

Gender Dynamics in China's Legal System: Comparative Analysis with the United States

By

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## Abstract

This thesis examines gender dynamics in China's legal system and aims to provide a comprehensive overview of the situation for female legal professionals. The gender gap is examined for several categories of legal professionals: private practitioners, government lawyers, legal academics, and emerging legal professionals in law school. The gender gap is measured using quantitative and qualitative data to chart empirical trends in gender disparities and trends in legal professionals' perceptions on gender issues. Comparative analysis using the same types of quantitative and qualitative data from the United States is included to provide a baseline from which trends and perspectives unique to China are examined.

## Acknowledgments

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## Introduction

This thesis studies gender dynamics in China's legal system by examining the situation for female legal professionals working in private practice, as government lawyers, and as legal academics, in addition taking into account the situation for emerging legal professionals in law school. My purpose is to explore whether there are numerical differences between the situations for female and male lawyers and to see to what extent these differences create a subjective impact upon women. To this end, I include comparative statistics on the situation for female legal professionals working in the same fields of legal practice in the United States. However, the study does not include an examination of legislation or other legal-political aspects of how gender is treated in China.

In examining gender dynamics from a statistical and subjective standpoint, questions about social-cultural gender norms and their influence arise. Socio-cultural gender norms can create gendered expectations and limitations that prescribe what is appropriate and expected for a "woman" and a "man." This gender orientated thinking can reinforce gender stereotypes that place women and men into certain boxes without regard for their individual characteristics.<sup>1</sup> Gender stereotypes can be especially problematic for female legal professionals because they can inform assumptions and judgments on their natural ability, work ethic, dedication, and suitability to occupational roles. The concept of gender exists in both countries and it is not inherently problematic, but it can become problematic when it impedes the ability of a woman or a man to make career choices. In removing gender barriers, the goal is not to erase any sense of gender. Such a task is seemingly impossible and counter-productive. In discussing gender-based

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<sup>1</sup> Rhode, "Unfinished Agenda," 30.

obstacles and barriers, the goal is to identify and understand how gender can impede a woman's or a man's career choices.

While female legal professionals in the United States have problematized and rebelled against socio-cultural gender norms for decades, less is known about what Chinese female legal professionals think. Since discussions about gender and its impact in the U.S. legal system have remained pertinent despite decades of feminization, the United States provides an ample basis for comparative analysis. The discourse in the United States has generated an abundance of scholarship that is useful in orientating an inquiry into gender dynamics in China's legal system. Comparative analysis with the United States generates a deeper discussion on gender dynamics in China's legal system, because it provides a baseline for comparative quantitative and qualitative trends that might not appear if studied in isolation. It is from the divergence of qualitative trends between the United States and China that analysis unique to China emerges. These trends suggest that while the current generation of Chinese legal professionals may not perceive the gender gap as a burden, succeeding generations of legal professionals might problematize gender norms and spark new questions about socio-cultural liberation in China.

#### A. Methodology

This study relies on both quantitative and qualitative data because both methodological approaches are equally essential in evaluating gender dynamics. Quantitative data is essential for tracking trends over time and often provides a basis for generalization. Qualitative data is essential because it breathes life into the empirical framework quantitative data establishes. Put simply, statistical trends are not evidence of lived experience; the two types of data are mutually



informative. In synthesizing the fruits of both approaches, this study relies on existing scholarship, which is augmented and updated by original research.

The original research conducted for this study is primarily quantitative. The quantitative research was conducted using primary sources, including statistics reported by China's National Bureau of Statistics and statistics published by the American Bar Association. Statistics on the gender composition of the Supreme People's Court were found by searching the Court's website and data on the gender composition of law faculties at eight Chinese law schools was found by manually searching each school's website. The findings and limitations of this research are presented in Chapter 2.

The majority of the qualitative data presented in this study is drawn from existing scholarship, as discussed in the literature review. The qualitative data is supplemented by a small amount of original qualitative research. This qualitative research consisted of online communication with three Chinese women who are working at law firms in the United States and are graduates of the same U.S. law school. These women were selected because the author wanted to include the perceptions of Chinese female legal professionals, and these women are recent graduates with whom the author is familiar. The women were sent the same twelve-questions that are included in Appendix 2. These twelve questions are not a survey and are not designed to procure anthropological evidence. The women were all told the questions were optional, to consider them open-ended, and encouraged to include any thoughts outside of these twelve questions. Essentially, the questions were only intended to generate informal discussion. The women were told that if their response were included in this study, they would not be named. Basic descriptive details on these women are included in Appendix 1. Some of their responses are included in this study as anecdotal evidence only. Responses were selected based

on whether they supported, contradicted, or elaborated on perceptions already included in existing qualitative evidence on this topic.

It is important to acknowledge that while this study explores gender dynamics, it is focused on how those dynamics affects the lives of society's most privileged. This privilege takes many forms. For example, the Chinese female legal professionals whose perspectives on private practice in China are included generally enjoy the privilege of working in China's highly developed eastern or coastal provinces, often at elite international law firms. Most of these legal professionals enjoy a comparatively affluent economic status that allows them more freedom in making their career choices. Undoubtedly, this privileges colors the perceptions of these individuals, and it is important to be cognizant of that when reading their evaluations and perceptions on gender. It is also important to acknowledge that these perspectives are from a small segment of society, which limits their applicability to gender issues within the Chinese labor market generally. These limitations aside, however, it is noteworthy that some of those who enjoy the greatest advantages in society still experience issues related to gender inequality. If this is the case for society's privileged elite, what possible implications does this hold for those who do not enjoy such privilege? This study will hopefully energize further research on this topic and further research on those who do not enjoy the same degree of privilege, but perhaps do experience issues of gender inequality to a far greater degree.

## B. Literature Review

Studies on gender within China's legal system are limited.<sup>2</sup> The studies that have been conducted are impressive scholarship. In contrast, studies on gender within the U.S. legal system are numerous.<sup>3</sup> Scholars have presented quantitative findings that provide an empirical baseline for charting trends that suggest gender inequality exists in both countries' legal systems. These trends are consistent with a broader trend of gender inequality in both countries' labor markets<sup>4</sup> and the literature discussed here is representative of gender dynamics present in other labor markets.

Studies on gender within China's legal system present unique obstacles regarding data collection and reliability.<sup>5</sup> There are a number of factors that make it difficult to obtain data on this topic. The political climate in China can make the study of so-called "sensitive topics" very difficult, as information is purposely limited in order to reduce the potential for criticism, alarm, or disorder. Scholars have pointed to additional factors, such as a lack of attention to gender-specific issues when studying China's legal sector.<sup>6</sup> For example, the government publishes official figures on the number of lawyers in China, but this official data is not disaggregated by gender.<sup>7</sup> Nonetheless, there is consensus among scholars that there is gender inequality within

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<sup>2</sup> Michelson, "Gender Inequality," p 338; Liu, "Women in Legal Education," 1311; Kuo, "Taiwan Case Study," 26.

<sup>3</sup> Rikleen, "Woman Lawyers Lag," 1; Seron, "Comparative Look," 20.

<sup>4</sup> Michelson, "Gender Inequality," p 337; Seron, "Comparative Look," 1360.

<sup>5</sup> Michelson, "Gender Inequality," 343-44; Liu, "Women in Legal Education," 323.

<sup>6</sup> Liu, "Women in Legal Education," 1324.

<sup>7</sup> Michelson, "Gender Inequality," 343.

China's legal system.<sup>8</sup> In evaluating gender inequality scholars measure what is often referred to as the "gender gap" in differing ways, but popular measurements include differences in numerical or proportional representation, income, promotion to powerful or senior positions, and career longevity.<sup>9</sup>

While there is a consensus among scholars that gender inequality exists within China's legal system, it is important to note significant differences in scholarship on this topic. For example, there are two studies focused on lawyers who practice in Mainland China;<sup>10</sup> one study on law schools in Mainland China;<sup>11</sup> and one study concentrated on legal professionals in Taipei, Taiwan.<sup>12</sup> In addition to differences in location, there are also differences in specialization. Studies have narrowed their focus to urban legal markets;<sup>13</sup> the legal academy;<sup>14</sup> the legal work of prosecutors and judges;<sup>15</sup> and the experiences of emerging legal professionals in law school.<sup>16</sup> Given that the scholarship on this topic is limited and is divided in its focus, this study will take

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<sup>8</sup> Michelson, "Gender Inequality," 338; Kuo, "Taiwan Case Study," 26; Liu, "Women in Legal Education," 1319-20; Boutcher and Silver, "Gender and Global Lawyering," 1139.

<sup>9</sup> Michelson, "Gender Inequality," 340; Boutcher and Silver, "Gender and Global Lawyering," 1105.

<sup>10</sup> Michelson, "Gender Inequality," 338; Liu, "Women in Legal Education," 1311; Boutcher and Silver, "Gender and Global Lawyering," 1142.

<sup>11</sup> Liu, "Women in Legal Education," 1322, 1324.

<sup>12</sup> Kuo, "Taiwan Case Study," 26.

<sup>13</sup> Michelson, "Gender Inequality," 338; Boutcher and Silver, "Gender and Global Lawyering," 1142.

<sup>14</sup> Liu, "Women in Legal Education," 1320.

<sup>15</sup> Kuo, "Taiwan Case Study," 26.

<sup>16</sup> Liu, "Women in Legal Education," 1316.

an inclusive approach in how it defines “legal professional” but will limit its regional focus to only Mainland China. “Legal professional” may refer to one working as a private practitioner, a government lawyer within the judiciary, a legal expert within academia, or it may refer to an emerging legal professional in law school.

The main scholarship relied upon in this study is Ethan Michelson’s “Gender Inequality in the Chinese Legal Profession,” and Xiaonan Liu’s, “Chinese Women in Legal Education.” Their scholarship is described in the paragraphs that follow.

### 1. Michelson Study

Michelson’s 2009 study, “Gender Inequality in the Chinese Legal Profession,” gathered an extensive amount of quantitative data on private practitioners in the law firm setting, and concluded that within this setting women face general patterns of persistent gender inequality. Michelson’s conclusions were based on his collection of quantitative data culled from fieldwork and official government data. This data was collected to answer one main question, do general patterns of urban gender inequality extend to China’s legal profession or are different dynamics at play in the Chinese bar? His fieldwork included a survey conducted in 2000 in twenty-five cities in Mainland China and a survey conducted in 2007 of lawyers in three cities and five provinces. The 2000 survey collected data from 131 identifiable law firms, representing 38% of law firms in Beijing in 2000, and from twenty-four small and mid-sized cities in 16 provinces selected because research assistants would be returning to their homes in these provinces for the summer holiday. Michelson was unable to determine how representative the firms from the twenty-four cities were because there was no national law firm directory available. The official government data he used included the *China Statistical Yearbook*, and the *China Lawyer*

*Yearbook*, which was only published between 2000 and 2005. The 2007 survey collected data from Beijing, Shanghai, Guangzhou, and five provinces. The data was collected through a survey distributed via mail and email survey by the All-China Lawyers Association and shared with Michelson by a professor at Koguan Law School Shanghai Jiatong University. The response rate was between 80-85%. Since the All-China Lawyers Association administered the survey, Michelson did not have data as to how law firms or individuals in law firms were selected.

Michelson used four key measures of the gender gap to answer his questions on gender inequality: numerical representation, income gap, partnership gap, and career longevity gap. Michelson found that women's numerical representation among lawyers grew consistently over time, but that the gap in years of practice had a strong adverse affect on the income gap and partnership gap, leading him to conclude that the expanded quantitative opportunities for women have not necessarily meant expanded qualitative opportunities for women.

## 2. Liu Study

In 2008, Xianonan Liu conducted fieldwork while working as a visiting professor at a Fujian Province law school. She gathered qualitative data on the perceptions of law faculty and law students. In addition to her fieldwork, Liu also conducted original quantitative research on the gender composition of law school faculties at twenty-six Mainland Chinese law schools.<sup>17</sup> Her methodology relied on manually searching law schools' websites for self-published information on faculty members. There are a number of limitations to her method, including the fact that the information is self-published and was conditioned on law schools' websites listing faculty members by name and position, and by the website either listing faculty members'

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<sup>17</sup> Liu, "Women in Legal Education," 1321.

gender, providing a picture, or providing a short biography from which a faculty member's gender could be determined. Even where law schools' websites provided this information, there were some inconsistencies which prevented Liu from determining the gender composition of the entire faculty at a given law school. Despite these limitations, her methodology and data provide an important empirical baseline for understanding the quantitative findings from her field research.

## Chapter 1: China's Legal System

### A. Political and Legal Framework

This section includes a brief summarization of the recent historical progression of China's political and legal frameworks. While this brief summarization may oversimplify and overgeneralize a complicated history, it is nonetheless important to include because it highlights significant historical and economic shifts that have influenced ideas about gender. Since these institutional influences have continued to provoke and respond to cultural norms, female legal professionals' responses to gender issues stand as a reflection of cultural norms regarding gender. Thus, the political and legal framework is contextually relevant to a discussion on gender dynamics because it informs the perceptions of legal professionals who navigate issues of gender within these frameworks.

The People's Republic of China (hereinafter referred to as "PRC") was established in 1949. Shortly after its establishment, the existing legal structure was abolished because it was deemed to be contrary to the political ideology of the new PRC government.<sup>18</sup> In the first few years of PRC rule after the former legal system had been abandoned, informal ad hoc tribunals were instituted in which millions of citizens were subjected to mass trials. These trials labeled people as "class enemies" and sentenced them to perform hard labor, known as "reform through labor." Many were even sentenced to death.<sup>19</sup> After the turmoil of these early years, the PRC set to work re-establishing the legal system and in doing so it turned to Soviet models.<sup>20</sup> Soviet legal

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<sup>18</sup> Chen, *Legal System of PRC*, 31; Chen, *Chinese Law*, 45.

<sup>19</sup> Chen, *Legal System of PRC*, 32.

<sup>20</sup> Chen, *Chinese Law*, 48.



codes and textbooks were translated into Chinese, Soviet scholars were invited to China, and students were sent to study in the Soviet Union.<sup>21</sup> In 1953, the newly established National People's Congress (hereinafter referred to as "NPC") promulgated a new constitution and new laws that provided a legal framework for the PRC.<sup>22</sup> These early efforts were soon derailed, however, by the Anti-Rightist Campaign of 1957 and by the Cultural Revolution (1966-1976).<sup>23</sup>

Beginning with the Anti-Rightist Campaign of 1957, legal reform efforts were slowly denigrated, and during the Cultural Revolution the legal system was more or less abolished.<sup>24</sup> The dismantling of the legal system was thorough. The Ministry of Justice, which had formerly overseen the legal field, was dismantled.<sup>25</sup> Law schools throughout the nation were closed.<sup>26</sup> Law professors and lawyers were branded as rightists and anti-revolutionaries, and often banished to the countryside to perform physical labor.<sup>27</sup>

After the turmoil and disruption of the Cultural Revolution, China's legal system was slowly revived.<sup>28</sup> This revival became particularly important as China opened up its economy in

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<sup>21</sup> Ibid.

<sup>22</sup> Chen, *Legal System of PRC*, 33-34.

<sup>23</sup> Chen, *Legal System of PRC*, 35-40; Spence, *Modern China*, 512, 603-617; Chen, *Chinese Law*, 51.

<sup>24</sup> Szto, "Gender & Chinese Legal Profession," 82.

<sup>25</sup> Chen, *Legal System of PRC*, 258.

<sup>26</sup> Ibid., 40.

<sup>27</sup> Ibid., 219.

<sup>28</sup> Ibid., 41.

a series of economic reforms, as these reforms required a functioning legal system.<sup>29</sup> The economic reform policies (*gǎigekāifang* 改革开放) that began in 1979 under Deng Xiaoping, are regarded as a turning point in the development of China's economic system and legal system.<sup>30</sup> The economic reforms policies sought to develop China's economy and focused on opening up to the outside world, highlighting the need for a legal system that could provide a conducive environment for economic development.<sup>31</sup> Indeed, the speed of China's economic growth and the increased rate of foreign investment have spurred the legal system's growth and professionalization in recent years.<sup>32</sup> The 1980s and 1990s were a period in which China's legal system underwent massive and rapid development, with numerous laws and regulations enacted, especially those that regulated commercial relations.<sup>33</sup> Furthermore, in the ten years from 2004-2014, the lawyer population has increased by 53.48%.<sup>34</sup>

The economic reform policies have resulted in dramatic economic changes and dramatic social changes. During the PRC's early years, people were tied to the land through the commune system and the vast majority of the population was unable to leave the countryside and live in urban areas.<sup>35</sup> In the 1980s, China began to experience some of the economic and social changes

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<sup>29</sup> Ibid., 44.

<sup>30</sup> Chen, *Chinese Law*, 50.

<sup>31</sup> Ibid., 51.

<sup>32</sup> Chen, *Legal System of PRC*, 46.

<sup>33</sup> Chen, *Chinese Law*, 51.

<sup>34</sup> 中国统计年鉴 2015 年(2015 China Statistical Yearbook);中国统计年鉴 2009 年(2009 China Statistical Yearbook).

<sup>35</sup> John, "Feminism in China," 1594.

that resulted from economic reform policies. Globalization and market growth are examples of the changes and that have uniquely affected women.<sup>36</sup> On the one hand, these changes have created new jobs for women.<sup>37</sup> However, many of these jobs have been low-status and low pay.<sup>38</sup> It is easy for scholars to criticize the degree to which women have benefited from these changes, but it difficult to understand the extent to which these changes, including their shortcomings, are criticized or welcomed by women.<sup>39</sup>

Other studies on gender differences in the labor market have found that women are often disadvantaged as compared to men. For example some scholars have questions the disproportionately low representation of women in Chinese higher education,<sup>40</sup> a gender wage gap in the private labor sector,<sup>41</sup> and gender-based occupation segregation.<sup>42</sup>

This study presents findings on how one segment of the female work force is affected. Differences in the quantitative and qualitative trends within each sector of the legal profession and across sectors of the Chinese and U.S. legal profession provide a source of discussion for possible cultural explanations that may reconcile differences that are unique to the Chinese legal system.

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid., 1595.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Zhao, "Female Faculty in Chinese Higher Education," 415.

<sup>41</sup> State News Service, "Discrimination Against Women in Law and Practice," 5.

<sup>42</sup> Guo, "Gender Inequality Urban China," 24.

## B. Ideological Influences

Confucian and Communist ideas and beliefs are two ideological forces that continue to shape Chinese gender norms. This section provides a few details on aspects of Confucian and Communist thought that are relevant to the discussion and commentary in Chapter Four. While the cultural influences of these two ideologies are complex, a simplified and generalized summary of their relevant aspects provide important cultural context that can inform possible explanations for the trends examined in Chapter Two.

Chinese society and its legal culture have often been described as Confucian.<sup>43</sup> While there is diversity and dissension among different Confucian schools of thought,<sup>44</sup> the term Confucian will be used to refer to fundamental attitudes and concepts that have had a lasting impact on Chinese traditions. In Confucianism, family is the fundamental unit in society.<sup>45</sup> The role of women in the family was to produce male offspring to secure future generations to carry out important ancestral rites. It was within the family that one first learned of social hierarchy, as children were expected to be filial to their parents and parents were expected to cultivate their children's sense of virtue and serve as examples of virtuous people. This parent-child relationship where the superior guides and serves as an example to the inferior and where the inferior is respectful and filial towards the superior, is a fundamental relationship because it demonstrates Confucian social hierarchy. Another important aspect of Confucian social hierarchy was women's inferior position to men, established in the husband to wife relationship in the family and extended outwards to the rest of society. These hierarchical relationships were

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<sup>43</sup> Chen, *Chinese Law*, 7.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*,12.

the roots of social order and the branches expanded from the family to the state, with the ultimate goal being an ordered society that allowed for harmony and prosperity throughout the state.

An important implication of this social structure is the focus on collective social units rather than a focus on a single individual.<sup>46</sup> Thus, in a Confucian society one's role within society is tied to a series of hierarchical relationships and does not merely concern an individual. Another important implication is that society is to be ordered by virtue that runs between hierarchical relationships rather than by the implementation and enforcement of laws.<sup>47</sup> Thus, in Confucian thought virtue is the ideal way to order and maintain society, not law. Confucianism was adopted as state ideology starting from the Han Dynasty through the Qing Dynasty, allowing Confucianism to serve a fundamental role in forming Chinese social and political structures for centuries. Its importance is steeped in its deeply rooted and enduring influence in shaping Chinese culture.

The Communist ideology regarding gender is arguably the antithesis of traditional Confucian attitudes towards gender. As part of the Chinese Communist Party's (hereinafter "CCP") revolutionary ideology, women's traditional gender roles were suspect and often rejected, especially during the Cultural Revolution.<sup>48</sup> In fact, the 1954 PRC Constitution states this radical sense of gender equality, declaring that women enjoy equal rights with men "...in all spheres of political, economic, cultural, social and domestic life."<sup>49</sup>

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Kuo, "Taiwan Case Study," 45.

<sup>49</sup> 中华人民共和国宪法(1954年) 第九十六条(PRC Constitution 1954, Article 96).

The 1950 Marriage Law further extended certain protections to women's domestic and social lives.<sup>50</sup> Women's lives changed in many ways. Cultural traditions like bigamy, concubines, exchanges of dowries, and child marriages were all banned, and a minimum marriage age of eighteen years old for women and twenty years old for men was established.<sup>51</sup> Women were able to divorce more readily, as they could be awarded land and property in divorce settlements.<sup>52</sup> In addition to securing more protection for women socially and domestically, women were encouraged to enter the labor force and such action had significant political meaning in promoting CCP goals.<sup>53</sup> Although the re-organization and later deterioration of the legal system under the first decades of CCP rule meant that these rights had little legal impact, their political and economic impact for women were important social influences.

Communist fever for separating the social classes of the proletariat from the bourgeois was a catalyst for new social norms that erased social distinction, including gender, in favor of a unified sense of a national proletariat class.<sup>54</sup> For example, people were all instructed to refer to one another as comrade (*tóngzhì* 同志), a term used for all regardless of class or gender.<sup>55</sup> Thus, Communist ideology represents a politically significant notion of gender equality. Communist beliefs are still culturally relevant forces shaping Chinese perspectives on gender and class. According to Li Xiaojiang, a Chinese scholar well known for her work on women's studies and

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<sup>50</sup> Diamant, *Revolutionizing the Family*, 6.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, 126.

<sup>53</sup> Li and Zhang, "Women's Studies in China," 139.

<sup>54</sup> Li and Zhang, "Women's Studies in China," 149.

<sup>55</sup> John, "Feminism in China," 1595.

feminism, there is an enduring perception among Chinese people that everyone should be treated equally.<sup>56</sup>

Given the tension between the gender based notions in Confucian and Communist ideology, the gendered perceptions of modern-day Chinese legal professionals can be a source of contested discussion on how relevant or influential either of these ideologies continue to be in a rapidly changing society. Acknowledging that there is space for dissension in interpreting the ideological influences on modern-day legal professionals' gender-based perceptions, it appears that Confucian and Communist ideological influences are both still at play. As discussed below, there is perhaps a lingering sense of egalitarian values in Chinese society that pull from early CCP reforms, at least suggested by some private practitioners. For other legal professionals, however, their perceptions reveal gender-oriented thinking and gender-based stereotypes that suggest Confucian influenced notions of the subordinate role of women in family and society continue to have pervasive influence.

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<sup>56</sup> John, "Feminism in China," 1594.

## Chapter 2: Gender Dynamics in Fields of Legal Practice

Economic reform policies, in highlighting the need for a developed legal system, resulted in a rapid development of the legal profession. In the 1980s the lawyer population nearly quadrupled, and from 1983 to 1989 alone, the lawyer population ballooned from 12,000 to 43,600.<sup>57</sup> This influx has continued into the 1990s and 2000s, although not at the same dramatic rate. From 1992 to 1997 the lawyer population nearly doubled, from 45,666 to 98,902.<sup>58</sup> From 2003 to 2010 the lawyer population continued to grow, increasing roughly 25.97% from 142,534 to 195,170.<sup>59</sup> The lawyer population has continued to steadily grow in recent years. From 2010 to 2014, the lawyer population grew about 28.10%, from 195,170 to 271,452.<sup>60</sup> Overall, in the decades since the economic reforms began the lawyer population has exploded. It nearly quadrupled in the 1980's, nearly doubled in the 1990s, and in the past decade, from 2004-2010, it has increased by about 87%, with an average increase of about 6.8% per year.<sup>61</sup> While the lawyer population is not increasing at the same dramatic rate as it did in the 1980s, growth has remained steady and consistent.

It is clear the legal system is developing and the number of lawyers is steadily increasing, but it is not clear how this has affected female legal professionals. The growth in the lawyer population from the 1980s through the 2000s coincides with a widespread global trend of lawyer

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<sup>57</sup> Chen, *Legal System of PRC*, 219.

<sup>58</sup> Szto, "Gender & Chinese Legal Profession," 71.

<sup>59</sup> 中国统计年鉴 2009 年(2009 China Statistical Yearbook); 中国统计年鉴 2015 年(2015 China Statistical Yearbook).

<sup>60</sup> 中国统计年鉴 2015 年(2015 China Statistical Yearbook).

<sup>61</sup> 中国统计年鉴 2009 年(2009 China Statistical Yearbook); 中国统计年鉴 2015 年(2015 China Statistical Yearbook).



feminization.<sup>62</sup> Feminization in this context refers to an increase in the absolute number of women or an increase in the proportion of women represented within the legal profession. While there is scholarly debate as to which numerical values constitute the requisite feminization of the legal profession,<sup>63</sup> it appears there is some consensus that 30% is an important threshold in measuring feminization of the legal field.<sup>64</sup> Feminization is an important trend because it delineates the extent to which a space for women has opened up in the legal profession. Feminization, however, is not an effective descriptor of gender dynamics. The legal profession may have opened up to women, but it does not necessarily mean women are not still marginalized.<sup>65</sup> Put simply, quantitative improvements do not necessarily equal qualitative improvements.<sup>66</sup>

The quantitative and qualitative status of women across four fields of legal practice is examined in the sections that follow. The four fields of legal practice examined include private practice, government lawyers within the judiciary, legal academics, and emerging legal professionals in law school. The question driving this study is how has feminization manifested in these four fields? Responses to that question incorporate a comparative analysis with the United States. Although there are dramatic differences between the legal systems of both countries, it is helpful to have a comparative reference when evaluating gender dynamics. The United States is a useful reference for a number of reasons. On the most basic level, there is an

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<sup>62</sup> Michelson, “Global Supply Lawyers,” 1074; Seron, “Comparative Look,” 1360.

<sup>63</sup> Thornton, *Dissonance and Distrust*, 269.

<sup>64</sup> Michelson, “Global Supply Lawyers,” 1083; Rikleem, “Women Lawyers Lag,” 16; James, “Presence of Women,” 10.

<sup>65</sup> Seron, “Comparative Look,” 1370; Michelson, “Global Supply Lawyers,” 1103.

<sup>66</sup> Michelson, “Gender Inequality,” 339.

abundant amount of research on this topic. On a more nuanced level, the United States presents an interesting case for comparison because despite a large lawyer population and decades of feminization,<sup>67</sup> the proportional representation of women is relatively low as compared to other countries.<sup>68</sup> Furthermore, after decades of feminization the legal profession is still plagued by a persistent gender gap, with women disproportionately represented in low-status and low-income positions.<sup>69</sup> Thus, the United States provides an interesting basis for comparison because even though feminization began earlier, it has not manifested into a gender equalizer; its failures in this regard provide a relevant baseline for evaluating whether feminization is affecting Chinese female legal professionals in similar or dissimilar patterns.

#### A. Private Practitioners

The gender gap among Chinese private practitioners is perhaps quantitatively large, and yet qualitative data suggests Chinese female legal professionals do not perceive gender as a major obstacle in their careers. In the U.S. legal system, the gender gap among private practitioners is also quantitatively large, but in contrast to their Chinese counterparts, female legal professionals do consider gender as a major obstacle in their careers. In both countries, the quantitative gender gap can be measured by women's disproportionately low representation both in the lawyer population and in high-status or high-power positions, like partner (*héhuǒrén* 合伙人), and by their comparatively smaller incomes and shorter careers.

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<sup>67</sup> Dinovitzer & Hagan, "Gender Dissimilarity American Legal Markets," 929-30.

<sup>68</sup> Michelson, "Global Supply Lawyers," 1095.

<sup>69</sup> Dinovitzer & Hagan, "Gender Dissimilarity American Legal Markets," 929-30; James, "Presence of Women," 10; Rikleen, "Women Lawyers Lag," 1-2; Seron, "Comparative Look," 1360-1363.

While it is difficult to state the gender composition of the Mainland Chinese bar with a high degree of certainty, estimates indicate that despite feminization, the Chinese bar is possibly still overwhelmingly male. The difficulty in precisely stating the gender composition of the Mainland Chinese bar is due to the fact that official statistics on the lawyer population are not disaggregated by gender. While they are perhaps not entirely reliable, scholars have offered figures for the total population of female lawyers and their proportional representation in the total lawyer population. The following table uses official data on the total lawyer population and scholarly estimates of the female lawyer population to extrapolate estimated figures on women's representation within the Chinese bar from 2003-2014, a time period in which the expansion and feminization of the Chinese bar was underway.<sup>70</sup>

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<sup>70</sup> Michelson, "Gender Inequality," 350-355; Seron, "Comparative Look," 1371; Michelson, "Global Supply Lawyers," 1074; Bunnell and Sommers, "Women in Law Summit," 2.

Table 1: Expansion and Feminization of the Chinese Bar 2003-2014<sup>71</sup>

<b>Year:</b>	<b>Total Lawyer Population:</b>	<b>Increase in Total Lawyer Population:</b>	<b>Estimated Female Lawyer Population:</b>	<b>Estimated Increase in Female Lawyer Population:</b>	<b>Estimated Proportion of Lawyer Population Female:</b>
2003:	142,534		26,511		18.6%
2004:	145,196	1.87%	28,313	6.79%	19.5%
2005:	153,846	5.96%	29,538	4.33%	19.2%
2006:	164,516	6.93%	31,163	5.50%	18.94%
2007:	143,967	-12.49%	32,877	5.49%	22.84%
2008:	156,710	8.85%	34,685	5.50%	22.13%
2009:	173,327	10.6%	36,593	5.50%	21.11%
2010:	195,170	11.9%	45,000	22.97%	22.0%
2011:	214,968	10.14%	48,740	7.67%	22.67%
2012:	232,384	8.10%	52,790	8.31%	22.72%
2013:	248,623	6.99%	57,177	8.31%	22.99%
2014:	271,452	9.18%	61,928	8.31%	22.81%

Table One provides official figures on the total lawyer population and estimated figures on the female lawyer population. The data in Table One allows for a few possible interpretations. One possible interpretation is that over the past decade the lawyer population has become increasingly feminized, but the rate of feminization has perhaps not kept pace with the rate at

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<sup>71</sup> Figures for “Total Lawyer Population” for 2003-2014 from 中国统计年鉴 2015 年 (2015 *China Statistical Yearbook*); 中国统计年鉴 2009 年 (2009 *China Statistical Yearbook*); Figures for “Estimated Female Lawyer Population” for 2003-2005 from Michelson, “Gender Inequality,” 374-75 and for 2010 from Bunnell and Sommers, “Women in Law Summit,” 2 and Gartland, “巾帼律师/Ladies in Justice,” 25; Figures for “Estimated Proportion of Lawyer Population Female” for the years 2003-2005 from Michelson, “Gender Inequality,” 374 and for 2010 from Bunnell and Sommers, “Women in Law Summit,” 2 and Gartland, “巾帼律师/Ladies in Justice,” 25. All other estimated figures are the author’s. The author’s figures for “Estimated Total Female Lawyer Population” 2006-2009 were generated using the average rate of increase in the total female lawyer population from 2003-2005 (5.5%). The author’s figures for “Estimated Total Female Lawyer Population” 2011-2014 were generated by averaging the average rate of increase in the total lawyer population from 2011-2014 (8.60%) and the estimated average rate of increase in the total female lawyer population from 2003-2010 (8.01%). The author’s figures for “Estimated Proportion of Lawyer Population Female” 2006-2009 and 2011-2014 were generated using official data on the lawyer population and the estimated figures for the female lawyer population generated as described above.

which the lawyer population has grown. In other words, it is possible that even though the female lawyer population has increased over the past decade, women could still constitute a minority in the lawyer population. This interpretation is perhaps supported by scholars who have commented that feminization of the Chinese bar has been quite slow<sup>72</sup> and that the 30% feminization threshold for the legal profession has likely still not been reached.<sup>73</sup> In interpreting these trends as noted by scholars in the estimated data, women might comprise about 20-25% of the lawyer population, in which case the 30% feminization threshold would not be met. Such interpretations would imply that the Chinese bar is still male-dominated and that women are a minority among lawyers.

While the U.S. bar has reached the 30% feminization threshold, women are still a minority among American lawyers.<sup>74</sup> Indeed, despite decades of feminization the 30% threshold was not reached until 2005.<sup>75</sup> Even in 2015, a decade after the threshold was reached, women comprised only 35% of the lawyer population.<sup>76</sup> In the fifteen years from 2000 to 2015, women's proportional representation within the American bar increased by only 7%,<sup>77</sup> while the total lawyer population increased by 27.21%.<sup>78</sup> Even though the U.S. lawyer population is at least four

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<sup>72</sup> Stern, "Brookings Conference," 60.

<sup>73</sup> Stern, "Brookings Conference, 60; Bunnell and Sommers, "Women in Law Summit," 2; Michelson, "Global Supply Lawyers 1083.

<sup>74</sup> American Bar Association, "Lawyer Demographics Table 2015."

<sup>75</sup> American Bar Association, "Lawyer Demographics Table 2011."

<sup>76</sup> American Bar Association, "Lawyer Demographics Table 2015."

<sup>77</sup> Ibid.

<sup>78</sup> American Bar Association, "National Lawyer Population 1878-2015."

times larger than the Chinese lawyer population and growing at a fraction of the rate of the Chinese bar, the feminization trend in both countries has been perhaps been protracted.

There are a number of reasons why women's disproportionately small representation in the lawyer population matters. Marginalizing a group that is half of the potential workforce squanders potential human capital.<sup>79</sup> A strong female presence in the lawyer population can serve to counteract gender-based stereotypes<sup>80</sup> and can be a powerful force in shaping policies that address issues like work-life balance.<sup>81</sup> Scholars have also suggested that an increased presence of female lawyers benefits women's access to legal services<sup>82</sup> because female lawyers are perhaps more likely to represent female clients<sup>83</sup> and perhaps can better recognize women's perspectives, particularly when representing them in marital and family disputes.<sup>84</sup> Overall, a strong female presence in the lawyer population has the potential to better serve the interests of the profession, female clients, and other female lawyers.

The gender gap for private practitioners is also quantified by differences between the proportional representation of women and men in high status and high power positions. In this sense the gender gap is a power gap, and data, though limited, may suggest that men are overrepresented in high status and high power positions. Based on 2000 and 2007 fieldwork,

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<sup>79</sup> Rickleen, "Women Lawyers Lag," 14.

<sup>80</sup> James, "Presence of Women," 11; Seron, "Comparative Look," 1365.

<sup>81</sup> Woodington, "Gender Schema Theory," 147.

<sup>82</sup> Michelson, "Global Supply Lawyers," 1072.

<sup>83</sup> Stern, "Brookings Conference," 60.

<sup>84</sup> Li, "What He Did Was Lawful," 173.

Michelson concluded that the chance of being a partner was “considerably smaller” for women.<sup>85</sup> From his 2000 data, he estimated women were 38% less likely than men to be partners.<sup>86</sup> Based on his 2007 data that estimate increased, with women 43% less likely than men to be partners.<sup>87</sup> While stopping short of generalizing based on his data, his conclusions regarding the power gap are perhaps very real for some female private practitioners.

In 2010, a group of researchers conducted fieldwork at six medium-large firms in an unnamed major city in southwestern China.<sup>88</sup> Within these six firms the number of partners ranged from twenty-four to three.<sup>89</sup> While there was one firm that did not have any female partners, there were four firms where women comprised 30%-40% of the firms’ partners.<sup>90</sup> While those figures are quite strong and indicate that Chinese women’s proportional representation in partnership positions in those firms was higher than women’s proportional representation in the lawyer population, there are a few points to be made. It is admirable and worthy of celebration that women were so strongly represented as partners in four of six firms. However, in four of the six firms, as the status of a position decreased, the proportion of women in that position increased.<sup>91</sup> Although in two of the firms the proportional representation of women was more or less consistent regardless of position, in the majority of the six firms there

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<sup>85</sup> Michelson, “Gender Inequality,” 358.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Cook et al, “Managing Lawyers in China,” 3424.

<sup>89</sup> Ibid., 3425.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

was a pattern of women being disproportionately overrepresented in lower status positions like lawyer or assistant lawyer.<sup>92</sup> In fact, the only instances where women were equally or more than equally represented were at two firms as lawyers, and at three firms as assistant lawyers.<sup>93</sup> A final point is perhaps best expressed through a hypothetical. If the data were reversed where one firm with no male partners and the average gender composition at the other five firms was 73.69% female and 26.31% male,<sup>94</sup> would such data be striking? If female dominance among partners reads as unexpected or atypical, there is perhaps a normalizing factor at play, where it is assumed or expected that men dominate positions of power. When this male dominance becomes normalized, expected, it is often less likely to be problematized. Overall, the data on partnership chances for Chinese women is somewhat limited, and thus not appropriate for generalization. Despite that limitation there is some inkling that women's career prospects are perhaps stronger for lower-level positions than for higher-level positions.

While the U.S. bar is proportionally perhaps more feminized than the Chinese bar, Chinese females in private practice might enjoy a smaller power gap than their American counterparts. In 2013 women comprised about 20.2% of partners in private practice, but 44.8% of associates.<sup>95</sup> In 2015, when examining equity partnership, which is a high-status and high-power position because equity partners share in the firm's profits,<sup>96</sup> only 18% of equity partners

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> American Bar Association Commission on Women in the Profession, "Current Glance 2014," 2.

<sup>96</sup> Fuchs Epstein and Kolker, "Economic Downturn on Women Lawyers," 1180.



were women.<sup>97</sup> When looking at non-equity partners, women comprised about 28% of non-equity partners.<sup>98</sup> These comparatively low numbers are perhaps more troubling in the United States than they are in China because feminization of the U.S. bar began decades ago and for the last decade law schools have been graduating women and men in roughly equal numbers.<sup>99</sup> These facts make it particularly difficult to reconcile a persistent power gap despite a consistent supply of women.

Although the legal culture surrounding the attainment of partnership status is different in China and the United States, differences in legal culture did not erase the suggested power gap between female and male private practitioners. In China, the legal culture allows for more flexibility in attaining partnership status<sup>100</sup> and has been referred to as “eat what you kill,” meaning that developing strong business that contributes to the firm’s bottom line is the key to promotion.<sup>101</sup> While private practitioners in the United States are also valued based on their contributions in cultivating firm business, in the United States there appear to be more formalized partnership structures or “partnership tracks.” This perhaps contributes to Chinese female partners’ comparatively stronger representation as compared to their U.S. counterparts. In the United States the legal culture surrounding partnership is commonly referred to as “up or

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<sup>97</sup> Rickleen, “Women Lawyers Lag,” 3.

<sup>98</sup> *Ibid.*, 2.

<sup>99</sup> *Ibid.*, 3.

<sup>100</sup> Michelson, “Gender Inequality,” 347.

<sup>101</sup> Bunnell and Sommers, “Women in Law Summit,” 5-6; Gartland, “巾帼律师/Ladies in Justice,” 28.

out.”<sup>102</sup> “Up or out” refers to system where if an associate is not promoted to partner after a number of years, then she or he is often forced to leave the firm. Promotion for an associate typically requires meeting, and exceeding, the required number of billable hours, typically around 1,500 a year.<sup>103</sup> This is perhaps a factor contributing to U.S. female legal professionals’ difficulty in shattering remaining glass ceilings in the private sector. Differences aside, however, when it comes to the partnership power gap, female legal professionals in China and the United States appear to share diminished chances at attaining these positions.

The gender gap is also often quantified by differences in income between women and men.<sup>104</sup> In China, the gender income gap is a subject of particular interest to scholars because of the transformation in China’s economy.<sup>105</sup> Their research indicates that as China’s market has opened to capitalist features, women have been more adversely affected than men. Examples of these adverse affects include increased rates of unemployment, decreased chances for promotion, earning 80-85% of what men in urban labor markets earning,<sup>106</sup> and their disproportionate representation in low-status<sup>107</sup> and low-wage positions.<sup>108</sup>

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<sup>102</sup> Liu, “Elite Corporate Lawyers China” 760; Michelson, “Gender Inequality,” 347.

<sup>103</sup> Liu, “Elite Corporate Lawyers China” 760.

<sup>104</sup> Michelson, “Gender Inequality,” 342; Guo, “Gender Inequality Urban China,” 4; Seron, “Comparative Look,” 1370; Stzo, “Gender and Chinese Legal Profession,” 64; Dorius and Firebaugh, “Global Gender Inequality,” 1952.

<sup>105</sup> Michelson, “Gender Inequality,” 342; Guo, “Gender Inequality Urban China,” 4; Reichman and Sterling, “Sticky Floors, Concrete Ceilings,” 29.

<sup>106</sup> Michelson, “Gender Inequality,” 339.

<sup>107</sup> Guo, “Gender Inequality Urban China,” 1.

<sup>108</sup> Michelson, “Gender Inequality,” 339.

Research on the income gap among private practitioners, primarily in urban legal labor markets in Mainland China, suggests this trend present in the urban labor market is replicated in the private urban legal labor market. Michelson's 2000 and 2007 fieldwork generated data that suggests that while lawyer's annual income increased from 2000 to 2007, the income gap between women and men and income disparity among all lawyers also increased.<sup>109</sup> The data from 2000 indicated female lawyers earned less than male lawyers at both the higher and lower ends of income distribution. At the higher end of the income distribution, female lawyers' median incomes were between ¥20,000-¥30,000 lower than male lawyers'.<sup>110</sup> At the lower end of the income distribution the difference was between ¥5,000-¥8,000.<sup>111</sup> When introducing variables into calculations on the gender income gap, Michelson found that while it did not eliminate the gap, years of practice was a factor that greatly reduced it.<sup>112</sup> Without years of practice added as a variable female lawyers' median incomes across the entire income distribution were about ¥14,000 lower than male lawyers'.<sup>113</sup> Adding years of practice as a variable almost halved the income gap, dropping it down to about ¥7,500.<sup>114</sup>

Michelson's findings demonstrate the importance of increasing women's career longevity. The persistence of the gender income gap may be the result of firms compensating women less because of their gender or it may be the result of female private practitioners exiting

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<sup>109</sup> Ibid., 355.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

the legal labor market much earlier than men. As Michelson suggests,<sup>115</sup> further research is needed to establish plausible explanations as to why female private practitioners have shorter careers.

For U.S. female private practitioners the gender income gap is present and persistent, even for female and male legal professionals working in the same position. The Bureau of Labor Statistics provided data on the weekly salaries of female and male lawyers from 2004-2013.<sup>116</sup> When looking at the salary of female lawyers as a percentage of male lawyers' weekly salary, the largest gap was 70.6% in 2006.<sup>117</sup> That largest income gap represents an average loss of 29.4% per week for female lawyers. In 2011 the income gap was the smallest, but female lawyers still earned, on average, 85.5% of what their male counterparts earned.<sup>118</sup> Taken together, the data indicate that for the years from 2004-2013, female lawyers earned an average of 77.65% of what male lawyers earned weekly. Put another way, for nearly a decade female lawyers on average earned 22.35% less, per week, than male lawyers.<sup>119</sup> Whether the gender income gap for U.S. female legal professionals is attributable to the power gap, meaning women are generally earning less because they are generally in lower-status positions, is a question to be conclusively addressed and confirmed by future research. However, there is at least one example during this time period where controlling for the power gap did not erase the income gap. In

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<sup>115</sup> *Ibid.*, 367.

<sup>116</sup> American Bar Association Commission on Women in the Profession, "Current Glance," 6.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

2009, the typical female equity partner at 200 of the largest U.S. law firms earned 88% of what their male counterparts earned.<sup>120</sup>

In that same survey, even though 19.2% of partners were women, almost half of those 200 firms reported that no woman was among their top ten “rainmakers” and 72% of those firms reported that no woman was among their top five “rainmakers.”<sup>121</sup> This data suggests that during the time period studied, adjusting for equity partnership reduced, but did not eliminate the gender gap. In other words, the power gap may contribute to the income gap, but that is not the entire answer. Further research is required before there can be a complete plausible answer for the gender income gap.

Despite the similarity in quantitative trends in the Chinese and U.S. bar, qualitative data implies that the gender gap is perceived as narrow or non-existent among Chinese female legal professionals, in sharp contrast to their U.S. counterparts. At the 2012 International Women in Law Summit, the perceptions of Chinese female private practitioners working in domestic firms in Shanghai and Beijing were gathered through surveys and interviews conducted by the presenters.<sup>122</sup> A portion of these Chinese female lawyers had experience working in international firms with international clients, but this was not the experience of all women surveyed.<sup>123</sup> The survey asked women to rate the impact of their gender on a variety of questions regarding gender disparity, from a scale of positive impact, little to no impact, or negative impact.<sup>124</sup> Across the

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<sup>120</sup> Esperian, Roberts, and Stearns, “Glass Ceiling Reinforced,” 61.

<sup>121</sup> Ibid.

<sup>122</sup> Bunnell and Sommers, “Women in Law Summit,” 1-3.

<sup>123</sup> Ibid., 3.

<sup>124</sup> Ibid.

board, the majority of women answered that gender had little or no impact on their careers in terms of promotion (50%), the assignments they received (70%), their compensation (83%), or their ability to cultivate relationships with clients and colleagues (38%).<sup>125</sup> The survey responses from this one segment of the female private practitioner population are somewhat similar to the comments of other female private practitioners similarly situated. Most of the women featured in the comments below are private practitioners in large urban areas, often at international firms.

- “The impact of gender (on her career) has been generally positive.” [Chinese female managing partner at a Shanghai firm, 2012]<sup>126</sup>
- “The majority of my time goes to work, but I love what I’m doing, and I cannot imagine being a stay-home mom and not working....No one at home is complaining, and until someone does, my life is not going to change.” [Chinese female partner Julie Gao, well-known for her success as a capital markets lawyer, 2012]<sup>127</sup>
- “The impact of gender [on her career] has been generally positive.” [Chinese female managing partner, 2012]<sup>128</sup>
- “Women are proven to be as equally capable as men. Most people have recognized that.” [Female senior partner at a Shanghai firm, 2012]<sup>129</sup>
- “I am very good at keeping a client. Once they see my work, they won’t leave.” [Female senior partner, 2012]<sup>130</sup>
- “We are very much a meritocratic profession. Promotion is based on performance and merit.” [Female senior partner, 2012]<sup>131</sup>

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<sup>125</sup> Ibid., 3-4.

<sup>126</sup> Gartland, “巾帼律师/Ladies in Justice,” 24.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

These comments imply that gender is either a nonissue or an asset for this limited segment of the female private practitioners. These women appear quite happy in their careers and if they are making gender-based decisions regarding their career they seem happy in those choices. Of course, their experiences cannot be generalized to speak for all female private practitioners, but their comments do suggest that whatever gender gap may be quantitatively present, it does not appear to be qualitatively present for these women. The discrepancy between this qualitative data and the quantitative data may be could be the result of researchers like Gartland speaking with a very small group of elite women. The discrepancy could also be explained by the difference between Michelson's data in the early 2000s and Gartland's interviews from around 2012, or the discrepancy could be the result of a number of other reasons. The specific reason for the discrepancy between the quantitative and qualitative data could pose a topic for further research. For the purposes of this study, it is important to take note of the discrepancy and acknowledge that the gender gap as measured by the data does not seem to be reflected by the subjective experiences of some female private practitioners.

#### B. Government Legal Professionals

The gender gap among judges is perhaps quantitatively quite similar to the gender gap among private practitioners. However, in describing the gender gap, women's responses suggest both a autonomous self-selection into this career and a degree of gender-oriented thinking that is much stronger than that revealed by female private practitioners. Judges are government legal professionals, essentially considered civil servants.<sup>132</sup> While research on these legal professionals

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<sup>132</sup> Chow, *PRC Legal System Nutshell*, 206.

also poses unique challenges, their inclusion in an examination of gender dynamics in China's legal system is relevant and important because the court system itself is an important legal institution. The court system is the adjudicative arm of the nation<sup>133</sup> and as China's legal system has developed the role and independence of the judiciary has become a central area of interest and concern. To exclude these legal professionals simply because of a scarcity of available data would exclude a major institution in China's legal system and an especially dynamic institution in the development of China's legal system.

Generally speaking, China's court system is a three-tiered one composed of basic, intermediate, and high people's courts.<sup>134</sup> The Supreme People's Court is the highest court, and therefore the highest judicial organ in China.<sup>135</sup> As the legal system has developed, the professional requirements and training for judges has become more stringent.<sup>136</sup> Before 1983, there were no professional training requirements for judges.<sup>137</sup> Since 1983 professional training requirements have become progressively rigorous, with judges now required to have either a post-graduate degree in a legal specialty, a Bachelor's of Law and at least two years work experience, or a graduate degree with no legal specialty, but a professional knowledge of law and

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<sup>133</sup> Chen, *Legal System of PRC*, 172.

<sup>134</sup> Chow, *PRC Legal System Nutshell*, 203.

<sup>135</sup> 中华人民共和国宪法(1982年, 2004修正), 第三章, 第七节, 第一百二十七条 (PRC Constitution (1982, 2004 amended) Chapter III, Section 7, Article 127).

<sup>136</sup> Zhao and Hu, "Comparative Study of Legal Education," 346.

<sup>137</sup> Chow, *PRC Legal System Nutshell*, 206.



at least two years work experience.<sup>138</sup> The Judges Law is one helpful step in developing China's legal system and a professionalized judiciary.

As China's legal system develops and economic reforms increasingly open the country up to globalization and international trade, the need for lawyers and judges increases. As is true in the context of private practitioners, procuring data on judges and the gender composition of the judiciary poses challenges. In fact, it is easier to chart the growth in the lawyer population than the increase in the number of judges. This is because judges (*fǎguān* 法官) are not listed individually in the China Statistical Yearbook, the yearbook only lists "Full-time Judicial Assistants" (*zhuānzhí sīfǎ zhùlǐyuán* 专职司法助理员).<sup>139</sup> However, scholars and some government sources have provided figures for the number of judges in Mainland China and the gender composition of the judge population. While this limited data diminishes the ability to make generalizations, it can be interpreted to provide a limited glimpse on the situation for one category of government lawyers, judges.

The figures in Table Two draw from primary and secondary sources to estimate the number of judges at points during the past two decades. In drawing from these sources, scholarly estimates on the gender composition of China's judges have been synthesized and extrapolated to include the author's own estimates. Table Two represents an attempt to provide a baseline for the number of judges and to interpret possible trends in the growth and feminization of the judge population.

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<sup>138</sup>中华人民共和国法官法 (2001 年), 第 9 章第 9 条 (Judges Law 2001, Chapter 9, Article 9).

<sup>139</sup>中国统计年鉴 2015 年(2015 China Statistical Yearbook);中国统计年鉴 2009 年 (2009 China Statistical Yearbook).

Table 2: Number of Judges and Gender Composition 1995-2011<sup>140</sup>

<b>Year:</b>	<b>Total Judge Population:</b>	<b>Percentage Female Judges:</b>
1995	165,000	18.4%
1996	156,000	15%
1998	173,000	19.5%
2000	220,000	20.4%
2002	204,000	21.6%
2005	189,000	23.3%
2007	180,000	24.28%
2008	190,000	25.26%
2010	194,000	25.8%
2011	195,000	26.6%

The data may be interpreted as charting a couple of trends. One possible trend is that the number of judges grew from the mid-1990s until the early 2000s, began to decline after 2002, and then grew again around 2008. This could perhaps be due to the fact that the 2001 Judges Law led to a flight of previously untrained judges who did not wish to become professionalized. In addition to the interrupted growth in judges, another possible trend is the feminization of China's judges. These figures could suggest the judge population is feminized at a similar rate to the lawyer

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<sup>140</sup> Figures for 1995 "Total Judge Population" and "Percentage Female Judges" from National Bureau of Statistics, "Facts and Figures 2004," 95; Figures for 1996 "Total Judge Population" and "Percentage Female Judges" from Szto, "Gender & Chinese Legal Profession," 74; Figures for 1998 "Total Judge Population" and "Percentage Female Judges" from National Bureau of Statistics, "Facts and Figures 2004," 95; Figures for 2000 "Total Judge Population" and "Percentage Female Judges" from National Bureau of Statistics, "Facts and Figures 2012," 118; Figures for 2002 "Total Judge Population" and "Percentage Female Judges" from National Bureau of Statistics, "Facts and Figures 2004," 95; Figures for 2005 "Total Judge Population" and "Percentage Female Judges" from National Bureau of Statistics, "Facts and Figures 2012," 118; Figure for 2007 "Total Judge Population" from Chow, *PRC Legal System Nutshell*, 208; Figure for 2007 "Percentage Female Judges" is author's estimate based on average increase (.98%) in "Percentage Female Judges" from previous years listed in table; Figure for 2008 "Total Judge Population" from Chen, *Legal System of PRC*, 177; Figure for 2008 "Percentage Female Judges" is author's estimate based on average increase (.98%) in "Percentage Female Judges" from previous years listed in table; Figures for 2010 "Total Judge Population" and "Percentage Female Judges" from National Bureau of Statistics, "Facts and Figures 2012," 118; Figures for 2011 "Total Judge Population" and "Percentage Female Judges" from National Bureau of Statistics, "Facts and Figures 2012," 118.

population, around 20-25%. Despite a possible quantitative similarity in the feminization of these two categories of legal professionals, qualitative data suggests that perhaps women are becoming judges in larger numbers.

Comments from Chinese legal professionals regarding the choice to become a judge and the work life of a judge as compared to that of a private practitioner might suggest that female legal professionals prefer to become judges. One female judge commented that for private practitioners an emphasis on drinking and “male-focused entertainment” was a barrier for female litigators, because such activities are considered inappropriate for women.<sup>141</sup> Another female judge in an intermediate people’s court elaborated on this issue, commenting that socializing and drinking is sometimes required for judges, but she can refuse to engage in those activities if she does not feel comfortable.<sup>142</sup> Another comment from a female judge implied that women become judges in larger numbers because they can more easily pass the national examination, because a position as judge provides more stability, and because women are better suited to be judges since they are more patient, tolerant, and careful with their judgments.<sup>143</sup> This same comment also implied that there might be more women judges because the low salary creates too great a financial burden for men, who decline to become judges for this reason.<sup>144</sup> As government officials, judges are paid at a rate similar to other mid-level bureaucrats and civil servants,<sup>145</sup> a set wage that is lower than the potential earning capacity of a private practitioner.

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<sup>141</sup> Gartland, “巾帼律师/Ladies in Justice,” 30.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Chow, *PRC Legal System Nutshell*, 207.

These comments imply a preference for women to become judges, and for men to not become judges, which is rooted in gender-based norms. Thus, while the quantitative gap government lawyers might not be very different from that of private practitioners, these comments suggest there may be different gender dynamics at play in this legal sector. These gender dynamics are perhaps rooted in cultural gender norms, which inform women's social suitability to a certain career.

Another manifestation of the gender gap for China's government lawyers is a power gap. This power gap may manifest in women's underrepresentation among senior positions in the judiciary.<sup>146</sup> A female judge working in an intermediate people's court commented that she had not been promoted in the past eight years.<sup>147</sup> She noted that one of the reasons why she had not been promoted is because she insists on "her way of working," which often included abstaining from the socializing and drinking judges and lawyers often engage in as part of their networking (*guānxi* 关系) cultivating activities.<sup>148</sup> The power gap can be quantitatively observed by looking at the gender composition of the Supreme People's Court. There are sixteen grand justices sitting on the Supreme People's Court.<sup>149</sup> Among these justices there are three ranks of judges, Chief Justice, Grand Justice of the First Rank, and Grand Justice of the Second Rank.<sup>150</sup> The Chief Justice and the Grand Justice of the First Rank are both men.<sup>151</sup> There are fourteen Grand

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<sup>146</sup> Gartland, "巾帼律师/Ladies in Justice," 30.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Supreme People's Court, *Grand Justices*.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

Justices of the Second Rank.<sup>152</sup> Two of the fourteen Grand Justices of the Second Rate are women.<sup>153</sup> Thus, women comprise 12.5% of the highest judicial court and are not represented at any of its highest positions. If the data suggests that in the first decade of the 2000s women comprised about 23% of judges, then their representation at the Supreme People's Court suggests that there may be a power gap where women's representation decreases significantly when it comes to senior positions.

In the U.S. legal system, the gender gap among judges is quantitatively similar to the gender gap suggested by data from China. Whereas the data suggests the gender composition of the Chinese judge population in 2011 was perhaps around 26.6%, in 2012 the gender composition of the U.S. judge population was about 27% in state courts and 24.1% in federal courts.<sup>154</sup> At the United States Supreme Court, the highest judicial organ in the United States, there are nine Supreme Court Justices.<sup>155</sup> With three women serving as Supreme Court Justices, the gender composition of Supreme Court is about 33.33%.<sup>156</sup> In the U.S. the gender composition of the highest court is roughly similar to the gender composition of the U.S. bar, whereas in China the gender composition of the highest court is perhaps half of women's proportional representation within the Chinese bar. This difference could suggest a larger power gap for Chinese female judges and a possible explanation could be inferred from the comments made by

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<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> American Bar Association Commission on Women in the Profession, "Current Glance," 5.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

Chinese female judges. Gender-based obstacles that appear to have a cultural root perhaps impeded advancement for women within the Chinese judiciary.

### C. Legal Academics

The gender gap in Chinese legal academia is quantitatively quite large, with women underrepresented on law school faculties and disproportionately represented in low-status positions. Gender dynamics in the legal academy matter because legal academics are legal professionals uniquely positioned to shape and influence the development of legal norms.<sup>157</sup> Legal academics produce a body of scholarship that is generally highly regarded due to their status as legal experts, and therefore their work has the ability to influence the development of legal norms.<sup>158</sup> Additionally, and perhaps more importantly, legal academics are uniquely positioned to influence the development of legal attitudes and norms because they develop and train emerging legal professionals.<sup>159</sup>

As with other sectors of the legal profession, measuring the gender gap in Chinese legal academia presents its own challenges. Although the government publishes statistics on the gender composition of faculty in higher education, those statistics are for higher education as a whole and are not disaggregated by law schools or legal departments.<sup>160</sup> This creates a challenge

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<sup>157</sup> Zhao and Hu, “Comparative Study Legal Education,” 330.

<sup>158</sup> *Ibid.*, 343.

<sup>159</sup> *Ibid.*, 346.

<sup>160</sup> Liu, “Women in Legal Education,” 1315.

in determining the gender composition of law faculty, but this challenge has been met with alternative methods for procuring such information.<sup>161</sup>

One method is visiting the websites of law schools and departments and manually checking whether members of the law faculty are listed.<sup>162</sup> This method is imperfect for many reasons. Many schools lack the technical support to build websites that contain and maintain such information. Where schools do have websites that contain information on faculty they do not always list their faculty members by name.<sup>163</sup> Furthermore, if faculty members are listed by name, often their position is not listed, making it difficult to measure gender composition at different levels of faculty rank. Even if faculty members and their positions are listed, it can become a guessing game as to their gender, because Chinese names are often not necessarily indicators of gender.<sup>164</sup> Where law schools and departments do list their faculty members by name, position, and include a picture or biography, this method can be quite useful. Acknowledging the conditioned and limited usefulness of this method in making generalizations or assertions about legal academia as a whole, it can provide a limited glimpse into gender dynamics at the schools where such information is available.

One scholar, Xiaonan Liu, utilized this research method to gather quantitative data on the gender composition of law faculty at twenty-six Mainland Chinese law schools.<sup>165</sup> She

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<sup>161</sup> Ibid.

<sup>162</sup> Ibid., 1321.

<sup>163</sup> Ibid.

<sup>164</sup> Michelson, "Gender Inequality," 349.

<sup>165</sup> Liu, *Women in Legal Education*, 1321.

conducted this research in 2008 and 2012 using the twenty-six law schools' websites.<sup>166</sup> The author conducted research in 2016 using the same method as Liu. The research yielded sufficient information from eight law schools, all purposely selected because they were included in Liu's research and provided an opportunity to update the existing data and interpret possible trends. It is important to note this data is also limited in several ways. One major limitation is the fact that these were small surveys, and in conducting these surveys, the data relied on schools' self-published information. Such self-published information makes it difficult to confirm or review the accuracy of the data against official or other sources. Furthermore, even with this self-published data there are issues, including some faculty members whose gender was not determined, and where gender was determined, a faculty member's position was not always listed. With those limitations in mind, the following tables provide the data collected by Liu and the author.

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<sup>166</sup> Ibid.



Table 3: Gender Composition of Faculty: Eight Chinese Law Schools 2012 and 2016<sup>167</sup>

<b>School:</b>	<b>Percentage Female Faculty 2012:</b>	<b>Percentage Female Faculty 2016:</b>
Fudan University of Law, Shanghai	20%	22.2%
Koguan Law School Shanghai Jiatong University, Shanghai	18.52%	20.0%
Peking University Law School, Beijing	22.99%	19.23%
Renmin University of China Law School, Beijing	21.54%	14.29%
Tongji Law School, Shanghai	34.09%	39.58%
Tsinghua Law School, Beijing	14.55%	12.5%
Wuhan University Law School	19%	21.74%
Xiamen University Law School, Xiamen	30.38%	36.21%

Table 4: Gender Composition by Faculty Position: Eight Chinese Law Schools 2016<sup>168</sup>

<b>Position:</b>	<b>Number of Women:</b>	<b>Number of Men:</b>	<b>Percentage Female:</b>	<b>Percentage Male:</b>	<b>Number Gender Not Determined:</b>	<b>Percentage Gender Not Determined:</b>
Dean:	0	8	0%	100%	0%	0%
Supporting Dean:	1	12	7.69%	92.31%	3	23.08%
Professor:	54	238	18.49%	81.51%	31	9.59%
Associate Professor:	25	61	29.06%	70.94%	17	16.50%
Assistant Professor:	6	22	21.42%	78.58%	4	12.5%
Lecturer:	6	9	40.0%	60.0%	6	28.57%

<sup>167</sup> Liu, “Women in Legal Education” 322-323; author’s 2016 research on eight Mainland Chinese law school’s websites.

<sup>168</sup> Author’s 2016 research on eight Mainland Chinese law school’s websites. The term “Supporting Deans” may refer to a vice dean, deputy dean, or assistant dean.

Table 5: Summary of Data: Liu and the Author<sup>169</sup>

<b>Year:</b>	<b>2008:</b>	<b>2012:</b>	<b>2016:</b>
Total Faculty:	1,832	1,700	537
Gender of Faculty Determined Total:	1,821	1,689	475
Percentage of Faculty Whose Gender Was Determined:	99.39%	99.35%	88.45%
Number of Gender-Determined Faculty Are Women:	566	504	106
Number of Gender-Determined Faculty Are Men	1,255	1,185	369
Percentage of Gender- Determined Faculty Are Women:	31.08%	29.84%	22.32%
Percentage of Gender- Determined Faculty Are Men:	68.92%	70.16%	77.68%
Highest Percentage of Women Faculty at a Law School:	52.17%	51.11%	39.58%
Lowest Percentage of Women Faculty at a Law School:	14.91%	14.55%	12.5%
Highest Percentage of Men Faculty at a Law School:	85.09%	85.45%	87.5%
Lowest Percentage of Men Faculty at a Law School:	47.83%	48.89%	60.42%

Acknowledging the limitations to this data discussed above, the data in Tables Three-Five can still be interpreted as suggesting certain trends, some of which are possibly consistent with trends suggested in other sectors of the legal profession. One interpretation of the data is

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<sup>169</sup> Liu, “Women in Legal Education,” 1321-1323; author’s 2016 research on eight Mainland Chinese law school’s websites.

that women are underrepresented in legal academia as a whole and overrepresented in low ranking positions. Table Five's shows that on women's proportional representation among law faculties at these schools decreased from 2008 to 2012 and from 2012 to 2016. This change could be due to the fact that a small number of schools were surveyed, especially in 2016, so the data might be more susceptible to changes from year to year. However, earlier data shown in Tables Three and Five buttress the suggestion that women are disproportionately excluded from high status positions in legal academia.

Liu also drew from "Project 211" data, data that was the result of a government initiative to strengthen around 112 higher education institutions.<sup>170</sup> Relevant data from that project includes the gender composition of deans at eighty-four law schools for the year 2012 and is incorporated into Table Five.<sup>171</sup> In Table Five, women accounted for 7.1% of the eighty-four schools' deans while men accounted for 92.9%.<sup>172</sup> This is consistent with the data in Table Three detailing the findings from eight law schools. Men comprised a strong majority of law faculties in both Liu's research and the author's. As Table Three shows, men dominated all faculty positions at these eight law schools. As Table Four shows, female faculty was most strongly represented in lower-level positions like Associate or Assistant Professor and Lecturer. Taken together, the data in Tables Three and Four collectively suggest women are underrepresented in

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<sup>170</sup> Liu, "Women in Legal Education," 1333. Liu relied on Project 211 data in her research. "Project 211" was undertaken in the 1990s-early 2000s and was a socio-economic developed project aimed at improving the research and scholastic standards of higher education institutes in China.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid.

law school faculties and when they are strongly represented, they are clustered in lower ranking positions.

One interpretation of the data in Tables Four and Five is that there is a gender gap and a power gap data in legal academia. It is unclear how substantial or pervasive this power gap might be or whether its root causes can be narrowly identified. Perhaps there is a generational divide, as many older law professors are male and the new generation of female law professors has not yet had a chance to fully join the ranks of law faculty. Perhaps the power gap could be the result of a lack of institutional support that prohibits the advancement of female legal academics to senior faculty positions. Future research could more thoroughly address these speculations.

Qualitative data may also support the notion that there is a gender gap and power gap in legal academia. Examples of this qualitative data obtained by Liu from a Fujian Province law school are listed below.

- “From a man’s perspective, being led by a woman leader is a humiliation. Also, if a woman were a leader, it [sic] will normally be alienated from the general women. Generally, the able female persons are a bit strange: they don’t have the sensation of women, don’t need family and don’t need ordinary life. When a woman is very successful (or takes the most important position), others may feel strange. They can’t help thinking that this woman probably has some ‘extraordinary’ abilities or has sexual relationship[s] with certain male superiors.” [Male law faculty member, 2008]<sup>173</sup>
- “...Of course I do not object that extraordinary women become leaders, who may do a better work than men, but in general, men are more suitable to be in the leadership positions.” [Male law faculty member, 2008]<sup>174</sup>

These comments imply that cultural norms could be a possible barrier to women in legal academia. These comments from male faculty suggest that it is socially undesirable for female faculty to be leaders, both from the standpoint of men and from the standpoint of the female

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<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

leader. It is undesirable for women to be leaders from the standpoint of men because the humiliation they might feel could perhaps be because the success of a woman somehow converts a sense of failure onto the men she leads. It is undesirable for female faculty to be leaders from the standpoint of the female leader because not only could they encounter difficulties leading men, they might also be alienated from other female faculty members. This alienation might be due to their focus on work obligations rather than family obligations, or “ordinary life” as the male faculty member phrased it. This quantitative data, while limited, suggests that there are cultural barriers facing female faculty leaders that perhaps could contribute to their dismal representation in high-ranking faculty position.

The gender gap in legal academia may not only hurt female faculty members, it may be harmful to female students as well. Examples of a Fujian Province law school’s students’ perceptions on how gender dynamics impact faculty-student relationships are listed below.

- “Some professors prefer male students in order to avoid arousing suspicion, because advisors are mostly male, and conversations between men are much easier.... Sometimes preference is given to the male students just because advisors prefer students who are like themselves. Take our faculty for example, some advisors enrolled only male students for no reason, no matter how outstanding the female students are or how frequently they communicate.” [Female postgraduate law student, 2008]<sup>175</sup>
- “It is absolute (that gender preference exists), and I have discussed it with many people.... From an academic perspective, it is not absolutely impossible for females to get engaged in academic fields, but for the most part, the connection between female students and academic life is not close and the gap cannot be narrowed.... Female students are not suitable to be scholars. Although nowadays there are some female scholars and professors, this will not last in the long run because the thoughts (of females) are not profound, which is a crucial reason.” [Male postgraduate law student, 2008]<sup>176</sup>

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<sup>175</sup> Ibid., 1326.

<sup>176</sup> Ibid., 1325.

- “Professors are more willing to enroll male students, and some even don’t enroll female students at all.... The academic mentor I applied for didn’t enroll female students.... It is unfair, but it is reality, and I don’t have much else to say. I am not a feminist.... The only thing a woman can do is try to be stronger.” [Female postgraduate law student, 2008]<sup>177</sup>
- “.... Male students can help with (the professor’s) work and are not afraid of working overtime. Besides, other people will gossip about (a male professor) having a female student.” [Female postgraduate law student, 2008]<sup>178</sup>
- “As far as I know, a male academic advisor in The International Economic Law School is a henpecked husband, so he enrolls no female students, or only ugly ones. The advisors in criminal law don’t tend to enroll female students either because some projects require business trips and it is not suitable for female students (to travel alone)....” [Female postgraduate law student, 2008]<sup>179</sup>
- “...Some advisors think that women are not suitable for jurisprudence; and some are forbidden by their wives from enrolling female students.... My advisor announced at the beginning of semester that he would not have any meals alone with female students.” [Female Ph.D. law student, 2008]<sup>180</sup>
- “Academic advisors of graduate and Ph.D. students prefer male students, and some even expressed it explicitly, which makes it an unwritten rule. The main reason for the phenomenon is that the male students’ mode of thinking is more suitable for legal research. In addition, some academic advisors are concerned that female students could not completely concentrate on their studies, and that getting married or giving birth to babies would probably affect their studies.” [Female Ph.D. law student, 2008]<sup>181</sup>

These student comments suggest that the underrepresentation of female faculty creates gender-based obstacles for students. Where male faculty members engage in behavior that favors male law students over female law students, female law students access to legal education may be

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<sup>177</sup> Ibid., 1325-26.

<sup>178</sup> Ibid., 1326.

<sup>179</sup> Ibid., 1327.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

diminished. Thus, the gender gap in legal academia might have a ripple effect on the gender gap in legal education.

In the American legal system, the gender gap and power gap in legal academia is similar. In 2014, women held about 37.5% of tenured positions at U.S. law schools.<sup>182</sup> When it comes to high-ranking positions, like dean, women's representation drops noticeably. During the 2008-2009 academic year, 20.6% of law school deans were women while 79.4% were men.<sup>183</sup> However, when it at to lower-level deanships, like associate dean, vice dean, or deputy dean, women held 45.7% of such positions.<sup>184</sup> Interestingly, during that time period women held a higher percentage of lower-level deanships than they did tenured faculty positions. Perhaps there is an effort among U.S. law schools to increase women's presence in high-status positions. Such an effort could be suggested by more recent data. During the 2015-2106 academic year, about 28.89% of law school deans were women, a noticeable 8.29% from the data about eight years earlier.<sup>185</sup>

Overall, the data from China's law schools suggests a gender gap and power gap that is similar to the gender gap and power gap suggested by data from the U.S. Women may not share

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<sup>182</sup> American Bar Association Commission on Women in the Profession, "Current Glance," 4.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Association of American Law Schools, *Deans of Member Schools*, accessed March 15, 2015, <https://www.aals.org/deans-member-law-schools/>. The Association of American Law Schools counted 179 law schools as members on the date of access. It provides links to these member schools' websites, where deans' biographical information often included years served as dean. The figures provided are not exact counts. For instance, some law schools name two individuals as co-deans; also, if a law school names a new dean to begin during the same year a previous dean leaves, that law school named two individuals to serve as dean for that year.

parity with men in their proportional representation among law faculty and are perhaps overrepresented in low-status positions both in teaching appointments and administration appointments to deanships. In the context of China, qualitative data suggests that this gender gap could have a potentially adverse impact on female law students.

#### D. Law Students

For emerging legal professionals in Chinese law schools, the gender gap is perhaps quantitatively smallest, yet students' perceptions suggest that qualitatively the gender gap might be quite large. Measuring the gender gap within Chinese legal education poses many of the same challenges encountered when studying the gender gap in Chinese legal academia. The Chinese government publishes statistics on the gender composition of students, but it does so for higher education as a whole.<sup>186</sup> Adding to this challenge, Chinese law schools or law departments generally do not publish data on the gender composition of their students.<sup>187</sup> Despite these difficulties, researchers have offered some statistics on the gender composition of Chinese law students. For example, from 1999-2005 at Renmin University of China Law School, the proportion of female law students was between 49-58%.<sup>188</sup> In 2000 at Peking University Law School, about 61% of incoming undergraduate law majors were women.<sup>189</sup> In 2004 at a Fujian Province law school, about 2/3 of undergraduate law students were women.<sup>190</sup> While these

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<sup>186</sup> Liu, "Women in Legal Education," 1315.

<sup>187</sup> Ibid.

<sup>188</sup> Michelson, "Gender Inequality," 355.

<sup>189</sup> Liu, "Women in Legal Education," 1319.

<sup>190</sup> Szto, "Gender & Chinese Legal Profession," 85.



statistics are over a decade old, they do provide some basis for quantifying the gender gap for law students. In extrapolating available data to provide a glimpse of the situation nationally, the author generated estimates for the female and male undergraduate law student population for 2000-2005. These estimates draw from figures provided by Richard Wu on the undergraduate law student population from 2000-2005 and from the proportion of female undergraduate students across law schools and law departments from 2000-2005, provided by Yunshan Liu and Zhiming Wang.<sup>191</sup> The following table represents the author's estimates based on the data described above.

Table 6: Female and Male Undergraduate Law Student Population 2000-2005<sup>192</sup>

<b>Year:</b>	<b>Undergraduate Law Student Population:</b>	<b>Undergraduate Female Law Student Population:</b>	<b>Undergraduate Male Law Student Population:</b>
2000	175,000	107,275	67,725
2001	240,000	147,120	92,880
2002	300,000	183,900	116,100
2003	360,000	220,680	139,320
2004	425,000	260,525	164,475
2005	450,000	275,850	174,150

Although more recent data is scarce, data from 2009 is fairly consistent with Table Six's data from the early 2000s. According to Xiaonan Liu, in 2009 at China University of Political Science and Law's Law School, women comprised about 60% of law students.<sup>193</sup>

Due to the lack of recent data and official statistics, it is impossible to assert with absolutely certainty that there are more female law students than male law students. But the

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<sup>191</sup> Wu, "Law Students in China," 39; Liu and Wang, "Women Entering Elite," 47.

<sup>192</sup> Wu, "Law Students in China," 39; Liu and Wang, "Women Entering Elite," 47.

<sup>193</sup> Liu, "Women in Legal Education," 1319.

available data can be interpreted as suggesting such an idea, and that idea is supported by the perceptions of law students and law faculty. Some examples of this perception are listed below.

- “One male professor noted that eight to nine years ago [1996-1997], there were more male students than female students; since then there are now more female students than male students.” [Male law faculty member, 2005]<sup>194</sup>
- “In my memory, both in Chinese and American law schools, number of males are [sic] less than female students.” [Chinese female U.S. law school graduate, 2016]<sup>195</sup>
- “...I do know the majority of law students in China are women.” [Chinese female U.S. law school graduate, 2016]<sup>196</sup>

This qualitative data tends to support the interpretation of the quantitative data. Together the data suggests that starting around the 2000s, female law students comprised either equal or a greater share of the undergraduate law student population. A near parity or above parity representation would represent the smallest quantitative gap within the four sectors of the legal profession examined.

Such a strong female presence in law school might lead one to expect that the gender gap would be perceived as a minor issue or a non-issue among law students. Contrary to expectation, however, while students’ perceptions on the gender gap are varied, their responses suggest that gender is a serious issue. Their comments reflect gender-based barriers for female law students that sound larger than those expressed by legal professionals in other sectors. Examples of students’ perceptions on gender are listed below.

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<sup>194</sup> Szto,” *Gender & Chinese Legal Profession*,” 85.

<sup>195</sup> Woman A (28-year-old Chinese female graduate of U.S. law school working as a private practitioner at mid-sized U.S. firm with offices in the United States and China. Informal interview conducted via email exchanges with the author, April 2016).

<sup>196</sup> Woman B (26-year-old Chinese female graduate of U.S. law school working as a law clerk in a small U.S. firm in Los Angeles, California. Informal interview conducted via email exchanges with the author, March-April 2016.)

- “In school, women like to study, have better grades, and take active part in various activities. Maybe this is because they have more problems in finding a job and have more sense of crisis.” [Female undergraduate law student, 2008]<sup>197</sup>
- “Women lack the capabilities to think and analyze; there have been few women philosophers in the world. There’s no discrimination against women if women are actually weaker in abstract thinking than men....Women may have better scored in exams because exams require less thinking, analyzing and abstract thought, but law requires legal philosophy, and women have problems with ‘why,’ so they cannot reach that far. Actually, this opinion is a little biased, but the data shows us it is true, even there are some of the brilliant philosophers.” [Female undergraduate law student, 2008]<sup>198</sup>
- “It is the exam criteria that disfavor men. Our scores basically depend on the final exam paper, even the regular grade are mostly the same. This kind of test form favors the women who have better memory skills, and men cannot show their advantages.” [Female undergraduate law student, 2008]<sup>199</sup>
- “Laws are conventions and regulations; women are the ones who can memorize them, so naturally they have better grades.” [Female undergraduate law student, 2008]<sup>200</sup>

From these students’ responses it could be inferred that gender-based stereotypes on women’s academic propensities and abilities inform their status as female students rather than as individual students. Students’ perceptions on gender matter because as emerging legal professionals, these students’ gender-based norms and attitudes may serve as a barometer for the future development of gender-based norms and attitudes among legal professionals. Gender-based stereotypes among law students could potentially become gender-based stereotypes among future legal professionals.

The gender gap in American legal education is strikingly similar to China, with the gender gap appearing quantitatively small, but students’ perceptions indicating that the gender

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<sup>197</sup> Liu, *Women in Legal Education*,” 1339.

<sup>198</sup> *Ibid.*, 1338.

<sup>199</sup> *Ibid.*, 1340.

<sup>200</sup> *Ibid.*, 1339.

gap may actually be quite large. Since the 2000s, women have constituted about 50% of law school graduates.<sup>201</sup> Yet gender dynamics in the classroom perhaps leave women feeling marginalized in spite of their strong numerical presence.

In 2012 Yale University Law School conducted a survey in which about 61.84% of the law student population voluntarily and anonymously participated.<sup>202</sup> Student respondents were about 55% women and 45% men.<sup>203</sup> When it came to students' perceptions on class participation, the majority of students indicated men participate more often in larger classes and that class participation is between the genders is equal only in small class settings.<sup>204</sup> 69.0% of student respondents felt men participate more in large classes, 55.1% of students felt men participate more in medium classes, but 59.3% of student respondents felt men and women participate equally in small seminar classes.<sup>205</sup> Comments by professors imply that they also perceive a difference in female and male law students' participation. A few examples of their comments are provided below.

- “Men talk more regardless of how much they have to say.....men have a higher perception of their ability and it only takes a third of men to be very vocal to silence the rest of the women.” [Male law faculty member, 2011-2012]<sup>206</sup>
- “Another professor notes that men and women have different thresholds for raising their hands. Women tend to have a higher threshold, meaning they only raise their hands if their comments are substantive or ‘higher quality.’ On the

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<sup>201</sup> Rickleen, “Women Lawyers Lag,” 1.

<sup>202</sup> Yale Law Women, “Speak Up,” 20.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid., 21-22.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid., 23.

other hand, men raise their hands very casually.” [Law faculty member, gender not specified, 2011-2012]<sup>207</sup>

- “I think, across the YLS [Yale Law School] population, men seem more confident and worry less about the reception their comments will receive. I’m not sure if the solution is to have women worry less or men worry more, though the former seems feasible.” [Male law student, 2012]<sup>208</sup>

There were also female and male respondents who perceived no difference in participation based on gender or who indicated they did not notice any such phenomenon.<sup>209</sup>

While these are only the perceptions of voluntarily student and faculty respondents at one law elite U.S. school, these response suggest that at least within one elite U.S. law school gender dynamics might play a role in students’ law school experiences. The responses of faculty and students imply that female law students sometimes lose their voice, especially in large classroom settings. The presence of this phenomenon at a law school where women comprise about 49.3% of the student population around the time the survey was conducted<sup>210</sup> potentially has startling implications for gender dynamics among private professionals in practice settings. If the qualitative data from this elite school suggests that even where numerically equally represented, women still either feel uncomfortable or do not want to participate in larger classroom discussions, it could suggest that female lawyers, numerically underrepresented in the bar, may also be less likely to speak up in larger settings.

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<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid., 10.

### E. Summary

The data presented across these four sectors of the legal profession suggest China and the United States share similar trends of feminization and manifestation of the gender gap, even in the face of large differences in culture and in political and legal frameworks of each country's legal system. Within both countries the expansion of the bar is associated with feminization of the legal profession, a widespread global trend over the past few decades.<sup>211</sup> However, China and the United States both lag behind this global trend in terms of how feminized the legal profession has become.<sup>212</sup> While feminization of the United States legal profession began in the 1980s,<sup>213</sup> it only began in China in the 1990s.<sup>214</sup> Despite this difference in when the feminization process began, at least by the 2000s, if not a little earlier, law schools in both countries began enrolling and graduating women and men in roughly equal numbers.<sup>215</sup>

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<sup>211</sup> Michelson, "Global Supply Lawyers," 1074; Seron, "Comparative Look," 1360.

<sup>212</sup> Michelson, "Global Supply Lawyers," 1075.

<sup>213</sup> Michelson, "Gender Inequality," 340; Seron, "Comparative Look," 1366.

<sup>214</sup> Michelson, "Gender Inequality," 351.

<sup>215</sup> Michelson, "Gender Inequality," 355; Liu, "Women in Legal Education," 1324; Gartland, "巾帼律师/Ladies in Justice," 25; Durak et al., "Legal Education Comparison," 67.

### Chapter 3: Discussion and Commentary

The protracted feminization of the bar in China and the United States underscores the importance of understanding how socio-cultural influences indigenous perspectives. The legal systems of China and the United States are very different, and yet there are several examples where the gender gap manifests in similar quantitative trends. The consistency between these quantitative trends accentuates the divergence in qualitative assessments of the gender gap. It is within this chasm that discussion on gender dynamics in the Chinese legal system yields analysis unique to China.

The responses of many Chinese legal professionals imply ambivalence towards the notion that gender is a barrier. This ambivalence is significant because it suggests socio-cultural liberation is inapposite in the context of China. This suggestion is antithetical to scholarship on the gender gap in the U.S. legal system. In fact, the responses of Chinese legal professionals imply gender-oriented thinking that is typically problematized in the United States. Socio-cultural norms create burdens and barriers for Chinese female legal professionals, but the absence of indignant rejection of these socio-cultural gender norms creates a rich space for further analysis and generates questions for future study.

Chinese responses to questions about the gender gap suggest socio-cultural norms create burdens and barriers for women. The barriers facing women appeared to vary across the four sectors of the legal profession studied. For example, female law students may be perceived as better students,<sup>216</sup> yet male law students are perceived as enjoying professors' preference.<sup>217</sup>

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<sup>216</sup> Szto, "Gender & Chinese Legal Profession," 83.

<sup>217</sup> Szto, "Gender & Chinese Legal Profession," 84; Liu, "Women in Legal Education," 1325.

Female law professors may be perceived as inferior legal scholars,<sup>218</sup> perhaps because they have family responsibilities.<sup>219</sup> Outside of the legal academy, certain types of legal work may be perceived as especially suitable for women<sup>220</sup> or especially unsuitable for women.<sup>221</sup> Judgeships may be perceived as better suited for women because they provides a safe and stable work environment<sup>222</sup> and may make it easier to find a husband.<sup>223</sup> Law firm practice may be perceived as unsuitable for women because it requires *guanxi* activities,<sup>224</sup> like drinking with clients and judges<sup>225</sup> or entertaining clients with paid female companionship.<sup>226</sup> These activities may not be suitable for women because they are not compatible with family obligations<sup>227</sup> and because it can be damaging to a woman's reputation to be seen out in public at such events.<sup>228</sup>

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<sup>218</sup> Szto, "Gender & Chinese Legal Profession," 84; Liu, "Women in Legal Education," 1325.

<sup>219</sup> Szto, "Gender & Chinese Legal Profession," 83.

<sup>220</sup> Ibid.

<sup>221</sup> Szto, "Gender & Chinese Legal Profession," 83; Woman A: 28 year old Chinese female graduate of U.S. law school working as a private practitioner at a mid-sized U.S. firm with offices in the United States and China. Informal interview conducted via online exchanges with the author, April 2016.

<sup>222</sup> Szto, "Gender & Chinese Legal Profession," 83; Gartland, "巾帼律师/Ladies in Justice," 30.

<sup>223</sup> Szto, "Gender & Chinese Legal Profession," 84

<sup>224</sup> Szto, "Gender & Chinese Legal Profession," 87; Gartland, "巾帼律师/Ladies in Justice," 30.

<sup>225</sup> Gartland, "巾帼律师/Ladies in Justice," 30.

<sup>226</sup> Szto, "Gender & Chinese Legal Profession," 86.

<sup>227</sup> Szto, "Gender & Chinese Legal Profession," 86; Gartland, "巾帼律师/Ladies in Justice," 30.

<sup>228</sup> Szto, "Gender & Chinese Legal Profession," 84.



Socio-cultural norms regarding marriage and family obligations seem to impose a burden shared by many types of female legal professionals. It seems Chinese women are expected to marry and have children<sup>229</sup> and where female legal professionals are unmarried they may be pitied or considered odd.<sup>230</sup> The responsibility to maintain a work-life balance appears to be primarily the woman's, and this perception seems to be shared by female and male legal professionals.<sup>231</sup> Furthermore, even when a woman has a successful legal career, if she is divorced she may be regarded as a failure.<sup>232</sup> It is possible these burdens and barriers are connected to Confucianism's pervasive influence on Chinese society. Traditional Confucian attitudes towards gender emphasize the importance of women's role in the family and in properly maintaining her relationship with her husband, her social superior.

The gender-based burdens and barriers implicit in Chinese responses are consistent with burdens and barriers typically identified by American legal professionals. While in the United States these burdens and barriers are quite often problematized, Chinese responses suggest

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<sup>229</sup> Szto, "Gender & Chinese Legal Profession," 84; Bunnell and Sommers, "Women in Law Summit," 6; Woman B: 26-year-old Chinese female graduate of U.S. law school working as a law clerk in a small U.S. firm in Los Angeles, California. Informal interview conducted via online exchanges with the author, March-April 2016.

<sup>230</sup> Szto, "Gender & Chinese Legal Profession," 84

<sup>231</sup> Szto, "Gender & Chinese Legal Profession," 86; Gartland, "巾帼律师/Ladies in Justice," 28; Woman A: 28 year old Chinese female graduate of U.S. law school working as a private practitioner at a mid-sized U.S. firm with offices in the United States and China. Informal interview conducted via online exchanges with the author, April 2016; Woman B: 26-year-old Chinese female graduate of U.S. law school working as a law clerk in a small U.S. firm in Los Angeles, California. Informal interview conducted via online exchanges with the author, March-April 2016.

<sup>232</sup> Szto, "Gender & Chinese Legal Profession," 84; Woman B: 26-year-old Chinese female graduate of U.S. law school working as a law clerk in a small U.S. firm in Los Angeles, California. Informal interview conducted via online exchanges with the author, March-April 2016.

ambivalence towards claiming gender as negative influence on women's careers.<sup>233</sup> This perhaps is connected to lingering egalitarian notions that were strongly promoted during the early years of the PRC. The declaration of gender equality in the 1954 PRC Constitution may continue to shape perceptions among Chinese women that gender is a non-issue.

This ambivalence can be inferred from female Chinese responses listed below.

- "...As a woman, I just had to show that I can work as hard as the male colleagues without being interfered by domestic matters." [Female legal professional, 2012]<sup>234</sup>
- "Women are proven to be as equally capable as men. Most people have recognized that." [Chinese female partner at Shanghai firm, 2012]<sup>235</sup>
- "...It is unfair, but it is reality, and I don't really have much else to say. I am not a feminist.... The only thing a woman can do is try to be stronger." [Female law student, 2008]<sup>236</sup>
- "When I was a child I was always wondering why there are so many girls go [sic] to piano classes but the majority of famous pianist [sic] are men and why there are so many women law students in China but the majority of famous lawyers are men. I don't think it is the result of unfair competition or injustice. I think it's just because that [sic] women take more responsibility in taking care of their families, which is an invisible asset that society cannot value." [Chinese female law clerk at Los Angeles law firm, 2016]<sup>237</sup>
- "I never think about this question. I came from China. Basically, most women are working outside their families in China. Basically, [s]tay-at-home mothers are very uncommon in China. To be honest, I never think about gender

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<sup>233</sup> Bunnell and Sommers, "Women in Law Summit," 4; Gartland, "巾帼律师/Ladies in Justice," 24.

<sup>234</sup> Bunnell and Sommers, "Women in Law Summit," 6.

<sup>235</sup> Gartland, "巾帼律师/Ladies in Justice," 24.

<sup>236</sup> Liu, "Women in Legal Education," 1325-1326.

<sup>237</sup> Woman B: 26-year-old Chinese female graduate of U.S. law school working as a law clerk in a small U.S. firm in Los Angeles, California. Informal interview conducted via online exchanges with the author, March-April 2016.

discrimination.”[Chinese female private practitioner at New York City law firm, 2016]<sup>238</sup>

- “I don’t think gender played a role in law school experience.”[Chinese female private practitioner at New York City law firm, 2016]<sup>239</sup>
- “As soon as female lawyers, law students, law faculty, or judges, worked as hard as their male counterparts, there is no difference.”[Chinese female private practitioner at New York City law firm, 2016]<sup>240</sup>

When these responses are considered as a whole, they tend to suggest that in instances where gender is described as an issue, it is not named as an issue. It is important to acknowledge that not all of the responses necessarily support such a suggestion, and these responses may simply reflect each individual’s perceptions and not provide any basis for generalizations. However, to the extent that there is ambivalence implied by some of these responses, that ambivalence generates questions about whether gender truly is perceived as a non-issue or whether women are uncomfortable naming gender as an issue. Such questions could present one area for future research.

In addition to possible ambivalence towards naming gender as an issue, Chinese responses may also suggest women may leverage their gender as a career advantage. This suggestion could indicate another unique feature of gender dynamics in China’s legal system.

- “I think women have some strength that men don’t have. Sometimes women can solve problems in a gentle way to avoid conflicts.”[Chinese female law clerk at Los Angeles law firm, 2016]<sup>241</sup>

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<sup>238</sup> Woman C: 33-year-old Chinese female graduate of U.S. law school working as a private practitioner at a law firm in New York City, New York. Informal interview conducted via online exchanges with the author, March 2016.

<sup>239</sup> Ibid.

<sup>240</sup> Ibid.

- “Being proactive task handler, being careful and attentive (this is females’ advantage), being persuasive in a feminine way.”[Female legal professional, 2012]<sup>242</sup>
- “(As a woman) you have better communication skills and from this perspective clients prefer female lawyers...”[Female Managing Partner at Shanghai law firm, 2012]<sup>243</sup>

To the extent these responses suggest Chinese women find advantages in gender based assumptions, their leveraging of gender is quite different from its problematizing in the context of the United States. If Chinese women do feel their gender can be used to an advantage, it may possibly explain their ambivalence towards naming gender as an issue.

The focus on distinct qualitative trends suggested by Chinese responses and the resulting discussion on possible unique features of gender dynamics in China’s legal system is not intended to suggest that quantitative trends measuring the gender gaps do not matter. Instead, the discussion is intended to suggest that these quantitative trends do not seem to matter to the current generation of Chinese legal professionals. However, responses of some Chinese law students detailed in Chapter 2 may suggest a willingness to problematize gender. This willingness may signal a shift away from ambivalence.

While trends in the qualitative data provide a rich basis for discussion, the quantitative trends detailed in this study raise at least one obvious question for further research. Law schools in China and the United States have had nearly equal numbers of female and male students since

<sup>241</sup> Woman B: 26-year-old Chinese female graduate of U.S. law school working as a law clerk in a small U.S. firm in Los Angeles, California. Informal interview conducted via online exchanges with the author, March-April 2016.

<sup>242</sup> Bunnell and Sommers, “Women in Law Summit,” 6.

<sup>243</sup> Gartland, “巾帼律师/Ladies in Justice,” 29

the 2000s and yet the gender composition of the Chinese and American bar still hovers around 25% and 35%, respectively. Where are the female lawyers? What is clogging the pipeline? Further research on the early careers of female lawyers in China and the United States could illuminate possible explanations to this question.

Socio-cultural norms that influence gendered expectations are difficult to change and may contribute to women's marginalization in different fields of legal practice. While Chinese women achieved political liberation under the CCP, this liberation does appear to have erased gendered expectations for women, especially regarding family. Regardless of whether Communist or Confucian influences are shaping Chinese responses, the ambivalence of Chinese female legal professionals towards the gender gap may present an indigenous characteristic of gender dynamics in China's legal system. Hopefully future research will continue to explore to whether this is a defining characteristic or whether merely a characteristic of a certain time period in the evolution of China's legal system.

## Conclusion

In examining gender dynamics in China's legal system, quantitative and qualitative trends suggest the gender gap is in many ways consistent with the gender gap in the U.S. legal system. Feminization of the bar has been slow in China and in the United States. Generally speaking, female legal professionals in both countries face a number of gender gaps. While law schools in both countries have perhaps been graduating female and male law students in fairly equal numbers for at least a decade, women appear to still comprise a proportional minority in the lawyer population, the judge population, and on law school faculties. Furthermore, evidence suggests there may be a power gap, where some women are overrepresented in low-status positions, and an income gap, where some women consistently earn less than their male counterparts.

There appears to be some consistency in gender-based burdens and barriers female legal professionals face in China and the United States, but the perceptions of Chinese females suggest ambivalence towards categorizing gender as a career obstacle. This has potential implications for questions regarding Chinese women's socio-cultural liberation, but the perceptions of Chinese law students could indicate that future legal professionals may not be as ambivalent towards gender. Emerging legal professionals may have a gender consciousness that is distinct from the more egalitarian notions towards gender reflected in the responses from the current generation of lawyers. This stronger gender consciousness may result in calls to address the quantitative gender gap. Future research could follow emerging legal professionals and study whether the new generation of legal professionals continues to demonstrate a less egalitarian gender consciousness.

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## Appendix

### Appendix 1: Chinese Women Working at U.S. Law Firms

Woman A: 28 year old Chinese female graduate of U.S. law school working as a private practitioner at a mid-sized U.S. firm with offices in the United States and China. Informal interview conducted via online exchanges with the author, April 2016.

Woman B: 26-year-old Chinese female graduate of U.S. law school working as a law clerk in a small U.S. firm in Los Angeles, California. Informal interview conducted via online exchanges with the author, March-April 2016.

Woman C: 33-year-old Chinese female graduate of U.S. law school working as a private practitioner at a law firm in New York City, New York. Informal interview conducted via online exchanges with the author, March 2016.

### Appendix 2: Twelve Optional Questions

1. Why did you choose to study law? Why in the U.S. rather than in China or in another country?
2. What type of law did you want to practice before law school? After law school? Why did you want to practice in this area?
3. What were your perceptions on the gender dynamics between female and male law students? Between female and male faculty?
4. Do you feel gender played a role in your law school experience? If so, how and what kind of role did it play (positive or negative)?
5. What is your perception of law students (female/male), law faculty (female/male), law partners (female/male), law associates (female/male), and judges (female/male)? I'd be curious to hear your perception of them here in the U.S. and

back home in China.

6. If you were mentoring a young lawyer, would you prefer to mentor a female or male lawyer, or would you have no preference? Why?
7. Do you feel gender has played a role in your legal career thus far?
8. What kinds of obstacles/barriers have you faced in your legal education/career here in the U.S.?
9. What could reduce these obstacles/barriers so they would have been easier for you to face?
10. Has the fact that you are a woman affected any of your decisions re: law school or your legal career?
11. Do you feel you have to make certain decisions or cannot make certain decisions re: your career because you are a woman?
12. Is there any other perceptions or experiences you would like to share as a Chinese woman practicing law in the U.S.?