

heart of their endeavor, they were performing a mission quite consistent with what we would see as the highest ideals of professional life today. That is, they were drawing on their expertise in a complex specialized body of knowledge (Confucian ethics), as tempered by practical wisdom, to provide their best independent judgment in a manner that served their client (the emperor) but also was true to a notion of the broader public good. That there were profound moral as well as psychological problems in endeavoring to serve “two masters,” or that many such scholar-officials, in practice, proved to be self-serving, ought no more lead us to overlook the significance of their example than comparable moral challenges or practical shortcomings should lead us categorically to dismiss out of hand today’s would-be legal, accounting, or medical professionals.

Although the other chapters in this volume are focused on post-imperial China, there are indications that Winston’s argument had analogues in lines of endeavor beyond officialdom prior to the introduction of foreign ideas of the professions in the latter half of the nineteenth century. In her path-breaking study of popular engagement with the law in the Qing dynasty (1644–1911), historian Melissa Macauley depicts legal advisors known, somewhat pejoratively, as *songgun* or litigation tricksters—a category also discussed by other historians, including Bill Alford, Mark Allee, Kathryn Bernhardt, Allison Conner, and Philip Huang, among others (Macauley 1998; and the essays in Bernhardt and Huang 1994). Although clearly lacking many of the indicia of the modern professional—*songgun* were tolerated rather than authorized by the state, and developed informally whatever expertise and ethos they may have shared—it is also evident that they intermediated between state and society, developed a craft that blended technical expertise and hands-on judgment, and at least in some instances brought to their work concerns other than simply the pecuniary. Similarly, the rapidity and sophistication of early twentieth century Chinese responses to the initial forays of foreign professionals, depicted by Peter Rowe and Bing Wang, Zhaodong Jiang, and Bill Hsiao in their chapters in this volume and by Xiaoqun Xu in his impressive book on the history of the Chinese professions, suggests that at least in architecture, accounting, and medicine, there were individuals with expertise in complex areas of knowledge who saw themselves as having a cohesion and integrity that was threatened by the introduction of foreign claimants (Xu 2001).

The introduction into China of foreign visions of the professions provides a second prism through which to think about professionalism more generally. In general terms, the initial absorption of Western professionalism went fairly smoothly in Republican China, with professional societies in law, medicine, engineering, and architecture springing up and working effectively as vibrant contributors to civil society. In the mode of Western professions, they produced a number of individuals who took an active part in political and civic life, with the most notable example being Sun Yatsen, who was trained as a Western doctor. However, this was often accompanied by fairly

only because they never attained unambiguous esteem to begin with. The possibility of serving a narrow clientele is one key reason why professionalization needs to be looked at from the outside as well as the inside. We do not want to forget that professional status has real consequences for the allocation of society's rewards, tangible and intangible. The exercise of complex judgment gives professionals a certain authority and hence power over others. The deployment of expertise can be a weapon that groups use to gain ascendancy; hence, internal debates among professionals may turn out to be struggles for power rather than genuine debates about the nature of their civic commitments. For this reason, among others, the state has an interest in exercising oversight.

Into this mix comes China.

The professions in China

Given the impact that China has had on so many other areas of contemporary life and thought, it would be surprising were the Chinese case not to throw into bold relief challenges of the type described above that lie at the heart of professionalism as conceptualized and lived in the West. China, after all, is embarked upon an epochal effort at national transformation, for lack of a better term, and is looking to the professions to play a central role in this historical undertaking. The period since the end of the Cultural Revolution has seen enormous change not only in such obvious respects as the size and income of certain occupational groups, but as well with regard to the internal organization, relationship to the state, and governing standards. In this section, we consider five ways in which the Chinese experience illuminates core challenges in thinking about the professions and professionalism in general.

First, the Chinese experience demonstrates that, although professional identity may crystallize at a specific (if extended) moment in time, professionalism typically emerges out of pre-existing practices—"law work," "medical work," "architectural work," and so on, pre-existing professionalization. So, although the assumption of a professional identity marks a crucial turning point in social history, we need to keep in mind the continuity with indigenous antecedents. At least some parts of the mission that we see professionals as singularly equipped to discharge showed themselves in imperial China. Perhaps the best example—raising strong questions about the oft-asserted contention that professionalism is a product of the modern, industrial West—is the one provided by Confucian scholar-officials who are the subject of Ken Winston's contribution to this volume. Traditional scholar-officials may have lacked certain of the more concrete indicia that we associate with autonomy in the contemporary West, but that did not prevent them from having their own distinct professional organization and self-generated rules of professional conduct—perhaps even to a greater extent than is true for some groups today, such as military officers. As Winston observes, at the

heart of their endeavor, they were performing a mission quite consistent with what we would see as the highest ideals of professional life today. That is, they were drawing on their expertise in a complex specialized body of knowledge (Confucian ethics), as tempered by practical wisdom, to provide their best independent judgment in a manner that served their client (the emperor) but also was true to a notion of the broader public good. That there were profound moral as well as psychological problems in endeavoring to serve "two masters," or that many such scholar-officials, in practice, proved to be self-serving, ought no more lead us to overlook the significance of their example than comparable moral challenges or practical shortcomings should lead us categorically to dismiss out of hand today's would-be legal, accounting, or medical professionals.

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intense competition between expatriate and local professionals, each with a mixture of idealism and self-interest, with the ex-pats decrying what they saw as the locals' failure to meet international norms and the locals attacking the ex-pats for being unable to bring their norms into conformity with local circumstances. (The contention over traditional herbal medicine is paradigmatic.)

Far from only involving the provision of a universal, neutral set of skills rising above national or ethnic divides—which would seem to be an implication of at least some of the theoretical writing about professions—the chapters in this volume by Xu, Rowe and Wang, and Jiang demonstrate that the entry during the late Qing and early Republican era of foreign professionals brought with it new understandings of core undertakings from adjudication to design and engineering to book-keeping that were variously embraced, adapted, and resisted by the Chinese. In effect, the foreign professions became a prime vehicle for the communication of new ideas and values about such fundamental matters as the meaning of beauty, safety, and thoroughness, the relationship of state and society, as well as a battleground between domestic and foreign elites and, at times, between different sets of Chinese actors. Jiang's chapter on accountants demonstrates nicely the tension of foreign actors serving simultaneously as models and rivals, providing "techniques . . . useful for enhancing . . . knowledge and expertise" even as they engendered opposition to those who conveyed such techniques, if not also, at times, to the techniques themselves.

Nor is this model/rival tension without its contemporary counterparts, even if its outlines are easier to discern with the benefit of historical hindsight. The chapters in this volume by Suzanne Gottschang about nurses and Bill Alford about lawyers, among others, illustrate challenges in adapting to a Chinese setting seemingly universal understandings of what it means to be a professional. Gottschang's portrayal of Nurse Bai vividly illustrates the shoals that a conscientious Chinese nurse must navigate as she endeavors to introduce international norms and practices while remaining loyal to her Chinese constituency and procedures and values with which they are accustomed. Similarly, Alford's chapter illustrates how one group of legal-service providers, closer at least in their self-conception to an international model of the professional, enlist the foreign in their efforts to secure dominance locally over others more enmeshed in what are seen as local practices.

Moving in a somewhat different direction is the case of Chinese journalists. As Judy Polunbaum points out, although journalism education in China borrows heavily from Western sources, the actual influence of Western models in practice is very weak—not simply because of the party's control over the media but from the continuing appeal of a longstanding conception of the proper role of intellectuals in society. This role, in a word, is to mediate between the rulers and the people, guiding the former to help them better achieve good government, educating the latter to better understand the actions of their rulers. Accordingly, some Chinese journalists reject

the Western idea that the press is the watchdog of government in an adversarial relation to dominant political institutions, and rather see themselves having the responsibility to play a constructive role by promoting positive values, such as social harmony and respect for authority, and thereby to foster civic consciousness. This alternative conception is of interest because it demonstrates how the ethos of a profession, and not just journalism, can be elaborated in communitarian rather than individualist terms. It also may have special salience in developing countries while nation-building is foremost on the political agenda. (The only, meager equivalent in the United States was the apparently brief flurry of interest in so-called "public journalism" in the 1990s.)⁵

The role that the Chinese state has played in the formation of the professions since the end of the Cultural Revolution in 1976 suggests a third respect in which China's experience raises probing questions about our understanding of professions. Even discounting for the tendency of U.S. observers to see the professions primarily as emerging from civil society, thereby slighting the ways in which the state constitutes them (and even more so in Europe), the extent to which the Chinese state consciously embarked on a plan to establish the professions as it sought to rebuild the nation in the aftermath of the Maoist period's devastation is without precedent in world history. This is perhaps most obvious with respect to individuals providing legal services. In 1977, China found itself with some 3,000 lawyers—the vast majority trained, if at all, with a Soviet model in mind that presumed a planned and largely closed economy and a similarly constricted social order. As Alford indicates in his chapter in this volume, to respond to the perceived need for a broader array of domestic economic relationships, a serious engagement with the international marketplace, and a (at least slightly) liberalized set of social arrangements, China's senior leaders determined that the country needed to expand the number of individuals engaged in the delivery of legal services more than fiftyfold within a generation—and launched the steps necessary to reach this objective. And in little more than a generation, indeed, the bar expanded to more than 150,000 members, and continues to grow apace. (Even so, this would be fewer lawyers than in the United States, both in absolute numbers and, of course, in proportion to the population.)

Providers of legal services are by no means unique in this respect. Perhaps this is most obvious in Yu Xingzhong's and Xiaoqun Xu's studies of the Chinese judiciary, the expansion of which from very modest numbers to more than 200,000 during the last quarter of the twentieth century the Chinese leadership saw as necessary to staff the legal system it was intent on developing. But there are analogues in almost every line of endeavor addressed in this volume. Witness Zhaodong Jiang's examination of the Ministry of Finance's very conscious plan to foster accountants as an important element in its effort to increase the sophistication of Chinese companies and encourage foreign-related economic activity, leading to the growth in certified public accountants from 500 in 1986 to more than 130,000 today. Or Margaret Pearson's

treatment of the support lent by the authorities to the formation of associations by Chinese businesspeople. Or even the state's decision, recounted by Richard Madsen, to train more members of the clergy as it came in the post-Cultural Revolution era to see a role in national reconstruction for religion, or at least the so-called patriotic version thereof.

The Chinese party-state's rationale and plans for launching these massive efforts for the construction of professions and its unambiguous role, at least initially if not longer, in defining and supervising them raises fundamental questions not only about the vision of professions as emerging from and expressive of civil society but as well about such core values as autonomy and independence. Certainly, at least through the mid-1990s, as Zhaodong Jiang's chapter on accountants and Judy Polumbaum's on journalists suggest, we should be under no illusion that, whatever the rhetoric, the party-state understood these actors instrumentally—as discharging purposes the party-state had in mind—and structured organization and oversight of them accordingly. The consequent temptation is to be dismissive—to see these actors as not qualifying for the designation of professional. But without excusing the party-state's authoritarian nature or lapsing into a simplistic cultural relativism, we need to ask ourselves whether the degree of autonomy that we celebrate, at least in the ideal of professionals in the United States and some other economically advanced nations, is wholly appropriate.

For one thing, such a critical stance overlooks professionals for whom a formal relationship to government is essential to the role. We mentioned above the example of the U.S. Solicitor General, a contemporary analogue of traditional scholar-officials in having a dual responsibility to uphold professional norms while serving a political superior. What is crucial in such cases, we observed, is whether the unavoidable dependence on the state is separable from control over professional issues: setting standards, identifying best practices, and being able to act on them.

Further, Bill Kirby's account in this volume of the intimate role of engineers in the current regime raises the intriguing question where the sense of civic commitment, as a defining feature of professionalism, comes from, in a profession that tends to regard its competence as only technical. If guidance toward achieving public value is not provided by the state, who then orients the professional in the right direction? This question has special salience for a developing state at an early stage of takeoff, especially one emerging, as China was, from years of external interference and devastation. But we need to ask, also, whether the striking blend of engineering skill and statecraft may not reflect a fundamental cultural difference exhibited in many of the emerging professions in China—that professionals have duties to society as a whole, not just to their clients. Some of the chapters in this volume suggest, at least, that we should be cautious in extrapolating from our own experience, or idealized visions of our experience, and ask whether beyond a certain point the absence of autonomy truly deprives would-be professionals of much of their rationale and legitimacy. If professional legitimacy turns out, in good

part, to actually contribute to important public values, we may not get the answer we initially expected. As Rowe and Wang observe for architecture, a “two-way street” that balances official oversight with openness to professional concerns may serve both sides reasonably well.

If the degree of state definition and direction of Chinese lawyers, judges, journalists, accountants, clergy, and other skilled workers in the first post-Cultural Revolution generation raises obvious questions about autonomy and through that professionalism more generally, the most recent decade surfaces what may be less apparent but no less vexing concerns that constitute a fourth contribution that the Chinese example provides to thinking generally about the professions. At first blush, the period since the mid-1990s would seem to be a time in which the Chinese professions have flourished and moved more in alignment with definitions drawn from the experience of democratic states. Professionals increasingly, in most lines of endeavor, are in private, rather than state, employ; are self- or market- rather than state-regulated; and are otherwise conceiving of themselves as independent actors. One can see this, for instance, with the bar, which is now almost entirely private; with certified public accountants who as of the early twenty-first century were working in some 4,300 firms; and with business leaders and their business associations. And yet the very forces that would seem to have liberated would-be Chinese professionals from the direct and heavy hand of the state contain challenges of their own—in many respects reminiscent of concerns expressed about professionals in the West. At least in some instances, these push us to reassess matters we might regard as settled in our own experience and so raise questions about what we consider professionalism as requiring, and the extent to which such definitions should apply as we look beyond the national settings in which they first took shape.

Perhaps the most interesting involves the very question of what we mean by public and private, and what the implications of such uncertainty could be for professionals as navigators of that divide. Most theoretical writing about professions and professionalism in the West, including that by scholars steeped in critical methodology, assumes something of a coherent distinction between public and private, even if the argument is made that the line is an artificial construct over which there are battles about periodic reconstruction. For instance, many of the sharpest academic critics of the legal profession in the West take it to task for utilizing public institutions to advance private interests. These criticisms imply some measure of clarity about where one breaks off from the other.⁶

In today's China, it is arguably a good deal harder to discern where the public stops and the private starts, in part because the party-state is so deeply enmeshed—imperceptibly, as well as obviously—in what is labeled private; in part because efforts to be effective within this setting mean that one cannot be oblivious to this presence; and in part because popular understanding of the boundaries is so fluid. The Chinese party-state continues to make its presence felt in entities that are ostensibly expressions of civil society, such as the

in China needed a “one adjustment, two strengthening” (*yige tiaozheng, liangge jiaqiang* 一个调整, 两个加强) undertaking – whereby rice-roots legal workers ought, at most, to focus their attention on the countryside and then with a reduced ambit of responsibilities (Zhang 2002).

Not surprisingly, commencing in the early years of the twenty-first century, the Ministry of Justice undertook to act on several of these ideas. Most notably, soon after the first administration of the specialized national examination for rice-roots legal workers – in which some 105,000 of China’s roughly 120,000 rice-roots legal workers took part – the Ministry cancelled subsequent administrations of the test, even as it moved to offer a unified national examination from 2002 for lawyers, judges, and procurators that did not include rice-roots legal workers. Within the Ministry, after a debate lasting more than one year, senior officials shifted responsibility for rice-roots legal workers from the office charged with rice-roots level services (in which they were a principal focus) to that overseeing lawyers and notaries (in which they were, in effect, shunted to a small sub-section) (Sifa bu 2003). Looking beyond Beijing, the Ministry issued an Opinion in 2003 that reiterated that lawyers were to be the principal providers of legal services in large and medium-sized cities (Sifa bu 2002). Going even further, the Administrative Licensing Law of 2004 (*Xingzheng xuke fa* 行政许可法) technically abolished the licensing of rice-roots legal workers altogether.¹¹

One seeming consequence of this was a decline during Zhang Fusen’s tenure (which ended in 2005) and that of his successor, Wu Aiyang, in the number of rice-roots legal workers.¹² After peaking at almost 122,000 in 2000, their numbers declined by 12,919 in 2001 and had dipped below 80,000 by 2006 (*Zhongguo sifa xingzheng nianjian* 2001: 8; S. Liu 2008b).¹³ To be sure, however, as with so much of Chinese law, enforcement of these Ministry measures was uneven, whether because of chronic *tiao-kuai* coordination problems (referring here to the fact that sub-national offices of national agencies operate under the aegis of both said national agency and local authorities) (Lieberthal 2004; Chen 2008), the fact that rice-roots legal workers generate considerable revenues for local governments which are therefore hesitant to hem them in, or other factors.¹⁴ Anecdotal evidence suggests that local justice bureaus have yet to replicate the transfer of oversight responsibility for rice-roots legal workers carried out at the Ministry level, that at least some sub-national units of government have continued to test rice-roots legal workers, and that there has been resistance at the local level to efforts to curtail their activities.¹⁵ And the complaints of lawyers have continued largely as before (bwb 2007).

The question of the legal status of rice-roots legal workers arose again during the drafting of the substantial revisions to China’s Lawyers Law that were adopted in 2007 and took effect as of June 2008. Reports indicate that there were efforts to include a so-called “Article 64” that would have acknowledged that the state had “established (*sheli*) rice-roots legal workers and provided for their separate regulation by the State Council (Y. Zhou 2007).

Not only did that provision – which would have been protective of rice-roots legal workers – fail to make its way into the final version of the new law, but Article 13 of the Lawyers Law was revised to indicate that “A person who is not certified to practice law . . . except as otherwise provided for by law, shall not represent someone in litigation or serve as defense counsel” (Quanguo renda changweihui 2007: Art. 13). In general, sub-national-level officialdom appears to be reading this provision so as to restrict the ambit of rice-roots legal workers, with some provincial authorities also facilitating the relocation from the cities to the countryside of the legal service offices from which rice-roots legal workers dispensed service (Anhui sifa ting 2007).¹⁶ Rice-roots legal workers and lawyers are in some disagreement as to how extensively the new Article 13 has taken hold, with the former claiming that even prior to its official effective date, the new law had wrought economic hardship on rice-roots legal workers and limited citizen access to needed services, whereas the latter continue to express concern about the need to combat improper practices by rice-roots legal workers (Wu 2008; Y. Zhou 2007; Puyang shi lüshi xiehui 2008). Indeed, one defender of rice-roots legal workers has gone so far as to claim that by November of 2007 more than 200,000 such workers were already on the verge of losing employment (Li: 2007a) (which would be remarkable, given that Liu Sida, in his recent book, indicates that there were no more than 80,000 rice-roots legal workers as of 2006) (S. Liu 2008b: 232).¹⁷

At first blush, the effort to hem in, if not eliminate, rice-roots legal workers would seem to represent a triumph for professionalism, even taking account of the ways in which for lawyers in China (as elsewhere) efforts to protect professionalism may also involve efforts at professional protectionism (Posner 1998). Rice-roots legal workers, we are told, lack the training, expertise, sense of professional responsibility toward clients (and the justice system), independence, and capacity for self-regulation of lawyers, and so should yield to lawyers when it comes to the provision of all but the most mundane of legal services (if even that) (Fu 2004: 94–96). Nor is this vision idiosyncratic to PRC lawyers, as foreign advisers from throughout the world – be they from multilateral development agencies, foreign governments, foundations, academe, law firms, or non-government organizations – from throughout the world have also been endeavoring to impress upon the Chinese that the model for the provision of legal services, whether for businesses or indigents, ought to be highly trained, professionalized personnel (McClymont and Golub 2002). It is revealing, for instance, that even though a major Ford Foundation study of its worldwide efforts to promote justice is entitled *Many Roads to Justice* it contains no mention of rice-roots legal workers in its 37-page chapter on China (McClymont and Golub 2002). To be fair, in a thematic chapter entitled “Nonlawyers as Legal Resources” the Ford report does make passing reference to Chinese paralegals, but underlying its extensive work promoting legal professions in the PRC has been a somewhat idealized vision of the lawyer in economically advanced Western societies and especially the United States. In this respect, it is akin to the bulk of what

If one accepts the ideal of facilitating citizen access to justice as the most powerful rationale for professionalism in law – as I believe one can without assuming that this compels China to emulate the particular American iteration of professionalism advanced by people such as Kronman²⁰ – one would be hard-put in a dispute over legal professionalism in China to ignore the question of the extent to which the legal needs of the populace are being met. Obviously, the question of unmet legal needs is highly speculative, especially if one imagines that problems deemed in one society to require the assistance of legal professionals might, in another context, be addressed via politics, administrative mechanisms, or civic action.²¹ And at a more mundane level, for all the statistics on lawyers' work, data about access to legal services remain fragmentary, as neither the Chinese government nor the All China Lawyers Federation indicate how many of the nation's roughly 150,000 lawyers practice in rural China or service the vast and growing migrant populace or other urban poor.²²

What does seem clear, even taking account of China having what Benjamin Liebman has described as more of a commitment to legal aid than many other nations at a comparable level of economic development, is that vast swaths of Chinese society lack access to lawyers and that there is no indication of lawyers moving in that direction even as they seek sharply to curtail, if not eliminate, rice-roots legal workers who have had as a prime function facilitating access to justice for that very population (Liebman 2007b: 311–56). The partial information that is available suggests that lawyers are few and far between in rural China – which remains home to the vast bulk of China's population, notwithstanding the use of so-called “148” hotlines intended to provide basic legal advice to ordinary citizens (which, in any event, are often manned by rice-roots legal workers). In March of 2004, then Justice Minister Zhang indicated that 206 (of China's some 2,000 counties) lacked even a single lawyer – to which one might add that even more rural Chinese counties appear to have only one or two lawyers (if data from Guangxi and Guizhou are at all representative) (Zhang 2004a). The Xinhua News Agency reports that as of mid-year 2004 in Hubei, Guangxi, and Guizhou provinces, more than three-quarters of lawyers were concentrated in large and medium-sized cities while a 2005 study notes that the paucity of lawyers in the southwest (with Sichuan, which has a population larger than that of France, having 5,783 lawyers) persists (Tang, Zhang, and Han 2005). A report by a Hainan governmental agency endeavors to advance the cause of rice-roots legal workers by noting that over 95 per cent of that province's lawyers live in the two large cities of Haikou and Sanya.²³ Former Peking University law dean Zhu Suli, in his much-noted recent book on the law in rural China, observes that there were few lawyers in the areas he studied and that, in any event, the rural populace often could not distinguish between judges, lawyers, rice-roots legal workers, and even the public security forces (Su 2000: 303–19). Chinese popular media contain accounts of how the populace is availing itself of citizens, such as the blind Shandong activist Chen Guangsheng, seeking

themselves to utilize the law, in the absence of legal representation, to fight for social justice (Zhu 2005; Cohen 2006). And there is little evidence to suggest that the situation of the urban under-class is any better – indeed advocate Chen is as celebrated for taking on the Beijing transport authority as he is for his rural work (Gao 2004).

Nor are the prospects large that there soon will be an influx of lawyers willing to take on such clientele, notwithstanding Ethan Michelson's work suggesting that at least some Chinese lawyers find themselves deeply worried about economic issues. Although admittedly anecdotal and based on a skewed sampling, conversations I have had with the deans of two of China's foremost law schools and faculty from a number of other schools failed to yield a single example of a recent graduate who had decided to relocate to the countryside. Indeed, the question itself was seen as absurd.²⁴ Nor, even discounting for the elite nature of such institutions, is there evidence of which I am aware of urban lawyers taking up permanent residence in rural China or in any significant number specializing in the problems of migrants to the city.²⁵

In the absence of a bar accessible to rural Chinese or willing to take the cases of the urban underclass, rice-roots legal workers serve an important function (Fu 2004: 100–101; Y. Wu 2006: 67). They provide services to millions of citizens. Official statistics indicate, for example, that in 2005, rice-roots legal workers provided 5,045,867 consultations, handled 663,661 matters not involving litigation, “settled” 618,463 disputes, and represented litigants in 646,424 “lawsuits” – all in addition to manning so-called “148” legal hotlines, assisting local judicial officials on occasion, and otherwise interfacing between citizen and state (*Zhongguo sifa xingzheng nianjian* 2006: 294). At times, it would seem, those services have been rendered at relatively low cost, in some instances a third to a tenth that of lawyers, owing perhaps to the fact that the salaries of some rice-roots legal workers have been covered by the state (Fu 2004: 100–101). And the fact that many rice-roots legal workers are drawn from the lower ranks of the local bureaucracy and are, in theory, limited to working within a tightly circumscribed area would seem, anecdotal data suggest, to connote a familiarity with local officialdom and with local custom and to facilitate an ease of access and an informality in resolving disputes – qualities which may be of particular potential use in serving a client base that generally lacks substantial means, is not especially interested in paying for legal assistance, and is cognizant of living in a long-term, repeat-player relationship with the local authority (Qiuju 2007).²⁶ Indeed, the very difficulty that the Ministry of Justice has experienced in its efforts to curtail the activities of rice-roots legal workers may be suggestive of the gaps they fill in the provision of legal services.²⁷

To take heed of the role of rice-roots legal workers and to make an argument for their on-going utility is not to romanticize the Chinese peasantry's interaction with the lowest levels of officialdom. Some scholars, most notably Zhu Suli, have been so determined to portray the virtues of the informality

4 Judicial professionalism in China

From discourse to reality

Yu Xingzhong

Introduction

In July 2002 the Supreme People's Court of the People's Republic of China (PRC) issued its Several Opinions on Strengthening the Professionalization of the Judicial Corps (Opinions), formally ushering in a judicial professionalization drive to achieve fair and efficient administration of justice (Supreme People's Court 2002b). Scholars, judges, and government officials have expressed high expectations as well as serious doubts about the possibility of a happy marriage between judicial professionalism and Chinese reality (L. Wang 2004; Y. Wang 2004; Yan 2004; Xu 2004; Lu 2008).¹ What could judicial professionalism possibly mean for a judicial system still largely controlled by political forces, structurally resembles an administrative hierarchy, and is financially dependent on local governments (Liu 2003: 206–65)? What could it possibly mean to the elevation of professional competence of a judicial corps, most of whose members do not have much legal education due to various reasons, historical or otherwise?² What kind of judicial professionalism do Chinese officials and scholars have in mind in the present judicial professionalization drive?³ Is the Chinese version of judicial professionalism a mere replica of the liberal model embraced by American judges or an alternative to it? These and other important issues deserve a careful analysis, however preliminary it may be.

Six years later, these questions remain unanswered and the debates among Chinese scholars seem to have become even sharper, despite events like the replacement of Xiao Yang by Wang Shengjun, who had no legal education, as the president of the Supreme People's Court and the chief grand justice. The official position toward judicial reform now leans in the direction of various forms of judicial populism, as has been demonstrated in the present campaign on ideological correctness, but the professionalization drive continues.

This chapter attempts to understand the complexities of this new phenomenon in Chinese legal reform, without reflecting on the merits or demerits of legal professionalism in general. The Chinese case of judicial professionalism, however, may be useful for a better understanding of the nature of

professionalism and, perhaps, even some inspiration for improving professional services that are important constituent elements of global social development.

In a general sense, it is not clear whether professionalism is only connected with the rise of capitalism or is a universal paradigm for social development, regardless of types of social systems and stages of social progress. Professionalism may be co-incident with modernity and the rise of capitalism. Judicial professionalism and indeed the formal legal process as a whole may be necessary for a market economy and a society of strangers. For some countries like China that have had very different experiences from those of the West, judicial professionalism may not be a necessary part of social life. Professions like accounting and medicine may be different, but the initial Chinese experience with judicial professionalism has shown that it does not seem to be vital for the delivery of justice for the majority of the populace and the development of Chinese society (Zhu 1998: 429; Zhu 2002: 398–417). Even if it has a role to play, it may be limited to economic activities, business transactions, and financial regulation. For civil disputes that involve daily life experiences and take up most of the work of the judiciary, judicial professionalism may not be absolutely necessary, as those disputes are mainly solved via mediation in a non-adversarial manner.

The chapter contains three sections. The first section presents a short discussion of the current discourse on judicial professionalism by Chinese legal scholars and judges in an effort to try to understand the conception and core values of judicial professionalism advocated by Chinese officials and scholars. The discussion identifies several dimensions of that discourse and provides comments on them. The section then moves on to pointing out the core values articulated by Chinese legal scholars, by which judicial professionalism is to be evaluated. The discussion is put into a comparative context with the American liberal view of legal professionalism as a contrasting perspective.

The second section looks at China's judicial reality to identify some of the major difficulties that may frustrate any attempt at judicial professionalization in whatever form, such as politicization of the judiciary, bureaucratization of the administration of justice, local protectionism, and judicial populism. It is against the backdrop of these difficulties that the cultivation of Chinese judicial professionalism must unfold.

The third section looks at some current efforts made by courts at various levels to promote and embody judicial professionalism in their actual work. The respective roles of the Supreme People's Court, the intermediate courts, and the basic-level courts are discussed in connection with specific cases and examples to show the complexities of the reality and how the judicial professionalization drive is received at different levels of the judicial hierarchy and how factors such as caseloads, economic conditions, and traditional culture bear on the judicial professionalization drive.

It seems that the discourse on legal professionalism by Chinese officials

and scholars is now dominated by Western liberal legal theory emphasizing judicial independence and legal professionalism, coupled with Chinese legal pragmatism which seeks to strike a balance between political control and judicial independence (Qian 2003: 18–27). The reality, however, does not completely reflect the discourse. In the current judicial reform drives, three types of trends are discernable, representing the mentalities of different sectors of the judiciary predefined by their positions in the judicial system. These are official policy defenders represented by the Supreme People's Court and the Higher People's Courts, which assume dual responsibility to the political authority and to the administration of justice and which endorse judicial professionalism only to the extent that it does not break away from, or conflict with, the official political line; the eager experimenters in judicial professionalism represented by a limited number of judges mainly serving in the intermediate and higher courts or courts having jurisdictions over matters involving foreign parties or special work; and the dispute resolvers anchored in traditional Chinese culture that did not have a high regard for professionalism, represented by the majority of PRC judges at the grassroots-level courts. Taken as a whole, the general picture of judicial reform in China does not seem to be heading in the direction of judicial professionalism as advocated by Western and Chinese legal scholars. In addition, various measures adopted by the Supreme People's Court and other controlling courts facilitate judicial practices that are contrary to professionalism.

The chapter concludes with a note of cautious optimism for the future of judicial professionalism in China's legal reform and re-emphasizes the importance of overall reform of political, economic, and legal institutions to judicial professionalism of whatever form, purely liberal or with some Chinese characteristics. The conclusion also attempts to offer some evaluation of the current status quo, pointing out whether the judicial professionalism advocated by Chinese officials and scholars is only transitional in nature or whether it poses an alternative to the Western concept of judicial independence and professionalism.

Discourse on judicial professionalism in China

As the Chinese legal reforms in the last two decades or so have been heavily influenced by liberal legal theory and practice, it is appropriate to briefly note the concept of legal and judicial professionalism in America before moving on to discussing its Chinese counterparts.

Liberal Concept of Professionalism in America

There is an extensive scholarship on professionalism by Western scholars (Abbott 1988; Abel 1986: 1–41; Barker 1992: 73–99; Dezalay and Sugarman 1995; Flood 1995; Freidson 1983; Johnson 1972; Kronman 1993; Parsons 1954; Perkin 2002; Posner 1993: 1–37; Rothman 1984: 183–206). In the

narrowest sense, a profession is a calling requiring specialized knowledge and often long and continuous academic preparation. Professions, according to one definition, include a broad class of occupations that are characterized by “trained expertise and selection by merit, a selection made not by the open market but by the judgment of similarly educated experts” (Perkin 2002). These professions are built on human capital, and typically involve some recognition of qualifications and some sort of career hierarchy (Kritzer 1999: 713–59). A professional is a person engaged in one of the professions characterized by or conforming to the technical or ethical standards of a profession, exhibiting a courageous, conscientious, and generally businesslike manner in the workplace. Professionalism is the conduct, aims, or qualities that characterize or mark a profession or a professional person (*Oxford English Dictionary*).

Legal professionalism is the benchmark to which lawyers and judges subscribe in America. Dean Roscoe Pound said that a profession is “a group . . . pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood” (Hillman 1990: 894). In 1998 former American Bar Association president Jerome J. Shestack outlined six criteria for lawyers to follow in the pursuit of excellence. They are: ethics and integrity, competence combined with independence, meaningful continuing learning, civility, obligations to the justice system, and pro bono service. He points out,

Of course, it is easier to advocate professionalism than to practice it. But speaking and writing about professionalism is not a vain exercise. I believe that frequent and frank discussion of the issues and elements of professionalism is an important way to highlight fidelity to our values. Discourse about the challenge and reach of ethics raises consciousness and encourages adherence to a higher standard of ethics.

(Shestack 1998: 70)

Justice O'Connor in a speech on the decline of legal professionalism in America emphasizes civility, grace, responsibility, and public service as the main values for the legal profession (O'Connor 1998: 5).

Judge Richard Posner is skeptical about the “professional mystique,” but he does not seem to oppose the generally accepted core meanings of a profession.

The hallmark of a profession is the belief that it is an occupation of considerable public importance, the practice of which requires highly specialized, even esoteric, knowledge that can be acquired only by specialized formal education or a carefully supervised apprenticeship, hence an occupation that cannot responsibly be entered at will but only in compliance with a specified, and usually, exacting protocol and upon proof of competence. Because of the importance of the occupation, and therefore the professional's capacity to harm society, it is often

during this period was the presence of an unfettered free market characterized by the crony capitalism that accompanied China's economic reforms. Corruption became widespread. Bribery played a significant role in determining which regulations were adopted, which regulations were enforced, who received which parcel of land for development, how much the current leaseholder of land received as compensation, who received appointments and promotions, and so forth. Under the same system, many sound health regulations were not adopted, resulting in misleading medical advertisements. This situation limits the patients' ability to identify the best-qualified practitioners and the most-efficacious drugs. In addition, many drug and food safety regulations are not enforced, thus leading to wide distribution of counterfeit drugs and harmful food products.

Given these changes in the broader social and economic context, how has medical professionalism changed? Prior to 1980, physicians worked under tight administrative controls, but medical school graduates were guaranteed jobs in the government- or state-operated hospitals and clinics. Hirings and promotions were managed by the government personnel system, and physicians were strictly supervised by public institutions under a uniform set of rules and regulations. The medical profession as a whole, as well as the individual physician, had little autonomy. Physicians were meant to perform like any state employee, operating under a set of bureaucratic rules. Compensation was based on seniority and had little relationship to workload or job performance.

Beginning in the early 1980s, the organizational environment for physicians changed dramatically. Two major developments are particularly noteworthy. First, private practice was no longer forbidden. Second, the organizational culture, goals, and management of public health institutions changed dramatically. Private commercial enterprises established hospitals and health centers that are currently flourishing by serving the increasing number of expatriates and affluent Chinese. Physicians can now set up their own private clinics and, most importantly, village doctors, upon whom the 850 million Chinese rural residents rely for their preventive and primary care, have largely become private practitioners. As such, private-sector hospitals, physicians, and village doctors are nearly autonomous, subject to minimum regulation and supervision. The establishment of private health care organizations provides medical professionals with the choice of practicing either in the public or in the private sector, depending on the relative compensation and professional opportunities. Table 5.1 indicates the recent growth of private medical practice in China.

Furthermore, the organization and financing of health care have also undergone radical changes, profoundly affecting physicians and village doctors. Previously, the Communist government had established a three-tiered organization for the delivery of health care for both the rural and urban areas and all health facilities were owned and operated by the government or by state enterprises. Prior to 1980, the government subsidized

Table 5.1 Percentage of for-profit medical institutions in China

Institution	2002			2008		
	Total	For-profit	Percentage of total	Total	For-profit	Percentage of total
Hospitals	17,844	1,792	10.0%	19,712	4,038	20.5%
City clinics	212,888	146,585	68.9%	173,777	132,250	76.1%
Village clinics	N/A	N/A	N/A	613,143	180,157	29.4%

Source: Ministry of Health (2009) 2009 *Zhongguo weisheng tongji nianjian*.

approximately 50 to 60 per cent of hospital costs. Physicians' salaries consisted of low cash remuneration, but high fringe benefits and job guarantees. The remaining revenue came from fee-for-service activities under a government-controlled price schedule, which was set below cost in order to make services affordable and accessible even for the poor and uninsured. Input prices were similarly controlled.

When China embarked on its economic reforms, like other transition economies the government experienced a drastic reduction in revenue, which in turn reduced its capacity to fund health care. By the early 1990s, government subsidies for public health facilities fell to a mere 10 per cent of the facilities' total revenue. To allow health care to remain affordable, the government maintained strict price controls and set prices below cost for basic services. At the same time, in an effort to keep the public facilities financially viable, the government set the prices for new and high-tech diagnostic services above cost and allowed a 15 per cent profit margin on drugs. These policies created perverse incentives for providers who had to make up 90 per cent of their budgets from revenue-generating activities, turning hospitals, township health centers, and village doctors into profit-seeking entities. Equally important, this price-setting approach created a leveraging effect whereby providers had to dispense seven dollars' worth of drugs to earn one dollar of profit. Consequently, providers began to over-prescribe drugs and tests, and hospitals raced to introduce high-tech services and expensive imported drugs that have higher profit margins (Liu and Mills 1999: 409–13). For example, 75 per cent of patients suffering from a common cold are prescribed antibiotics, as are 79 per cent of hospital patients – over twice the international average of 30 per cent (Zhou n.d.).

Providers are not the only ones exploiting the profit-making opportunities created by the recent transformation of the health care system. Pharmaceutical and medical supply companies offer kickbacks to hospitals and physicians for using their drugs or supplies (Rodwin 1993). One study reveals that kickbacks may be as high as 30 per cent (Wang 1995a, 1995b).

Further compounding the problem is collusion between providers and

pharmaceutical companies. Hospitals receive kickbacks from drug companies and the doctors' bonuses from the hospitals are often tied to these kickbacks. In rural areas, village doctors purchase expired and counterfeit drugs at low cost and sell them as authentic products at higher prices. Gradually, these corrupt practices have led many physicians, particularly surgeons, to accept illegal under-the-table payments (i.e., "red envelopes") from patients who want to ensure they receive good care. As a result of these phenomena, professional ethics have largely disappeared in the practice of medicine.

As such, Chinese public hospitals and physicians have become profit-seeking entities (Liu and Mills 1999: 409–13). Instead of focusing on the quality of patient care, most hospital directors focus on setting revenue targets for each service department, which then sets revenue targets for each physician. Because the majority of these revenues are earned from drugs and tests, physicians over-prescribe drugs and perform expensive tests to meet their targets and to increase profits. Over one-half of hospital revenue is derived from drugs (Ministry of Health 2009).

The transformation of public facilities into public, for-profit entities is not limited to hospitals. When the government reduced its financial support for public health organizations such as the Center for Disease Control (CDC) and maternal and child health (MCH) and village doctors, these entities turned to the market to survive (Hsiao and Liu 1996; World Bank 2005). As an illustration, the CDC opened outpatient clinics to treat common illnesses, rather than focusing on prevention. By 2005, 50 per cent of CDC revenue was derived from charges for treating patients (China National Health Economic Institute 2005). MCH stations built hospitals and clinics instead of concentrating on prevention and home visits to new mothers and babies, while village doctors became profit-seeking private practitioners. Although the government designated village doctors to serve as the front-line troops for prevention, immunization, health education, and basic treatment, it offered them low or no salaries. Most of their income was derived from prescribing and dispensing drugs and giving IV injections to patients suffering from the common cold or flu (Zhou n.d.).

Consequences of the transformation

There were serious consequences to the practice of medicine resulting from the radical organizational shift to material incentives. When hospitals and health centers changed their incentive structures, a majority of physicians and most village doctors changed their medical practices to pursue their own self-interest with little regard for their patients' welfare. Nonetheless, not all physicians are driven by self-interest. There are older physicians educated in a different ethics who practice under different professional norms and they still try to swim against the current tide. Moreover, there are many young physicians who have chosen to enter medicine motivated by their desire to

serve humanity over their own self-interest. However, they face many obstacles in pursuing this goal.

Current incentives align the material interests of hospitals with the material interests of physicians. Chinese public hospitals share a large portion of their profits with their staff as bonus payments. Another portion of their profits is typically invested in the latest medical technology to generate ever greater profits and to enhance the prestige of the hospitals and the specialists. In other words, the incentive structure encourages medical practitioners to pursue wealth and prestige at the expense of their patients. This behavior has resulted in many questionable ethical practices that have been well documented in academic studies and frequently reported in the newspapers (Bloom *et al.* 2008). We illustrate such unprofessional behavior below and highlight its impact on both patients and society.

The most widespread and paramount problem to date has been the prescription of unnecessary drugs and expensive tests by practitioners to generate higher incomes. Physicians have an incentive to prescribe more expensive drugs when less expensive drugs provide an identical clinical efficacy because profits are calculated as a percentage of the price of the drug. In addition, higher-priced drugs may offer higher "kickbacks" to hospitals and physicians. Such perverse incentives have even motivated some hospitals to establish specific rules about what drugs physicians should prescribe in certain contexts to maximize profits (Zhang *et al.* 2006). A poignant example illustrates the seriousness of this problem. An award-winning physician, Hu Weimin, was one of the few physicians who refused to follow the "hidden rules." Dr. Hu prescribed the least expensive but most efficacious drugs to reduce the medical costs to his patients and he refused to accept under-the-table payments. He also exposed the profit-driven unethical practices in his hospital. As a result, Dr. Hu was ostracized and isolated by his colleagues and criticized by his superiors, but he received the respect of his patients. Nonetheless, he eventually resigned from his job after intense organizational and peer pressure (Tang 2006).

In urban community health centers that do not have expensive high-tech testing equipment, physicians still behave in a similar manner. They give profitable IV injections to treat patients regardless of their medical needs. In villages, doctors follow the same pattern of over-using IV and subcutaneous injections.

The over-prescription of drugs may harm patients due to drug toxicity and, moreover, the over-use of antibiotics may lead to drug resistance. Currently, this has affected the treatment of TB patients, with about 25 per cent of all new TB cases and 50 per cent of all previously treated TB cases in China resistant to at least one TB drug (He *et al.* 2008). The combination of over-prescribing drugs and expensive high-tech tests, plus the use of costly drugs rather than cheaper substitutes of equal efficacy, has caused health expenditures to rise at a phenomenal rate of 16 per cent per year—7 per cent faster than GDP growth over the past two decades

The reform period under Deng Xiaoping initiated a new era for the Catholic Church in China as priests were released from prison and churches rebuilt. Provisions were made to re-establish seminary training to produce a new generation of priests and communities of nuns. The government still demanded, however, that religious practice take place under the supervision of the Catholic Patriotic Association. Many Catholics resisted this, either because they thought that the Catholic Patriotic Association's leaders had fatally compromised the faith through association with the Communist government or simply because the government did not open enough officially approved churches to meet the demand – or some combination of both these motives. There grew up an underground sector of the church, which probably constitutes about two-thirds of the Chinese Catholic Church's 12 million members (Madsen 1998: 39–45; Madsen 2003: 162).

Vatican regulations gave bishops and priests in the underground unusual discretion to organize as procedures for establishing seminaries were largely left to local bishops. Underground seminary training often took the form of an informal apprenticeship to an older priest rather than formal study. Some outside commentators have remarked that many underground priests were poorly educated and the only part of church teaching they knew well was the provisions in canon law about excommunicating Catholics in the officially approved church who had betrayed the faith (Tang and Wiest 1993: 148). The relationship between the officially approved part and the underground part of the church is complicated and fluid, however, contingent on many different local circumstances. Some priests in the underground church have received education in officially approved seminaries, together with priests who work in the officially registered church.

Moves toward professionalization

In any case, the officially approved seminaries have access to resources and connections with the outside world that have enabled them to begin to undertake changes akin to the professionalization of clerical formation that occurred in the United States in the 1960s. Seminary professors have been able to study for higher degrees in the United States and Europe; theology and philosophy curricula are increasingly based on up-to-date academic scholarship and seminarians undertake practical internships to prepare them for pastoral ministry. But a lack of resources has slowed the progress of these changes.

One impetus for the changes has come from the government itself. In 1992, the secretary of the Legal and Political Department of the state Religious Affairs Bureau issued an "Inquiry into Seminary Studies in Mainland China" (Lam 2003: 54–68). This document deals with seminary training for all officially approved religions in China – Buddhist, Daoist, Muslim, and Protestant, as well as Catholic. The report is mainly concerned with the lack of coherence in seminary education and it claims that there are no unified

curricula: "no unified teaching syllabus, no organized curriculum, no study outlines, and no choice of teaching materials" (Lam 2003: 59). There is a paucity of properly trained teachers and leadership too often consists of elderly clergy who do not have the time or energy to manage the seminaries well (Lam 2003: 56, 59).

An important weakness is political education. The report "points out that most seminaries do not have teachers for ideological work. Although political courses are clearly mandated as part of the curriculum, there is a lack of suitable textbooks for use in seminaries. Furthermore, political leaders teach above the heads of the students, merely quoting from the text; consequently, the courses have little effect. An obvious tendency among many teachers and students, especially those who are more fervent in their faith, is to favor religious courses while neglecting political ones. There are some Catholic and Protestant seminarians who have only a vague idea of the meaning of an autonomous and independent self-management of the church, and they oppose such courses. In the past, some individuals secretly got hold of books from abroad and even took part in underground meetings" (Lam 2003: 56–57).

The concern with political education is not surprising, but the report is also concerned with the quality of religious education. Too many young people, according to the report, enter seminaries without any firm commitment to become clerics. "[S]ome students with the aim of leaving the farm to find employment or go overseas for study take the entrance examination for the seminary. They are not properly motivated and as soon as they graduate, they switch over to other professions and jobs. Some are always mailing out letters seeking job interviews" (Lam 2003: 57). This is a problem connected with the incipient professionalization of seminary training. Even with their disorganized curricula, seminaries were providing academic credentials that might be used to get desirable urban jobs. Because they were easier to get into than most other academic institutions, the seminaries were a path to upward mobility for rural people. According to the official report, the dropout rate was high in all kinds of seminaries. There is an eerie resemblance between this phenomenon and the dropouts experienced in Catholic seminaries in the West as they embarked on a program of professionalization.

Nonetheless, to resolve such problems, the report recommends increased professionalization, Chinese style. It wants the quality of education standards raised while discipline and surveillance are increased and it advocates improvements in the funding for seminaries so that they can buy better teaching materials and provide better salaries to their staff. It recommends inviting foreign experts to improve the quality of education and sending selected faculty abroad for study and it calls for the establishment of committees that can facilitate the development of more systematic curricula. However, it also calls for the appointment of "one cadre from among the seminary leadership who is responsible for ideological work. He is to organize an ideological work team made up of seminary leaders, the dean of studies, department teachers, class teachers and students from the students' association. . . . He must be

few. Problems soon begin to surface: personal, social, ecclesiastical. He soon finds himself overworked, undervalued, and lonely. For the strong, these are challenges to be met and overcome, merely steps along the way to progress. . . . But for those who came to their day of ordination still hampered by unresolved ambivalence, for those who chose to become priests more out of internal or external pressures than personal conviction, these problems are much more acute. Such young priests have the feeling that they are riding on the back of a tiger with no possibility of escape.

(Yu 2000: 27–28)

One result of such alienation can be a quick loss of idealism and a descent into cynicism. “As the years pass, their interest in pastoral work declines, and they turn more to material pleasures for solace. They cultivate a taste for the ‘good life.’ . . . Soon they seek to fill the void in their lives with wining, dining, and the aimless pursuit of pleasures” (Yu 2000: 28). With a professionalized model of clerical identity having proven irrelevant to the real conditions of rural life, some young priests fall back on older models for leadership in the countryside – they act like local cadres and display many of the forms of corruption often attributed to rural cadres. They charge increasingly higher fees for their services and they channel the money to their families and relatives. “The sudden appearance of TV sets, washing machines, and refrigerators in their hometowns set these households apart from their neighbors. This has given rise to a saying among non-Christian villagers: ‘The family that has a priest gains a treasure’” (Yu 2000: 28). Within the church, such priests play the game of clientelistic politics to move ahead. “It is a great evil of the bureaucratic system when favoritism rather than merit is rewarded by promotion. . . . Unfortunately the management of church personnel on the Mainland often leaves much to be desired” (Yu 2000: 30–31).

Though still in its early stages, the professionalization of seminary training for a new generation of Chinese Catholic clergy has somewhat similar consequences and presents somewhat similar challenges to the professionalization of Catholic clergy in the West during the 1960s. There begins to be a separation between the cognitive, practical, and normative sides of the training and the priests face the challenge of how to integrate these different parts into a coherent whole. These general challenges take several concrete forms: temptations to use one’s professional status as a stepping stone to a secular career; tensions with an older generation of priests who learned their roles before the move toward professionalization; confusion about the meaning and purpose of the clerical role, leading sometimes to anomic and even predatory behavior (exemplified in the sex abuse scandals in the American church). But in the Western church professionalization was a necessity if clergy were to fit into the rationalized culture of middle-class societies. In China, professionalization can pit the clergy against the predominant culture, especially in the countryside.

As suggested by the account given by Yu Min, the ultimate challenge faced by incipiently professionalized Chinese priests is that they have to live in a world that does not understand or value professional norms. Local community life is dominated by informal relationships and advancement in the church depends to a large degree on patron-client relationships. A very traditional faith, infused with the assumptions of folk religion, predominates among the most devout laity. An older seminary training was good preparation for work in this non-professionalized world (as traditional seminary training was good preparation to work in ethnic Catholic ghettos in the United States in the early twentieth century). Heavy on discipline and embedded in traditional piety, such training gave Chinese Catholic priests a clear introduction to the roles they would have to play in rural parishes and it turned out to provide the backbone necessary to withstand severe persecution. The new training sometimes leaves priests confused and wavering in the face of the challenges of life in Catholic communities still largely embedded in the un-modernized parts of an unevenly modernized society.

The advantages of a non-professionalized priesthood

We do not have a clear picture of the type of training in underground seminaries for the Catholic priesthood. It seems to vary from place to place. For those priests who are truly trained underground – rather than in officially registered seminaries – the training seems to consist of apprenticeship to older priests. This would mitigate the generational tensions experienced by priests educated in normal seminaries. And because of limitations on textbooks, the education may rely more heavily on memorization of basic doctrine. Because such underground training has no standing in China’s secular world – while being held in great respect by underground Catholics – it may strengthen commitment to the priesthood. In any case, being an underground priest can be dangerous and the non-professional training seems to prepare many such priests courageously to endure harassment and even imprisonment.⁴

This is by no means to say that the underground has a monopoly on courage. Priest candidates in officially registered seminaries have also boldly stood up to government attempts to manipulate their religion. For example, on 6 January 2000, in a deliberate affront to the Vatican, the Chinese government pushed forward the ordination of six bishops in the Beijing cathedral – even though it was widely known that these men were unacceptable to the Vatican. (In many other cases, informal negotiations have taken place between Vatican representatives and government officials about the appointment of bishops, and compromises have been worked out that are at least tolerable to the Vatican.) Seminarians at the National Seminary in Beijing were told to attend the ordination. They all refused, and the buses sent to carry them to the cathedral returned empty. In response, the government

replaced the seminary's rector and other key personnel, and the pace of political education was accelerated. It is uncertain whether this will have an effect ("A Turning Point" 2000: 16–18).

The slow professionalization of seminary training gives the government at least some leverage to shape the identity of the new generation of priests. It can set standards for certification and require the introduction of political study into the curriculum. As the protest over the ordination of the unacceptable bishops shows, however, government attempts at control contradict the sense of professional autonomy that the higher-level clerical education cultivates. The government has no leverage, except outright coercion against the autonomy of the underground priests, and by making martyrs of underground priests, coercion seems to strengthen underground resolve.

Other faith traditions

The process of clerical professionalization raises similar issues for other faith traditions in China. As with the case of the Catholic Church, some of these issues became apparent when professionalization took place outside of China, but the Chinese historical and cultural contexts give them their own particular twists.

Let us start with the Protestant ministry. In the Protestant churches, the process of professionalizing clergy started much earlier in the West than in the Catholic Church. From the late nineteenth century in the United States, leading Protestant seminaries fostered a critical, rational approach to theology and strove to integrate faith traditions with modern scientific archeology, history, and philosophy. Training for pastoral care was also systematized in accordance with the social science of the Progressive era. This fit the expectations of the mainstream of the middle-class Protestant establishment, but it raised challenges for integrating the cognitive, practical, and normative components of the Protestant ministry. This may be contributing to the much commented on erosion of mainline Protestant churches in America. Meanwhile, "fundamentalist" revolts over the new critical-rational theological education and its associated pastoral practices and moral vision led to vigorous religious movements (with widespread appeal but especially strong among the lower-middle classes) and important political implications (Casanova 1994: 137–66).

China has followed a somewhat similar pattern. Most missionaries in the early twentieth century preached a conservative evangelical theology, but the leaders of the most important theological schools, like the Yanjing seminary and the Nanjing seminary, were devoted to integrating theology with modern science and to preparing ministers in a professional manner. The seminaries under the Three Self Protestant Movement (TSPM, roughly equivalent to the Catholic Patriotic Association) carry on this tradition. In the top leadership of such seminaries, according to Daniel Bays,

there seems to be increasing concern about what is perceived . . . as the persistence of obsolete or even "backward" theological currents of an evangelical or fundamentalist nature. . . . It is precisely these traditional evangelical characteristics, however, which define the faith of the great majority of TSPM churches. . . . It can be argued that these characteristics helped enable Protestant communities to survive the decades of persecution before 1980. Thus, it is an inherently complex and difficult task to try to change the theological orientation of the majority of Chinese Protestants, to which they seem strongly attached.

(Bays 2003: 188)

In any case, the modern, quasi-professionalized training for the ministry provided by TSPM seminaries does not lead to the most rapid forms of Protestant church growth. The truly spectacular growth of Christianity is driven by independent church networks, most stressing a Pentecostal style of belief and practice. According to Ryan Dunch, the religious culture of such communities stresses "direct personal experience of God, centered on literal reading of the Bible, spread by itinerant preachers with little in the way of formal education (theological or otherwise), but a great deal of dedication and enthusiasm. Suspicions of the state, and of the TSPM for its ties to the state, are characteristic, as is an otherworldly and often eschatological orientation" (Dunch 2001: 201). The leadership of these networks is decidedly non-professional and followers are mostly rural.

This kind of Christianity travels widely because it travels light. It does not need specialized institutions to provide extensive theological education and it can readily take root in local communities because its adherents easily blend the expression of their faith with local folk culture.

Buddhists also are developing more systematic training for their monks. The movement toward this began in the early twentieth century, with monks like the eminent reformer Tai Xu (1889–1947). As summarized by Raoul Birnbaum,

Taixu hoped to induce a radical modernization of the Buddhist sangha, in which the numbers would be greatly reduced and the level of learning greatly increased. Taixu was concerned with creating a 20th century Buddhism—which included notions of Buddhism derived from Christian models, as well as notions of Buddhism derived from European academic assumptions.

(Birnbaum 2003: 129)

A key part of his program was to replace the old form of monastic training, which consisted of individual apprenticeship under a particular master, with new academic institutions – analogous to Christian seminaries. These *foxue yuan*, Buddhist studies academies, had "a carefully constructed curriculum that emphasized advanced studies in Yogacara and Madhyamika treatises,

the end of 1999. Disaffiliation was part of the campaign of "sorting out and restructuring social intermediate organizations" (*qingli zhengdun shehui zhongjie jigou*) to reduce the number of professions and professional organizations through consolidation. It affected a large number of professions and professional groups, for instance CPAs (including former CPAUs), CAAs, CTAs, lawyers, patent agents, and trademark agents. In 2000 the CAAs lost their independent status and became a sub-professional group within the CICPA. In 2002, the MOF and SGAT agreed that the CTAs should retain their separate professional status, but their national organization, the China Association of Certified Tax Agents (CACTA) was made an associate group member of the CICPA. However, the top officials of the CACTA remain appointed by the SGAT. Despite administrative disaffiliation, informal ties between CPAs and their former affiliating units are likely to linger (Huang 2003: 92).

Opening accounting markets to foreign practitioners

The revival of the Chinese accounting profession in 1980 was initially intended to address tax and regulatory control over foreign businesses. With domestic reform moving forward in earnest since the mid-1980s, accounting techniques and the profession have become part of the modern business management that Chinese enterprises should assimilate in their drive for greater efficiency and profitability. Later, auditing and accounting services were given an important role in the development of the country's stock market. As the demands for the accounting profession gradually shifted to broader support for the economic reforms, there was a surge in the need for training and education of the country's own professionals with foreign assistance and expertise. The country also welcomed the help of foreign accounting professionals so as to build the confidence of overseas investors. By the end of 2002, 11 foreign accounting firms maintained representative offices in the country (Han 2003: 9). In addition, foreign accounting firms joined hands with local firms (Ji 2001: 62). At the same time, there were nine Chinese-foreign joint venture accounting firms (Han 2003: 9). Cooperation between Chinese and foreign public accountants has proved beneficial to both sides. Although audit reports are legally required to be signed by Chinese CPAs, the participation of foreign joint venture professionals in the auditing process is expected to boost confidence and bring quality assurance. Collaborations with foreign professionals can add to one's bottom line. Out of the top seven accounting firms with the largest market share in the country, five are Chinese-foreign joint ventures. The average productivity of domestic accounting firms is just one-fifth to one-quarter of that of the top five joint venture firms (Xia and Lin 2003: 41). Meanwhile, foreign professionals share profits from auditing businesses.

The country's financial market conditions have provided unique business opportunities for foreign practitioners. The Shanghai and Shenzhen stock

exchanges list both "A Shares," that are available to domestic investors and qualified foreign investors, and "B Shares," that are reserved for non-domestic investors. Although foreign firms cannot audit a company only issuing A Shares, they are allowed and often invited to audit the books of companies that issue B Shares, under the assumption that audits with the participation of foreign accounting professionals will reassure overseas investors. The same practice and assumption applies to Chinese firms listed on foreign stock exchanges. Foreign firms operating in China prefer audits by professionals with whom they are familiar and under rules and standards they know best. Although audit reports signed by foreign professionals have no legal effect in China, they are valuable for the purpose of reporting to company headquarters and investors in the home country.

However, the government maintains tough restrictions on foreign accounting practices and only auditing reports signed by Chinese CPAs have legal effect under Chinese law. Provisions for auditing, accounting, or business consultancy services by foreigners within Chinese territory are illegal unless otherwise authorized. A foreign accounting firm may only set up a representative office or form a joint venture with a Chinese firm upon approval of the MOF and other government authorities. If foreign public accountants without a Chinese establishment wish to carry out auditing or other practices regarding foreign clients located within the country, they must first obtain a special approval from the finance bureau of the local government. The 1980s regulations required that Chinese citizenship be a criterion for qualification and the CPA Law continues this requirement, adding, however, a reciprocity principle. A foreign national may take qualifying examinations and be licensed in China if his home country has a similar policy for Chinese nationals. In contrast to foreign accounting practitioners who face various restrictions on their services, Western professional accreditation organizations have enjoyed surging popularity in mainland China. The U.K.-based Chartered Association of Certified Accountants and the Certified General Accountants' Association of Canada, for instance, have recruited scores of new members in the country in recent years, as many Chinese professionals view a foreign professional qualification as a plus for their careers.

A comparative analysis of the role of accountants

Self-regulation vs. government regulation; Reputational intermediary vs. gatekeeper: The debates in the United States.

In the United States, accounting practices and organizations preceded any legislation (Brewster 2003: 42-53; Carey 1969-70).⁵ The 1896 New York legislation on CPAs – the first such legislation in the United States – and other similar state legislations were enacted at the request of accountants who sought the granting of the title of CPA only to qualified persons and a prohibition against others using it (Carey 1969-70: 44). The U.S. accounting

The "two masters" formula does more to define the problem inherent in the advisory role than to solve it. But the SG analogy suggests the following resolution of the mandarin's professional conundrum—not that moral advisors themselves must be autonomous, but that they require the existence of an autonomous group that sets standards, monitors their work, and reminds them of their corruptibility. The good advisor, in a sense, mediates between the needs of clients (the rulers) and standards set by appropriate independent auditors. I accept this resolution, up to a point. It is most compelling for legal advisors to rulers, like the SG, whose work is closely monitored by independent legal professionals. It may also be plausible for science advisors and military advisors, for similar reasons. In each case, however, we should be alert to two dangers. We should not forget that the free-standing observers themselves face problems of corruptibility, whether as academics or practitioners or commercial writers. (No one entirely escapes, although the sources of corrupted judgment are different in each case.) More importantly, because of the luxury of their own independence, the unattached auditors may fail to give due weight to the complex responsibilities involved in serving two masters, and mistakenly (or, at least, unhelpfully) evaluate the advisor's work by the standards appropriate to their own. In fact, once we leave the Confucian context, it is not obvious who composes the appropriate standard-setting reference group for moral advisors. I return to this point below.

Whatever the resolution, it should be clear that one way of going wrong in systems with strong executives, whether emperor or president, is to think there is only one master and hence no possible conflict of loyalties. The formulation of the twelfth century neo-Confucian writer Hong Xingzi is characteristic: "[Even] though banished and out of office, [Qu Yuan] knew only love and unalterable affection for his lord; [accordingly] he completely fulfilled the duties of a minister." That is, loyalty is "a personal commitment unto death in absolute obedience to the emperor . . . personal loyalty comes before loyal service to the state" (Schneider 1980: 75, 77). Similarly, albeit without the commitment to obedience unto death, former Solicitor General Charles Fried writes: Loyalty to the President "is a moral attitude . . . [and] must be recognized as having intrinsic value, as being worth following for its own sake and in principle." Fried elaborates: "First we judge a thing or a person to be worthy of our loyalty, and then—and for that reason—subordinate our will to it. . . . The President is entitled to loyalty conceived in just this way from those he appointed to high office" (Fried 1991: 189).

This confuses personal fealty with professional allegiance. In the executive branch, it is common to identify the interests of an administration with the interests of the chief officer, the president. This is understandable, since the fortunes of the team rise or fall with the fortunes of the chief. However, such identification appears to preclude the possibility that the chief could betray the interests of the team and of the office, as though the chief could do no wrong. Some team members make this assumption, and for them loyalty becomes personal fealty to the leader: following the leader's wishes and

attending to the leader's personal fortune. At the extreme, loyalty becomes love.¹⁰

Affection, however, is not a necessary requirement of the advisory role and perhaps incompatible with professional judgment, which is impersonal and limited to the client's service-related needs. So, although I take for granted that advisors as professionals take rulers as their clients, helping clients to achieve their (the clients') aims, I would add that "client" is ambiguous as between the office-holder and the office. (Here the distinction between a nominal client and real client could be useful.) The office-holder's principal responsibilities come with the office. The advisor's role is to be guided by a grounded conception of those responsibilities—at the most abstract level, to achieve humane governance—and at the same time to do so in a way that takes into account the political realities confronted by the office-holder.

Expertise in ethics

A basic premise of the role of moral advisor to rulers is that achieving humaneness in government requires special learning. The professional claim depends on exclusive mastery of an appropriate body of knowledge and the capacity to engage in complex judgment. Ordinary people do not know Confucian principles, even if they live by them, or at least they are not expert at applying them in the political realm. Further, this mastery is attained through exacting study of the classics. It cannot be acquired through trial-and-error or on-the-job training. Such study, presumably, increases the reliability of one's moral judgment. The moral advisor sees things aright and, if talented, can impart that perception compellingly to the ruler.

Why does an education in the classics make one an expert in ethics, especially ethics in government? In the United States, it is clear that an advanced degree in "applied ethics" does not enhance one's moral competence or make one a better person. That is because moral competence does not come from mastery of ethical theories, classical or modern. Indeed, in terms of moral understanding, the academic study of ethics may be an obstacle. So at least Thomas Jefferson believed, when he observed: "State a moral case to a ploughman and a professor. The former will decide it as well and often better than the latter because he has not been led astray by artificial rules [derived from academic theories]."¹¹ The skills that applied ethicists are trained in—textual exegesis, conceptual analysis, logical evaluation of arguments—are neutral skills that presuppose no moral virtue or wisdom. Meanwhile, they lack training in history and empirical analysis—which means that if one aim of inquiry is to trace the consequences of a policy decision for other social values, the typical applied ethicist is at a loss how to proceed. Some observers take it as an advantage of academic ethicists that they are able to think full-time about ethics, but perhaps the opposite is true: the academic who thinks only about ethics lacks relevant experience and operates with uninformed intuitions. Detachment from the world is disabling.