


Away from Grass-roots? The Irony of the Chinese Rural Legal Service

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This paper is a modest attempt to study legal pluralism in rural China, using rural legal services as a case study.¹ The paradox of the provision of legal services in rural China is the conflicting imperatives between providing localized services at the grass-roots level and the lure of legal professionalism. The greatest strength of rural legal service providers is the way they are embedded in the rural social and political setting, the geographic and social proximity to villagers, the personal touch in their work, and the trust they obtain from their clients based on the personal knowledge of the rural communities in which they serve. Simply put, there is a particular legal need, and rural legal service providers effectively fill the gap.

Yet, there are strong ideological and economic forces pulling the rural legal service providers away from their grass-roots. The calling of an emerging legal professionalism (and the related financial incentives) demands a certain degree of legal knowledge and qualification, rules of procedure, code of conduct and regularity in legal practice. Gradually, there is a separation between the public and the private legal service providers in the Chinese countryside. In order to survive in an increasingly competitive legal market (even in rural areas), rural legal service providers have to run legal practices as a business. Hence rural legal services are torn between a service idea and a profit-making (survival) motive.

It is an important policy issue to strike a proper balance between public and private delivery of legal services in the Chinese rural areas. Firstly, rurality creates natural barriers for rural residents in limiting the availability of public services including legal ones (Fu, 2003; Michelson, 2007a, 2008; Liu, 2011). The problem is structural and improvement in delivery through information technology has had only limited impact. Secondly, private delivery of legal services in rural areas is costly, ineffective and not sustainable. Lawyers are economically driven and legal services are market driven (Abel, 1989). They cluster in commercial centers in China and there is an apparent market failure. Thirdly, to correct this failure, the government would need to step in to provide or supplement legal services in rural areas by introducing a public dimension of legal services. Politics may ameliorate where the legal service market fails as the development of legal aid services in Western democracies has amply demonstrated (Abel, 1985; Gray, 1994; Flood and Whyte, 2006). This paper offers a glimpse of this tension by examining rural legal services in China.

Rural legal services: history and institutional framework

There are currently two tiers of legal service providers at the rural county level in China and, within each tier there are both a public component and a private component. The upper and professional

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tier includes legal services rendered by lawyers and staff members in government-run legal aid centers and the delivery by practicing lawyers in private law firms. A county legal aid center is located within the Bureau of Justice (BoJ) to which the legal aid centre is accountable, and law firms are uniformly located in the county seat as well, running legal practices with some government supervision. Private lawyers serve principally the urban section of the county population.

The lower and less professional tier, found at the township level, is less well defined. The lower tier generally includes, as official policy demands, a justice assistant (JA, 司法助理员) – who is now a civil servant, and usually a man – heading a justice station (JS, 司法所). The JS is supported by the township government and works closely with the local police, and to a lesser degree with courts, in solving disputes. Administratively, a JS is directly accountable to the BoJ of the locality where it is located, and a JA can be seen as the principal law officer of the township government.

The duties of JAs have evolved over the years. The position of JA was created in the late 1970s and early 1980s to enhance the governance capacity of the local government and to develop socialist legality (Fu, 1992).² The JA scheme was set up in each township in rural areas and with a street office in urban areas. Initially as township government officials, the principal responsibilities of JAs were to organize and guide mediation work that was in disarray during the social and economic transition; to train mediators; and to solve difficult disputes. Currently, the main duties of JAs include: mediation of important cases; legal promotion and propaganda; guidance over legal services firms (法律服务所) as discussed below; provision of legal aid services; and community correction. Mediation of actual cases has become the most pressing and the pivotal task for JAs. Most of the JAs reported that over 50% of their time is spent on mediating disputes. If legal service provision and legal aid services were added together, they would take up almost all of a JA's time. Typically, a JA mediates about 10 major disputes per year, which are approximately 10% of the cases a JA mediates directly or indirectly each year (SC04).

While the JS was developing, a new legal services firm appeared in the countryside, mostly in the southern part of China, to provide legal advice to rural enterprises. In 1984, the Ministry of Justice (MoJ) recognized and welcomed that spontaneous development. As a result, legal services firms started to grow in different parts of China. These firms appeared in various forms, with some being privately run, others attached to township governments and subsidized by the government, and most situated in-between. China was witnessing an emerging semi-private sector of legal service providers which were referred to as legal workers (法律服务工作者). That profession was permitted limited legal practice rights in all cases other than criminal cases of public prosecution in the county with which they register. As quasi-private legal practitioners, legal workers formed their own legal services firms and provided legal services on a partly fee-charging basis and partly based on government subsidies.³

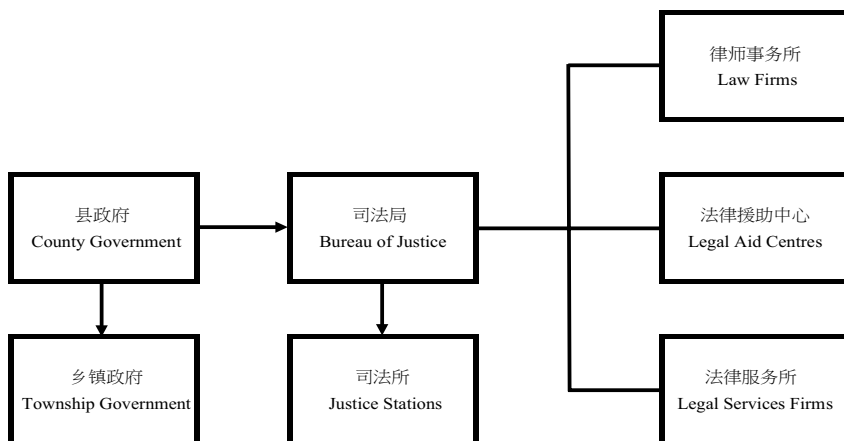


Figure 1. Structure of Legal Services Providers in China.

In 1987, the MoJ promulgated the Provisional Measures on Township Legal Service Firms (Provisional Measures) to regulate the profession, according to which, legal workers were recruited by the county BoJ to provide legal services in the respective townships. In addition to their private practice, legal workers were required to help JAs in assisting people's mediation and conducting legal propaganda. Importantly, the township government was requested to provide funding in cases where legal services firms could not be self-sustainable financially. JAs, as a rule, became legal workers, hence the merging of public and a private sectors.

But the status of legal services firms was never clearly specified in the Provisional Measures, and indeed the MoJ in its explanatory note to the Provisional Measures refrained from defining the status. The MoJ stated that because of great local variation, "a decision on the legal status of legal service firms would be deferred." It was not until 1990 that the MoJ clarified that legal services firms were not profit-making social organizations but part of the government structure.

There were two additional changes of significance in developing and consolidating rural legal services in the 1990s. The first change was to promote the position of JA to the status of a civil servant, which made him directly accountable to the county BoJ. Before the promotion, the JA was part of the township establishment with an uncertain status, and this uncertainty caused two problems to the detriment of rural legal services provision. A major problem was the personal instability of JAs. Since it was not a formal, well-established post, township governments had the discretion to transfer a JA to another position. A promotion to the rank of civil servant with the BoJ served to promote the status of JAs and to professionalize the post, making training and long-term planning more feasible. The second problem related to the duties of JAs. When the JA was a township post, township leaders required the JA to perform duties that were not law-related (such as collecting taxes and levies and enforcing the one child policy). Townships have different priorities that may or may not fit within the official profile of JAs. As it happened, JAs were diverted from dispute resolution to other tasks of the local governments.

The second change in consolidating JAs was to institutionalize the post. The MoJ, as mentioned above, created the JSs towards the end of the 1980s, with a JA serving as the director of each JS. However, that organization was not officially established by the central government level and operated without additional personnel and budget. There was therefore no institutional separation between each JS and legal services firms, and both were centered around the office of the JA. The JA therefore developed two separate identities: organizing mediation in the capacity of a local government official; and giving legal advice and legal representation on a fee-charging basis as a private legal service provider. The MoJ, apparently satisfied with the merging of two entities in one institutional framework, enacted two important normative documents to govern the two entities, both in 2000, namely the Measures for the Administration of Grass-roots Level Legal Service Firms and the Measures for the Administration of Grass-roots Level Legal Workers. More importantly, in December 2000, the MoJ organized the first, and so far the only, national examination for legal workers. It is generally agreed that the climax of legal services firms' development was mainly between 1995 and 1999 (Fu, 2006).

The formal co-existence of legal services firms and JSs came to a sudden end in 2000 under pressure from the central government. In September 2000, the MoJ issued a document entitled *The Implementation Opinions on the Delinking and Re-structuring of Grass-roots Legal Service Agencies*, announcing that legal services firms would be delinked from the government and become partnership legal services firms based on the principles of self-governance, self-financing and self-development. To facilitate the development of a second tier of the legal profession, the MoJ was responding to a new State Council initiative in delinking all intermediary agencies from governmental departments. Legal services firms, following the example of law firms and accounting firms, were regarded as an intermediary, non-governmental agency that should be socialized. By the early 2000s, the central government was taking serious measures to reduce government

interference in the economy and society by restricting the licensing power of the government. The delinking took place in that larger context of government reform to develop a support structure for a market economy in China.

Unexpectedly, however, the delinking brought a sharp decline in the number of legal workers and legal services firms. Most of the legal workers had only a meager income and were simply not in a position to become financially independent. The decision to delink was made in Beijing, with the encouragement and agitation of the professional lawyers, who feared competition from their barefoot counterparts (Alford, 2009; Fu, 2006), with no consultation with legal workers. The newly granted independence also came at a price – a socialized profession allowed government regulation of legal workers and to charge a hefty registration fee for their licenses. To reduce the cost, legal workers created mega-firms which may have more than a dozen lawyers. Others simply continued to practice without registration.

By the end of 2000 when delinking was announced, there were 34,219 legal services firms, a 1164 decline from 1999; the number was reduced further to 28,647 in 2001. In 2001, the number of legal workers was 107,985, a decline of 13,919 from 2000. The unintended consequence set off alarm bells at the MoJ in Beijing. By 2001, the MoJ clearly realized the crisis it was facing by implementing the delinking policy and announced a decision calling for caution in proceeding with the delinking. The MoJ pointed out that:

... even though 8,000 legal service firms might have delinked with the JSs, many of them were actually still operating jointly with the JSs. That sort of mutual dependent and supplementary relationship would be a necessary measure to consolidate and strengthen justice administration at the grass-roots level ... the conditions to implement the policy of separating legal service firms and JSs on a large scale do not exist.⁴

In 2003, the MoJ abandoned the privatization policy and announced that township legal services firms will become *pro bono* community legal services organizations, which provide public interest-oriented, convenient, and affordable legal services that are jurisdiction-based and under the guidance and support of the basic level government (Fu, 2006). Unfortunately this new policy initiative has remained largely empty talk. The guiding principles of the MoJ towards legal workers were to restrict its development in the short term and abolish the whole profession in the long term, as reflected in various policy statements.⁵

What became fatal to sustaining the spread and health of legal services firms was the 2003 Administrative Licensing Law that provides that no ministerial measures could authorize a Ministry to approve a license/permission. Accordingly, the MoJ is not competent to establish legal services firms and the profession of legal worker. The Administrative Licensing Law took effect on 1 July 2004. On 19 May 2004, the State Council promulgated the Decision on the Third Batch of Administrative Approval Items to be Abolished or Adjusted, which made it unlawful for the MoJ to approve legal services firms and issue licenses to legal workers.⁶ Since then, the legal services firms have been placed in a legal limbo. No national examination for legal services workers has been conducted since 2000, even through provincial BoJs have been admitting legal workers on an *ad hoc* basis.

The JSs, on the other hand, received a significant boost in 2003 and 2004. The central government raised 400 million RMB to build one separate office building for the JS in each township in central and western China. The JSs expanded quickly in terms of personnel and support as a result of the financial boost. As heads of JSs recounted their development:

Our (legal service) firm was established in 1988, there was only one room with one staff member; but now there are five rooms for two staff members. Also, the Station has one computer, two motorcycles and one

television set. Much of the hardware of the Station have been refurbished ... The quality of the newly-recruited staff members has become higher and higher. From what I can see at this moment, this Station is operating well, and it can help solving some minor legal disputes in the locality. (HN039)

This Justice Station was established by the Justice Bureau in 1988 according to the request of the superior organ and the instruction of the government. At the time of its establishment, there was only one staff member who was concurrently serving as a government official. The working condition was poor: there was only one writing desk. When the Justice Bureau recruited civil servants in 2004, I was selected and transferred to this Justice Station. At this moment, the Justice Station has five rooms. (HN042)

By the end of 2007, China had almost 41,000 JSs with almost 100,000 staff members (Yu, 2007).

Because of the development of JSs, legal services firms were (re)merged into JSs in 2004; this trend of re-integration with JSs was very visible in Hunan and Chongqing. Currently, there are three types of institutional arrangements between JSs and legal services firms. First, there are the lone JSs in townships in which the JA performs the two different functions as government mediator and private legal services provider. Second, and at the other extreme of the spectrum, there are independent firms which admit no relationship with the JSs. Third, a sizable minority of legal services firms continue to work within the JS facilities and are allowed to share the office space for free. But there is now a more visible division of labor than before where the JA performs the public function and legal workers focus on their private practices. In exchange for the free office space, the legal workers would contribute a proportion of their income to the JS. In addition, whenever there is a special need in the township, such as legal propaganda, teaching a law class in a local high school or provision of legal consultation, legal workers are expected to play a role (CQ03; CQ08).

Legally, JAs, as civil servants, are no longer allowed to work as legal workers on a fee-charging basis (with the exception of legal aid cases). In practice, “moonlighting” as legal workers is common among JAs because of a peculiar financial arrangement for the JA and his office. While the JA is paid as a civil servant directly through the county budget, there is no operational budget for his office. This peculiar financial position makes moonlighting as legal workers a necessity.

It is a well-known fact that the JS can generate decent income through providing legal services. Realizing the possibility of moonlighting, the BoJ became predatory and required that an annual contribution be paid as a condition of the appointment as a JA. With this, profits driving became a core (and official) component of a JA’s duty. The common practice is to request a JS to generate a quota of fees to be submitted to the BoJ on an annual basis. In one Chongqing township, a JS was requested to send 8500 RMB,⁷ or over 10,000 RMB if taxes and fees are included. Anything beyond the quota is pocketed by the JA, and in this particular township, the JA was able to keep 7000 RMB to 8000 RMB per year after meeting the quota. In Chongqing, Sichuan and Hunan, the annual fees imposed on JSs range from 4000 RMB to 9000 RMB, and the fee is also imposed on each individual legal worker. Where there is more than one legal worker in the JS, the BoJ may impose fees on each of them. In a Sichuan JS, the BoJ imposes a fee of 4500 RMB on the director and 4000 RMB on another legal worker (SC01). The BoJ in turn may provide some transportation subsidies of a few hundred RMB and reimburse certain expenses of the JS (SC01).

Generally speaking, the delinking that took place around 2000 was regarded as detrimental to the development of legal services firms because the firms were forced to compete in the market and “pay for its own income and expenses.” As a result “legal service firms started to decline gradually” (HN031) in quantity and the quality of services provided. The 2004 reversal of the policy, on the other hand, was naturally regarded as a restoration of hope (HN027).⁸

Grass-roots lawyering

In China's rural governance, there is a two-tiered dispute resolution mechanism. Village is the basic unit of rural governance and a village authority, the Villagers Committee, is expected to resolve most of the disputes and to refer only the more contentious ones to the authority at the township level. "Trivial things would not leave the village" has always been the prevailing policy, and most of the disputes are regarded as trivial. Increasingly, however, disputes have escaped the mediation network at the village level and surfaced at the township level for the JAs and legal workers to handle. Several reasons explain the shift of JAs from a coordinator of mediation to a chief mediator.

Firstly, there is a visible escalation of disputes and aggrieved individuals have brought their disputes to the attention of higher authorities. The traditional disputes between rural households gave way to public disputes in which peasants resisted illicit levies imposed by or through village leaders in the 1990s (O'Brien and Li, 2006) and later land disputes including land takings cases in the 2000s (Pils, 2009). Village leaders were deeply involved in the disputes with peasants they sought to represent, and are parties to the disputes they are expected to resolve. Private village disputes, which were previously contained and internalized in villages, have now surfaced at the township level or above, appearing in the form of disputes between peasants as a collective and village governments. Township authorities, represented by the JAs, become the most immediately available third party mediator with a degree of neutrality.

The second cause is the incentive provided by the harmonious society initiative of the Hu-Wen government. That initiative equates a dispute to the sign of social instability and requires the relevant government to prevent the dispute from occurring or from escalating after it has occurred. It places heavy burdens on local officials to contain local disputes by using both sticks and carrots. Sticks are used in extreme cases of potential or actual petitions to higher authorities in the provincial capital or Beijing in which case the JAs together with the local police would have to bring the petitioners back (SC03; SC04). During major holidays, JAs would have to ensure potential petitioners are under control; they may even put the petitioners under detention by inviting them to attend "study class" or "training" (SC03; SC04).

But for other disputes, local governments are willing to make unprincipled concessions to create social harmony. In handling such claims, police are instructed to withhold their coercive powers, and the township governments, with the participation of JAs and legal workers, would organize intensive mediation to reach a settlement, often trying their best to satisfy the demand of claimants. In so doing, however, the township governments are inviting claims, even apparently outrageous ones, from potential claimants (SC02; SC03). The system has created a new form of "moral hazard."

Finally there is the demographic change. The initiation of market reforms in the urban economy created huge demand for cheap labor and drew millions of able-bodied and otherwise redundant peasants in the countryside to the cities as migrant laborers. Estimated at between 150 million and 200 million, migrant labor has been fundamental in generating the most controversial social problems in Chinese cities since the early 1990s. While researches abound on migrant labor and related social problems, they are city-oriented, focusing on either their contribution to the urban economy or their suffering in cities (Solinger, 1999; Wang, 2005). Until recently, the resultant social impact on rural social structure has largely been neglected and we are only beginning to understand the social problems that have been created by family break-down, the hollowing-out of the rural community and the thinning of village social organizations. The capacity of dispute resolution at the village level has been weakened.

Geographic barriers are the foremost constraint operating to limit the accessibility of legal services. Legal establishment clusters in cities, and the institutional presence of law in the countryside,

until the most recent decade, has been rare. Law firms, as a rule, are all located in county seats and are unlikely to re-locate to the townships. Indeed, as will be discussed, legal services firms themselves are moving up the ladder with small firms merging into larger ones and then moving to the county seat. Lawyers from the county seats are outsiders to villagers and are not familiar with the local environment. They are generally perceived as unable and unwilling to take on rural cases (CQ05).

The township legal workers are normally the first port of call when villagers take their disputes out of their villages. Legal workers, because of their spatial and social proximity to the villagers, are the first recipients of cases. When a dispute takes place and immediate responses are called for, lawyers are not available. But legal workers are always there and, similarly to the police response to a crime scene, can take on cases on site. Naturally the legal workers will also provide the follow-up legal services (CQ07). This geographic advantage largely explains the fact that legal workers often have more cases, number-wise, than lawyers. It is common ground that legal workers take on more village-based cases, though small in monetary terms, than lawyers. The comment of a legal worker is representative of the common view:

In the rural areas, legal service firms have greater advantages than law firms in case-hunting. This is mainly because the legal service firms are located near villages, their services are more convenient [to the villagers], and their charges are also relatively lower. (HN014)

Proximity creates familiarity. Legal workers generally confirmed that most of the cases came to them because of their personal network in the locality (i.e. referred either by family members, friends or other people they are familiar with) and the reputation they won among former clients (HN030).

Concerning case-hunting in rural areas, legal service firms are in a better position. People in the same locality are familiar with each other, people have greater trust [in legal service firms] and the fees [of the legal service firms] are also lower.

Affordable service is definitely an attraction. Legal workers are willing to take on cases that lawyers would not look at because of the small fee they may be able to generate. Legal workers charge a lesser fee than lawyers according to the fee scale determined by the provincial Justice Department and the pricing authority. While there is a fee scale to follow, which is also posted in the offices of the legal services firms, legal workers, as a rule, negotiate their fees with clients in individual cases. In general, the ability to pay is limited among rural clients, and legal workers are able to manage their own expectation.⁹ To a large extent, the fee that a legal worker may charge depends on the financial condition of the client and the level of acquaintance between a legal worker and the client (HN009). Since most of the clients are not well-off, fees are normally lower than the fee scale permits (HN018). Legal workers constantly adjusted their fees to affordability so that fees are regarded as reasonable to the villagers and from time to time only a nominal fee is charged (HN024). Personal relations with the clients are another factor in determining fees that works to lower legal fees (HN011). Since the community in which a legal worker practices is small and people are familiar with each other, fees have to be lowered or even waived.

Legal workers, especially those who serve as JA in the township government, are deeply embedded in the local political system,¹⁰ which works to enhance their competitiveness in the legal market. Liu pointed out a “symbiotic” relationship between legal workers and local governments (Liu, 2011). The JA is appointed by the BoJ to work in a township. Once the appointment is made, the county BoJ has little control over his performance, and the BoJ gives little support either. The work

that the JA does is mostly locally oriented and involves local interests. As such, his work relies on the support of township authorities, especially financial support.

The JA is well aware of these political dynamics and the need to strike a proper balance in his political loyalty. For example, Director Mo learned his lesson the hard way. The township government was occupying an office that belonged to the JS. Mo had repeatedly requested the township government to move away, and therefore offended the local government. The Township Party Secretary went to the BoJ to complain about Mo's lack of cooperation at work and asked for a replacement. The township also imposed its ultimate punishment: refusing to give Mo his year-end bonus because Mo was not, *de jure*, part of the township government. Mo did not get anything from the BoJ either because he was not, *de facto*, part of the BoJ (SC01). Mo was later on moved to another JS, improved his relations with the township government, and was able to receive 1000 RMB per year (SC01).

Even legal workers who are not government officials work closely with the township government. While officially independent of the township government, or any government for that matter, they are still regarded in many ways as part of the township government establishment and perform duties as required (i.e. attending meetings). One legal worker complained that each of the five legal workers in his firm have to provide up to 300 legal consultations and mediation services per year upon the request of the township government for very little payment (CQ03).

While legal workers are unwilling to volunteer their services if they have a choice, they realize that their free services may provide opportunities to generate business in the future. They also provide legitimacy. As one legal worker explained, provision of free legal services under the guidance of the government gives the impression that legal workers are good people who are trusted by the government (CQ03)

Certainly legal workers also maintain close relations with local judges (at court branches) and other legal personnel. The JAs and legal workers also work closely with township police in mediating disputes. Legal services firms and court branches were often located next to each other. Although there is a requirement that they must be separated by at least 100 meters, the enforcement has not been strict. Judges and legal workers associate with each other in the open:

Distant or not, there are that few people around. We play cards together frequently and ordinary people can see it. (CQ07)

Judges are said to refer cases to legal workers and also provide guidance on legal issues. County lawyers are highly critical of this sort of "unethical" and "corrupt" dealing between legal workers and judges, alleging that judges may have taken bribes from legal workers and are biased towards them in their decision-making. Legal workers are, of course, sensitive to this question, insisting that their dealings with judges are "normal" and "lawful."

Legal workers also work closely with villagers' committees which may from time to time refer cases to them:

... most of the villagers, after having sought the assistance from the villagers' committee, would be referred by the committee to a legal service firm. But for relatively big cases, they normally would go to the law firms. (HN013; HN028)

A significant difference between lawyers and legal workers lies in their different style of lawyering. It is common ground between lawyers and legal workers that the latter are more hard-working, down-to-earth, and have a personal touch in their work. Legal workers can offer a more timely, affordable and responsive legal service and because of those qualities, they are regarded generally as more trustworthy.

Legal workers at the grass-roots level know the family conditions of the parties, including the personality and character of the family members, their strength and flaws, [the difference between lawyers and legal workers is] similar to the difference between county level cadres and township level cadres. They know how to treat different people differently ... that familiarity is beneficial to mediation. (CQ07)

Compared with lawyers, we have much closer contact with the masses – there is a human tendency to trust one’s fellows from the same locality. We have higher level of trust which is accumulated over time. (CQ03)

Given their geographic proximity to villages, their familiarity with local circumstances and people, the affordable services, and political embeddedness, legal workers believe strongly that people seek their services on the basis of the trust that villagers place in them. A thread that runs through the interviews among legal workers is the assertion that legal workers, in the eyes of their clients, are “trustworthy” (HN016); are given “great trust by the people” (HN027), are reliable because referred by a mutual friend and can be counted on.

While lawyers are critical of the low level of legal knowledge among legal workers and complain about their often dismal professional standards, lawyers do appreciate the legal workers’ contribution to mediation in rural areas and their work ethic.¹¹ One lawyer said:

Although the legal workers need to improve the standard of their professional services, they have rich experience in working at the grassroots level, and they are also good at solving disputes. (HN037)

A few lawyers even stated that they have high respect for enthusiastic legal workers, and are willing to learn from them (HN004; HN026).

Interestingly, lawyers who have handled more rural cases tend to give more favorable, or at least more neutral, comments on legal workers. They are also less likely to give a wholesale condemnation of legal workers, appreciating the fact that there are “bad apples” among the legal workers who have little legal knowledge and poor ethic standards (HN14; HN17).

For legal workers, their style of lawyering is different from that of underground lawyers (“black lawyers”). The term “underground lawyers” is commonly used to refer to those who practice law without any legal qualification. They are usually considered as people who have no legal skills but who bragged about their friendship with officials to deceive clients:

There is one female “black lawyer” who has only received two years’ primary education and could only spend a few minutes to prepare claims. Relying on her personal network, she bragged to clients about her close relationship with courts, prosecution and the police ... She would say a few words in courts to discharge her duty. (CQ03)

When challenged in court, “black lawyers” would shout, yell, and when necessary, they would not hesitate to pick a fight, literally, with judges. Chinese law is liberal in its standing requirement and a “black lawyer” may therefore appear in court in the name of agent *ad litem* but charge a fee in secret. “Black lawyers” are often repeat players in courts and judges of course know who they are. However, because of their connection, judges are often willing to turn a blind eye to this problem (CQ03).

Underground lawyers are also competitive in terms of their charges even in comparison with legal workers. They know the fee scales for lawyers and legal workers, and thus tactically ask the potential clients to be aware of their own cost-effectiveness. An underground lawyer may charge as little as 20 RMB to 30 RMB for case, which is a small fraction of the fee to be charged by legal workers (CQ03), not to say lawyers.

Legal workers are well aware of their limits and of their comparative advantage in comparison with county lawyers and take pride in their efforts to conduct thorough investigation. Their weakness in legal training is compensated for by their ability to gather evidence:

We are willing to run errands. We know the geography in the township, and sometimes it takes half a day just to reach the clients to understand their difficulties (CQ05).

One of the legal workers we interviewed was harsh on lawyers while praising legal workers for their diligence and their willingness to travel long distances to gather evidence no matter how small a case is. For him, “sound evidence is better than the empty words coming out from the mouths of lawyers; without evidence, lawyers become useless no matter how skillful they are” (CQ07).

Because of the type of clientele and the nature of cases that legal workers face, legal workers have to be more proactive, investigative and hard-working. Clients who approach them have a lower level of legal knowledge, lack economic resources (many of them are actually legal aid applicants), and are more reliant on the third party to gather evidence. The disputes that the clients face tend to involve little, if any, written documents which can be used as evidence. They are the more traditional civil cases, which require proactive investigation. Rural clients with limited resources place more reliance on their service providers.

Another major difference is the fact that legal workers use mediation more often than lawyers in helping clients to settle disputes. Legal workers understand local circumstances and customs, but possess less substantive legal knowledge and therefore rely more on extra-legal persuasion in handling cases. Legal workers tend to be less rule and procedure oriented and thus more informal (CQ04; CQ05).

Ironically, the informal working style indirectly confirms lawyers’ criticisms and skepticism that legal workers do not know the law and do not follow rules and procedures. Legal workers, because of their knowledge structure, may prefer the more open-ended mediation rather than rely on legal argument. But of course, mediation is also more time-consuming in persuading parties involved to reach a settlement and the prevalent use of mediation also explains why legal workers have to be more hard-working.

Mediation in the Chinese context is often conducted in the shadow of government authorities. This is natural, given the fact that the separation between the government JAs and the private legal workers is recent and incomplete. Mediation remains the primary task of JAs, and given the influence of the JAs on rural legal services in many places, legal workers take part in mediation with or without a fee.

The preference to settle is also related to the limits of the profession and financial implications. The profession of legal worker does not have a clear legal status and the extent to which judges allow their legal representation in courts varies according to time and place. The legitimacy, if not legality, of legal workers is not questioned in their home jurisdictions (the county) when they represent cases at trial at first instance. But their legality could be challenged outside their respective counties when a case, for example, is appealed to the intermediate court in the city. In Chongqing, a legal worker recalled his experience when he was stopped at the gate in the Chongqing Intermediate People’s Court and the guard refused to accept the legal worker certificate as a legitimate paper for entering the court (CQ08).¹² The majority of legal workers claim that they have experienced discrimination during work. Indeed, when they venture out to the coastal cities to represent their fellow villagers in labor disputes, they act as agents *ad litem* not as legal workers to avoid any complications.

Because of this particular uncertainty when a case goes to trial (compounded by weak litigation skills and legal knowledge), legal workers have a tendency to settle a dispute wherever possible.

Lawyers, on the other hand, prefer to solve cases through the litigation process because of their ability to control the development of a case and the consequent economic incentives (CQ05).

The types of cases that legal workers encounter tend to be more suitable for settlement. They are the traditional civil law disputes in which parties, within the family or among neighbors, have developed a long-standing relationship and are mutually dependent.¹³ A more fundamental reason is that parties go to the JS or legal services firms more for help than for justice. Many cases are surfacing at the township level due to the diminished capacity of rural villages to internalize and resolve disputes and the reduced capacity of self-help among the parties. As mentioned earlier, the shortage of able-bodied persons in villages has weakened the self-regulatory capacity. When young and middle-aged people leave villages, the able third parties who could have intervened in disputes and offered solutions vanish. Many of the disputes which were within the jurisdiction of village leaders are now coming to the attention of JAs and legal workers. Without effective help, disputants bring the problems to the township and are channeled to the JA and legal services firms, thus effectively converting family quarrels (e.g. family members fighting fiercely over a few hundred RMB) (CQ08)) and disagreements among neighbors into a legal dispute to be resolved by a legal solution. Many aggrieved persons may not, however, be seeking justice in court but rather a suitable third party who is willing to educate and discipline an abusive husband or an impious son, or handle private matters which the parties may not want to publicize (CQ08). The lack of internal assistance from within the village makes law the first resort for disputes and mediation may be the best solution.

The lure of professionalism

Legal workers work in a hostile legal environment and have been facing one existential crisis after another. Lawyers with their academic and government supporters launched their own assault on legal workers in the early 1990s and lobbied the government to restrict their practice to non-litigation work. When the Lawyers Law – the first law on the legal profession in China – was passed in 1996, it prohibited anyone without a practicing certificate from representing a party in litigation for profit-making purposes, which means that a legal worker was not allowed to charge any fee for their legal representation in courts.¹⁴

This restriction never worked, however. The MoJ, realizing the indispensable role of legal workers in providing legal services in rural China, restored the right of legal workers to represent clients in courts through an executive measure issued also in 1996. What followed was a ten-year struggle between lawyers and legal workers, with courts playing an important role in policing the implementation of the Lawyers Law. Lawyers' criticisms against the legal workers have become more acute since the introduction of the national judicial exam in 2002. Their question naturally becomes: why take the exam with a low pass rate, and pay all the fees and taxes as licensed lawyers, if one can become a *de facto* lawyer through the legal worker back door?

Lawyers again lobbied for further law reform to clarify the matter and tighten the rules against legal workers. In 2007, the Lawyers Law was amended. Article 13 of the amended law reads:

A person who has not acquired a lawyer's practicing certificate shall not be engaged in legal service practices in the name of lawyer; and, except as otherwise provided for by law, shall not be engaged in a practice of representation or defense in litigation.

The exception under the law is confined to agents *ad litem* who provide legal representation for free. Clearly, the National People's Congress recognized the important role of legal workers in providing (rural) legal services but decided to remove them and "black" lawyers from the litigation market once and for all.

Because of the legislative change, legal services firms do not provide a future for the younger, more ambitious legal workers who joined these firms in recent years, but law firms do. Most of the legal workers that we surveyed have either obtained a University degree or studied law at a sub-degree level with a diploma or high diploma. The informal recruitment by BoJs that is currently on-going actually places such a minimum legal educational requirement for newly admitted legal workers. Once admitted, they continue to study, on a part-time basis, for the undergraduate law degree which will qualify them for the national judicial exam. The incentive is obvious:

For myself, I am also self-studying a LLB and will try to obtain the qualification to take the judicial exams ... so that my fees will increase and I can also do legal representation in criminal cases. (CQ08)

China's legal education has been geared to the lower level of the legal services providers at least number-wise. Chinese law schools have produced millions of graduates in their sub-degree programs through all imaginable means, including various distance learning, self-study, and part-time programs. These education programs are having their impact and their graduates are playing an instrumental role in staffing the lower tier legal service in rural China. Law schools in China are also offering hope for the lower end graduates – who can top-up and graduate with a university degree after further continuous studies.

There are incentives for legal workers to continue their studies, to take the national judicial exam and to qualify as lawyers. There is indeed a continuous supply of lawyers from legal services firms as young legal workers pass the national judicial exams from time to time in both Chongqing and Hunan. When discussing the relationship between lawyers and legal workers, legal workers take pride in pointing out that the ones in their firms have passed the judicial exams and moved to a law firm in the county seat. Undoubtedly, being a lawyer is the ultimate ambition for them and they usually admire lawyers for achieving a more advanced level of legal knowledge and litigation skills.

Lawyers, on the other hand, while respecting the work ethic and the personal touch of legal workers, resent legal workers precisely for their lack of legal knowledge. Some lawyers pointed out that, instead of following law and procedure, some legal workers only handle cases according to moral reasoning and their personal feeling (HN006; HN040). Most lawyers lamented the lack of a truly professional qualification as well as the perceived competition legal workers bring about. One lawyer with 14 years' practicing experience made the strongest attack on them:

Some legal workers pretend to be lawyers and handle cases as if they were lawyers in order to deceive the clients. What they do severely affects the lawyers' image in the society. I suggest abolishing of the abnormal system of legal workers. (HN025)

Interestingly, legal workers largely agree with the critique and suffer a strong inferiority complex. They agree that legal workers may be more affordable, but they are less authoritative. In particular, clients place more trust in qualified lawyers when the stakes are high (CQ02) so that richer clients and bigger cases go to lawyers. Legal workers readily admit that they lack the advanced legal knowledge when compared with lawyers, and therefore constantly remind themselves of the need to improve.

Legal workers largely accept this (often harsh) criticism and the profession itself is trying to prove its legitimacy and the "legality" of its existence by creating a lawyerly image. They are acting upon the criticisms to build up legitimacy through self-studies and on-the-job training to degree level. As one legal worker put it, if they do not enhance their level, there will be fewer cases coming their way (CQ01) and they may risk being abandoned (CQ2).

While most of the legal workers are confident that they have a role to play in rural legal services, some of them are concerned about their future prospects:

Most people working in legal service firms did not pass the judicial exam and their level [of legal knowledge] is limited. As the education level continues to rise and the legal system continues to develop, legal service firms will not have much role to play. We will all have to master some [legal] knowledge and there will be no room for someone who cannot pass the judicial exam and without the lawyer's qualification and who cannot reach a high level [of legal knowledge]. (CQ01)

The challenge from the lawyers has become more imminent with the expansion of law firms. In one county in Chongqing, legal services firms are on the decline because law firms are on the increase, and legal workers see this as a direct causal link (CQ02). Some legal workers take comfort in the fact that the number of lawyers is increasing only at a slow pace and there is a need for legal workers for the time being.

Given the inferiority complex and the eagerness to join the rank of lawyers, once a legal services firm is delinked and placed in the market place, it follows the same market rules as those which apply to lawyers. First of all, the traditional arrangement of "one-township-one-firm" is no longer feasible and a rural township simply could not sustain one legal services firm. Naturally, when the firm is pushed to the market, it vanishes and this explains the sudden drop of legal services firms in the years immediately after 2000 when the delinking was announced.

Of course, the legal services firms do not simply vanish; they merge into larger firms and relocate to a large market town, especially where a court branch may be also located. In one extreme example in Chongqing, some 30 legal services firms were merged into a mega-firm located at the county seat. The major consideration was to create an economy of scale through the merging of firms, so that legal workers cluster in a market town to receive and handle more cases with greater efficiency. For business reasons legal services firms, and law firms for that matter, have to cluster in certain geographic locations and to concentrate on commercial cases.

Within the boundary of a county, the county seat is the ultimate source of business where major business takes place. As a rule, at least one legal services firm would be located in the county seat or nearby. Once a legal services firm moves to the county seat, it competes directly with law firms. To survive in the market, legal services firms have to increase their competitiveness by recruiting capable and resourceful members. According to the director of a county seat legal services firm, after an adjustment in his firm by dismissing nine legal workers from his 18-membered teams:

The remaining nine members are competitive and their performance is also good ... the nine legal workers whom we have dismissed are weak in their case-handling ability. Now the nine members are better than any other lawyer in case-hunting and case-handling ability. Most of them have been in practice since the 1990s and have served as directors in other legal service firms. We also have a former deputy Chairman of the county's People's Congress (retired) and a former deputy police chief (retired). We have a retired judge who worked in a branch tribunal for more than 10 years. They are all properly licensed (as legal workers) (CQ07).

The director was confident that similar dismissal may also take place among other legal services firms in the county. Otherwise, "we would not be in a position to compete with the law firms" (CQ07).

Legal services firms have their own competitive edge against law firms. The formal legal profession is ruled by a national standard and there is little local discretion. While not governed by any national standard, the legal services firms are effectively licensed and controlled at the county level. Since there is no longer any qualifying examination, the entrance to the profession of legal

worker is controlled largely at the discretion of the BoJ. Because of this flexibility in qualification, legal workers are also subject to stronger control of the government and have been turned into sources of income for the BoJ. Thus, a potentially key difference between a law firm and a legal services firm lies in the degree of control, especially financial control, that the BoJ may have over the two different firms.

In this process, legal services firms have lost their original identity. They have uprooted themselves from the countryside and have become more profit-driven, competing with lawyers in exactly the same market with the support and guidance of the BoJ. Their bread and butter cases are no longer those concerning the daily life of the peasants whom they have clearly abandoned, to a degree, when the firms have moved from the town to the county seats.

Conclusion

The geography of law matters greatly in both developed countries and developing countries for access to justice. Similar to the situations in other countries, economically advanced or not (Economides and Watkins, 1986; Blacksell, 1990), the foremost barrier to adequate access to justice for villagers is the spatial distance between the world in which disputes take place and the world in which disputes can be resolved. While information technology and improvements in transportation may alleviate the problem to a degree, the ultimate solution is to deliver the services, and institutionalize the services, at the places where disputes occur. Sending law to the countryside therefore continues to be a necessity that is warmly welcomed.

Rural legal services provision is unique and cannot be designed and assessed according to the urban standard where lawyers tend to cluster and authoritative third parties abound. A clear lesson is that reliance on delivery of legal services by the private professions is unlikely to meet the legal needs in rural society. A private legal profession follows its own logic. The profession's survival may depend on an economy of scale, and firms follow where the business is: market towns and the county seats. Eventually law firms and legal services firms compete in the market for the same cases, becoming increasingly distanced from their rural roots.

A major barrier for the growth of legal services firms is their uncertain legal status. The MoJ has not been able to give a clear indication on the future of rural legal services in general, and legal services firms in particular. While the number of legal workers has started to increase again, legal workers have the impression that the government eventually would let legal services firms die a natural death; without sufficient new blood, the profession of legal worker will be aged out of business.

In the end, politics matters more than economics. Government initiatives can correct the market failure and alleviate the difficulties in providing meaningful access to public goods including legal services. Chinese society is pluralistic and legal services have to be polycentric to respond to the diverse social needs. The profession of legal worker emerged due to the fact that it could provide a service to rural communities, which the market itself could not provide otherwise. The demand for these localized services is still there and the fact that existing legal workers are moving up the professional ladder and settling in county seats does not alleviate this demand. With certain policy support to create certainty, this profession can be sustained and new entrants can move in to fill the market demand left open when some legal workers abandon village markets. But to do that requires political vision and will.

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Notes

1. From 2007 to 2010, the author traveled to Chongqing and Hunan to organize interviews, focus groups and workshops on rural legal services, working closely with one law school in each province. To collect more systematic data, we organized and trained 15 law students in Hunan and 12 law students in Chongqing as assistants to conduct in-depth interviews in their hometowns in Chongqing, Hunan and Sichuan. The interviews took place during the Chinese New Year holidays in 2010. A total of 36 county lawyers and 43 legal workers were interviewed in Hunan (HN); and 11 legal workers and 26 heads and staff members in Justice Stations were interviewed in Chongqing (CQ) and Sichuan (SC). Interview is coded according to chronological order.
2. See the Provisional Measures on the Work of Judicial Assistants issued by the Ministry of Justice in 1981.
3. Data from Hunan can illustrate the timeframe in the development of legal services firms in China. Among the legal services firms that were surveyed in Hunan, 36 legal services firms stated their establishment dates, among which 19 of the legal services firms were established in the 1990s, especially in the early 1990s; ten in the 1980s, with the earliest ones established in 1985 (HN019; HN024); and seven established in the 2000s, with the latest legal services firms set up in 2007–2008 (HN002; HN015).
4. MoJ Statements (on file with the author). Principal problems with delinking as identified by the MoJ were: 1) lack of necessary personnel to work in JSs; and 2) a severe shortage of necessary and stable financial resources and supports. The MoJ insisted the delinking should be conditioned on the healthy development of JSs. However, the policy reversal was not enough to stop a continuing decline. By the end of 2003, legal services firms were reduced to 20,771, and the number of legal workers decreased to approximately 70,000.
5. One policy statement states: “gradual abolition, treating from cities and withdrawing from litigation.” Another policy provides: “limited development, gradual diminishment and eventual disappearance.”
6. Decision on the Third Batch of Administrative Approval Items to be Abolished or Adjusted, gov.cn/zwgk/2005-08/06/content_29614.htm.
7. The figure was said to be decided by the BoJ chief at a dinner table while drinking (HN05).
8. For a critical review of the development, see Alford (2009).
9. Legal workers spend much less in case-handling and their lifestyle also reduces the cost of practice. In one example cited in Fu’s research, a legal worker who spent more than one week in Hangzhou in handling a personal injury case incurred less than 200 RMB on food, accommodation and transportation in the city (2006: 161).
10. On the embeddedness of Chinese lawyers and other legal services providers, see Fu (2012), Michelson (2007b), and Liu and Halliday (2011).
11. In our interviews with county lawyers in Hunan, legal workers were praised for their warm and friendly attitude in case handling (HN035; HN036), their rich experience in working at the grass-roots level (HN037), as well as their responsiveness and good skills in solving disputes (HN035; HN036; HN037).
12. Sida Liu also observed that high level court judges are much more hostile to legal workers (Liu, 2011).
13. It is particularly worth noting that the largest number of cases by far in both Hunan and Chongqing involve divorce petitions. Divorce counts for 40 to 45% of the case load of a legal services firm in general (CQ03); in one township in Chongqing, one legal services firm accepted more than 70 divorce cases in 2009 (CQ04).
14. Lawyers Law of the People’s Republic of China (1996), Article 14.

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ANNEX: Personal Background of Legal Workers.

Among the 43 legal workers interviewed in Hunan, 20 have a university degree (大学本科) which has been achieved mainly through distance learning; 19 have higher diplomas, a three-year programme, (大专) (again achieved in different ways); one with a diploma, a two-year programme (中专); two at the level of senior high school (高中); and one with only a junior high school certificate (初中).

Among these 43 legal workers, three of them have a lawyer's qualification and another seven have passed the national judicial examination. One interesting observation is that legal workers generally underestimate the educational background of their fellow legal workers with the general views being that most of them had a high diploma only.

Legal workers are also experienced. Of the 43 legal workers interviewed, 34 have told us their occupation prior to becoming a legal service worker. Among them, nine joined the legal services firms immediately after graduation, three were teachers, one engaged in business and three were civil servants. Five legal workers held positions in their respective villages prior to becoming legal service workers, such as: member of the village's mediation committee; director of the village committee; Party secretary of the village; and town/township cadre and village official.

Interestingly, nine legal workers had prior legal experience, mostly at the township level, before becoming a legal worker. Again, legal workers, and for that matter, lawyers and BoJ officials, underestimated the prior legal knowledge of their fellow legal workers, with the mainstream view being that legal workers simply joined the legal services firms and then learnt the law on the job before obtaining the Practice Certificate (HN016).

Among the 43 legal workers interviewed in Hunan, 41 indicated their years of practice, with the shortest period of practice being two years and the longest being 23 years. Below is the breakdown by years of practice:

Year of Practice	Number of Legal Workers
2–5 years	14 (34.1%)
6–10 years	12 (29.3%)
11–19 years	9 (22%)
Over 20 years	6 (14.6%)

On the other hand, lawyers are more stable and experienced. Among the 36 lawyers interviewed in Hunan, the shortest period of practice is one year, and the longest period is 26 years. Below is the breakdown of the 36 lawyers by period of practice:

Year of Practice	No. of Lawyers
1–5 years	5 (13.9%)
6–10 years	12 (33.3%)
11–19 years	15 (41.7%)
Over 20 years	4 (11.1%)