generate chemical reactions (i.e., the professional-client interactions), which produce the final chemical product (i.e., the professional solution to the client’s problem). During this process, the *form* of professionalism is largely preconditioned and independent from the client’s various inputs, but its *content* is constructed by the professional-client interactions and thus becomes different from case to case. By distinguishing the form and content of professionalism in the workplace, therefore, this theory has the capacity to explain the variations of this concept in two dimensions, i.e., openness and stability. While the form of professionalism is largely endogenous and static, its content is exogenous and dynamic.

For the case of elite corporate lawyers, the division of labor between partners and associates in the law firm further complicates the nature of their professionalism. In contrast to Uzzi and Lancaster's (2004) recent finding that the firm's social embeddedness has a greater effect on partner prices than on associate prices in corporate law firms, I argue that external client influence has a greater effect on the actual professional work of associates than on the work of partners. Partners enjoy more autonomy in their work than associates do because they are the major controllers of the cultural machinery of work in the legal project, while associates' lack of control over the form of professionalism puts their work in a vulnerable position when facing external influence. In the Chinese case where associates have frequent direct contacts with the clients, their professional autonomy is particularly weak and subject to client influence.

Data and Methods

The data used in this project include intensive interviews I personally conducted with 24 lawyers of six corporate law firms in Beijing from June to September 2004, as well as my participant observation in a corporate law firm in Beijing during two periods: (1) February 2002 to April 2002; and (2) July 2004 to September 2004. These data provide a unique, rich body of information about the professional work of elite corporate lawyers as well as their interactions with different types of clients.

A methodological note must be made before I introduce the data in detail. As the corporate law market in China is by all means still in its formative years, the use of the Chinese case for a

general sociological inquiry on professionalism may seem problematic to some readers. However, it is precisely in China's transition from a socialist planned economy to the market economy that a multi-cultural and heterogeneous social environment for corporate legal work has been developed. The extremely diversified client types in this work environment make the dynamics and variations in corporate legal work particularly visible. This case thus provides a rare opportunity for observing lawyer-client interactions in the corporate legal project, the division of labor within the law firm, and, above all, the contingent nature of lawyers' professional work.

The six law firms selected for interviews are all elite corporate law firms in China, including the four largest corporate law firms in Beijing and two smaller but not less prominent law firms. Following Nelson's (1988: 94-95) descriptive framework for corporate law firms, major descriptive information about the six firms is presented in Table 2.²

----- Table 2 about here -----

In spite of the variations in number of lawyers, organizational structure, and managerial ideology, the six law firms demonstrate more similarities than differences. All the six firms were among the first partnership law firms in China, established around 1992-1993 when the law firms' "unhooking" process started (Michelson 2003). All, including the two smaller and more specialized firms, claim themselves as "a leading full-service law firm in China," and their

² Note that the real names for the law firms are replaced by "Firm X" (X = A, B, C, D, E, F) for analytical conveniences, but anyone familiar with the Beijing bar would easily identify the six renowned firm names.

practice areas all concentrate in high-prestige corporate legal work, including Foreign Direct Investments (FDI), Banking & Finance, Securities, Mergers & Acquisitions (M&A), Real Estate, Corporate Litigation & Arbitration, and Intellectual Property. All six firms have branch offices in other major cities in China like Shanghai and Shenzhen, and some even have established offices in the United States. Most lawyers in the six firms graduated from prominent law schools in China³, and the majority of them also acquired law degrees from Britain, the United States, Germany, or Japan. And, above all, the clients of the six firms all include foreign corporations, state-owned enterprises (SOEs), and private enterprises.

There are, of course, also notable differences among the six firms. Firm E and Firm F are specialized in securities, particularly IPO (Initial Public Offerings of Equity Securities) projects and their related M&A work. The other four firms are general practice corporate law firms. Firm A, B and C have adopted a bureaucratic organizational structure, whereas Firm D, E, and F are still organized around their senior partners. However, the structure of Firm C is not entirely bureaucratic, because underneath its bureaucratic structure the work is still divided by the work teams of senior partners. In contrast, in both Firm A and B, the work is organized around project teams rather than partner teams.⁴ For the managerial decision-making, while Firm A partners have an exceptionally bureaucratic ideology, in the other five firms the managerial decisions are

³ These law schools include the law schools of Peking University, China University of Politics and Law, Jilin University, Renmin University, University of International Business & Economics, etc.

⁴ According to Uzzi and Lancaster's (2004: 322) definition, project teams are "usually led by partners and staffed by associates with the aim of uniting varied talents to solve multifaceted legal problems." Such teams are often formed differently in different legal projects to meet the specific needs for solving the client's problems. In contrast, if the work is organized around partner teams, the lawyers in a team usually do not change for different legal projects, and there is also much less cooperation among senior partners in the firm.

still made by the influential founding partners, though in both Firm B and C formal managerial committees have been organized for decision-making.

24 lawyers were selected from the six law firms for intensive interviews, including 8 partners and 16 associates.⁵ 5 of the 24 interviewees are female. In contrast to the extremely generalist practice of most Chinese lawyers (Michelson 2003), the practice areas of these elite corporate lawyers have a surprisingly high degree of specialization. Of the 24 interviewees, 11 reported only one practice area during their career, 10 reported two areas, 3 reported three areas, and nobody is specialized in four or more fields of practice. 13 of the 24 lawyers are specialized in FDIs, 12 in securities, 10 in litigation/arbitration, and 5 in real estate. My educational background from a premier law school in Beijing and previous work experience in Firm C substantially facilitated the interviews. Most interviewees were very cooperative and provided frank responses even when being asked some sensitive questions concerning their work.⁶ The questions for the interviews are designed as semi-structured and open-ended. I coded the interviews both qualitatively and quantitatively, yet the main thrust of my approach in both data collection and analysis was qualitative in nature. Much of the evidence presented in the paper is in the form of direct quotation from respondents.

My participant observations were conducted in Firm C for 6 weeks in spring 2002 and 8 weeks in summer 2004, respectively. In each period I worked as an intern associate in the work

⁵ Note that lawyers from Firm C are overrepresented (11 of 24) because Firm C is the law firm where I conducted my participant observations. Nonetheless, the great homogeneity of the six firms in terms of practice areas, personnel, and client types makes the variation by firm much less significant than the variation by practice area.

⁶ Needless to say for the purposes of confidentiality all names of the interviewees have been altered or left out.

team of a senior partner in Firm C, whose practice areas include foreign investment, real estate, and litigation/arbitration. Through frequent personal interactions with different types of clients and numerous informal discussions with lawyers in the firm, particularly those working in the same partner team, I gained a better sense of how these corporate lawyers do their work and deal with their clients than any formal interview could provide. Moreover, some cases I recorded during my observation are used in the paper to complement the interview data.

Lawyers' Perceptions of their Clients

To study client influence on the professional work of these elite corporate lawyers, it is useful at the beginning to differentiate the client types according to their distinct demands, strategies and behaviors when approaching a corporate law firm. In the case of the corporate law market in China, foreign corporations, SOEs, and private enterprises are the three major client types.⁷ All the 24 lawyers I interviewed indicated the different behaviors of the three types of clients and, accordingly, they form different opinions regarding them. These opinions are not only important as an empirical basis for the following discussions on lawyers' professional work,

⁷ Foreign corporations include companies from both the Western advanced economies and the East Asian region (Japan, Korea, Singapore, Hong Kong, Taiwan, etc.), all of which are large transnational corporations seeking to make investment in China. These corporations are obviously crucial actors in foreign investment projects, and they are also increasingly involved in other areas such as real estate and litigation/arbitration. However, they are rarely associated with securities work, because major IPO projects in China are about transforming local enterprises into share-holding companies that offer their shares to the public in Shanghai (A Share), Hong Kong (H Share), New York (N Share), or London (L Share). State-owned enterprises (SOEs) constitute another major type of clients for the corporation law firms. The clients of the six firms are usually SOEs directly regulated by the SASAC (State-owned Assets Supervision and Administration Commission), i.e., the largest, wealthiest and most powerful SOEs in China. The legal areas these SOEs are involved in include almost every practice area of the six law firms, and in recent years they are particularly active in IPOs and as receivers of foreign investment. Private enterprises constitute a relatively new client type for the corporate law firms. Established by successful local private entrepreneurs, these companies are rarely receivers of foreign investment, but many are active in real estate, IPOs, banking & finance, and litigation/arbitration.

but also of interest in themselves by providing a unique lens through the perceptions of corporate lawyers for observing the behaviors of the major players in China's new market economy. In this section, I give a brief overview of how Chinese corporate lawyers perceive their clients in terms of five aspects: (1) legal department; (2) managerial structure; (3) agency and communication; (4) attitudes toward non-legal and illegal behaviors; and (5) billing methods. Table 3 provides a summary of these variations across client types.

----- Table 3 about here -----

The first aspect of the variations is whether the client has an internal legal department. Whereas 90.0% of the interviewees who have provided legal service to foreign clients reported that their clients usually have a legal department, for SOEs the corresponding percentage is 46.2%, and for private enterprises the percentage is as low as 9.1%. Furthermore, even in those SOEs and private enterprises that have in-house legal department, the department is often newly established and has limited power within the company's managerial structure.

Besides this salient difference in having legal department, the three types of corporations also have dissimilar managerial structures. Almost all lawyers dealing with large SOEs indicated their complex bureaucratic structure and emphasized the "level-by-level upward reporting" (*ceng ceng shangbao*) system as a major feature of Chinese SOEs. "Lack of coordination" is also

frequently mentioned by lawyers working with large SOEs⁸, because all departments of the enterprise, sometimes even including subsidiary companies, tend to approach the lawyer directly without the intermediation of inside counsel. The management of most private enterprises resembles family corporations, and the boss interferes and dominates in most of the major decision-making processes. The internal structure of foreign corporations is usually more clearly defined than their local counterparts, but the lawyers also indicate that the communications between their branch offices and regional headquarters (e.g., between Shanghai and Hong Kong or between Beijing and New York) are sometimes difficult and time-consuming⁹.

For the lawyer-client communications, in general, the interviewees indicate smoother communications with foreign clients than with domestic clients. In contrast to the American case where in-house lawyers assume many managerial or even entrepreneurial functions (Nelson and Nielsen 2000), inside counsel in Chinese enterprises rarely have the chance to become managers in the corporation. Consequently, while foreign clients usually use their in-house counsel to deal with most legal issues, the contact persons from SOEs and private enterprises are often managers of their central office or non-legal departments. For private enterprises, it also frequently happens that the boss of the company approaches the law firm directly.

Highly professionalized in-house counsel makes lawyers' communication with foreign clients resemble discussions between legal professionals. However, because the in-house counsel working in the Beijing or Shanghai offices of foreign corporations are either foreign lawyers or

⁸ Interview04201, Interview04202, Interview04204, Interview04206.

⁹ Interview04203.

Chinese lawyers trained and worked abroad, their knowledge of Chinese law is sometimes quite limited. Hence, as a lawyer in Firm D describes, the work experience with foreign clients can often be seen as a “mutual learning process.”¹⁰ In contrast, managers from SOEs and private enterprises usually have no legal background, but they understand their industry and the Chinese sociopolitical environment very well. Therefore, these managers may have already formed their own plans for the project before they approach the law firm, though in many situations their plans would turn out to be legally unrealistic. Due to their powerful government background, managers from SOEs are particularly likely to influence or even direct the work of lawyers (esp. in IPO or FDI projects)¹¹, whereas the private enterprise people are much more modest and defer to the opinions of lawyers in most situations¹².

Legal practice always contains non-legal and, sometimes, illegal elements, but as the most prestigious sector of the bar, elite corporate lawyers are expected to enjoy a high degree of professional purity in their work (Abbott 1981). However, clients always have a potential for damaging this purity by bringing in non-legal and illegal affairs. The complex social and political environments in China make this problem particularly salient. Foreign clients aside, both SOEs and private enterprises are reported by many interviewees for frequently bringing in non-legal affairs (e.g., managerial, commercial or financial issues), and lawyers often have limited choice in rejecting such requests when the client is a powerful enterprise and generates a large amount

¹⁰ Interview04214.

¹¹ Interview04215, Interview04224.

¹² Interview04211, Interview04212, Interview04215, Interview04217, Interview04221, Interview04222.

of billings for the firm. A related difference among the clients is their attitudes toward illegal behaviors in lawyer's professional work. Foreign corporations are uniformly reported by the interviewees to avoid or even detest illegal behaviors. However, in litigation, where informal connections with the court are prevalent and inevitable, foreign clients display a much more tolerant attitude toward such behaviors by lawyers.¹³ SOEs and private enterprises, by contrast, almost always connive or even explicitly promote illegal behaviors in lawyer's work. SOEs are especially inclined to use illegal methods to achieve their goals, as their powerful government background makes the cost of their illegal behaviors much less than the illegal behaviors of foreign or private clients¹⁴.

The last but not the least important aspect of the variations in client types is their distinct billing methods. Although the six firms all have relatively fixed standards for billings, which billing method is used in the project is often determined by the preference of the client. A partner in Firm D specialized in litigation work summarizes this issue in a clear and concise way:

These three types of enterprises certainly have different concerns, and it can be seen from their usual billing methods. What foreign companies care about is the quality of our work, so in general their billings are by hours; private enterprises often use the "billing by phase" method and make one payment for each phase in the case, because they are more calculative and really care about the money involved in the case; SOEs usually tend to make onetime payment for each case, but we charge different amount of money according to the result of the case.¹⁵

¹³ Interview04214, Interview04219.

¹⁴ Interview04220.

¹⁵ Interview04213.

Although there are some variations across practice areas (e.g., billing by hour is more common in FDIs than in litigation/arbitration), the general pattern is very clear across all the 24 interviews: foreign clients are much more likely to make payment by lawyers' work hours, whereas domestic clients prefer to be charged by case or by phase. In fact, many experienced corporate lawyers indicate that the "billing by hour" method was created in Chinese corporate law firms precisely to meet the demand of foreign clients. Today all the six firms have adopted this method in calculating the amount of lawyers' work, but the work hours for domestic clients are still difficult to count in many situations¹⁶. Therefore, facing the great irregularity and diversity of client preferences, Chinese corporate lawyers have adopted flexible billing methods to protect their economic interests. As a result, the price for their legal service is often set according to the conditions of the consumer rather than the internal quality of the service. This internal flexibility of price within the law firm is largely ignored in Uzzi and Lancaster's (2004) recent analysis on the price of corporate legal service in the US, in which both the partner and associate prices are averaged at the firm level.

Overall, the divergent cultural and political backgrounds of the three types of clients in relation to the state and the transitional market economy have created a heterogeneous external environment for China's corporate legal service. Although the descriptions of the three client types given in this section are by all means "ideal-typical" accounts, they already clearly

¹⁶ For example, for Chinese enterprises, many important decisions are made at dinner tables or other informal occasions, and lawyers may also use different standards of billing for different domestic clients. For some familiar clients that generate a large proportion for the firm's billings, lawyers often have to lower the billing standard to satisfy them. But for some unfamiliar clients, the billing standard for a second-year associate could be as high as 180 USD per hour.

demonstrate the huge diversities in client behavior that corporate lawyers in China must face in their professional work. Now let us go to their workplace to observe how professionalism is constructed in the lawyer-client interactions.

Constructing Professionalism: Lawyer-Client Interactions in the Workplace

Diversified client behaviors constitute a heterogeneous social environment for these elite corporate lawyers to do their professional work. In such an environment, professional work becomes a contested space where both lawyers and clients seek to establish control (Johnson 1972). This section examines the social construction of professionalism during the lawyer-client interactions in each phase of lawyers' professional work, from the initial contacts with the clients to the final completion of legal opinions or court proceedings.

1. Initial Contacts with the Clients

When a client approaches a law firm for the first time, she is always looking for competent lawyers to achieve her goals – this is true for both individual and corporate clients. Accordingly, the primary task for the lawyer is to convince the client that she is a good lawyer and capable to meet the client's demands. The central part of the lawyer's talk during initial contacts with the client is what Abbott (1988: 41-44) terms "diagnosis," i.e., the colligation of a picture of the client's problems and the classification of it into professionally legitimate issues. In other words, to quickly identify the client's major problem from the evidences presented and transform it into

legal issues is the crucial professional skill in lawyers' diagnosis.

To be sure, much of this skill is gradually developed through law firm training and experience, although there are also some lawyers who believe that part of it is individual talent and cannot be learned through practice¹⁷. Senior partners in elite corporate firms all have their own ways in dealing with the clients, but familiarity with the law, practice experience in the field, and understanding of the client's situation are all necessary and important skills for their diagnosis. An associate in Firm E summarized the ways her partner, one of the most prominent securities lawyers in China, impresses his client:

Our boss is incredibly sharp when talking to the clients. Because he knows IPO so well, whatever the client says he already knows it. I would say he has three major techniques when talking to the clients. The first is legal articles. He can recite all relevant laws and regulations without any mistake. The second is his analysis of the situation of the client. As he has done so many such projects, he can quickly identify the intention of the client and design a solution accordingly. The third is his experience. He is able to tell the client what kinds of problems have occurred in similar projects and give a lot of examples to make the client understand the risk in every step. So all the clients trust him completely.¹⁸

This description shows the crucial qualities for the successful colligation and classification of a problem. To know the statutes is certainly an indispensable skill, but more central to the diagnostic process is the ability to quickly identify the problem and transform it into "a legal discourse which has trans-situational applicability" (Cain 1983: 111). The solution the lawyer provides in this initial stage of a project is not entirely a prescription, but expedient in nature and,

¹⁷ Interview04216.

¹⁸ Interview04204.

in a sense, resembles the hypothesis in social science research – the validity of the solution needs to be tested in the following steps of the project. Meanwhile, the best solution provided by the lawyer does not always meet the particular demands of the client. An associate in Firm D who also works in a partner team specialized in IPO work elaborated on the difference in providing solutions to SOEs and to private enterprises:

When contacting the client, my boss will first consider the project with the purely objective perspective and introduce him the best possible solutions for his problem. The client will express their intentions afterwards, and we will then tell him the feasible solution for achieving their goals, which might be different from the original objective solution. Then we will let them consider all these solutions themselves and provide legal opinions according to their decision. It is also possible that two solutions will be discussed in the legal opinion for different situations. In general, private enterprises are more likely to choose the best solution we considered objectively, but who knows where [the decision of] the SOEs would deflect to? This is because SOEs have many internal problems ... so sometimes if they proceed with the best solution we provided, their subsidiaries would not agree. The private enterprises have no such problem, because they are more like family enterprises, so everyone belongs to the same family. To make an analogy, if your father's company plans to be listed in the stock exchange and he wants to transfer the non-performing assets to your subsidiary company, you would not disagree, because you two can negotiate easily and finally you would also benefit from it.¹⁹

This quote clearly demonstrates the contingent nature of professional work, as the legally “best solution” is often modified in practice to accommodate the various demands of different clients. The opinions of the client add crucial inputs in the lawyer's diagnosis of the problem. On the other hand, in most situations, the lawyer's opinion will also substantially change the client's

¹⁹ Interview04215.

original perception of the problem – to many lawyers this is precisely the key to show the value of their legal service and win the trust of the client. An associate in Firm C described how his partner changes the client’s strategy:

During initial contacts, Lawyer W will often propose a solution that is different from the expected solution of the client, because for many types of projects we already have pretty mature solutions, such as investment, etc. Sometimes the client’s expectation is to go from step A to B to C and to D, but Lawyer W will tell him it is impossible to go from A to B or from B to C, but he could go from A to E to F to C. The key is to understand the goal of the client and design the solution accordingly.²⁰

In this case, we see a good reconciliation between existing legal solutions and the specific objectives of the client. To make the client appreciate the value of legal service, the lawyer not only needs to provide them the so-called “best legal solution” for the present project, but also a solution that meets their particular considerations. Therefore, in the phase of initial contacts, the content of professional work is already constructed by the negotiations between lawyers and clients rather than endogenously determined.

2. Memos and Legal Opinions

The ultimate objective of professional work is to produce the solution to the client. The process of “treatment” or “prescription” is not simply the individual work of the professional, but a process constructed by professional-client interactions. For the medical profession, Freidson

²⁰ Interview04202.

(1970: 315-321) summarizes three patterns of interaction in the doctor's treatment process, namely, activity-passivity, guidance-cooperation, and mutual participation.²¹ He argues that the activity-passivity pattern is most likely to be found when there are large divergences in both culture and status between the professional and the layman, whereas guidance-cooperation is often found when the divergences are lesser, and mutual participation is to be found when the lay culture and status are very much like that of the professional (Freidson 1970: 321). Similarly, Abbott (1988: 47) indicates that the clients' ability to pre-diagnose their problems and to understand their treatment in relatively professional terms influences the amount of the professional's brokering work, that is, the work to "exclude the nonprofessional and irrelevant professional issues from practice" (Abbott 1981: 823).

Unlike individual clients in ordinary legal work who are often under the lawyer's control or manipulation (Sarat and Felstiner 1995), the clients of corporate lawyers usually have similar or even higher social status than the professionals and their "lay culture" is more similar to the professional culture than the case of individual clients. Hence, Freidson's theory would predict that a process of mutual participation would occur in the prescription for the corporate legal project, i.e., memos and legal opinions. Meanwhile, Abbott's theory would predict that the work for large corporations would lead to relatively "purer" legal documents than the work for individuals or small enterprises.

²¹ According to Freidson (1970: 316-317), in activity-passivity, the patient must be thoroughly immobilized and passive, wholly submissive to the activity of the physician; in guidance-cooperation, the patient is less passive but the physician still initiates more of the interaction; in mutual participation, the patient is able or is required to take care of themselves and the initiation of interaction comes close to being equal between the two.

Interestingly, writing memos and legal opinions for both foreign and domestic clients are described by my interviewees as “feeding babies,”²² because each of the client types has some unique defects in accepting the lawyer’s treatment. While foreign clients have difficulties in understanding the complicated sociopolitical environments for China’s foreign investment market, domestic clients (both SOEs and private enterprises) often have naïve beliefs about the new market economy, or what Arthur L. Stinchcombe (1965) terms “the liability of newness.” As a result, corporate lawyers must “feed” them with different materials in the legal documents.

To explain Chinese law to foreign clients is a formidable task for most corporate lawyers, because the huge cultural divergence between China and the Western countries makes many issues, including both legal and nonlegal issues, hardly explainable. In many situations, the lawyer even has to make up stories in interpreting some unique issues in the Chinese context. An associate in Firm F gave a good example of how difficult it is to explain some concepts in Chinese law to foreign clients:

Such work [work for foreign clients] is much more difficult than the work for domestic clients, because they don’t understand what law in China looks like. Let’s use real estate as an example. Many of our houses only have the use right for the house but not the land-use right, that is, having the house certificate but not the land-use certificate. In China everybody understands this, but foreign folks absolutely would not understand. He would ask you, “So what is the consequence for not having the land-use certificate? Does that mean you own the land or not?” The Chinese legal system is not perfect – this is something they don’t understand.²³

²² Interview04203, Interview04207.

²³ Interview04210.

This example clearly shows the importance of the social context for an external actor to understand local law. Not every foreign corporation is unfamiliar with Chinese law, but several interviewees specialized in foreign investment or other foreign-related work all indicate that, when they write legal documents for foreign clients, it is a necessity for the lawyer to introduce the broad background of the Chinese legal system before going into details of the present project.²⁴ Such background information would rarely appear in memos and legal opinions for domestic clients. As an associate in Firm A concisely commented, “It is just like feeding babies.”²⁵ The big irony, however, is that the “babies” being fed here are often highly professionalized in-house counsel – their legal knowledge and skills do not necessarily make them understand how the law works in a different social context. Cultural difference largely explains away the effect of professional knowledge in facilitating the prescriptive process.

In contrast, SOEs and private enterprises constitute another kind of “babies” to Chinese corporate lawyers – they are often ignorant about the law and the value of legal service in spite of their familiarity with the Chinese social context. A senior partner in Firm B specialized in banking and finance vividly elaborated on the reasons why these domestic clients do not appreciate the value of lawyers’ work:

All SOEs in China realized the value of legal work through negative experiences, just like 3-year-old kids. ... Even some 3-year-old kids are able to get one insight from every mistake (*chi yi qian, zhang yi zhi*), but many SOEs are even worse than the kids – they

²⁴ See, for example, Interview04203, Interview04206, and Interview04217.

²⁵ Interview04203.

would go on to do the same thing even after getting the negative lessons. This is because originally the operation of the whole country did not rely on the law, so to them, they could not distinguish whether the cost of death is higher than the cost of hiring lawyers. At first, the contracts of the banks were incredibly simple, only two pages, and the government would resolve everything once problems occur. Afterwards the government did not interfere anymore, but the court did, so they had to go to the court. Even then they were not honest and wanted to settle with (*gao ding*) the court. However, the court was not that easily to be settled and they could not make it, only at this time they would think about getting a lawyer. The private enterprises are not much better, because the surviving condition for private enterprises in China was too harsh, almost being attacked back and forth (*fu bei shou di*). Every private enterprise that has survived until today did not rely on the law, but all have their different means. Because if private enterprises are not in accordance with the regulations, they would take all the negative consequences, the government would not interfere.²⁶

Consequently, when providing legal documents for these domestic clients, the lawyer's emphasis is often not on legal inference or even legal issues per se. Instead, to know to what extent the client is capable of following the solution provided in the legal documents is crucial for the lawyer's prescription. An associate in Firm D specialized in securities described how the difference between large SOEs and private enterprises influences the lawyer's legal solution for the project:

In terms of the content of our documents, basically we would make a judgment in advance about the rank of the enterprise: if large SOEs are able to get some government approvals, we would propose some better solutions; whereas for private enterprises we would not provide those solutions, because they would never get the approvals. It is pretty easy for large SOEs to get approvals from the SASAC (State-owned Assets Supervision and Administration Commission) or the MOC (Ministry of Commerce). Although private enterprises would never get those approvals, they can easily get stuff from the local government. ... The leading officials of the SOEs often have equal ranks

²⁶ Interview04207.

with the SASAC and the MOC, so it is very easy for them to communicate. And in many cases it is even better for them to consult the government agencies directly than we consult for them. This is because if we consult, the opinions of the agencies could be generalized to all similar problems, whereas the opinions from their consulting would only be applied to themselves, so some compromises could be made. ... Private enterprises generally handle everything by themselves, but they hope that we provide definite documents so that they don't need to bother the government agencies to write documents for them, but only to get their seals.²⁷

Apparently, the different positions of SOEs and private enterprises in relation to the state lead to their distinct ways of dealing with the government agencies, and, more importantly, the lawyer must pay attention to this difference when writing her memos and legal opinions. Furthermore, the content of legal documents also varies according to the familiarity between lawyers and clients to manage uncertainty (Flood 1991). Lawyers tend to have less reservation when providing opinions to familiar clients. An associate in Firm C explains this issue:

The more the client is familiar, the less reservation in the opinion. It is necessary to make a balance between profit and risk. In complex projects or projects with large amount of money involved, we generally would have some reservation to new clients and assume that they would investigate into the lawyer's responsibilities. However, when you've got familiar with the client, there would be much less reservation. For example, we could make five pieces of opinion in one legal letter, among them A, B, and C are 100% correct, D is 95% correct, and E is 80% correct. To new clients we would only make A, B, and C in the opinion, unless when the amount of money involved is pretty large we might add D, but absolutely not E. But to familiar old client we would make all A, B, C, D, and E. Of course, for D and E it would not be written unless necessary, probably only orally mentioning them.²⁸

²⁷ Interview04215.

²⁸ Interview04202.

It is clearly seen here that the law firm's trust of a client decreases the chances of its being investigated by the client later and thus increases their chances for providing the client more risky legal opinions. Sometimes this rule even works for different people from the same client. For example, many of the interviewees indicate the complexity of the SOEs' internal structure and politics, in which corporate lawyer's work is embedded. Generally speaking, partners who can get the project from the SOE always have many social connections in that enterprise, thus they say more to people from the familiar departments and less to people from the unfamiliar ones²⁹. In other words, the internal politics of the client could also have significant influence on the lawyer's prescription.

In sum, cultural difference makes lawyers' treatment of foreign clients a difficult task, though the content of the prescription is relatively "pure" in the professional sense (Abbott 1981). Meanwhile, the prescriptive process for domestic clients indeed resembles the "mutual participation" pattern of treatment (Freidson 1970), in that the client often requires to take care of themselves, and their capability and preference shape the ways the lawyer construct the legal documents. However, the reason for the occurrence of this pattern is not entirely the closure of culture or status between the professional and the client as Freidson would predict. Unlike medicine, legal projects often involve several third parties (e.g., relevant state agencies) besides the lawyer and the client, and the lawyer-client interactions during prescription are shaped by the social contexts in which both the corporation and the law firm are embedded. Furthermore,

²⁹ Interview04202.

providing legal documents for domestic clients is a “dirty” task in that many nonprofessional factors should be taken into consideration. Nonetheless, such “dirty” prescriptions are often associated with high level of client participation, and the increasing status of the client does not necessarily lead to higher purity of professional work. This suggests the limitation of the concept of “purity” in characterizing professional work. Treatment, as diagnosis, cannot be reduced to a process of removing or adding nonprofessional elements; instead, it is characterized by the lawyers’ various adaptations to the conditions and capabilities of the client in producing their legal documents.

3. Legal Inference

Besides diagnosis and treatment, at the heart of professional work lies its most esoteric part – professional inference. Within the professional knowledge system, the logical chain of inference may vary by length or even by kind (Abbott 1988: 48-52), but as the link between diagnosis and treatment, inference is expected to be less subject to external influence than the other two processes. As the most prestigious sector of the bar, elite corporate lawyers are particularly sensitive about the autonomy of their legal inference – when being interviewed, therefore, nobody would admit that the client has the capacity to shape the ways of her legal inference. Accordingly, participant observation is a more effective method than interview for exploring the client influence on these lawyers’ inference. Surprisingly, there are very few ethnographic studies that directly deal with professional inference. One reason for this research

deficiency is physical – professional inference is frequently conducted without producing any tangible evidence that researchers could analyze. Nevertheless, this is not the case for the legal profession. The professional inference for lawyers is clearly reflected on their written work, because legal inference is a necessary component of most legal documents. Hence, here I use a case collected during my participant observation in Firm C in 2004 to elaborate on this issue.

A junior associate in the partner team that I worked in was writing a letter to a German client regarding a share transfer agreement for a foreign investment project. The objective of the letter is to explain the revisions on some articles of the agreement in response to the questions that the client raised after reading the previous version she drafted. One of the client's questions is why in the agreement only the price of the share transfer is listed without any articles on the specific arrangement of the transfer. In the first draft of the letter, the associate made the following explanation in response to this question:

Meanwhile, regarding the consideration of the share transfer that you mentioned in the Agreement, because the Share Transfer Agreement needs the examination and approval of the related government agencies, we suggest that we only list the transfer price of the shares to be transferred.³⁰

As the previous work of this associate is mainly for domestic clients, she was not quite familiar with the format for writing legal documents for foreign clients. Hence she asked another lawyer in the team familiar with foreign-related work to check the format of the letter before

³⁰ Author's ethnographic notes, September 14, 2004.

sending it to the client. After reviewing the letter, the lawyer came to her and suggested her to rewrite the above paragraph. The reason is that the client would not understand the causal relationship between the need for approval from government agencies and the fact that only the price is listed in the agreement. The associate was surprised at first, because she considered this causal link to be obvious. She argued that she had already written in similar ways to many clients and no objection was ever raised by any partner or client. At this point, the lawyer emphasized the fact that this letter was different from the previous legal documents she had written because the reader would be a foreigner. He said,

If you write this to a local client, he would immediately understand the reason behind what you wrote, that is, the government agencies that would examine and approve the agreement would be very likely to raise problems concerning the substantive aspects of the share transfer, so if those details are written into the agreement, it might cause trouble in the process. So the specific stuff should be left to a separate document that does not require government inspection. But foreigners would never think about all these, as they have very limited knowledge and experience on how to deal with the government. So you must elaborate on the underlying reasons behind this sentence to make them understand our intention. You must tell them which government agencies will be involved during the transaction, what they would do to this agreement, what is the danger for writing in the details. In a nutshell, you need to write the implicit stuff into the document to make the causal relationship look logical to them. Also, you'd better emphasize the things that they are mostly concerned with, such as risk management.³¹

Client type does make a difference here. Something straightforward to domestic clients could become completely incomprehensible for foreign clients. Consequently, the lawyer's legal

³¹ Author's ethnographic notes, September 14, 2004.

inference must adapt to this difference and use a distinct way of reasoning when writing to a foreign audience. Finally, the associate accepted the advice and rewrote the paragraph in the following way:

Meanwhile, regarding the arrangements of the share transfer that you mentioned in the Agreement, we have the following explanation. Because this share transfer would need the examination, approval, and control of the related government agencies (foreign exchange, industry & commerce, tax, etc.), if we list the specific arrangements of the share transfer in the Share Transfer Agreement, it would increase our risk in the above examination process. Therefore, we suggest that we only list the transfer price of the shares to be transferred and do not make any specific statement concerning the arrangements of the share transfer.³²

Note that the legal inference in the letter has changed from an implicit and concise manner to a logical and rational way. During a later informal discussion, the associate told me that such “rational” way of reasoning is not only unnecessary for domestic clients, but also inappropriate in many occasions. This is because Chinese enterprises are usually sensitive about issues related to the government, particularly the techniques for avoiding government inspection, thus blunt legal inference on the benefit and risk of such techniques would be unacceptable to them. Instead, they prefer to keep things flexible on the page and leave space for later manipulations.

Apparently, such flexible ways of reasoning is not in accordance with the Western legal tradition, thus many Chinese lawyers trained abroad often condemn domestic clients as

³² Author’s ethnographic notes, September 14, 2004.

“overlooking legal inference.”³³ Meanwhile, “emphasizing conclusion” is an almost uniform comment from the interviewees in describing SOEs and private enterprises.³⁴ A lawyer in Firm C who mainly deals with SOEs indicated, for example, that if he uses such terms as “void” in the conclusion of a legal opinion, people from SOEs would have strong reactions and request him to revise it.³⁵ Private enterprises are usually less demanding than SOEs, but they are also very sensitive about any reservation the lawyer makes in the conclusion.³⁶ When working with these clients, therefore, lawyers tend to “cook” conclusions palatable to the client before making the legal reasoning behind those conclusions logical and explicit.³⁷ Metaphors like “story-telling” or “plotting” are frequently found when the interviewees describe the legal reasoning for domestic clients³⁸. In other words, the legal inference for domestic clients is often reversed in logic, that is, conclusions come before legal reasoning actually occurs.

One might easily argue that such phenomena reflect the immaturity of the Chinese legal profession, because their professional inference is so penetrated by the client’s demands that it does not even look “legal” anymore. However, given the fact that most of these elite corporate lawyers have very solid legal training both domestically and internationally, this argument is hard to be sustained. Instead, I would argue that this difference in legal reasoning indicates an extreme version of the social construction of legal inference in the workplace. When the clients

³³ See, for example, Interview04207, Interview04218.

³⁴ Interestingly, the only two exceptions are both from partners specialized in litigation/arbitration and working with SOEs. These two partners both indicated that SOEs do not care about the lawyer’s conclusions in litigation because of their strong protections from the government.

³⁵ Interview04201.

³⁶ Interview04211.

³⁷ Interview04201, Interview04212, Interview04214, Interview04215, etc.

³⁸ Interview04206, Interview04210, Interview04212.

are of distinct cultural and knowledge backgrounds, the ways that lawyers approach a given legal problem, make inference, and then provide solutions are all substantially constructed through the lawyer-client interactions (Flood 1991; Sarat and Felstiner 1995) to satisfy the different needs of the clients.

Professionalism Divided: Comparing the Work of Partners and Associates

The discussions above have demonstrated the various ways that client influence shapes corporate lawyers' professional work through their interactions, but how the cultural machinery of professionalism works in practice has not been well analyzed yet. Is there indeed a relatively endogenous and static form of professionalism as proposed in the theory? This section seeks to respond to this question by looking at the variations in lawyers' attitudes toward client influence within the corporate law firm.

Client types have significant influence on the work of corporate lawyers, but it is by no means the only crucial factor. Although the huge homogeneity among the six firms substantially reduces the variation across firms, variations in practice areas, positions in the firm and other socioeconomic factors (gender, age, education, etc.) still all could have potential influence on the lawyer's professional work. After both quantitative and qualitative examinations of the 24 interviews in terms of all these factors, what I found is that the difference between partners and associates is a fundamental distinction in determining lawyers' answers to the interview

questions. Meanwhile, variations across different practice areas are surprisingly insignificant.³⁹

Despite the small sample size, let me start with a little statistical result. In response to the question “Do you feel that you need to use different strategies to deal with different types of clients?”, 9 of 10 associates answered “Yes,” whereas 5 of the 7 partners answered “No.”⁴⁰ This finding is particularly intriguing considering that partners are usually considered as “finders” and “minders” in the corporate law firm, thus their work is often more embedded in the lawyer-client relationship than the work of associates, who are often called “grinders” (Lazega 2001: 31-32). A major task of partners in corporate law firms is to bring in the business, exclude the non-legal elements in the problem the client presented (Abbott 1981: 824), and break down the problem into a set of professional issues for the associates to handle (Lazega 2001: 187-193). Furthermore, Uzzi and Lancaster’s (2004) recent study on the price in corporate law market also suggests that partner prices are more influenced by the firm’s social embeddedness than associate prices. Given all these facts, therefore, this statistical result seems very counterintuitive.

To explain the result, we need to take a close look at the nature of partners’ work and its position in corporate law practice. In contrast to the simplified and sometimes even painstaking routine legal work of associates, the work of partners, particularly senior partners, is rather a complex amalgamation of legal knowledge, professional skills, and intellectual creativity. This

³⁹ There are, of course, other possible confounding factors. For example, different types of clients may ask firms to do different types of work, and this variation in work types will complicate the effect of client influence on lawyers’ work. In the present case, Chinese corporate lawyers usually handle very high-end work for their foreign clients (because of their division of labor with in-house counsel), while deal with a much more diverse portfolio for SOEs and private enterprises. How would this variation in work type map into the client influence on professional work is a very difficult question. However, for my purpose in this paper, it suffices to note that its existence cannot explain away either the effect of client types or the distinction between partners and associates.

⁴⁰ Note that 1 partner and 6 associates did not provide a definite answer to this question.

complex legal work “typically requires intellectually challenging, original research-oriented work that covers multiple areas of or multiple parties” (Uzzi and Lancaster 2004: 322), and it generates a large amount of income for the law firm by differentiating its products (Sandefur 2001). In the mean time, complex legal work is often conducted with higher status personnel from the client. A senior partner in Firm C explained how the nature of corporate legal work is divided into two types:

I did a little statistical analysis. We use 70% work to make 30% of the money, and then the remaining 30% work to make 70% of the money. Why? This is because this 30% work is directly in touch with the bosses of the clients, no matter SOEs, foreign corporations, or private enterprises. As long as it is directly in touch with the boss, the money we get is way much higher than the work with lower-level people from the company. But work with these people is also necessary, so I would let my associates to do this 70% work, and I myself focus on the 30%. Some people would complain that the partners make money without doing any work, but what I’m doing is actually the most important and most profitable work. And even if I let them to do such work, they are not capable.⁴¹

This quote makes a very clear distinction between the complex legal work of partners and the routine legal work of associates. Much of partners’ professional expertise is realized through their talk to both the client and other lawyers in the firm, which accounts for a substantial portion of the chargeable work hours in the legal project (Flood 1991: 48). Then the central question is – what elements make the work of partners so esoteric, indispensable, and profitable to corporate law practice?

⁴¹ Interview04216.

The preceding discussion on the initial contacts with the clients has indicated some clues for this question. Although the solution the partner provided is often adaptive to the specific conditions and demands of the client, to many senior partners this is by no means a limitation to their professional autonomy. Instead, it is precisely the fact that they are able to find the intention of the client and design solutions accordingly that makes them distinct from other lawyers in the firm. Such indifferent attitude to client influence is evident in the interviews with nearly every senior partner. For example, a prominent founding partner in Firm A gave the following response when being asked whether his work is influenced by different client types:

I think the role of the lawyer when facing different clients is all the same, and the difference is merely the manner in doing the work. Every client has its formula, that is, the fixed ways of behavior. For example, foreign clients are familiar with international conventions and the law of their country, so what they care about is what should be done in China, and why many things do not work. Doing business for SOEs requires first of all thinking from their perspective, because originally SOEs get everything by allocation, that is, putting the money from the left pocket [of the government] into the right pocket, no legal concept at all. So we must tell them, if you want to do this, you must do it according to the law. [You] should be patient to them and understand the difficulties of SOEs. Because every SOE is a small society full of all kinds of problems, you must give solutions that are able to resolve their problems. ... Private entrepreneurs often got rich in a short time, generally have little education, and many using familial management. A different work manner should be used for them. Some private enterprises do not make a clear distinction between the individual and the company, things like using the money from the company to buy house, buy car are all very common. ... They cannot distinguish these legal relations at all, so you must correct them on these faulty conceptions. Actually, no matter what types of clients, as long as you think about the issues from their point of view, they are all the same.⁴²

⁴² Interview04217.

This response is particularly fascinating in that, while describing the huge diversities of the problems different clients present to the lawyer, the partner nevertheless insists that there is no big difference in the lawyer's work. In other words, it is not that there is no difference in working for different clients, but, as a senior partner, he cares little about these differences. The reason he gives sounds simple yet meaningful, i.e., once you know the fixed "formula" of the clients and are able to think from their perspectives, the variations in client types become trivial to your professional work.

Does this twisted answer imply that, in spite of the powerful client influence in every aspect of corporate lawyers' work, there is something in professional work which is relatively independent from client influence? Although this partner does not give a clear answer for it, we can still find some clues from other interviews and ethnographic data. For instance, the senior partner in Firm C quoted above gave the following answer when being asked the same question:

I never thought about the difference between foreign clients and domestic clients, or between SOEs and private enterprises. Let me tell you this, how we deal with our clients is actually the same as how doctors treat their patients. The first question to ask is always "What's your problem?" Sometimes even the client himself doesn't know what his problem is, and at this point I will tell him where the problem is, here, not there. First of all you need to diagnose, to find out where the disease is, and only after that you can prescribe.⁴³

Note that the way this partner describes his work is strikingly similar to the "diagnosis,

⁴³ Interview04216.

inference, treatment” processes proposed in the theory. Given that lawyers and doctors in China have distinct origins and are rarely regarded as comparable professions, it is even more meaningful that this partner compares legal work with the diagnostic and prescriptive work of doctors. In fact, although not every partner uses such metaphors in describing her professional work, this fixed cultural machinery of professional work is easily observed in the ways they frame a given problem, elaborate on the legal issues involved, and then provide the solution to the client.⁴⁴ To them, the ultimate objective of legal service is always unitary, as a founding partner in Firm C concisely put it:

I think there is no essential difference in doing work for different clients, because the clients’ ultimate needs for legal service are all the same, that is, they all need the most professional lawyer who can fit their business model best and provide the best solution at the most suitable time.⁴⁵

The work of partners nicely illustrates the contingent nature of professional work, i.e., the content of professional work varies according to the client types, but its form remains the same. In other words, the formal machinery by which lawyers analyze a legal problem is not subjected to the social construction of professional work in the lawyer-client interactions, though the client is able to put in elements that fit their needs and demands in every step of this machinery. The specific meanings of diagnosis, inference, and treatment are constructed in every case, but lawyers still hold their professional autonomy as long as the work is conducted in this formal

⁴⁴ Author’s ethnographic notes, March 1, 2002, March 8, 2002, and March 28, 2002.

⁴⁵ Interview04222.

cultural scheme.

There is, of course, a division of labor between “finders” and “minders” in the corporate law firm (Lazega 2001). While the work of “finders” emphasizes preliminary diagnosis and treatment, “minders” are usually the specialists in the concerned practice area, and their work focuses more on professional issues. In other words, the problem the minder gets from the finder is already a preliminarily purified problem, though she still needs to further diagnose it and then provide the professional solution. An ethnographic note I made during my participant observation in Firm C in 2002 clearly demonstrates the difference between finder (Lawyer W) and minder (Lawyer F) in dealing with the client:

Yesterday afternoon, I assisted Lawyer W and Lawyer F in the meeting with the female boss of XXX Securities. Lawyer F is a female lawyer specialized in law on corporations. It seems that Lawyer W is the perennial legal consul of this newly established company, and this time she [the boss] came to consult some issues concerning the business scope of the company, its address change, and some procedural issues regarding the coming sessions of the board of directors and the stockholders. When she came, Lawyer F was not present yet, so Lawyer W and I welcomed her. She asked those questions to Lawyer W and Lawyer W briefly answered, but he emphasizes that the authoritative answers should be given by Lawyer F, because she is the specialist in this area. What impressed me most is Lawyer W’s attitude. Although he is not specialized in law on corporations, he seemed very confident, talkative, and skillful in adjusting the mood of the client. It feels like such a lawyer would never be silent, and there would never be stage wait when meeting with him. Moreover, his words are very artful, and he could dexterously switch the topic when I made some inappropriate comments. By contrast, Lawyer F has a totally different style. After she heard the boss’s statement of the issues, she started to read the documents quietly. There are frequent intervals during the meeting, and sometimes I even need to say a few words to mitigate the atmosphere. Only after she fully grasped the facts would Lawyer F express her opinion. But compared with Lawyer W, her opinions are

obviously more professional and more specific.⁴⁶

The distinct styles of Lawyer W and Lawyer F in dealing with the client vividly illustrate the different skills for finders and minders in the corporate law firm. A central task for finders is to “warm up” the client (Galanter 1983: 159) by both their professional and nonprofessional skills, whereas minders conduct the central professional tasks. Both as partners, finders and minders emphasize different aspects of the cultural machinery of professional work. The work of finders in corporate law firms resembles the “brokerage” image that Herbert M. Kritzer (1990) presented in his study of lawyers in ordinary litigation, as they act as the intermediary between clients and professionals and often have informal expertise.

By contrast, the “routine legal work” (Uzzi and Lancaster 2004: 322) of the grinders (i.e., associates) contains much less diagnostic and prescriptive elements, because the work of partners have already substantially excluded the “impure” parts of the problem the client presented. Consequently, their work is more research-oriented and often focuses on the direct application of legal codes. However, as we have seen in the previous discussions on client influence in lawyers’ diagnosis, inference, and treatment, facing various demands of the client, associates do not have the capacity of partners to define the issues and transform these demands into legal problems, or vice versa. Consequently, the client is often able to achieve the dominant position in direct interactions with associates.

⁴⁶ Author’s ethnographic notes, March 1, 2002.

Therefore, it is precisely the fact that associates have very limited control over the cultural machinery of professionalism that makes their work vulnerable to client influence. This partially explains why corporate law firms usually do not let junior associates directly deal with clients, which resembles the “buffering” mechanism that Thompson (1967) proposed in explaining organizational behavior in relation to external influence. Only after these associates have made progress in the crucial professional skills of diagnosis, inference and treatment could they maintain their professional autonomy even when the client is powerful and demanding. But in the Chinese context where the work in the law firm is not fully integrated and such buffering mechanism for junior associates is often deficient, these associates have to directly deal with clients for many small issues. And, accordingly, their professionalism in corporate law firms is particularly weak and is heavily constructed by client influence. Accordingly, complaints about their powerlessness in resisting client influence in contrast to the powerful position of partners are frequently found in the 16 interviews with associates⁴⁷.

In short, the division of labor between partners and associates within the corporate law firm makes the meaning of professionalism in this work setting clearly divided. Only if we distinguish between the form and content of professionalism can we explain the puzzle that partners assume more “dirty” work but nevertheless enjoy higher professional autonomy and prestige than associates who focus on the technical aspects of corporate legal work. Whereas the content of professionalism is constructed in every specific lawyer-client interaction, for

⁴⁷ For example, see Interview04201, 04204, 04206, 04211, 04212, 04215, and 04219.

experienced professionals its form always stays the same. Corporate lawyer's professional autonomy is only seriously undermined when they do not firmly control the cultural machinery of professional work, which usually happens for inexperienced associates.

Conclusion

I have argued in the previous pages that the *content* of corporate lawyers' professional work can be substantially shaped by client influence in a heterogeneous external environment, but its *form* stays the same. For the Chinese case, foreign corporations, SOEs and private enterprises constitute the extremely diversified client types for the elite corporate law firms, in terms of internal structure, agency, attitude, and billing method. Consequently, lawyers' work becomes flexible and adaptive to accommodate the different demands of the clients. Such differences are found in every step of lawyers' professional work, including initial contacts, legal documents, and professional inference. Meanwhile, although the external social construction of professional work seems pervasive, it could barely touch the form of professionalism, i.e., the cultural machinery by which lawyers diagnose, infer, and prescribe. Control over this machinery is crucial for both the lawyer's professional autonomy and status within the corporate law firm. Partners usually have solid control over diagnosis, inference, and treatment in the legal project, whereas the work of associates is largely stripped of this form of professionalism. As a result, the work of associates is more subject to client influence than the work of partners.

Professionalism, therefore, is a contingency that (1) has its inherent formal elements (i.e.,

diagnosis, inference, and treatment); and (2) is constantly constructed through interactions between lawyers and their clients. By differentiating between its form and content, this contingent view of professionalism provides a new perspective for understanding professional work in relation to external influence. Focusing on workplace interactions, this eclectic view of professionalism is able to incorporate the internal and external, static and dynamic pictures of professional work. Although my emphasis in the present paper is the work of elite corporate lawyers, the applicability of this contingent view of professionalism is by no means restricted to this narrow sector of professional life. With a little sociological imagination, the professional work in medicine, academics, and other professions could all be explained by this perspective. Moreover, as a large number of professionals are now practicing in corporate work settings, the division of labor between senior and junior professionals also becomes an increasingly important issue, on which I have found some interesting patterns for future studies to test and build upon.

Some readers of the paper might have felt it to be overargued, as the corporate law market in China is still in its formative years (Michelson 2003). Indeed, to generalize conclusions about the nature of professionalism based on evidence from this nascent case is a very ambitious task for me. I would argue, however, that the multi-cultural and extremely diversified client types in the Chinese case provide a rare opportunity to observe the dynamics of client influence on lawyers' professional work and the contingent nature of professionalism. For corporate lawyers working in advanced market economies, as the variation in their client types would be much less salient than the Chinese case, I would expect corporate lawyers' work for different clients to be

less distinctive, but this does not imply that the social construction of legal work is not as strong. The image of “patronage” frequently observed by research on corporate lawyers in both Britain and the United States (Johnson 1972; Heinz and Laumann 1982; Nelson 1988, etc.) is supportive to the “content” part of the argument that I propose here. Meanwhile, the concepts of diagnosis, inference, and treatment originated precisely from observations on the Anglo-American professions (Abbott 1988), thus my findings in the present paper only strengthen its applicability. Further studies on the professional work of corporate lawyers in a wider range of social contexts would shed more light on the cross-national generalizability of my argument.

Given all the variations and dynamics discussed in the paper, it is very difficult to make any prediction for the future of the corporate law market in China. In this extremely diversified social, cultural, and political environment for corporate law practice, Chinese corporate lawyers in domestic law firms have developed a variety of adaptive measures to serve the demands of different types of clients and to maintain the balance between client influence and professional autonomy. It is doubtful to what extent transnational law firms from abroad could develop similar techniques and serve local enterprises equally well. Although today there have been over a hundred foreign law offices in China, the scope of their practice is still strictly controlled by the government. More importantly, because of their narrow client base, these transnational law firms still lack the knowledge and skills for adapting to the local work environment, which is crucial for the success of corporate law practice. Therefore, even if the current government control over the corporate law market in China is loosened, whether the large Anglo-American transnational

law firms could take over this market as they did in many other places (Dezalay and Sugarman 1995) is still a hard question to answer. After all, law is a localized practice and, without much change in the local environment (client types, state regulatory policies, etc.), transnational law firms could survive in China only by getting localized or specializing in some market niches in which the local character of the law is less important (e.g., FDIs, Banking & Finance, etc.).

The final implication of the paper goes back to the theoretical distinction between professional work and its social structure. Many efforts have been made to reconcile these two central aspects of professional life, either by showing the social differentiations of legal work (Heinz and Laumann 1982; Hagan and Kay 1995), by deriving the division of expert labor from the link between professionals and their work (Freidson 1970, 1986; Abbott 1988), or by conceiving professionalism as constructed and deployed in multiple arenas (Nelson and Trubek 1992). However, the structure/work distinction still persists in both theory and methodology, and it is difficult for researchers to fully incorporate both elements in one study. The present paper chooses to focus on the professional work of elite corporate lawyers, with the assumption that the social structure of the corporate law market has been well understood in previous sociolegal research. This assumption, of course, is inevitably to be challenged by future studies. Research on corporate lawyers and on professions in general will continue to grow along the two dimensions, hopefully not as imbalanced as before.

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Table 1. Classification of Major Existing Views of Professionalism in Three Dimensions.

	Arena	Openness	Stability
Legitimate control over professional work (Freidson 1970)	Workplace	Endogenous	Static
Power in producer-consumer relationship (Johnson 1972; Heinz and Laumann 1982)	Structure	Exogenous	Static
Bureaucratization of collegial ideals (Nelson 1988; Galanter and Palay 1991)	Structure	Endogenous	Dynamic
Power and conflict in workplace interactions (Sarat and Felstiner 1995; Shapiro 2002)	Workplace	Exogenous	Dynamic
Collegial control in professional communities (Mather et al. 2001)	Workplace	Endogenous	Dynamic

Figure 1. An Analytical Framework on the Form and Content of Professionalism.

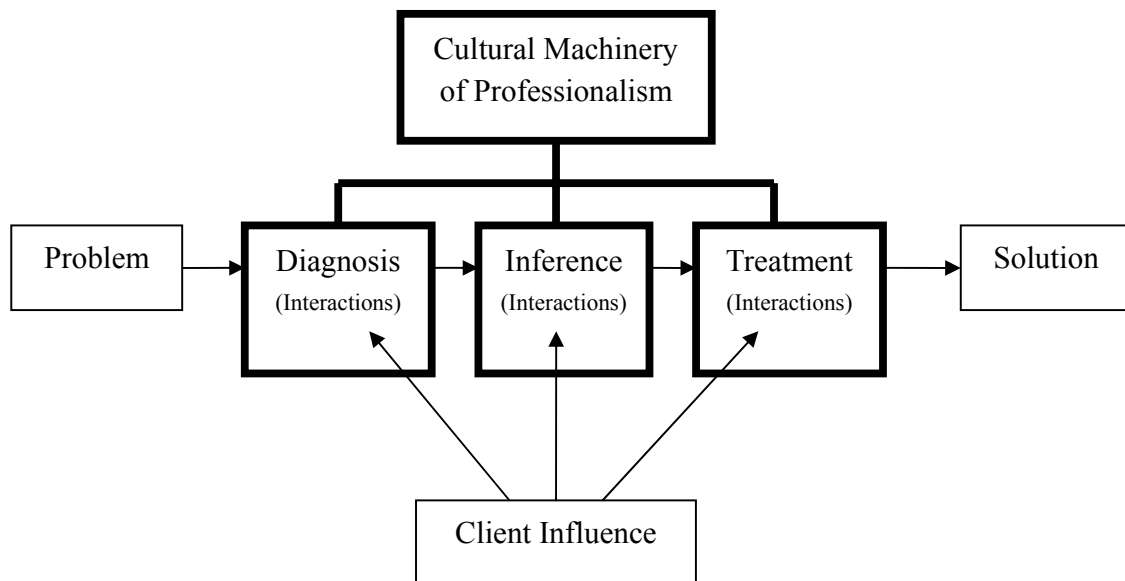


Table 2. Major Descriptive Information about the Six Law Firms in Beijing.

	Firm A	Firm B	Firm C	Firm D	Firm E	Firm F
Scope of Practice	General	General	General	General	Specialty	Specialty
Leading Fields of Practice	FDI, B&F, S	B&F, S, FDI	RE, L&A	S, L&A	S	S
Number of Total Staff (approx.)	150	300	200	150	70	40
Number of PRC Lawyers	62	76	55	58	25	14
Number of Partners	25	62	29	21	18	12
Organizational Structure	Bureaucratic	Bureaucratic	Bureaucratic	Traditional	Traditional	Traditional
Work Group Structure	Project Teams	Project Teams	Partner Teams	Partner Teams	Partner Teams	Partner Teams
Managerial Decision-making	Bureaucratic	Hybrid	Hybrid	Traditional	Traditional	Traditional

Notes:

(1) Abbreviations:

FDI = Foreign Direct Investments

B&F = Banking & Finance

S = Securities

RE = Real Estate

L&A = Litigation & Arbitration

(2) Numbers:

Because the number of personnel in mega-law firms is always changing, it is difficult to calculate the exact numbers of total staff (including partners, associates, and other staff) – even the managing partners in the six firms could not provide the exact numbers. For the number of PRC lawyers, the numbers given here are calculated from the official 2004 Beijing Lawyers Registry. In fact, these official numbers are much less than the total numbers of lawyers in the six firms, because some lawyers, especially those specialized in foreign related work, hold foreign licenses. Meanwhile, many junior associates in the firms have not yet acquired the PRC license. Therefore, the actual numbers of lawyers in the six firms all far exceed the statistics on the official registry. The numbers of partners are as of December 2004 and acquired through follow-up communications with the interviewees.

Table 3. Variations in Client Types through Lawyers' Perceptions.

	Foreign Corporations	State-Owned Enterprises	Private Enterprises
Legal Department	Yes, Powerful	Yes or No, Weak	None
Managerial Structure	Dispersed	Highly Bureaucratic	Traditional
Agency and Communication	In-House Counsel Professional	Department Managers Powerful and Active	Boss Modest and Passive
Non-Legal and Illegal Behaviors	Rarely Avoid and Detest	Frequently Abide and Promote	Frequently Abide and Promote
Billing Method	Billing by Hour	Billing by Case	Billing by Phase