

# Roundtable

## **Access to Lawyers: A Comparative Analysis of the Supply of Lawyers in China and the United States**

ETHAN MICHELSON\*

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## INTRODUCTION

Growth in the legal profession has had different implications on access to lawyers worldwide. National Taiwan University College of Law is honored to have Professor Ethan Michelson in this roundtable discussion to compare and contrast the trend in supply and access to lawyers in the U.S. and China. Based on his survey, Professor Michelson highlights the expansion of the legal profession in the U.S. and China, and explains the migration of lawyers. Professor Wen-Chen Chang presents a brief comparison of the developments in the legal profession of China and Taiwan. In answering to comments and questions raised by Professor Yun-Chien Chang and other participants, Professor Michelson compares the type of cases practiced by lawyers that make the bulk of work in legal practice in the U.S. and China. He further explains registration of lawyers in China, and their potential roles in public policy and human rights.

### I. OPENING REMARKS

#### **PROFESSOR JIUNN-RONG YEH**

Professor Michelson is with us today. He holds his doctorate in sociology from University of Chicago that has a great reputation in interdisciplinary researches, and has looked into many issues related to law and society, particularly the legal profession. His topic today, comparing the legal profession in China with that in the United States, is a very important topic not only for Taiwan, but also for the world to have a better understanding of what is happening in China.

Before Professor Michelson proceeds with his speech, I would like to share my personal experience that may be relevant with this topic. Back in the mid-1980s, I was very fortunate to pass the bar exam, and stood as the only two of my class who passed it. Then I paid some fee to join the bar association and went to Yale Law School for the pursuit of my doctorate. This was in the heyday of the democratic transition in Taiwan. One day, I received a call from one of my classmate, who was also a lawyer. He asked me to fly back from the United States to vote in the bar association in the hope to fight against the Kuomintang (KMT) affiliated domination in the association. At the time, the bar association was controlled by the lawyers from the military, rather than those graduated from law schools. Not until in the late 1980s have the Taipei Bar Association and the National Bar Association been placed at the hand of the lawyers who were graduated from law schools. This story shows the complexities underlying the legal profession and its relationship with society. With this, I would like to invite

Professor Michelson now for his speech.

## II. SPEECH

### ACCESS TO LAWYERS: A COMPARATIVE ANALYSIS OF THE SUPPLY OF LAWYERS IN CHINA AND THE UNITED STATES

#### PROFESSOR ETHAN MICHELSON

##### 1. *Introduction*

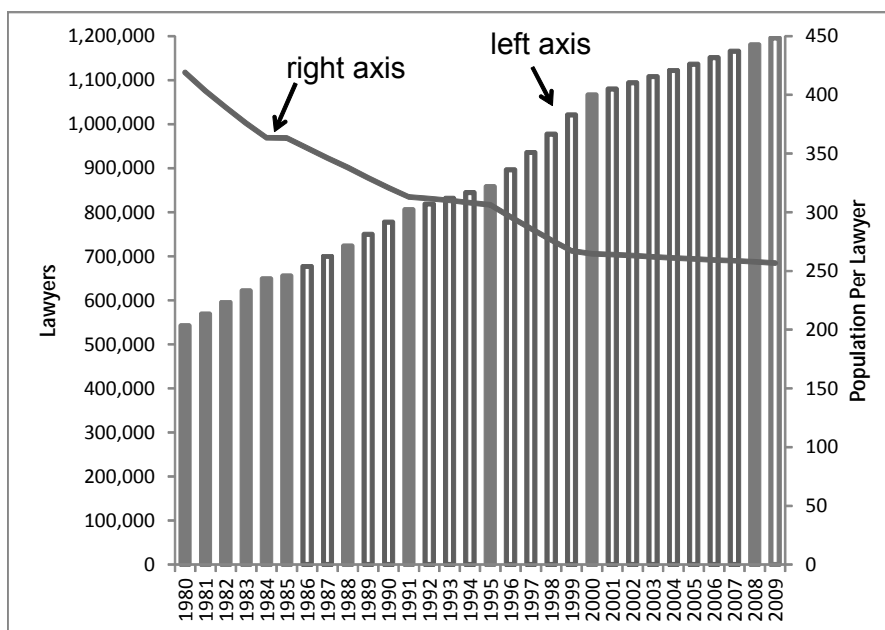
Thank you, Professor Yeh, for the introduction, which sets the stage for me and provides some background on the situation in Taiwan. It is really a privilege and an honor for me to be with you today. Today I want to talk about the evolution of the Chinese and American legal professions over the past few decades. In some respects the dramatic growth of the Chinese bar since the 1980s mirrors that of its American counterpart. However, similarities in aggregate growth obscure important and puzzling differences in the geographical distribution of lawyer populations. In the process of revealing these differences, I will introduce sources of data with the aim of encouraging you to pursue comparative empirical research on legal professions.

##### 2. *Empirical Research on American Lawyers*

###### (a) The Growth of the American Legal Profession

The following figure indicates the expansion of the American bar (Figure I). The hollow bars are simply imputed and the solid bars are the years for which we actually have information. I basically used the average figure to fill in years in between. The American bar has more than doubled in the past thirty years, and the annual growth rate is 2.8%. This trend is well-known and has caused considerable distress, anxiety, and embarrassment among many Americans. Many scholars have tried to explain why there are so many lawyers in the U.S.

**Figure I Population per Lawyer and the Number of Lawyers in the U.S.**



Source: Richard L. Abel;<sup>1</sup> Clara N. Carson;<sup>2</sup> American Bar Association Market Research Department.<sup>3</sup>

There are more lawyers in the U.S. than anywhere else in the world. Scholars have offered various explanations. One explanation for this really dramatic growth in the legal profession comes from John P. Heinz and Edward Laumann. First a little background on their study. Their survey of Chicago lawyers in 1975, which culminated in a classic book published in 1982, was one of the first empirical studies of legal professions.<sup>4</sup> They did a follow-up survey twenty years later in 1995, and published a new book in 2005.<sup>5</sup> In the second book they devoted a lot of attention to the issue of change over time.

Beyond the issue of numbers, the most dramatic change was growth in the size of law firms. The emergence of large law firms was a phenomenon

1. RICHARD L. ABEL, *AMERICAN LAWYERS* (1989).

2. CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000* (2004).

3. *Lawyer Demographics*, AM. BAR ASS'N MARKET RESEARCH DEP'T[0] (2009), [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/Lawyer\\_Demographics.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/Lawyer_Demographics.authcheckdam.pdf).

4. JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982).

5. JOHN P. HEINZ, ROBERT L. NELSON, REBECCA L. SANDEFUR & EDWARD O. LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005).

of the late 1980s and 1990s. This is partly due to the shift of the American economy as a whole and a concomitant shift in legal practice towards torts, commercial litigation, and business law. This is one of the big trends between 1975 and 1995 in the American legal profession as a whole. In America as a whole there was a transformation from an industrial economy to a post-industrial economy, to a service economy based on the financial sector and the service industry more generally. The transformation of the American legal profession mirrors this larger transformation. The legal profession changed along with its clients.

Another reason why the American legal profession has continued to grow has been identified by my colleague Bill Henderson,<sup>6</sup> a faculty member in the Indiana University Maurer School of Law. He was profiled in a *New York Times* article published on January 1, 2011,<sup>7</sup> which received a lot of attention and publicity. His argument is that law schools are responsible at least in part for the continual growth in the legal profession by luring and misleading students into applying to law school with the false promise of a lucrative career when they graduate. American law schools publish statistics on alumni employment rates, salaries, and so on. His argument is that this is a sham. There are many trickeries behind the numbers, including outright falsification. He exposed some of these trickeries and their consequences, including widespread “buyers’ remorse” among students who typically end up with over one hundred thousands of dollars of debt to finance their expensive legal education, and then have trouble finding a job.

(b) Sources of Data on American Lawyers

Many sources of survey data on American lawyers are publicly available. Data from the 1975 Chicago lawyers survey can be accessed through the University of Michigan ICPSR website,<sup>8</sup> which is one of the biggest data archives in the U.S. The 1995 survey data and codebooks are also available for download.<sup>9</sup>

Another source of data is the Michigan Alumni Data Set, which contains longitudinal data, or panel data, on Michigan law school graduates over a period of several decades. These data can be used to track their careers over time. Another colleague in the Indiana University Maurer School of Law, Ken Dau-Schmidt, has extensively analyzed the Michigan data with

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6. William D. Henderson, Professor of Law and Val Nolan Faculty Fellow in the Indiana University Maurer School of Law. He is also the Director of the Center on the Global Legal Profession in Indiana University.

7. Catherine Pampell, *At well-paying law firms, a low-paid corner*; N.Y. TIMES, May 24, 2011, at A1.

8. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS SURVEY, 1975, available at <http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/08218> (last visited March 10, 2012).

9. JOHN P. HEINZ et al., CHICAGO LAWYERS SURVEY, 1994-1995, available at <http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/04100> (last visited March 10, 2012).

particular interested in gender inequality.<sup>10</sup> The careers of lawyers can be tracked, and gender differences can be observed. In one of his recent articles, he reports that there is a real penalty for having children. Women's careers suffer for their leaves of absence to have and care for children. This is one of the biggest obstacles women face as they try to develop careers in law.

Another source of data is the *Martindale-Hubbell Law Directory*, which contains population data on lawyers every year for over a hundred years. Only recently has there been an effort to create an electronic database from the volumes of printed books.

Bill Henderson is also working with these and other data, including the National Law Journal Top 250, which are large law firms that provide data on all their lawyers, when and where they get hired, when they leave, to where they move, and so on. One of the primary missions of our law school's new Center for the Global Legal Profession is to apply empirical social science methods to the analysis of data to understand what is going on in legal professions, not just in the U.S. but around the world.<sup>11</sup> Jayanth Krishnan,<sup>12</sup> another colleague in law school, and a leading expert on India's legal profession, is a core part of this effort.

The Law School Admissions Council National Longitudinal Bar Passage Study is basically a huge database of information on law school admissions. This is a very rich source of data on the demographics of those that entered and graduated from law schools, who took the bar exams, who passed them, and so on. People have been using these data to understand the disparities between blacks and whites, men and women, and other demographic groups on who gets into law school, who actually passes the bar, and who gets good jobs. Of course the U.S. Census Bureau and U.S. Department of Labor's Bureau of Labor Statistics have very detailed occupational data.

John Hagen<sup>13</sup> and his colleague Fiona Kay published a book called *Gender in Practice* using survey data on lawyers in Toronto. The "After the JD Survey" is a longitudinal study of American lawyers.<sup>14</sup> The first "After the JD Survey" was done in 2002 of over 4,000 lawyers across the country.

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10. Kenneth Glenn Dau-Schmidt, Professor of Willard and Margaret Carr Professor of Labor and Employment Law of Indiana University Bloomington; Maurer School of Law.

11. Kenneth Glenn Dau-Schmidt, Marc Galanter, Kaushik Mukhopadhaya & Kathleen E. Hull, *Men and Women of the Bar: An Empirical Study of the Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49 (2009).

12. Jayanth Krishnan, Professor of law and Charles L. Whistler faculty fellow; Director of India Initiative, Center on the Global Legal Profession; Co-director, Center for Law, Society, and Culture, Maurer School of Law, Indiana University Bloomington.

13. John Hagan, W. Grant Dalstrom Professor of Sociology and Adjunct Professor of Law at the University of North Carolina at Chapel Hill; Professor of Law & Sociology, University of Toronto.

14. Bryant G. Garth et al., *After the JD*, AM. BAR FOUND., <http://www.americanbarfoundation.org/publications/afterthejd.html> (last visited Mar. 10, 2012).

The most exciting feature of the data was the respondents were recent law school graduates, people who had graduated from law school within the past three years. They show kinds of jobs they got, what their experience were, how they liked their jobs, and so on. They answered many questions about satisfaction and interaction with partners. They were only in the very early stages of their legal careers. If they practice in private law firms, they were associates; nobody was a partner yet. They then re-interviewed the same people in 2007. The data show us who dropped out of a legal career, who became or failed to become a partner, the lawyers moving between firms, what kinds of firms they were moving to, and geographical relocation. Requests for access to both waves of data can be made on the American Bar Foundation's website.

### 3. *Empirical Research on Asian Lawyers*

#### (a) Empirical Research on Chinese Lawyers

It was very exciting for me to have my research profiled on the front page of the *Legal Daily* in China.<sup>15</sup> In 2000, I did a survey of almost a thousand lawyers across twenty-five cities in China. The survey was about the difficulties, challenges, frustrations, and problems they encountered in everyday practice. The conclusion of the research was that it is really hard to be a lawyer in China. All one has to do is ask a lawyer in China, and he will explain how hard it is, particularly in criminal defense, but also in other areas of law. I then wanted to assess the extent of change in terms of whether the legal environment has remained difficult and hostile to lawyers, or whether there have been improvements. So in 2009, I did a new survey, a bigger survey of lawyers across more cities all over China.<sup>16</sup> I did the survey with Sida Liu,<sup>17</sup> who is from the University of Wisconsin-Madison, and, like me, a graduate of the University of Chicago. We have been working on the data together, so some of the analyses presented today come from my work with Sida Liu.

We are not the only ones doing empirical research on Chinese lawyers. In 2007, Professor Ji Wei Dong,<sup>18</sup> Dean of the Shanghai Jiao Tong

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15. Yu-Chen Chu, *Yike Laowai Tui Chungkuo Lushih Yeh te Liangtzu Tiaocha he Shihnién Kuancha* [Two Surveys and A Ten-year Observation of Chinese Lawyers Carried Out by A Foreigner], FACHIH JIHPAO [LEGAL DAILY], Nov. 19, 2009, at 2, available at [http://www.legaldaily.com.cn/zmbm/content/2009-11/19/content\\_1183784.htm](http://www.legaldaily.com.cn/zmbm/content/2009-11/19/content_1183784.htm).

16. Ethan Michelson & Sida Liu, *Chinese Lawyers and their Challenges: Findings from Two Surveys* (2009), [http://www.indiana.edu/~emsoc/LawyerSurvey/Report1\\_ENG.pdf](http://www.indiana.edu/~emsoc/LawyerSurvey/Report1_ENG.pdf).

17. Sida Liu, Assistant Professor of Sociology and Law, Department of Sociology, University of Wisconsin-Madison.

18. Wei-Dong Ji, Dean and Presiding Chair Professor, Director of Law and Society Center of KoGuan Law School, Shanghai Jiao Tong University.



University KoGuan School of Law, did a large survey of lawyers. He is a prominent figure in law and society, and has been trained in social science research methods. He spent a lot of time in Japan before he returned to China only a few years ago. He was thoroughly steeped in Japan's rich law and society research tradition.

(b) Empirical Research on Other Asian Lawyers

One of the leaders of law and society in Japan is Setsuo Miyazawa.<sup>19</sup> He did a survey a few years ago<sup>20</sup> modeled after the Chicago Lawyers Project. He is very closely associated with scholars at the American Bar Foundation, UC Berkeley, and elsewhere in the United States. His goal was to replicate the Chicago survey in Japan: the social structure of the Japanese bar. He presented his findings at the Law and Society Association a couple of years ago, and described how difficult it was to study Japanese lawyers. The refusal rate was amazingly high and the response rate extremely low. I think the response rate was about ten percent. No one could understand why it was so hard to get Japanese lawyers to participate.

A new survey was recently undertaken of lawyers in Vietnam just. This is a very exciting survey because, as I understand it, it is not just a survey, but is really a census of every lawyer in Vietnam. The National Bar Association of Vietnam helped ensure the participation of every lawyer in the country.

(c) Empirical Research on Taiwan Lawyers

Now what kind of research has been done in Taiwan? What has been done, and what needs to be done, would be great discussion topics. If we tried to do a survey like the Chicago Lawyer survey or like the surveys I have been doing in China, would we get reasonable response rates? How would a similar survey actually be done? I am not aware of any survey that has been done. Maybe someone has done the survey and I just don't know about it. I know there has been some high quality research on lawyers in Taiwan published in English. Some research have been published in 1994 in Jane Kaufman Winn's article on "Guanxi", which is about the rule of "Guanxi", not the rule of law, and the Taiwanese legal profession.<sup>21</sup> And she wrote another article which resonates very nicely with the introductory comments of Professor Yeh about Taiwanese lawyers that led the democratic revolution. I think her piece is called "Advocating Democracy".<sup>22</sup> Professor

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19. Setsuo Miyazawa, Professor of Law, Aoyama Gakuin University Law School.

20. Setsuo Miyazawa, *Education and Training of Lawyers in Japan—A Critical Analysis*, 43 S. TEX. L. REV. 491 (2002).

21. Jane Kaufman Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 LAW & SOC'Y REV. 193 (1994). See also Shu-chin Grace Kuo, *Seniority, Confucianism, and the Training Programs for Judges and Prosecutors in Taiwan*, 33 KOREAN J.L. & SOC'Y 87 (2007).

22. Jane Kaufman Winn & Tang-Chi Yeh, *Advocating Democracy: The Role of Lawyers in*

Kuo in Taiwan has been writing really terrific primarily qualitative research on gender and other elements.<sup>23</sup>

#### 4. *Access to Lawyers*

The scholarship I have reviewed concerns the careers of the lawyers. The scholars I introduced are interested not only in what causes the growth of the American legal profession but also in the implications of the growth of the American legal profession for lawyers' careers. How has this affected gender inequality? For example, has the expansion of the bar been good for women? Has it created more opportunities for women? Or has it been bad for women in other ways? I think it is a double-edged sword in most research. It has been good for women because it helped more women enter the bar and created more opportunities for women. However, it has created some difficulties and challenges for women, too.

Another issue for lawyers' careers is the promotion to partner. As the bar expanded with the growth of large law firms and the legal system, the associate to partner system has been reinforced. Legal scholars are for the most part interested in what this means career wise for lawyers.

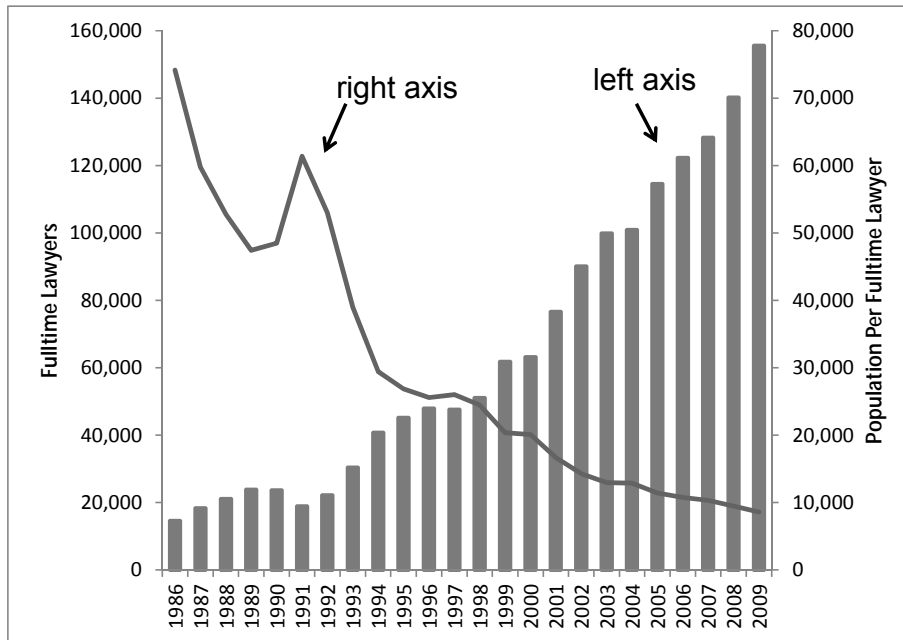
I am not interested in those questions today. I am not interested in the left axis which represents the numbers of full time lawyers, but rather in the right axis which shows the population per lawyer (Figure I). What does the growth of the legal profession mean for access to lawyers? Is the overall trend of growth in lawyers, meaning there is more lawyers available to people, a good thing? There are complaints about the growth of lawyers from politicians and the American medical association, doctors who are worried about suits for medical practice, the U.S. Chamber of Commerce which is worried about the liability of its members, and the insurance industry which is worried about tort litigation. Law and society scholars, on the other hand, for the most part think it is a good phenomenon. Lawyers are good for society. They help people get justice. So enhancing access to lawyers is a good thing. Access to lawyers means access to justice. I am interested in this question.

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*Taiwan's Political Transformation*, 20 LAW & SOC. INQUIRY 561(1995).

23. E.g., Shu-chin Grace Kuo, *Rethinking the Masculine Character of the Legal Profession: A Case Study of Female Legal Professionals and Their Gendered Life in Taiwan*, 13 J. AM. U. GENDER SOC. POL'Y & L. 25 (2005).

**Figure II The Number of Full Time Lawyers and the Population per Full Time Lawyers in China**



Source: China Lawyer Yearbook; China Law Yearbook; China Statistical Yearbook.

(a) Increasing Lawyer Density in China

So while the general trend in the United States is that there are more lawyers available to people, what happened in China? This is the same graphic looking at the case in China (Figure II). Expansion in the number of lawyers in China has been even more rapid than the U.S. Between 1986 and 2009, the population of full time lawyers increased from about fifteen thousand lawyers in 1986 to over one hundred fifty thousand. The tenfold increase over this period of time was far more dramatic than in the U.S. This growth was not only driven by economic forces and the kind of forces seen in the U.S., market forces and the economic transformation in China, but also by political forces. We have to remember that before this, there were basically no lawyers until the late 1970s in China. Rebuilding the legal system in China and the legal profession was a political project.

Looking at the right axis, access to lawyers has improved dramatically (Figure II). From the graph, in 1986 there was only one lawyer for about 75,000 people in China. Now that has dropped to one lawyer for less than ten thousand people. While this looks quite impressive, we need to bear in mind that there is one lawyer for every 250 people in the U.S. Nonetheless, things have clearly improved a lot in China.

(b) The Geographical Distribution of Lawyers in China

It is important to look at the geographical distribution of lawyers, and whether these lawyers are concentrated in particular places. The national average is one lawyer to every ten thousand people in China, but there must be some regional variation. What does this regional variation look like?

I am interested in this question because the geographical movement of lawyers is disturbing. Volumes of the China Lawyer Yearbook<sup>24</sup> are the only source of the data I know of with provincial population data on lawyers. A very simple and quick measure of geographical concentration is the Gini coefficient. The Gini coefficient is essentially a measure of inequality. It is typically used to measure income inequality. It ranges from zero to one. So you can see the Y-axis ranges from 0.33 to 0.43 (Figure III). Zero indicates perfect equality. In this case, the distribution of full-time lawyers would be perfectly equal across all of China's provinces. A Gini coefficient of one would mean that all lawyers in China are concentrated in one province. So the dramatic increase in the Gini coefficient means that full time lawyers have become increasingly concentrated geographically.

Another way to look at this is to look at the percentage of full-time lawyers in Beijing and Shanghai, which follows exactly the same trend. Between 2000 and 2009, the proportion of all full-time lawyers in Beijing and Shanghai more than doubled. It is very alarming and disturbing to see this dramatically growing concentration of lawyers in Beijing and Shanghai. So the next question to ask is whether this is because the population of China as a whole became more concentrated in Beijing and Shanghai.

The trend of concentration in Beijing and Shanghai started in 2004. From 2000 to 2003, the trend of this graph was really flat and then took off after 2003 (Figure III). This corresponds precisely with the Administrative License of Law in China. The Administrative License of Law took away licensing authority from the provinces and put it under national jurisdiction so that the central government then became in charge of the licensing. That made it much easier for lawyers to move. The Gini coefficient for the total population is totally flat, so it does not explain the concentration of lawyers in terms of the overall population trend.

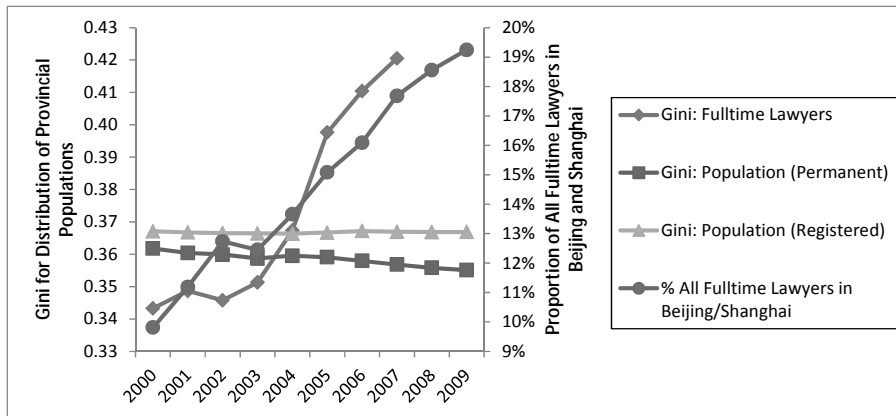
What does this mean for access to justice? This means that access to lawyers in Beijing and Shanghai has improved amazingly. Read the line at the bottom (Figure IV) for Beijing and Shanghai. The availability of lawyers in the year 2000 was one lawyer for every 3,600 people, and that dropped to one lawyer for every 885 people in 2009. That decline of 76% is much greater than the decline for places outside of Beijing and Shanghai. Access to

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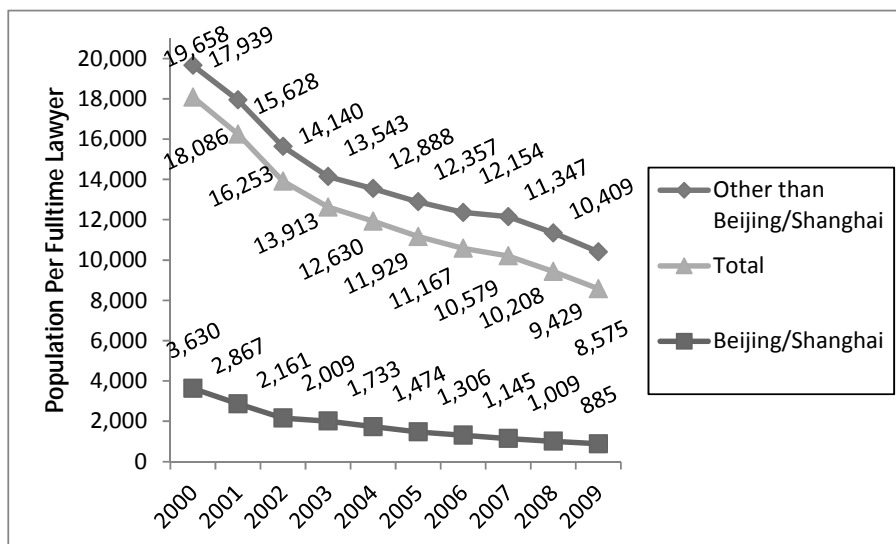
24. *E.g.*, Chungkuo Lushih Nienchien 2009 [China Lawyer Yearbook 2009] (Chungkuo Lushih Nienchien Pienchi Weiyuanhui [China Lawyer Yearbook Editorial Comm'n] ed., 2011).

lawyers has improved much faster in Beijing and Shanghai than outside of Beijing and Shanghai. Now the density of lawyers in Beijing and Shanghai is similar that in some European countries. Between Beijing and Shanghai, most of the growth has happened in Beijing. By 2009, in Beijing alone, there was one lawyer for every 631 people. There are even more lawyers available in Beijing than for Germany as a whole; in Germany the rate is about eight hundred people per lawyer. I don't have the most recent data and I don't know about trends in other European countries. This is still fewer lawyers than in the U.S. where there is one lawyer for 250 people, but we are approaching the ballpark. It is getting close, but what about ordinary people outside Beijing and Shanghai? It is much harder to find lawyers outside of Beijing and Shanghai because lawyers are just not available. The supply of lawyers is very limited outside of Beijing and Shanghai. In my opinion, this is alarming and disturbing. So questions I am interested in are: Is this a unique Chinese phenomenon? Has this happened in the U.S. as well? This is the reason why I spend a lot of time analyzing numbers.

**Figure III The Gini Coefficient for Distribution of Provincial Population and Proportion of All Full Time Lawyers in Beijing and Shanghai**



Source: China Lawyer Yearbook; China Law Yearbook; China Statistical Yearbook; Beijing Statistical Yearbook; Shanghai Statistical Yearbook.

**Figure IV Population per Full Time Lawyer in China**

Source: China Lawyer Yearbook; China Law Yearbook; China Statistical Yearbook.

(c) The Geographical Distribution of Lawyers in the U.S.

I got data from the U.S. Census Bureau's 5% population Public-Use Microdata Samples (PUMS).<sup>25</sup> The data sets for each state have two hundred or more Megabytes. You have to download gigabytes and gigabytes of data for three census years, 1980, 1990 and 2000. There was a new census in 2010, but the data are not available yet. We can get state-level data from the American Bar Association surveys on lawyer discipline systems,<sup>26</sup> and also from the U.S. Bureau of Labor Statistics.<sup>27</sup> These three sources of data allow me to see if something similar has happened in the U.S. in the past thirty years. The answer is "no." The Gini coefficient of inequality has been basically pretty flat between 1980 and 2009 (Figure V). The degree of geographical concentration of the American lawyer population is essentially constant. Let's pick some places that are really popular to be a lawyer: New York, California and Washington, D.C. Let's look at the proportion of lawyers in these three states over time. It is also pretty flat. In 1980 it was about 27%, and by 2009 it was still in the 27% region. There is some variation using different sources of data because the ways lawyers are defined and counted vary across the three sources of data. But you can see it

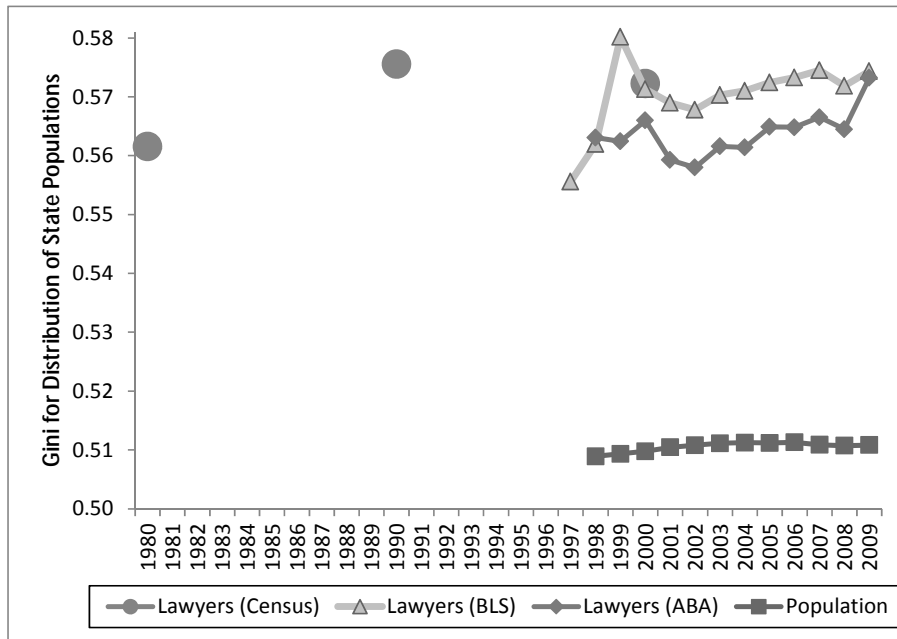
25. *Public-Use Microdata Samples (PUMS)*, U.S. CENSUS BUREAU, <http://www.census.gov/main/www/pums.html> (last updated May 28, 2010, 9:22 AM).

26. *2009 ABA Survey on Lawyer Discipline Systems (S.O.L.D.)*, AM. BAR ASS'N [http://www.americanbar.org/groups/professional\\_responsibility/resources/survey\\_lawyer\\_discipline\\_systems\\_2009.html](http://www.americanbar.org/groups/professional_responsibility/resources/survey_lawyer_discipline_systems_2009.html) (last visited Mar. 10, 2012)

27. U.S. BUREAU OF LABOR STATISTICS, <http://www.bls.gov/> (last visited Aug. 17, 2011).

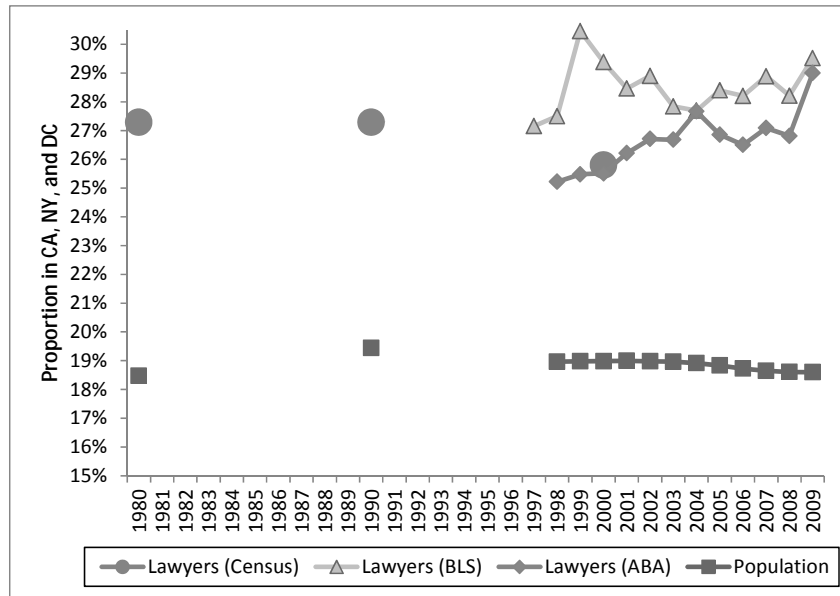
is pretty flat by all measures (Figure VI). The percentage of lawyers in these three places is the same more or less over the thirty year period. What about ten major cities: Boston, Chicago, Dallas, Detroit, Houston, Los Angeles, Miami, New York, Philadelphia, and Washington, D.C.? Ten really big cities were selected and the percentage of lawyers in these big cities is over the thirty year period were studied. There is no real trend over time. It is pretty flat overall (Figure VII).

**Figure V The Gini Coefficient for Distribution of State Population in the U.S.**



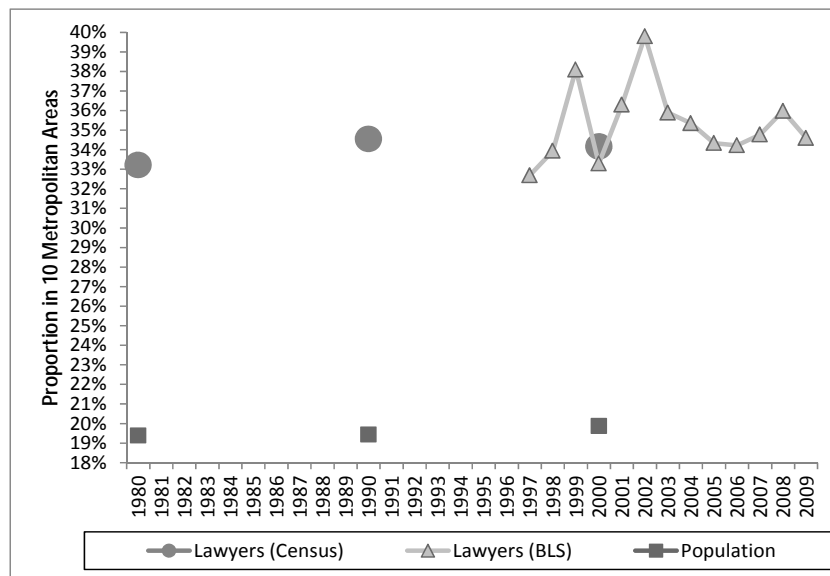
Source: U.S. Bureau of Labor Statistics; 1-Percent Public Use Microdata Sample Files, U.S. Census Bureau; 2009 Survey on Lawyer Discipline Systems, American Bar Association.

**Figure VI Proportion of lawyers in California, New York and Washington, D.C.**



Source: U.S. Bureau of Labor Statistics; 1-Percent Public Use Microdata Sample Files, U.S. Census Bureau; 2009 Survey on Lawyer Discipline Systems, American Bar Association.

**Figure VII Proportion of lawyers in 10 Metropolitan Areas in the U.S.**



Source: U.S. Bureau of Labor Statistics; 1-Percent Public Use Microdata Sample Files, U.S. Census Bureau; 2009 Survey on Lawyer Discipline Systems, American Bar Association.



(d) Explaining Why the Geographical Distribution of Lawyers in the U.S. and China is so different?

So, this trend we have seen in China appears to be unique. This has not happened in the U.S. The Y-axis here is the proportion of all American lawyers in these ten major cities. Basically in 1980, 33% of all the lawyers in the U.S. were in these ten cities. And this percentage has not really changed over time. So there has not been the same trend in the U.S. The Chinese trend of increasing concentration in Beijing and Shanghai seems to be unique. This is not like the American trend at all. What is going on? Why has it not happened in the U.S.? And why is it happening in China?

I think the clear answer is “migration,” the movement of lawyers. There is very limited movement in the U.S. because the American legal profession is really fragmented by states. Licenses are state licenses. Bar exams are state bar exams. And this very fundamentally limits and constrains movement across jurisdictions, across states.

In China, especially after the passage of the Administrative License Law of the People’s Republic of China in 2003, which became effective in 2004 the Administrative License Law simplified and facilitated the migration of lawyers from one place to another. It is seen very clearly in the data. I now want to add another comparative dimension to see if Chinese lawyer migration is different from general Chinese migration.

(e) Empirical Research on the Migration of Lawyers in China

What I want to focus on is the 2009 survey that I did with Sida Liu.<sup>28</sup> Adding questions on migration was his idea. He had the wisdom and foresight to ask the question: “Did you ever work in a different place in the past?” Remarkably, 958 full-time lawyers answered the question, and 33% said they had worked somewhere else. This is a remarkable movement of the legal profession. It is almost unbelievable. Almost half of the lawyers in Shanghai previously worked somewhere else as a lawyer before they went to Shanghai. 44% percent of lawyers in Beijing worked somewhere else as a lawyer before they went to Beijing. 43% of lawyers in Guangdong worked somewhere else as a lawyer before they moved to Guangdong. This could simply mean they moved from Guangdong to Shenzhen. So they may have stayed in Guangdong.

Let’s look into inter-provincial movement, the movement from one province to another. We also had this question in the survey: “Please indicate all the places [province-level units] in which you practiced as a licensed lawyer prior to your current place [province-level unit].” We can look at movements from one province to current province. We can see who

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28. Ethan Michelson, *Survey on China’s Legal Services Work Environment*, [http://www.indiana.edu/~emsoc/lawyer\\_survey.htm](http://www.indiana.edu/~emsoc/lawyer_survey.htm) (last visited Feb. 24, 2012).

previously worked outside of their current province. Overall almost one in five lawyers moved between provinces. And where is the concentration of movement of lawyers? 38% of lawyers in Shanghai, 35% in Guangdong, and 34% in Beijing respectively worked in different provinces previously. In my opinion, this is truly dramatic.<sup>29</sup>

I analyzed data on the overall migration of the general population in China. I found that the concentration of movement into Beijing and Shanghai is much more pronounced among lawyers than in the general population. In the general population, between 7% and 8% of inter-provincial moves are into Beijing, and among lawyers 21% of inter-provincial moves are into Beijing.

We not only gathered information about where lawyers are coming from, where they were in the past, where they worked before, but also about their future plans to move. We asked the question: “Do you plan to move to another city within the next five years to practice law?” 22% said yes, which was incredible! More than one in five of lawyers were planning to move to different cities! And here we can look at where they are moving to. I divided cities to Tier 1 cities: Beijing, Shanghai, Guangzhou, Shenzhen; Tier 2 cities, and Tier 3 cities. Generally speaking, lawyers move in a tiered process of migration: from Tier 3 to Tier 2 and from Tier 2 to Tier 1. If you are a lawyer, you want to move to Beijing, Shanghai, Guangzhou, or Shenzhen. This is the dream destination. Everybody wants to move to these places and make it and get rich. It is dominated by Beijing. 30% of all intended moves are to Beijing. People want to go to Beijing.

## 5. *Conclusions*

### (a) *Chinese Lawyer Migration Patterns*

In conclusion, survey findings and official data in yearbooks show an enormous influx of lawyers into Chinese Tier 1 cities in general and into Beijing in particular. This is unique and dramatic in comparative perspective. Part of the story is convergent with general migration patterns. The floating population in China is huge. About 200 million people form the floating population in China. And the single most common destination for migrant workers from rural areas is Guangdong. More migrant workers end up in Guangdong than anywhere else. In China as a whole, as many as 40% of all inter-provincial moves are into Guangdong. So part of the story of lawyer migration is the general migration of China as a whole. But movement into Beijing is above and beyond the general pattern. Lawyers want to move into Beijing more than anywhere else.

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29. *Id.*

(b) Improving Access to Lawyers in China

Access to lawyers is improving everywhere as we can see very clearly. However, outside the Tier 1 cities, improvement has been much slower. Access to lawyers in the U.S. is much greater than China, but geographical concentration is also greater in the U.S. than China. Actually the concentration of American lawyers is higher than in China. But it has been very stable over the past thirty years, but the degree of concentration is higher in the U.S. than in China. In China, by contrast, there has been dramatic change. There has not been change in the U.S., but still even now there is less concentration in China than in the U.S. However, we also know from survey data I collected with Sida Liu that more than 22% of lawyers in China plan to move to different cities, which suggests the geographical concentration will continue to intensify in China. This trend will persist into the future.

(c) Should This Phenomenon be Alarming?

Is it a problem? I am worried about access to lawyers in China. There are already very few lawyers in China, and the shortage of lawyers will persist for most Chinese people outside the big cities. Before we become too alarmed or conclude it as a real problem, we need to know what these lawyers are doing in these places. How many of these lawyers are actually serving everyone in general? How many are serving companies? What kind of litigation are they doing? What kinds of clients do they represent?

We also need to know something about the demand for lawyers. Perhaps we do not need to worry about access to and the supply of lawyers if there is limited demand for lawyers outside the big cities. Maybe people find help from the basic-level legal workers and other actors like village heads. Maybe people do not want to hire lawyers.

We should also take into consideration how many of these lawyers move into Beijing and Shanghai are going to succeed, and how many of them will fail. We know from research that a lot of lawyers fail in Beijing. They come in huge numbers and they also leave in huge numbers. So maybe the market will solve these problems.

While I am worried about this trend, we need to temper or qualify my conclusion until we do more research in the future. I look forward to your comments and suggestions. Thank you very much.

### III. COMMENTARY

#### A. PROFESSOR WEN-CHEN CHANG

I was wondering if our chairperson, Professor Yeh, would have something to add before I begin my discussion. Although Professor Yeh has

not done empirical survey or studies on the state of the legal profession in Taiwan or in other contexts, he is definitely the leading authority here in terms of the causes in the increase of lawyers, law schools, as well as other sectors in the legal profession in Taiwan or in other comparative Asian countries. Professor Yeh, please feel free to intervene if you wish.

1. *Similar Recent Trends in the Taiwanese and the Chinese Legal Profession*

As Professor Michelson discussed these themes, I could not help but discern similarities between the trends in China and those in Taiwan. I strongly wished that I had done some empirical studies on the legal profession in Taiwan so that we could discuss these trends and compare and contrast what we have in common as well as the differences. Nevertheless, there are some key phenomena that I would like to flesh out between China and Taiwan in the legal profession.

To begin with, there were significant increases in lawyers as well as in law schools over the past two or three decades. First, there was a huge increase in the number of lawyers in both sides of the Strait. In 1981, only two law students in a class would pass the bar, with fifty students passing in total.<sup>30</sup> Afterwards, there was an increase in the admission of lawyers around the 1990s. I think it was 1992 or 1993.<sup>31</sup> That year, for the first time, there were 120 lawyers who passed the bar exam. Since then, starting from the early 1990s, we have an annually the admission of more than 120 to 150 new lawyers. As of now we have around 2000 to 3000 lawyers in Taipei, with approximately 8000 in Taiwan by and large. Aside from lawyers, we have also witnessed the increase in the number of law schools in both Taiwan and China. When I graduated from this law school in 1992, there were only about ten to fifteen law schools nationally, and now we have about 50 law schools. Five years ago we even had 55 or 60, but some could not meet the market demand and closed down.

2. *The Role of the Government in the Asian Legal Profession*

Another aspect of the Asian legal profession, which Japan, South Korea, Taiwan and China all share with each other, is that the number of law

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30. In 1981, the attendance number of the National Bar Exam in Taiwan was 1182 applicants, with 50 applicants admitted, leading to an admission rate of 4.23%. Heng-Wen Liu, *Chanhou Taiwan Ssufajen chih Yenchiu—Ssufakuan Hsunlienso Wenhua Weichu te Kuancha* [Research on Postwar Jurists in Taiwan—Observation Centered on the Culture of Judges and Prosecutors' Training Institute], SSU YU YEN : JENWEN YU SHEHUI KESHUEH TSACHIH [THOUGHT AND WORDS: JOURNAL OF THE HUMANITIES AND SOCIAL SCIENCE], Mar. 2002, at 125 tbl.6, 176.

31. *Id.*

schools, lawyers, and legal professionals such as bureaucrats and judicial officers are all controlled by the government. Not a single element in the legal profession has been put in the face of market challenges. In other words, when we look at these empirical studies, we have to be aware of an invisible hand behind all of this, which is not the market but the government. This was typically reflected in Taiwan at the time. After the opening of the number of lawyers in the 1990s, the bar association, which should have been the frontrunner of the legal profession, has not been supportive of expanding the number of lawyers as well as for the opening for foreign lawyers, with the Taipei bar association being a notable exception. Another phenomenon is that the Examination Yuan, a constitutional organ, is in charge of the total number of admissions of all legal professionals. These are examples of similarities that show China has much more in common with Taiwan than with the U.S., and which I like to flesh out first for discussion.

### 3. *The Rise of Cities with a National Development Agenda*

Now I like to postulate that what you have been presenting in your data of China regarding the concentration of lawyers in major cities reflects very similarly to the trends in Taiwan. The population in Taipei city and the new Taipei city constitutes one quarter to one third of the population of Taiwan, and the Taipei bar association probably constitutes more than 50 percent of the lawyers in Taiwan. If the concentration of lawyers in Taiwan and China are under certain similar contexts and development trends, what would those be?

Here I wish to focus my discussion on a special developmental pattern in Chinese political culture, namely the “capital cities directly controlled by the national government”. The ROC Constitution stipulates capital cities aside from provinces. Now we have capital cities as well. Taipei City is the capital of Taiwan, but the city of Kaohsiung has commanded the same status as Taipei, enjoying privileged resources allocation. An example to evidence their privileged status is the participation of the mayors of Taipei and Kaohsiung in the Executive Yuan (Cabinet) meeting. To this effect, these two are not ordinary cities, but cities under the clout of the national government provided with the agendas for national developments. Similarly in China, Shanghai is not just a city, but a national or a nationalized power center in that sense. In the past, capital cities included only Kaohsiung and Taipei, but now we have Taipei City, new Taipei City, Kaohsiung City, Tainan City, and Taichung City, encompassing a total of five cities with national status. This idea of having these national or capital cities is in a sense cultural; in another sense political. This also reflects very nationally controlled ideas of development. With limited resources available, the government would

choose to develop and award privileges only to those regions strictly under its own control, instead of spreading those resources evenly among all regions. This is a different development method than that of the U.S. They are specifically for governing purposes. That is one point in comparing Taiwan and China. In addition, there is, of course, the fact that these cities are the “open doors” of China and Taiwan. So it is easy to understand why government agencies and big law firms would concentrate in these areas, resulting in very unequal access to justice in the less developed region.

A personal anecdote illustrating the concentration of lawyers in major cities would be from a young lawyer who was a student of mine. He was working in a major transnational law firm in Taipei, and one day he felt tired of the life being a corporate lawyer, and decided to move to the biggest law firm in Hualien, a beautiful county in Eastern Taiwan. It is notable to point out that the biggest firm in Hualien had only six lawyers. By working there, he thought he could finally say goodbye to the busy life of a transnational lawyer in Taipei. It turned out, however, that he had no life in Hualien as one of only six lawyers in charge of many, many cases.

#### 4. *Democratization as a Differentiating Factor in Taiwan*

While the legal profession in Taiwan and China witnessed similar trends in the development, one major difference between Taiwan and China was democratization in the former and the lack of it in the latter. During the period of political and social changes in Taiwan, many reforming measures were advocated in the parliament, successfully put into legislation and implemented. Those kinds of legislation clearly have driven the demand of lawyers, and are related to the increase of lawyers in Taiwan. In contrast, that kind of causes for the increase of lawyers did not occur in China. The increase of lawyers in China was instead stemmed from a top-down initiative of the national government. This is one notable difference that requires further examination in the comparison of lawyers between China and Taiwan.

### **B. PROFESSOR YUN-CHIEN CHANG**

#### 1. *Possible Explanations for the Concentration of Lawyers in Major Cities*

To begin with, I would like to explore why lawyers concentrate in big cities such as Beijing and Shanghai. There may be several possibilities. First, we can intuitively think that people would want to move to these places because of their preference for the life style in big cities. The second

possibility would be that most of the major international law firms which pay better salaries are there. If this is true, when the subjects of your survey say that they are moving to the cities, they are actually saying that they are moving to an international firm. If the survey has not incorporated these possibilities in its questionnaire, we may not necessarily detect this incentive. A third possibility would be the housing and registration policies in China. My understanding is that in China, the government controls the flow of people from the countryside to the city. For example, the only way for a lawyer from Xinjiang to stay in major cities is by practicing in those cities for several years until he receives the permission to stay.

## 2. *Inquiries into Aspects of the Survey*

My second question would be to question the wisdom of comparing the U.S. and China in the current situation. Like the difference between apples and oranges, China is a developing country while the U.S. is a developed one in every sense. An educated guess would be that in the nineteenth century, there was also migration from the countryside to the city in the U.S., though the current census does not show data from that period. As such, a comparison of only the current U.S. and China may be subject to certain criticism.

Thirdly, an ordinary city resident would not care about the number of corporate lawyers in the city as much as they do about the number of litigation lawyers, such as criminal defense attorneys, in terms of access to social justice. Perhaps a subset of data on how many criminal lawyers per capita there are in the city in comparison to the countryside and whether there has been a change in that percentage or whether it has been distributed unequally would better reflect access to social justice for ordinary citizens.

Fourthly, I would like to ask how you chose your survey targets. Were they simply convenient samples? Were they from the top one hundred firms? What were the criteria for choosing the lawyers that you surveyed?

## 3. *Possible Inconsistencies between Registered and Physically Present Lawyers*

A final note would be to point out a possible inconsistency with the number of lawyers registered in an area with the actual physical presence of those lawyers. You mentioned about the situation in Taiwan. Following Professor Chang's comments, when I passed the bar about ten years ago, if I remember it correctly, the number of lawyers registered in Taipei City was 3000 with a total of 4000 for the whole Taiwan—highly concentrated, on its face. That number could be misleading as in Taiwan a lawyer is required to

register in a local bar association and a district court to practice in that city or county. In my time, you can only register to a maximum of four jurisdictions.<sup>32</sup> Theoretically, if one wished to serve the most clients from all the areas of Taiwan, I would certainly register in Taipei City, the biggest commercial and political hub in the country, in addition to my local district court. So the number we reported are simply the registered members of a local bar association or court, but not necessarily the number of lawyers physically active in that area. In the future, if you plan to do a similar survey, you may want to keep this in mind and add some questions to sort things out.

### C. PROFESSOR CHI CHUNG

Thank you. It is an honor to participate in this roundtable discussion and to learn from all of you.

#### 1. *Comparing Chinese and European Cities: Two Perspectives*

My first question relates to Professor Michelson's comparison of the population per lawyer ratio of Beijing and Shanghai to that of cities in Europe. You find that, by 2009, in Beijing alone, there was one lawyer for every 631 people, while in Germany the rate is about eight hundred people per lawyer. There may be two interpretations of your findings. The first would be to look at it in terms of social justice, and the average access to lawyers is measured by the population per lawyer ratio. Another interpretation would be to look at the broader economic landscape. As you mentioned, factors such as growth opportunities in urban areas, the concentration of commercial transaction litigation in the legal service market, and the practice of estate planning in Beijing and Shanghai may be similar to those in cities in Europe. In addition, the population per lawyer ratio may be influenced by government policy. One of Deng Xiao-Ping's policies is to "let a small group of people get rich first", and the concentration of resources and talents in a few urban areas serves that policy.

#### 2. *Chinese Legal Professionals with Foreign Licenses Only*

My second question is about the observation that some of my Chinese friends from the U.S. law schools do not take the Chinese bar exam, but instead take the New York state bar exam and later work in the Chinese offices of foreign law firms. If they take the Chinese bar exam and become

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32. This restriction was lifted in 2002. Attorney Regulation Act, art. 11 (1941) (amended 2010) (Taiwan), available at <http://law.moj.gov.tw/Eng/LawClass/LawContent.aspx?PCODE=10020006>.



Chinese lawyers, Chinese law prohibits them from being hired by a foreign law firm. As they choose to practice U.S. securities law and do the work such as the Initial Public Offerings (IPOs) of Chinese companies in the New York Stock Market, they choose not to take the Chinese bar exam. Are these Chinese legal professionals included in your report? What is your view on this corporate work?

3. *Is Population per Lawyer Ratio an Accurate Measure of Social Justice?*

I am also curious about the comparison between New York City and upstate New York. It seems that these statistics relate to your first point of population per lawyer ratio, but are they accurate measures of access to social justice in these areas? Would the fact that people in New York City, compared with people in upstate New York, can hire more lawyers necessarily mean that people in New York City enjoy more access to social justice? I have some doubts as to whether there exists a clear and universal causal link between the population per lawyer ratios and access to social justice in different areas.

**D. PROFESSOR CHIA-SHIN HSU**

1. *Rapid Growth of the Legal Profession Without Democratization in China*

My first question comes from Professor Chang's inspirational comment. Why did Taiwan's legal profession open after the initiation of democratization, while China's legal profession is rapidly increasing in a very high speed while it is open under an authoritarian regime? Is there a difference in government strategy? How does an authoritarian regime view the legal profession? To really understand the legal profession you have to understand its relationship with the government. I believe that it is the same case in China. Another factor to consider would be the self-perception of lawyers and bar associations in China. What kind of interests do they think they best serve or best want to serve? This may require more quantitative analysis.

2. *Relationship between the Growth of the Legal Profession and that of the Civil Society*

Something else that I am quite interested in but which may not be your immediate interest is the link between the growth of the Chinese legal

profession and the growth of the burgeoning civil society in China. To what extent is the legal profession serving the environmentalists, NGOs, and other socially active citizens? To what extent are they assisting with their work? To what extent are they being shunned by their lawyers? These statistics may shed significant insight on your main concern about the extent that the legal profession is serving the ordinary people. We also know that a lot of unrest is taking place in China due to government takeovers of land in certain areas. To what extent can or do lawyers take part in these disputes? Perhaps this may also be a future project for all of us.

#### **E. PROFESSOR TZE-SHIOU CHIEN**

I have a question about the slide showing the change in the concentration rate of lawyers in Shanghai and Beijing (Figure IV). I would consider this graph as misleading because I initially perceived the line presenting the concentration rate of lawyers in Shanghai and Beijing in the chart as flat, while the concentration rate of other place and the average rate of China were steeper. However, you mentioned that the former one represents the concentration rate in Beijing and Shanghai, and I realized that it is flat only because the base line is lower and the choice that you use a person as a basic unit rather than proportion of lawyer population to city population. Therefore, I would consider this graph visually misleading. I was wondering if my perception is correct or not?

(Professor Michelson: Yes, I think you are correct.)

#### **IV. GENERAL DISCUSSIONS AND RESPONSE**

*Yi-Li Lee (College of Law, National Taiwan University):*

Thank you, Professor. From your slides we can observe that the number of lawyers in China has increased in recent years. This may be an implication that lawyers are gradually becoming important actors in Chinese society. To this end, I would like to know whether lawyers in China form any bar association, and assuming that they do, do they have any chance to participate in government or judicial policy making? How do they monitor their government's policies? From your observations and research I understand that you are an experienced sociologist, so perhaps you can provide us with some insight.

*Shao-Man Lee (College of Law, National Taiwan University):*

Thank you. My name is Shao-Man Lee, and I am a research assistant of Professor Chang. Professor Michelson has analyzed the access of lawyers in China through the numbers of lawyers as well as their geographical distribution, but what could be just as relevant is what lawyers actually do in China. I heard from Professor Jerome A. Cohen<sup>33</sup> in a talk that a lot of lawyers were arrested in China because they helped local citizens in addressing issues of human rights, which is prohibited by Chinese authorities. So details of the cases that lawyers actually take in China may matter more here in this respect.

*Professor Jiunn-rong Yeh*

Before turning the floor to Ethan, I would like to briefly sum up a few points.

1. *Apples and Oranges: Comparing the Legal Profession with other Professions*

I understand from the data Professor Ethan presents that it is basically limited to the legal profession, particularly the concentration and the movement of lawyers, so the question here is whether these trends are special when taking into account major changes in geo-political structure. For example, what can we infer from here to the medical profession? What if the concentration and movement of medical doctors reflect the same trend? What if this finding reflects a broader geo-political development trend in China?

One possible deduction from this presentation is that this trend is unique to the legal profession, if we have enough data to support this hypothesis. However, my sense is that people are perhaps essentially attracted to the same incentives. Medical doctors would like to settle down in big cities, so would school teachers. Hence, whether this finding reflects a broader geo-political trend in China with features such as unequal, fast-paced, and one-sided development is yet to be clarified. A possible conclusion would be that what you have found is also similar to other professions, and may merely reflect a broader trend in China.

This may have several implications for understanding the legal profession in China. As we know, oranges and apples are very different. The

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33. Jerome Alan Cohen, Professor of Law, New York University School of Law.

difference in oranges and apples exists not only between China and the U.S. but also between professions like medicine and law. For governments and civil society, the difference between these two professions is very significant. The government may have different preferences regarding the number of lawyers and doctors. If we discover that the concentration and movement of lawyers are the same as doctors and reflect the same trend in the society, it may imply that the special feature of lawyers as a profession in their political, civil and societal significance has been missing in some aspects, or different than those of other societies.

2. *Analysis of the Legal Profession through Income, Productivity, and Capacity*

In addition, what lawyers are doing is very important. I tend to believe that lawyers have a lot to do with civil society as well as the government. However, I would like to see an analysis of lawyers in terms of total income and productivity as a service sector. Besides numbers of lawyers, there are many other ways to access the impact of the legal profession, such as through comparison with other professions like architects or engineers, and whether they are doing relatively well in terms of income. My sense of the situation in Taiwan is that our annual service is perhaps going down. Whether lawyers can get access to international markets also has to do with the legal education and their ability. Last but not the least, I would like to conclude with a note of applause, as this is a very interesting topic and a wonderful presentation.

*Professor Ethan Michelson*

Thank you for your ideas and feedback. These are really good ideas, and just what I have been hoping to receive through this roundtable discussion.

Let me first renew the call to cooperate with you in the future. We do very much hope to create new collaborative research and relationship with you and also to better understand the Taiwanese legal profession. It is so important in so many ways, not just in terms of understanding legal careers, but lawyers as a profession are important socially, economically, as well as politically, and in Taiwan they have demonstrated all three areas of importance. The Taiwanese legal profession adds a comparative element as a sort of a natural experiment, or maybe even a quasi-experiment between the Mainland and Taiwan as many cultural elements are constant. For example, the influence of “Guanxi” (relationships), in the legal profession is something to be noted, though I'm not sure whether this came from China or Taiwan. There is a phrase in China, “ ”, roughly

translated into “the essence of litigation is the exercise of relationships”, which I believe can serve as an example.

1. *General Civil Litigation instead of Corporate Work as the Bulk of Legal Practice*

Continuing, I would like to first highlight some common threads presented through the comments. One of them was the importance of differentiating lawyers by the work that they do. If I want to look into access to lawyers by ordinary citizens, I should limit the lawyers to those that represent individual causes and exclude lawyers that do corporate work. If I do that, supposedly the numbers in my data would change. Fortunately, though I have not shown it, we actually have detailed data on what lawyers actually do that can shed light into this problem. We have a long list of over thirty specific fields of practice and how much effort they devote to each of those. Here we can really see apples and oranges between the U.S. and Chinese legal professions. In the U.S., the top field is commercial litigation. In the larger landscape of the Chinese legal profession, however, commercial litigation and other corporate work is very limited. In a total population of more than 150 thousand lawyers in China, very few actually do corporate litigation.

If corporate work does not represent the bulk of legal work, then what kind of practice could it be? According to our data, the highest proportion has turned out to be debt collection. General civil litigation or basically what we call run-of-the-mill civil litigation, rather than commercial litigation, is what Chinese lawyers do more than anything else, and they represent more individual clients than corporate ones. Unfortunately, the official government data do not allow me to exclude lawyers that specifically do corporate work, though we could do that in our survey. Additionally, just for the sake of clarification, the kinds of friends that you may have working in an international law firm where lawyers are not licensed to practice law in China are not counted in our survey.

2. *The Significance of Jurisdiction Registration in China*

The other point I wanted to make was to applause your brilliant observation on the registration policies for legal jurisdictions. As you mentioned, only four jurisdictions are allowed for lawyers to register in Taiwan, and to encompass as much of the Taiwanese legal service market as possible, supposedly you would want one of those jurisdictions to be Taipei. This is similar to China. The total number of lawyers in Shanghai has more than doubled in 2009. Some of this movement in the data could be

migration, or the actual physical movement of lawyers into these cities, but not necessarily all of it. This is a very good point.

When you register a law firm in a jurisdiction in China, it carries the name of the city. If you register in a small town, you carry the name of the small town. As you can probably understand, this is not a good public relations move. For advertising purposes, you would want to put on your name card Beijing, Shanghai, or another big city. To reach this goal, what lawyers do is to go to Beijing to register your firm in there. It doesn't matter where you actually practice, but you have a jurisdiction listed as Beijing City. So differentiating between the amount of real movement and the amount of the appearance of movement is crucial in our report.

### 3. *The Weak Role of Chinese Lawyers in Public Policy Supervision and Human Rights*

To address a question raised by members of the audience, the extent of public policy influence for lawyers in China is low. In the U.S., politics is dominated by lawyers. I forgot the actual number but I think almost two thirds of Congress has a JD degree or is a lawyer. In China, however, very few of the deputies to the National People's Congress are lawyers. Chinese bar associations are weak politically as well. In China, bar association members and leaders are not elected but appointed by the Justice Bureau instead. They are politically weak, marginalized even, and sometimes deliberately so.

Another question from the audience concerns the role of lawyers active in human rights. While there are some activist lawyers in China, many are behind bars. So in terms of promoting human rights, very few lawyers in China actually practice in that due to the high probability of arrest. In fact, many lawyers are terrified of bad relations with the government or local officials. Some law firms may depend entirely on maintaining good relations with the authorities, so there are certain cases which they may choose not to take.

Finally, let me reiterate once more my deep appreciation to all of you and for this roundtable discussion. Thank you all and I look forward to staying in touch.

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# 律師的接近與使用

## ——中國與美國的供給比較分析

Ethan Michelson

### 摘 要

臺大法律學院非常榮幸邀請到美國印第安納大學布魯明頓分校法學院Ethan Michelson教授，為我們演講關於中國及美國律師供給數量及其分布的實證研究結果與分析。Ethan Michelson教授比較中國及美國律師的供給，分析人民接近使用律師的發展趨勢，並根據統計資料，進一步討論兩國法律服務規模的擴張，解釋律師在城市之間的遷徙。與談人張文貞教授簡要比較中國及臺灣的法律專業發展，Ethan Michelson教授在回應張永健教授及其他與會學者的提問及評論時，同時討論中國及美國的律師處理案件類型的差異，並解釋中國律師登錄集中於大城市的原因，以及律師在公共政策與人權議題上所可能扮演的角色。