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Legal Profession in the Age of Artificial Intelligence: A Perspective from Legal Education

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Abstract: From the perspective of AI technology reengineering legal service business process, this paper discusses how the legal profession represented by lawyers utilize AI technology, analyzes the limitations of AI in legal practice, and identifies the optimal path for technical management of AI to improve legal service. The application of AI in the legal profession is mainly reflected in legal research and electronic forensics, contract management and litigation management, automation of legal document work, and legal big data analysis. The application of AI in the legal profession can promote the comprehensive deepening and innovation of the legal profession, promote the interdisciplinary innovation and development of law and AI, and serve the national strategy for AI development. The transformation of legal reasoning thinking and the application of AI technology to link up legal work flow are challenges to the legal profession. However, AI and legal profession will not and should not form a pattern of opposition. A digitally-infused humanistic approach should be fostered for the integrated development of AI and legal profession should be formed. The rational response of lawyers in the era of AI includes becoming proficient in technology, strengthening strategic attention in legal affairs, enhancing business management talents, and facing up to the arrival of legal AI as soon as possible through legal education.

Keywords: AI; Legal Profession; Legal Education

Introduction

Nowadays, the global pandemic of COVID-19 has completely changed the traditional mode of operation of the legal profession. Due to the need to maintain social distance in response to the epidemic, the legal profession community has to use information technology to maintain the operation of the legal system. In the era of artificial intelligence, the emergence of legal information systems such as online law firms, smart courts, and online arbitration has provided convenience for the legal profession to use information technology including AI. To meet the needs of clients under the condition of epidemic prevention and control, the legal profession represented by

lawyers has increased investment in information construction. On the one hand, they use the law firms' "cloud offices" to break through the predicament caused by the epidemic, and on the other hand, they use information technology to transform the professional service process of lawyers, promoting AI technology to become a normalized form of legal service online alongside offline and high-touch personal legal services with "high-touch" characteristics.^[1] The emergence of online law firms, smart courts, and digital arbitration platforms has not only changed how legal services are delivered but also raised crucial questions about how we educate future lawyers.

Divergent perspectives exist regarding AI's role in law. One view enthusiastically embraces AI, highlighting machine learning as a disruptive force that enhances legal practice through "responsive AI" and "limited memory AI." For instance, E-discovery systems improve iteratively with each task, often outperforming human lawyers in speed and accuracy.^[2] Numerous scholars advocate for the proactive adoption of AI to navigate profound industry changes.^{[3][4][5][6][7][8]}

Conversely, another perspective expresses caution over AI's potential to replace human legal work, raising ethical concerns about the erosion of professional subjectivity. Some warn that the "singularity" could redefine human existence, leading to the objectification of subjective judgment.^[9] The attempt to encode moral and legal reasoning into machines—absent human socialization and innate goodwill—poses significant risks. Thus, reconciling human-machine collaboration remains a critical challenge.^[10]

In the face of the trend of AI improving the efficiency of legal services, the work model of the legal profession is facing challenges. Legal professionals are worried that due to the introduction of AI service technology, the intellectual work of legal affairs will be replaced, and most of the manual work will be boring and repetitive review and supervision of machine work. The total hours billed for each problem of the same legal service will be reduced, and since the same legal service will take less

^[1] Legal Daily, "Cloud Offices' for Chinese Law Firms: Pragmatic in the Present, Promising for the Future." [EB/OL]. (2020-10-12)[2020-11-20]. <http://epaper.legaldaily.com.cn/fzrb/content/20201012/Article07002GN.htm?spm=zm1012-001.0.0.2.V6NINe>.

^[2] Kurt Watkins and Rachel E. Simon. "AI and the Young Attorney: What to Prepare for and How to Prepare" [EB/OL]. ABA, (2019-1-16)[2020-11-20].

^[3] Moore, Thomas R, "The Upgraded Lawyer: Modern Technology and Its Impact on the Legal Profession", *UDC/DCSL L. Rev.* 21 (2019), 27.

^[4] Markovic, Milan, "Rise of the Robot Lawyers", *Ariz. L. Rev.* 61 (2019), 325.

^[5] Barton, Benjamin H., and Deborah L. Rhode, "Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators", *Hastings LJ*, 70 (2018), 955.

^[6] Frostestad Kuehl, Heidi, "Technologically Competent: Ethical Practice for 21st Century Lawyering", *Case W. Res. JL Tech. & Internet*, 10 (2019), 1.

^[7] Zheng, Ge, "Big Data, Artificial Intelligence and the Future of the Legal Profession", *Prosecutorial View*, 4 (2018)

^[8] Li, Maojiu, "The Era of Artificial Intelligence: What Should Lawyers Think About?", *Chinese Lawyers*, 7 (2020)

^[9] Zhao, Tingyang "What Philosophical Questions Does Artificial Intelligence Raise?", *Wenhua Zongheng [Cultural 纵横]*, 1 (2020)

^[10] Yu, Ronald, and Gabriele Spina Ali, "What's inside the Black Box? AI Challenges for Lawyers and Researchers", *Legal Information Management*, 1 (2019), 2-13.

time, law firms will hire fewer partners but require them to share more of the firm's costs. the legal profession is both excited and perplexed about the arrival of the AI era. AI technology empowers lawyers to meet the needs of clients faster, cheaper, and more efficiently, but at the same time, the reduction of entry-level legal positions has caused concerns among legal professionals. In order to cope with this challenge, law schools are paying more and more attention to the understanding and innovation of emerging technologies in the training of lawyers' practice skills, providing necessary training for the future success of young lawyers.^[11]

At the same time, legal education stands at a crossroads. While some view AI as a disruptive force that will automate traditional legal tasks, others see it as a tool that can enhance legal practice when properly understood and utilized. This divergence in perspectives reflects a deeper tension within the legal academy about how to respond to technological change. The challenge for legal educators is to prepare students for a profession that is increasingly shaped by technologies that did not exist when current curricula were designed.

Legal education must undergo a fundamental transformation to address the AI revolution. Rather than merely adding technology courses to existing curricula, law schools need to rethink their educational paradigms to produce graduates who can leverage AI tools effectively while maintaining the critical thinking and ethical judgment that are the hallmarks of professional legal training.

1. The current situation of AI application in the legal profession

Artificial intelligence, at its core, involves computer programs that mimic human intelligence through learning, reasoning, and decision-making. Its applications in law are diverse and expanding. According to the International Association for AI and Law, key areas include: (1) formal models of legal reasoning; (2) computational models of legal decision-making; (3) computational models of evidence reasoning; (4) multi-agent modeling of legal reasoning; (5) executable legislative testing modeling; (6) automatic classification and summarization of text; (7) automatic extraction of legal information; (8) machine learning for electronic discovery; (9) retrieval systems for legal information; (10) research and development of legal robots.^[12]

As AI becomes more pervasive, clients expect lawyers to deliver services that are not only faster and cheaper but also technologically adept. Legal AI systems now support practice activities, add client value, and reduce long-term costs. Below are some prominent applications:

^[11] Carrel, Alyson, "Legal Intelligence Through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional", *Ga. St. UL Rev*, 35 (2018), 1153.

^[12] Xiong, Minghui, "Ten Frontier Issues in Legal Artificial Intelligence", *Chinese Social Sciences Net* (2019).

1.1 Legal research and electronic discovery

Legal research is a fundamental skill in legal work. During the process of legal research, natural language processing AI technology is used, such as IBM's legal AI system ROSS, which utilizes IBM's Watson technology. The technological advancement in legal research allows lawyers to discuss legal concepts with AI technology, and enables ROSS to analyze cases based on these concepts rather than strict search terms.^[13]

Evidence analysis is closely related to legal research, and AI is widely applied in electronic discovery. electronic discovery is a broad concept, including but not limited to evidence collection for litigation activities, such as the organization of evidence materials and relevance analysis for fact determination in both litigation and transaction processes. The AI machine learning process can receive thousands of documents and store these materials, then search and find relevant content, thereby supporting a large amount of evidence collection work in various businesses of lawyers, such as helping clients in dispute resolution, business negotiations, due diligence, and tax audits. Some legal technology companies specialize in developing AI products for electronic discovery for the legal profession, even changing the concept and service process of legal services.

1.2 Contract management and litigation management

The application of AI systems in contract management is mainly reflected in the automation of contract drafting and review. Large commercial institutions may have hundreds or even thousands of contracts executed annually with suppliers, contractors, or clients. The drafting and review of contracts are regular work for corporate legal affairs, and since the contract signing process involves cross-departmental collaboration, a lot of communication, collaboration, and process waiting are required. The application of AI systems in contract management aims to check for inconsistencies and errors in the manual contract review process and to provide constructive opinions on legal risks. From the actual operation, AI systems are not only more accurate but also more time-saving than manual review in some contract drafting and review. In addition to corporate legal contract management, law firms also use AI technology to develop "contract robots" to solve the problem of professional knowledge updates in lawyer document assistance systems/business template libraries, ensuring legal service capabilities.^[14]

1.3 Automation of legal document work

In addition to the automation of contract drafting and review, AI is also used to automate the processing of traditional manual legal work content. Currently, common legal AI programs can draft patents, detect errors and format defects, extract data from databases of mergers and acquisitions documents, create confidentiality agreement templates, and edit contracts initially created by lawyers. In recent years, a

^[13] ROSS Intelligence[EB/OL]. <https://rossintelligence.com.2020-11-21>.

^[14] Dentons Launches 'Contract Robot' — Leveraging Shared Community to Build an Adaptive Expert System Based on Neural Networks[EB/OL]. https://mp.weixin.qq.com/s?src=11×tamp=1628667505&ver=3245&signature=5p7Z97n11s*0iawIS32F*5La6b40tSIZBCN2AU7WzxkLVtOEDijMuHILdPVMk2cNgVg9*pb8mZbx-lyms8fjvclsfwH2ctURcUMajK1uTlqMbeTY3-Gt*IcLQIhfTm4&new=1. 2020-11-21.

series of legal AI software have helped lawyers, especially corporate affairs lawyers, to generate and create various legal documents and forms.^{[15][16][17]}

AI software is also helping clients to automate the verification of lawyer billing hours. Intapp scientifically counts lawyer service billing hours by identifying the interaction of lawyers with specific cases, including emails and personnel participation.

^[18]LegalZoom provides automated, affordable "format" legal document drafting services for ordinary people; ^[19]Wevorce system automates divorce processing by inputting customer divorce litigation case information, outputting predictive judgments on how divorce will proceed; ^[20]DoNotPay provides automated rights protection application services for parking tickets for people in major cities around the world. ^[21]Rowan Patent automatically generates patent applications based on the information provided by the applicant, predicting the possible reasons for application rejection to mitigate these risks during the drafting process.

In addition, AI has been integrated into legal document translation services. Large translation company TransPerfect has invested a lot of money in AI-based machine translation, which can imitate natural language using artificial neural networks. ^[22]Machine translation is much faster and cheaper than human translation. Depending on the purpose of translation, AI-based translation is usually sufficient to replace human translators, although this technology still has room for further optimization in the application of the legal profession.

1.4 Legal big data analysis

Compared with legal professionals, the biggest advantage of AI is the big data analysis ability. With the help of big data analysis tools, lawyers can combine their intuition and experience from similar cases in the past to predict and analyze the development trend of cases. In the field of AI and law, the intelligent use of legal information is an important research topic. How to integrate and use publicly available legal-related information is undoubtedly an important direction in this field. Big data analysis methods allow us to see the possibility of instantly processing a large amount of unstructured information, and at the same time, big data analysis methods can make up for the shortcomings of human understanding of vast data,

^[15] Intellectual Property Management Software and Services from Anaqua[EB/OL]. <https://anaqua.com/>.2020-11-21.

^[16] Rowan Patents: Technology-Enabled Legal Services[EB/OL]. <https://rowanpatents.com/2020-11-21>.

^[17] No-code automation platform for legal and compliance professionals[EB/OL]. <https://www.neotalogic.com.2020-11-21>.

^[18] Intapp Connected Firm Management for Professional and Financial Services[EB/OL]. <https://www.intapp.com.2020-11-21>.

^[19] LegalZoom: Start a Business,Protect Your Family:LLC Wills Trademark Incorporate &More Online[EB/OL]. <https://www.legalzoom.com.2020-11-21>.

^[20] Premiere Online Divorce,Private Divorce,Private Judge-Wevorce[EB/OL]. <https://www.wevorce.com.2020-11-21>.

^[21] DoNotPay - The World's First Robot Lawyer[EB/OL]. <https://www.donotpay.com.2020-11-21>.

^[22] TransPerfect-Language and Technology Solutions for Global Business[EB/OL]. <https://www.transperfect.com/.2020-11-21>.

providing legal professionals with "data experience" or "special experience" based on data.^[23]

2. Benefits of ai application in the legal profession

The application of AI in the legal profession not only aids the work itself but also interacts positively with legal education. More importantly, it serves the national strategy for AI development. In recent years, AI, as a national strategic technology, has been elevated to an unprecedented height. Its rapid development exhibits new characteristics such as deep learning, cross-border integration, human-machine collaboration, collective intelligence, and autonomous control, which have profoundly changed human social life and the strategic development landscape of countries worldwide.

2.1 Promoting comprehensive and deep innovation in the legal profession

Technology drives the innovation of legal service concepts. The combination of the legal profession and AI can enhance the efficiency of lawyers' work and showcase unique creativity and service capabilities in legal services. How to drive business with scientific and technological means has become an issue that the legal profession must face. AI has unparalleled advantages over humans in dealing with certain legal issues, such as completing large-scale repetitive work in a relatively short time, improving work efficiency, and even analyzing cases, predicting trial outcomes, and selecting litigation strategies to increase the accuracy of problem-solving.

The use of AI can address and mitigate potential risks of human error. Compared to AI, human lawyers are relatively costly, inefficient, and slow in handling certain tasks, such as document review. A major advantage of AI is the repeatability of results. AI follows strict rules (i.e., algorithms), and a given AI system should provide the same result based on the same input. In a "human-machine" combined scenario, the lack of experience or physical fatigue of legal professionals will not affect the uninterrupted operation of the AI system.

AI also works much faster and more efficiently than similar manual operations. AI excels at performing tasks with clearly defined parameters. Although lawyers are well aware of using legal databases as research tools, advancements in AI have enhanced these capabilities beyond traditional manual legal retrieval. For example, machine learning can be used to analyze response documents determined based on initially input parameters to identify other keywords, time frames, administrators, or other parameters that were not previously determined, leading to the identification of additional response documents. This process, called predictive coding, is often used in the review and production of electronically stored documents, especially emails.

^[23] Zhou, Wei, "Analysis of the Mechanism of Big Data in Fact-Finding", *Journal of China University of Political Science and Law*, 6 (2015).

Under Moore's Law, "strong AI" can provide more decision support for legal work.
[24]

The legal profession uses information systems to cope with the globalization of legal services. The globalization of legal services includes two meanings: on the one hand, Chinese legal service institutions enter the international legal service market, such as arbitration institutions and law firms establishing branches abroad, especially in countries along the "Belt and Road" to carry out foreign-related legal services; on the other hand, it allows internationally renowned legal service institutions to establish offices in China to carry out international cooperation with Chinese legal professions. Globalization brings challenges and opportunities to the Chinese legal profession, especially lawyer services, and also exposes legal service institutions to more risks and challenges. Faced with the challenges of the domestic large cycle and international cooperation, the legal profession urgently needs to use emerging technologies, including the intelligent internet, to support globalized services.

The legal profession uses information systems to cope with the transformation to a knowledge and information economy. The world is transitioning to an information economy, big data economy, and knowledge economy. In the new economic era, legal professionals are not just outputting legal information but creating knowledge-based outcomes for legal issues. The knowledge economy era has given rise to a large number of knowledge- and information-intensive organizations.^[25] The new type of legal service industry is a typical knowledge-intensive industry. More knowledge tools are applied to the work of lawyers, who need to use information systems to process information and knowledge to make decisions and help clients achieve optimal legal solutions.

2.2 Promoting interdisciplinary innovation and development of law and ai

The application of AI in the legal profession is beneficial for carrying out interdisciplinary exploratory research. The research on AI and law has a history of 50 years.^[26] AI establishes intelligent computing systems by simulating human thinking, while law is a legal knowledge theoretical system with social relations as the research object. Due to the multiple knowledge structures and reserves involved in the legal profession, and the differences in legal norms in different legal systems, legal reasoning mechanisms can be divided into rule-based reasoning or case-based reasoning. Moreover, the interpretation and application of law and the determination of case facts cannot be mechanical deductive logic derivation. The formation of free evaluation of evidence, value judgment, and the influence of judicial policy make the legal profession more likely to carry out work in a way that triggers reflection through argumentation.

^[24] Kluttz, Daniel N., and Deirdre K. Mulligan, "Automated decision support technologies and the legal profession", *Berkeley Tech. LJ*, 34 (2019), 853.

^[25] Liu, Zhongying, et al., *Management Information Systems*, Higher Education Press, 2017, pp. 7-9.

^[26] The publication of the article "Some Questions About Artificial Intelligence and Legal Reasoning" by Bruce Buchanan and Thomas Headrick in November 1970 marked the beginning of research on artificial intelligence and law.

The deep integration and development of AI and law has deepened the understanding of AI application in the legal profession and subtly changed the teaching and research paradigms of law as a discipline, to the extent that some scholars have pointed out that the application of AI technology in the judicial field, driven by the integration of networking, digitalization, and intelligence, has formed a Chinese judicial reform picture from "access to justice" to "visual justice".^[27] At present, two similar but different disciplinary definitions have emerged in the Chinese academic community: "legal artificial intelligence" and "artificial intelligence law". The former reflects the focus on the specific application of AI in law, which is essentially an AI issue, while the latter focuses on the new legal issues brought about by the use of AI technology, which is essentially still a legal issue.

Artificial intelligence law, based on knowledge systems, rational speculation, and legal logic, regards AI as the object of legal regulation or the way of legal regulation, and is a theoretical approach that considers and studies from an external perspective, with law as the foundation.^[28] Legal artificial intelligence emphasizes the machine substitution or intelligent transformation of legal work, and is a theoretical approach that considers and studies from an internal perspective, with legal calculation as the foundation. Legal artificial intelligence uses information systems, modeling calculations, and mathematical logic to establish reasoning systems based on legal rules and judicial cases, and further transforms legal activities into adaptive intelligent systems of logical derivation calculations through AI technologies such as data mining, deep learning, and knowledge mapping.

With the rise of interdisciplinary research between AI and law, it has driven the research of various legal issues related to information technology. Traditional civil law, administrative law, criminal law, and other departmental laws are actively responding to the opportunities and challenges brought by the development of information technology. At the same time, new disciplinary concepts such as computer law, computational law, quantitative law, internet law, information technology law, data law, legal big data, robotics law, future law, legal technology, and automated negotiation technology have emerged.^[29] The state encourages colleges and universities to broaden the content of AI professional education on the original basis, forming a new model of "AI + X" composite professional training, such as the cross-integration of AI and law professional education.^[30] Many domestic

^[27] Ma, Changshan, "The Reshaping Effect of Judicial Artificial Intelligence and Its Limits", *Chinese Journal of Law*, 4 (2020).

^[28] Ma, Changshan, "AI Law, Legal AI, and the 'Third Way'", *Zhejiang Social Sciences*, 12 (2019).

^[29] Shen, Weixing & Liu, Yun, "New Paradigm for Legal Research: The Connotation, Category and Methodology of Computational Law", *Chinese Journal of Law*, 5 (2020).

^[30] The State Council issued the New Generation Artificial Intelligence Development Plan (Guo Fa [2017] No. 35), outlining a national strategy for AI development. This effort was further supported by the National Informatization Development Strategy Outline and the *13th Five-Year Plan for National Informatization*, led by agencies including the Ministry of Education and the National Development and Reform Commission. In 2020, the Ministry of Finance released the Several Opinions on Promoting Discipline Integration and Accelerating the Cultivation of Postgraduates in Artificial Intelligence at "Double First-Class" Universities (Jiao Yan [2020] No. 4), emphasizing interdisciplinary graduate education in AI.

and foreign law schools have taken the integration with information technology as an important direction for discipline development,^[31] and the interdisciplinary research results in the field of AI and law have been continuously published, gradually forming a parallel development path for legal artificial intelligence and artificial intelligence law.

2.3 Serving the national strategy for ai development

As a strategic technology leading the development of the national economy, AI is a major strategic measure for China to enhance national competitiveness and safeguard national security. The application of AI in the legal profession can promote interdisciplinary research between AI and law and serve the national strategy in three aspects. First, it enriches and expands the basic theories of AI. The public disclosure of judicial judgment documents online, the construction of smart courts, and complex and multi-level legal service practices provide test data and test application scenarios in the legal field for big data intelligence theory, hybrid enhanced intelligence theory, collective intelligence theory, advanced machine learning theory, and brain-like intelligence computing theory, providing a field for simulating complex activities of human society for the key breakthroughs in advanced machine learning theory, to achieve AI with high interpretability and strong generalization ability.

Second, it provides application scenarios in the field of legal practice for the development of key common technologies of AI. The research and development and deployment of a new generation of AI key common technologies aim to take algorithms as the core, based on data and hardware, focusing on improving perception and recognition, knowledge calculation, cognitive reasoning, motion execution, and human-computer interaction capabilities, forming an open compatible and stable mature technical system. The development of AI key common technologies is conducive to improving the level of AI technology application in the legal profession and reducing the cost of deep AI application in the legal field. The application of AI in the legal profession in diversified dispute resolution, blockchain smart contracts, smart courts, and other legal fields, in turn, enriches the application practice of key common technologies in the "good governance" of social governance.

Third, it uses legal big data to enhance national governance capabilities. Smart courts are an important starting point for the comprehensive reform of the judicial system, and the information resource foundation of smart courts is legal big data. Taking the big data of judgment documents as an example, effective judgments play a role in resolving disputes in individual cases, and also have a guiding and normative role in subsequent social practice and legal activities. Big data analysis provides governance wisdom for the application of evidence, social hot issues, and risk prevention in

^[31] In September 2017, China University of Political Science and Law established the School of Law and Information Management, while Renmin University Law School founded the Institute of Future Rule of Law. That December, Peking University launched its Artificial Intelligence and Law Laboratory and Research Center, and Southwest University of Political Science and Law set up the School of Artificial Intelligence and Law. In April 2018, Tsinghua University Law School further enriched the academic landscape by introducing a new Master of Law (LL.M.) program in Law and Algorithms.

dispute-prone areas, providing legal big data mining and machine learning mechanisms for the national governance decision support system.

3. The impact and limits of AI on the legal profession

The development of legal AI discipline has driven the rapid innovation of legal technology. More and more legal service institutions use AI technology to improve the efficiency and quality of legal services, making it more convenient for the public to access legal services. AI technology represented by electronic discovery, contract management and litigation management, automation of legal work, and legal big data analysis has replaced repetitive legal work. Technological progress has brought changes in work processes and methods, creating opportunities and challenges for the career development of young legal professionals. Although we cannot clearly depict the legal profession in the AI era at present, and our understanding of the impact of AI technology on the legal profession is still in a continuous cognitive process, the trend of technology integrating into legal work is undeniable. As mentioned in Susskind's book "Tomorrow's Lawyers", new jobs for lawyers include: legal knowledge engineers, legal technology personnel, multi-faceted legal talents, legal process analysts, legal professional managers, online dispute resolvers, legal management consultants, and legal risk managers. ^[32]Therefore, due to the replacement of entry-level legal positions by AI technology, higher requirements are put forward for the cultivation of young legal professionals in the future. The transformation of legal reasoning thinking and the use of AI technology to connect legal work processes are challenges for the legal profession.

3.1 The transformation of legal reasoning thinking paradigm

In many aspects, AI research is connected with argumentation research. The argumentation approach of AI integrates insights from different perspectives. From the perspective of theoretical systems, the focus is on the theoretical and formal models of argumentation. Since the 1990s, the main areas of AI that have been significant for argumentation theory include defeasible reasoning, multi-agent systems, and legal argumentation models. ^[33]

The common logical form of argumentation and reasoning used by legal professionals is legal syllogism. However, in the field of legal AI, research on argumentative dialogue is more extensive, establishing computer programs to model and support argumentative tasks, such as litigation, arbitration, and negotiation processes. Hage believes that the popularity of dialogue argumentation models in the field of legal AI is due to two reasons: first, legal reasoning is defeasible, and dialogue models are a good tool for studying defeasibility; second, dialogue models are valuable when

^[32] Susskind, Richard, et al., *Tomorrow's Lawyers: An Introduction to Your Future*, translated by Mai Huifen, Business Weekly Publications, 2014, pp. 181-196.

^[33] van Eemeren, Frans, et al., *Handbook of Argumentation Theory*, translated by Xiong Minghui, et al., China Social Sciences Press, 2019, pp. 735-740.

exploring the process of establishing law in specific cases.^[34] Faced with the uncertainty of legal application and fact determination, a better modeling understanding solution seems to be to view legal procedures as a kind of argumentative dialogue. Scholars in the English-speaking world have provided theoretical framework models from the perspective of argumentative dialogue, modeling multi-agent legal AI systems through defeasible reasoning logic,^{[35][36][37][38]} and presenting the unique thinking and reasoning methods of legal professionals in a more refined and visualized manner.

Under the technical trend of AI modeling legal processes, the legal profession should pay full attention to the transformation of the argumentation thinking paradigm. The argumentative dialogue AI framework can evaluate legal arguments, define the justification of arguments, and correspond to the acceptability and logical validity of arguments. In the legal argumentative dialogue AI framework, the proponent and respondent jointly enter into a dialogue, resulting in a shared set of premises, from which conclusions are derived as legitimate. In addition, in mediation dialogues of non-litigation procedures, information systems or AI frameworks are more of a system that supports dialogue rather than evaluation, not guaranteeing the correctness of the outcome, serving as an imperfect legal procedure.

3.2 The reengineering of legal information systems on work processes

The world is undergoing a major change unseen in a century, with information technology represented by the internet, 5G communication technology, cloud computing, big data, and AI accelerating the transformation of society, economy, management, and other aspects. Legal professionals use computers and mobile terminals as the main tools, and carry out team collaboration, online legal services, and online judicial procedures through the internet and mobile communication networks, efficiently carrying out negotiations, group communication, and legal procedures in their work. The information age has changed the way legal services work, and the use of information systems by the legal profession is an inevitable trend of progress in the commercial society. AI influences legal work processes through information systems as a carrier.

The legal profession uses information systems to achieve transformation. The information age has created digital organizations, and business activities such as enterprises and suppliers, customers on the supply chain are completed with the help of information technology. Legal services have increasingly become a part of the industrial chain in the digital economy era. The legal profession, represented by the lawyer industry, has also begun to try transformation and breakthrough. "Internet

^[34] Hage, Jaap, "Dialectical models in artificial intelligence and law", *Artificial Intelligence and Law* , 8.2 (2000), 137-172.

^[35] Bench-Capon, Trevor J. M., T. Geldard, and Paul H. Leng, "A method for the computational modelling of dialectical argument with dialogue games", *Artificial Intelligence and Law* 8.2 (2000), 233-254.

^[36] Ashley, K. D., Modeling legal argument. Reasoning with cases and hypotheticals. Cambridge, MA: The MIT Press. 1990, p20

^[37] Gordon, Thomas F, "The pleadings game", *Artificial Intelligence and Law* , 2.4 (1993), 239-292

^[38] Prakken, Henry, and Giovanni Sartor, "Modelling reasoning with precedents in a formal dialogue game", *Judicial applications of artificial intelligence*. Springer, Dordrecht, 1998. 127-183.

Plus" has achieved the sharing and co-governance of information among various subjects in the legal service industry chain through connection, and with the help of supply chain management ideas, mature and advanced management information system solutions in business fields such as Enterprise Resource Planning (ERP), Supply Chain Management (SCM), Customer Relationship Management (CRM), Business Intelligence (BI), Knowledge Management (KM), and Decision Support Systems (DSS) are applied to legal professional activities. Traditional legal service institutions will achieve organizational restructuring, management evolution, and internet transformation, thereby meeting the broader legal service needs of the intelligent society. Legal information systems cover AI and legal professionals, forming a human-machine system under the "social-technical" view, proposing digital solutions for the development pain points of law firms, using information systems to carry out digital transformation in the management, business, and collaboration of the lawyer industry, serving and connecting law firms, solving the pain points of law firm management, optimizing digital legal service products through the reengineering of legal service processes, helping lawyers to improve work efficiency and law firms to increase revenue, ultimately achieving management and business capabilities that match the intelligent internet era.

AI is a powerful tool for the legal profession, helping legal professionals enhance their cognitive abilities and achieve process reengineering (BPR) for legal service processes, which is the external value of the legal profession. First, legal services shift from information resource management to knowledge management. The concept of "knowledge management" originated from Peter Drucker's writings, in which he described knowledge workers in his 1988 article "The Coming of the New Organization," proposing that using the knowledge and capabilities of an organization to create new knowledge provides opportunities for gaining a competitive advantage. As a knowledge worker, a legal professional completes a knowledge work process, using his brain as well as resources and tools outside his brain, forming a knowledge output: "brain knowledge + external resources + thinking/collaboration = documents."^[39] The knowledge of legal service organizations is applied in different forms, formally or informally, including structured knowledge, semi-structured knowledge, and unstructured knowledge. The goal of information resource management is to establish knowledge systems and knowledge work systems oriented towards operations and management for organizations, while knowledge management focuses on knowledge discovery and the use of AI in application systems. Taking Case-Based Reasoning (CBR) as an example, it originated from the description of dynamic storage by Yale University's Roger Schank in 1982. The research method of CBR is inspired by human cognitive psychological activities, optimizing the limited sources of knowledge acquisition in traditional expert systems, and has the advantages of combining quantitative and qualitative approaches, having a dynamic knowledge base,

^[39] Larenz, Karl, *Methodenlehre der Rechtswissenschaft*, translated by Huang Jiazhen, The Commercial Press, 2020, p. 369.

and maintaining incremental learning. Its application in the legal field is mainly divided into explanatory and problem-solving types.^[40]

Second, data-driven legal services. Taking the legal practice of law firms as an example, law firms use data analysis to provide "smarter" legal services. First, through data-driven legal service marketing, CRM systems combined with business data analysis to track potential customers, help determine the most effective legal service marketing in promoting new business, measure the return on investment of marketing expenses, and determine which practices and customers are more valuable to law firms. Second, using data to provide higher-quality legal services, AI may open up some data sources that were previously inaccessible. Law firms that have been operating for many years may have unstructured and semi-structured data. If this data can be converted, standardized, and metadata collected, this information will be very useful. Third, data-driven law firm management, based on the goal of data-based management information systems to enhance organizational competitive advantage, through the use of information systems to help organizations improve efficiency, optimize business processes, manage legal documents, and manage human resources.

Third, the change of business intelligence technology (BI) on legal professional decision-making. The successful application of BI in the business field lies in analyzing and interacting with a large amount of data, transforming data into novel and potentially useful knowledge, providing valuable insights for decision-makers, and enabling them to make better business decisions.^[41] By establishing a data warehouse as the basic environment for BI applications, providing lawyers or law firm managers with a collection of data oriented towards themes, integrated, changing over time, and relatively stable, and through online analytical processing, flexibly and interactively providing statistics, trend analysis, and forecast reports, as well as AI data mining technology to obtain effective, novel, and potentially useful knowledge patterns from massive data through specific algorithms.

Future lawyers need to develop three key competency areas: technical literacy (understanding how AI systems work), critical evaluation (assessing the appropriateness and limitations of AI tools), and ethical reasoning (addressing the moral implications of AI in legal contexts). These competencies should be developed through both dedicated courses and integration into traditional doctrinal classes. Law schools should implement a tiered approach to technology education. Foundational courses should introduce all students to basic concepts of legal technology and AI. Advanced courses and concentrations should allow interested students to develop

^[40] Interpretive Case-Based Reasoning involves comparing a new problem with already classified cases in a case database to form a judgment or classification for the new problem. In common law systems, this approach is widely used for interpreting legal provisions and applying the law.

Problem-Solving Case-Based Reasoning, on the other hand, aims to adapt previous solutions to new problems by modifying them to generate a corresponding solution for the new situation.

^[41] Liu, Zhongying, et al., *Management Information Systems*, Higher Education Press, 2017, pp. 205-209.

deeper expertise. Most importantly, technology concepts should be integrated into core courses to show how AI affects all areas of legal practice.

3.3 The limits of AI's impact on the legal profession

The improvement of AI on legal work efficiency makes legal professionals both fascinated and fearful of the rapid development of technology. The fascination comes from the convenience and richness that technology brings to human life, while the fear comes from the worry that technology will get out of human control and even control humans in turn. Can AI completely replace the legal profession?

First, if we view the legal profession as a tool for achieving meaning from an external value perspective, AI must overcome three difficulties to fundamentally challenge the legal profession in the legal field. First, AI currently only simulates human intelligence in a few aspects and needs to carry out reasoning in rich data, deterministic information, complete information, static events, and single tasks in limited fields. None of these conditions can be absent, while the legal profession often needs to make judgments under conditions of insufficient information and limited time. Second, the problem of normative understanding. Legal practice involves the interpretation of legal norms, and the application of law is often a matter of interpreting legal concepts. For example, "good faith" usually points to two views: fulfilling the trust that one has caused and been accepted by the other party; and considering and accommodating the interests of both parties in their relationship.^[42] Obviously, it is difficult to construct and depict these two interpretations of legal principles using the syntax and semantics of AI logic modeling. Third, the problem of moral value reduction. Legal practice involves value judgments, and value and normative issues are difficult to quantify or formalize into data and algorithms,^[43] because there are some binding value evaluation standards in the legal order, constitution, and accepted legal principles. Before "applying" them, legal professionals need to further understand and apply them, such as specifying these standards, and the "justification" of the decision-making process in legal practice is closely related to these standards.

Second, from the perspective of the internal value of the legal profession, moral life is an important part of the meaning of human life. If legal practice, as a moral practice, is replaced by AI, then human moral practice will be reduced, involving almost all important ethical values such as life, freedom, equality, justice, and dignity, which often involve the moral bottom line of human social practice. Considering the special significance of legal practice in the field of morality, the application of AI technology in legal practice should not be promoted with the idea of replacement.

Third, from the internal perspective of AI, if AI is regarded as law, such a system is a hybrid critical discussion system, connecting knowledge representation and reasoning

^[42] Larenz, Karl, *Methodenlehre der Rechtswissenschaft* [Methodology of Legal Science], translated by Huang Jiazhen, Beijing: The Commercial Press, 2020, p. 369.

^[43] Huang, Weiwen, "From Unicorns to AI: Should Artificial Intelligence Replace the Legal Profession?", *Law and Social Development*, 5 (2020).

through machine learning. ^[44]The interdisciplinary research of AI and law is extremely difficult. The difficulty does not lie in the realization of AI technology but in the openness of the legal system. This openness is reflected in the openness of legal terms. Legal reasoning is guided by rules, not based on rule reasoning. Whether it is the interpretation and application of law or the evidence reasoning for the determination of case facts, although it can be depicted from a technical perspective using default logic and non-monotonic logic, it still cannot be separated from the wisdom of legal professionals in the application of rules. In addition, it is also reflected in the openness of answers to legal questions. Legal questions can have more than one answer, but a reasonable and timely answer must be given, and this currently reasonable answer may change over time.

AI will pose challenges to entry-level legal positions to a certain extent, while also providing more legal technology positions. These positions may not be the career plans that law students had in mind when they entered law school. Faced with the changes AI technology brings to the legal profession, scholars have pointed out that legal practice is a delicate and complex job, especially since law involves reason, emotion, and value, and is closely related to the meaning of life. The replacement or support of AI for legal work will not touch the core of legal practice, nor will it affect the significance of the legal profession for moral life. AI and the legal profession will not and should not form a pattern of opposition. Instead, they should return to the tool value of information systems to support legal professional decision-making from a "social-technical" perspective, helping legal professionals to take the legal profession more seriously, and forming a digital humanistic care for the integrated development of AI and the legal profession.

Consequently, teaching methods must evolve to match changes in content. Law schools should incorporate active learning approaches that involve hands-on work with technology tools, problem-based learning that addresses real-world technology challenges, and interdisciplinary collaboration that brings together law, computer science, and other relevant fields.

4. Rational response of legal professionals in the age of AI

The mission of computers is almost application, and countless applications in various fields of human society have been carried out since their birth. The interdisciplinary studies named after computers and AI have triggered academic discussions and research that have attracted much attention. ^[45]The deep integration and development of networking, digitalization, and intelligence is an irreversible fundamental trend of today's social change. The research of law and AI has been deeply affected by this

^[44] Verheij, Bart, "Artificial intelligence as law", *Artif. Intell. Law*, 28.2 (2020), 181-206.

^[45] Feng, Huiling, "Digital Humanities: Achieving Integration Through Cross-Disciplinary Collaboration", *Chinese Social Sciences Today*, 8 (2017).

trend. Due to the morality of legal practice, the cross-interaction between humanities and technology is increasingly required, and a "third path" of integration and development of law and AI has emerged. ^[46] The integration and development of law and AI aims to leverage the strengths and avoid the weaknesses of both, achieving two-way integration. Therefore, it is the need of the times for the legal profession to strengthen the understanding of AI, and it also promotes the transformation of legal profession ethics in the age of AI. It is particularly important for legal professionals to be good at using the advantages of AI while ensuring that machines and legal professionals cooperate in their respective areas of expertise. The legal profession can seek adjustments and changes from the following aspects.

First, the legal profession will become proficient in technology. As AI tools become more advanced and integrated with various application systems, they give rise to new legal service demands and job positions, while the traditional legal career development path becomes narrower. The legal profession should adapt to the growth of emerging legal culture, be familiar with the principles of technology operation, develop more flexible methods to use new tools, on the one hand, to understand the business of clients, and on the other hand, to understand the advantages and disadvantages of information system tools, and to discuss these technical methods with technical professionals. By using appropriate AI tools, the legal profession will gain more knowledge to enable AI products to serve the legal needs of clients. The legal profession will not be replaced in this process. Taking lawyers as an example, through the continuous refinement and integration of the "human-machine system," lawyers who master legal service technology will be able to apply the legal wisdom that was traditionally only possessed by more experienced lawyers.

Second, the legal profession pays more attention to the strategy of legal affairs. Traditional legal profession training focuses more on tactical operations. Starting from law school, professors ask questions to law students, who then decide what legal application applies, apply the law to given facts, and make reasonable and informed suggestions. AI replacement of legal work is more at the tactical level, not strategic work. As tactical work is gradually automated, understanding why clients need certain things, being able to see various issues that will arise, and developing comprehensive strategies to connect client goals with machine tasks will increasingly become the standard for measuring qualified and valuable legal work. Therefore, the strategic guidance means to be familiar with the law as a whole rather than separate parts, returning from the romantic ideal of legal professionalism to the realistic market demand for legal services.

Third, the legal profession becomes more commercially and managerially talented. The wave of social informatization integrates AI with law and will give rise to a new legal culture, making highly specialized legal professionals turn to a broader vision

^[46] Ma, Changshan, "AI Law, Legal AI, and the 'Third Way'", *Zhejiang Social Sciences*, 12 (2019).

and knowledge structure. Clients hope that lawyers can better understand and be aware of their business needs in order to better apply legal AI to their industrial chains. The lawyer profession needs to expand their horizons, including business and management talents that traditionally go beyond the scope of legal work and business decision-making. AI may perform all legal tasks, but lawyers need to understand their weaknesses and the intentions and goals of their clients, and be able to make suggestions and modifications to AI legal products. Connecting human thought with automated processes will be something we value and cannot be replaced. Consolidating the significance of the legal profession in moral life in a digital humanistic way will truly achieve the integration of the two.

Fourth, legal education should face up to the arrival of legal AI as soon as possible.^[47] What impact will AI technology have on future legal professionals? What profound changes will it bring to our legal education? On the one hand, with the progress of AI technology, new technical tools are integrated throughout legal practice, creating a level playing field for experienced lawyers and junior lawyers who can better utilize these new tools. On the other hand, the number of junior legal positions available in the future may decrease. In order to cope with the challenges of AI to the legal profession and the new development opportunities it brings, law school graduates should become experts, senior lawyers, or interdisciplinary talents who master legal AI technology at the time of graduation. Therefore, legal education must strive to bridge the legal technology gap, adjust training programs to become the starting point for innovation and change, actively provide necessary conditions for law students to use legal AI technology, and better provide guarantees for the success of future legal professions. (1) Law students need to understand AI technology. Legal education needs to provide courses on legal services and judicial management techniques in the form of legal teaching practice, allowing students to understand what algorithms are, what chatbots are, what robot advisors are, and the basic components of AI; legal education can provide advanced courses for legal professionals to deeply understand the differences between general AI and specific field AI, how AI machines think, act, and behave, how cognitive computing interacts with humans, and how AI continuously learns and improves with the introduction of expanded or new datasets. (2) Law students need to use AI to innovate and break away from inherent thinking patterns. Traditional legal education is not good at guiding students to innovate and start businesses. In order for law students to adapt to the market competition of the legal service industry and achieve success, they need to understand these technologies and create innovative content for future legal service technology development. Future legal professionals should know the best ways to make full use of AI technology to make legal processes more convenient and acceptable to clients. (3) Law students must learn to question data and algorithms. Just as teaching students to question witness testimony and motives, legal education should teach students to question the data generated by AI programs, avoiding over-reliance on technology itself, as there

^[47] Frostestad Kuehl, Heidi, "Technologically Competent: Ethical Practice for 21st Century Lawyering", *Case W. Res. J.L. Tech. & Internet*, 10 (2019), 1.

may be flaws in algorithm design. (4) Law students need to cultivate advanced lawyer skills, leadership, management, and interpersonal skills. Due to the significant advantages of AI technology in improving work efficiency, law schools generally require students to utilize and embrace new technology. However, the reality is that the younger generation may find interpersonal relationships more challenging because they have become more accustomed to spending more time in the digital virtual world rather than interacting with people. Law schools cultivate the empathy and communication skills necessary for the moral subjectivity of future legal professionals through practical courses, offsetting the impact of "relationship distance" between people. These practical courses include courses on legal studies, legal professional ethics, and technology in legal services and judicial management, to strengthen the cultivation of students' interpersonal skills.^[48]

5. Conclusion

AI is shaping a new pattern in human history, and all of humanity, including the legal profession, needs to seriously face the great changes unseen in a century. In 2017, the first robot lawyer appeared, widely used in the UK and the US, handling traffic tickets at a very low cost. Its official website slogan is: "Fight corporations, fight bureaucracy, sue anyone with just a button press."

The integration of AI into legal practice represents both a challenge and an opportunity for legal education. While AI will undoubtedly change how legal work is performed, it does not eliminate the need for well-trained lawyers who can provide strategic advice, exercise ethical judgment, and serve client needs. Rather, it requires lawyers who can effectively combine legal expertise with technological understanding.

Legal education must respond to this changing landscape by developing comprehensive approaches to technology education that prepare students for the future of legal practice. This involves not only teaching students about specific technologies but also helping them develop the critical perspectives needed to understand technology's role in legal systems and society. By embracing these changes, law schools can ensure that they continue to produce graduates who are prepared to serve society effectively and uphold the rule of law in an increasingly technological world.

The time for incremental change has passed. Legal education needs fundamental reform to address the AI revolution. By developing thoughtful, integrated approaches to technology education, law schools can prepare their students to harness the power

^[48] Reid, Melanie, "A Call to Arms: Why and How Lawyers and Law Schools Should Embrace Artificial Intelligence", *U. Tol. L. Rev.*, 50 (2018), 477.

of AI while preserving the human judgment and ethical commitment that remain essential to the legal profession.

China's Bribery Offenses System's Logical Inconsistencies & Strategies for Improving the Allocation of Penalties

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Abstract:Over the years, China has developed a comparatively comprehensive normative framework for bribery offenses and punishments. The current laws regarding bribery offenses, however, have shown numerous issues with logical self-consistency, which has an impact on the consistency of judicial application and the severity of the penalties. The hierarchy of offenses is unclear, the regulation of new forms of bribery is inadequate, the crimes and penalties are out of balance, the application of property penalties is not standardized, the qualification penalties are nonexistent, and other issues are discovered by sorting out the current legislative framework and penal configuration of bribery offenses in China and thoroughly analyzing its inherent logical conflicts. It is suggested to create a three-tiered offence system, improve the supplementary offenses to control new bribery behaviors, and encourage the equitable distribution of penalties for bribery offenses in order to achieve logical self-consistency. This is based on the two dimensions of reforming the offence system into a group of offenses and reforming the accuracy of penalty allocation.

Keywords:criminal allocation; bribery offenses;;system of offenses; optimization

Introduction

The efficiency of corruption governance, which includes bribery offenses as a central concern, is closely linked to the realization of modernization of the national governance system and governance ability. Chapter VIII of the Criminal Law, "Corruption and Bribery Offenses," is the core of the system of offenses, while Chapter III, "Offenses of Undermining the Order of the Socialist Market Economy,"

is the supplement. However, as the economy and society have developed rapidly, the provisions of China's criminal law on bribery offenses have evolved from being harsh to being fine and from being single to multiple. However, the issues with the current bribery offense laws in terms of logical self-consistency and penal balance are becoming more and more apparent as a result of the quick economic and social development as well as the ongoing evolution of corruption patterns. In order to improve the overall efficacy of the anti-corruption legal system, it is crucial to methodically examine the logical contradiction between China's bribery offense system and penalty structure, investigate the underlying causes, and propose specific optimization avenues.

1.The present offense system structure and penalty structure of bribery offenses in China

The nation's social justice and rule of law have been severely damaged by bribery offenses, which are the primary expression of corruption. A comparatively comprehensive system of offenses and punishments has been established by the bribing offenses sections of China's criminal code. In order to provide a theoretical framework for the following chapters, which will identify the issues and propose an optimization path, this chapter will methodically sort out the legislative status quo of the Chinese bribery offence system, analyze its internal logical characteristics, and thoroughly examine the particular situation of the penalty configuration.

1.1 The offense system's legislative sorting

The subject's identity serves as the border for China's current criminal law regulation of bribery offenses, which adopts a binary legislative model of "subject + behavior" and forms a parallel legislative pattern of "functional bribery" and "non-functional bribery." With Chapter VIII of the Criminal Law, "Corruption and Bribery Offenses," serving as the foundation and Chapter III, "Offenses against the Socialist Market Economic Order," as the supplement, a system of offenses has been formed using the binary legislative model of "subject + behavior." Bribery offenses of state officials and bribery offenses of non-state officials are the two main categories in accordance with the different nature of criminal subjects and behaviors.²⁰ The Criminal Law Amendment (XII), which went into effect in 2004, has raised the penalty for active bribery offenses, rationalized the penalty settings for active and passive bribery offenses, and modified the individual expressions for special self-surrender. This reflects the legislator's most recent trend of bribery offenses and has significantly altered the current more prominent situation in the fight against corruption. It has altered the imbalance between active and passive bribery, which is more noticeable in the current battle against corruption, as well as the issue of inadequate investigation and punishment of active bribery offenses.

According to article 385 of the Criminal Law,¹ "a State official takes advantage of the convenience of his position to solicit the property of another person, or illegally accepts the property of another person in order to seek benefits for another person" is the fundamental component of the passive bribery offense. This includes the three essential components of "taking advantage of the convenience of his position," "soliciting or accepting property," and "seeking benefits for another person." The three fundamental components of "using the facilities of one's position," "soliciting or accepting property," and "seeking benefits for others" are established in this article. Article 386 also lists "particularly large amounts" and "particularly serious circumstances" as aggravating circumstances for the passive bribery offense. State organs, state-owned businesses, institutions, people's associations, and other units are all included in the scope of the offense of unit passive bribery, which is established under Article 387. In order to address the regulatory gap of close relatives or other close individuals of State authorities using influence to receive unfair benefits, Article 388 establishes the crime of passive bribery with the use of influence. Unlike passive bribery, active bribery is defined as "giving property to a State official in order to seek an undue advantage" in article 389 of the Criminal Law.² The subjective objective of "giving property" and the subjective goal of "seeking an undue advantage" are two of the offense's constituent elements. The objective behavior of "giving property" and the subjective goal of "seeking an undue advantage" are the components of the offense. Aggravating conditions for the crime of active bribery are covered by Article 390. It is important to note that, among other things, Article 390 establishes the crime of active bribery of an influential person, which serves as a counter to the crime of passive bribery through the use of influence. This reflects the legislator's goal of addressing the bribery offense chain holistically.

Regarding the bribery offenses against non-State officials, article 163 of the Criminal Code defines the offense of passive bribery of non-State officials. This refers to the behavior of an employee of a business, organization, or other unit who uses their official position to unlawfully accept another person's property or belongings in order to benefit themselves. A system of offenses analogous to the offence of bribery of public officials is established by Article 164, which correspondingly establishes the offence of active bribery of non-State authorities.

Furthermore, the Criminal Code's article 392 defines the crime of procuring bribery, which covers the acquisition of bribes for State officials in the presence of

¹ Article 385 of the Criminal Law of China: "Where a state functionary, by taking advantage of his official position, solicits property from another person, or unlawfully accepts property from another person in order to procure benefits for that person, he commits the offence of accepting bribes. Where a state functionary, in economic dealings, contravenes state regulations by accepting rebates or handling fees under any pretext for his own personal gain, he shall be treated as having accepted bribes."

² Article 389 of the Criminal Law of China: "Where property is given to a state functionary for the purpose of obtaining improper benefits, it shall constitute the crime of bribery. In economic dealings, where property is given to a state official in contravention of state regulations, and the amount is substantial, or where rebates or commission fees are given to a state official under various pretexts in contravention of state regulations, such acts shall be treated as bribery. Where property is given to a state official due to extortion and no improper advantage is obtained, it shall not constitute bribery."

aggravating circumstances. This offense represents the legislator's crackdown on the intermediary links of bribery and serves as a "bridge" in the chain of bribery offenses. By extending the topic of active bribery to a unit and expanding the scope of active bribery offenses, Article 393 allows for the offense of active bribery by a unit.

1.2 The system of offenses' logical features

The three-part conceptual framework of "identity-conduct-legal interest" forms the basis of the current criminal classification system. It is based on the subject's identification, directed by the directionality of the conduct, and focused on protecting legal interests. Three distinguishing features of this structure are the symmetrical construction of conduct patterns, the dual differentiation of offenders, and the central positioning of legal interest protection. These characteristics show the value orientation of criminal policy as well as the legislature's comprehension of the fundamentals of bribery offenses.

1.2.1 The subject of action's dualistic differentiation

Due to the disparate legal definitions of public office bribery and commercial bribery under China's Criminal Law, the dual classification of offenders takes the form of a division between state and non-state officials. The chapter on "Crimes of Embezzlement and Bribery," which primarily protects the integrity of official action, codifies bribery offenses affecting state employees. On the other hand, the chapter on "Crimes Against the Socialist Market Economy Order," which emphasizes the preservation of fair competition in the market economy, covers bribery offenses involving non-state actors. Although there is some logic to this dual-subject arrangement, systemic coordination is also hampered. For example, the term "state functionary" is not sufficiently defined, which makes it difficult to determine the status of some people in real-world situations and, as a result, influences the use of criminal charges.

1.2.2 Designing symmetrical behavior patterns

The reciprocal relationship between accepting and providing bribes is an example of the symmetrical design of behavioral patterns. Reciprocal offenses are divided into "fully reciprocal offenses" and "partially reciprocal offenses" according to criminal law theory; China's bribery crime laws mainly reflect this reasoning. The crimes of receiving and giving bribes make up a traditional reciprocal relationship in the context of public office bribery. Accepting bribes from non-state actors and giving bribes to non-state actors also have a similar relationship in the context of commercial bribery. Although bribery offenses are typically seen as reciprocal crimes, it should be highlighted that a state official's bribery does not always indicate that the recipient will also bribe. Giving property to a state official does not amount to bribery if it only violates the incorruptibility of official duties. Only when it concurrently violates the impartiality of official duties does it qualify as bribery.

1.2.3 Legal interest protection's fundamental positioning

Although their definitions are the same, several academics in our nation have independently stated the protected legal interests of the bribery offenses of offering and accepting bribes. For instance, Professor Guangquan Zhou, in discussing the protected legal interest of the offence of accepting bribes, noted: "The foremost

protected legal interest of this offence is the impartiality of official conduct. Concurrently, even where official duties are performed impartially, should a public official associated with such duties accept bribes, public confidence in the administration of public affairs would be undermined, thereby jeopardising the proper exercise of official functions or creating such a risk. To safeguard the impartiality and incorruptibility of official duties, the protected legal interest of this offence should be interpreted as society's trust in the fairness of official conduct (the trust protection theory). " Concurrently, Professor Guangquan Zhou , in discussing the protected legal interest of the offence of bribery, noted: "The legal interest infringed by this offence is the integrity of official conduct and society's trust in such integrity." Accordingly, the protected legal interests of the offenses of bribery and accepting bribes are indistinguishable. Diverse debates over the protected legal interests of bribery offenses continue from the standpoint of legal interest protection. Nonetheless, the dominant perspective maintains that the principal legal interest violated by the crime of receiving bribes is the integrity of public officials' obligations or the incorruptibility of official action. Furthermore, the conventional criminal law theory that emphasizes "the integrity of public officials' official conduct" is giving way to the "incorruptibility of official conduct" theory as the primary focus of legal interest protection in China. This forbids exchanging tangible advantages for maintaining the integrity of official behavior. The focus on the fundamentals of "power-for-money transactions" in legislation reflects this change. For example, the existence of an agreement including a transaction of this kind is sufficient to establish the crime of bribery, rather than the need for real harm to the public interest. However, depending only on "non-bribability" as the primary legal interest protection has proven insufficient due to the multiplicity of bribery techniques. For example, in "emotional investment-type" bribery, the bribe-giver may develop relationships over time rather than making precise demands right away. "Baiting the hook for a big catch" is a pattern of behavior that challenges conventional ideas of legal interests.

1.3 The present situation of sentencing guidelines

China has "greater emphasis on status than conduct" and "greater focus on punishment than prevention" in its criminal penalties for bribery offenses, which are mostly jail sentences with financial and disqualification penalties added. The three tiers of penalties—principal penalties, extra penalties, and sentence considerations—combine to create the system of sanctions for bribery offenses.

1.3.1 Principal penalty

The primary penalty under the statute for bribery offenses is incarceration; the range of sentences varies based on the type and seriousness of the offense. Accepting bribes is punishable by up to three years in prison or criminal detention, as well as a fine. If there are aggravating circumstances, the punishment could include a fine or property confiscation in addition to a maximum sentence of ten years in jail. Property seizure and imprisonment for more than ten years, life in prison, or even the death penalty may be applied in cases of extreme severity. Offering bribes carries relatively minor consequences; the minimum sentence is criminal detention or a fixed-term jail sentence of no more than five years, plus a fine. A fixed-term prison sentence of at

least five years but not more than ten years, together with a fine, is the punishment in cases when the situation is serious or results in a major damage to state interests. China's criminal policy stance of "strict governance of officials" is reflected in this sentence pattern, which penalizes bribe-taking more harshly than bribe-giving. It has, nevertheless, also spurred discussion about the appropriateness of punishment.

1.3.2 Additional penalty

Fines and property seizure make up the majority of additional penalties. The 2015 Criminal Law Amendment IX made major changes to the bribery penalty system by changing the previous clause that said fines "may be imposed concurrently" to state that they "shall be imposed concurrently." In addition, certain monetary thresholds were eliminated, and a system of abstract fines was adopted. Although the mandatory aspect of fines was reinforced by this amendment, varied application criteria have led to significant differences in fine amounts in actual situations. Property seizure is mainly used as a punishment for really significant bribery offenses. In reality, though, the hazy line separating "proceeds of crime" from "lawfully acquired property" sometimes results in conflicts while enforcement is being carried out.

1.3.3 Sentencing factors

China's Criminal Law and judicial interpretations include a number of elements that impact the harshness of punishments for bribery offenses when it comes to sentencing considerations. Statutory mitigating factors include "voluntary surrender," "meritorious service," and "truthful confession"; statutory aggravating circumstances include "extorting bribes," "repeatedly accepting bribes," and "securing improper benefits for others." In accordance with the criminal policy of dismantling bribery alliances, the "special leniency clause" established by the Ninth Amendment to the Criminal Law states that bribe-givers who willingly reveal their bribery operations prior to prosecution may have their punishment lowered or avoided. However, this unequal treatment has also resulted in a "world of difference" in the punishments meted out to bribe-takers and bribe-givers, causing a sharp variance in sentencing.

2. Logical inconsistencies and issues with China's offence system and penalty structure for bribery offenses

Despite the fact that China's bribery offenses system was first established, its underlying structural flaws are becoming increasingly apparent due to the country's rapid economic and social development as well as the ongoing evolution of corruption patterns. This chapter will systematically analyze the irrationality and systemic shortcomings of the current bribery offence system's penalty configuration, expose the systemic conundrums and practical issues at their core, and offer a problem-oriented approach to the discussion of the optimization path that follows.

2.1 Systemic flaws in the offenses system

Over time, China's bribery offenses system has developed into a rather complicated set of rules. However, the absence of scientific top-level design and systematic

integration has resulted in significant issues like unclear subject definitions, regulatory blind spots, and confusion in the hierarchy of offenses, all of which have severely limited the anti-corruption legal system's overall efficacy.

2.1.1 The order of offenses is unclear

Although the identity of the subject and the opposability of the behavior serve as the primary classification criteria for the current "flat and fragmented" distribution of bribery offenses in China, there is no progressive hierarchical design that goes from the degree of legal interests violated to the mode of behavior, and no graded system of offenses based on the type of behavior and the extent of harm has been established. First, from the perspective of legislative technology, the current Criminal Law divides bribery offenses into various chapters: Chapter VIII, "Corruption and Bribery Offenses," primarily outlines bribery offenses committed by state officials, while Chapter III, "Offenses against the Socialist Market Economic Order," primarily outlines bribery offenses committed by non-state officials. "Offenses against the Socialist Market Economic Order" is covered in Chapter III. Because of this legislative paradigm that separates offenses based on the subject's identity, bribery activities of the same kind are subject to entirely distinct criminal assessments. Second, the application of the offenses is confusing due to the absence of a clear logical hierarchy among them in judicial practice. The line between passive bribery by use of influence and regular passive bribery is blurred when using this offense as an example. This hierarchical confusion directly results in two extreme tendencies: the "amount-only theory," which uses the amount of money involved in the case as the only criterion for choosing the offence, and the "pocket crime" tendency. The second is the propensity for "pocket offence," in which bribery that is hard to qualify for is unwillingly covered by general prohibitions. The fundamental issue is that the existing laws do not establish a "core-periphery" framework of offenses that are grounded in the rent-seeking³ character of bribery. Theoretically, bribery offenses ought to focus on money transactions and power dynamics, and they ought to be categorized into various levels based on the extent of power participation and behavior. However, there is no logical connection between the current legislation's straightforward juxtaposition of state and non-state staff bribery, mechanical division, and unit bribery and individual bribery. When handling complicated bribery cases, such cross-bribery involving both public officials and business people, where the justice is sometimes caught in an offense selection conundrum, this systemic problem is most noticeable.

2.1.2 Insufficient oversight of emerging bribery schemes

The old "property"-centered laws on bribery offenses are facing significant obstacles due to the digital transformation of the business and society as well as the iterative upgrading of corruption techniques. The emergence of new types of corruption, like "emotional investment-type" bribery, virtual property bribery, and option bribery, highlights how lagged legal regulation is.

³ Rent-seeking refers to the unlawful practice whereby government officials or other individuals in positions of power exploit their authority or influence to secure improper benefits for others, originating from the economic theory of rent-seeking.

When a bribe-giver maintains a "friendly relationship" with a public official over an extended period of time under the pretense of human contact, transferring benefits in the name of weddings, funerals, and other festivities without immediately proposing specific requests for favors, this is referred to as "emotional investment-type" passive bribery. While "emotional investment-type" passive bribery is difficult to identify as a passive bribery offence under the current criminal law due to the lack of a clear request, the existing criminal law requires the perpetrator to seek benefits for others. As a result, there are insufficient legal efforts to combat this behavior.

Bribery of virtual property includes new types of property including online gaming gear and digital money. The current criminal law will restrict the object of bribery to "property" and "property interests." Although this has been broadened by judicial interpretation, data rights and interests are not explicitly included. Instead, network virtual property will fall under the purview of regulation, creating legal gaps and leading to judicial practice on virtual property bribery. It is challenging to define and penalize virtual property bribery behavior in judicial practice. Using the time gap to avoid legal repercussions, the more subtle form of "option bribery" takes the form of an agreement to cash in the benefits at a specific future date (such as after retirement). There is still a lack of resources to handle the more complex option agreements, even though the Criminal Law Amendment (IX) adds the clause about "accepting bribes after the fact" but only applies to "seeking benefits for the requestor while in office and accepting property after leaving office."

2.2 The irrationality of penalty distribution

Penalties for bribery offenses in China have structural flaws that weaken their deterrent and preventive effects. These flaws include the unorthodox application of property penalties, the imbalance between crime and punishment, and functional deficiencies. Enhancing the anti-corruption criminal rule of law requires a thorough examination of these irrational phenomena.

2.2.1 Penalties and offenses are not uniform

The existing prison system has glaring fundamental inequities. First, one of the main issues is the irrational internal punishment gradient for the passive bribery offense. The judicial interpretation sets the standard of "a particularly large amount" at more than 3 million yuan, which is clearly out of line with the current level of economic development. As a result, "major cases" and "minor cases" have emerged in judicial practice. Article 386 of the Criminal Law stipulates that "a particularly large amount or a particularly serious circumstance" is a requirement for the statutory upgrading of the sentence. The punishments for "major cases" and "minor cases" differ too much in the practice of the law. Even more noticeable is the difference between the punishments for active and passive bribery. The Criminal Law stipulates that the basic penalty for active bribery is limited to less than five years in prison, while the basic penalty for passive bribery is limited to less than three years in prison. This penalty appears to be more severe than that for active bribery. However, because there are numerous aggravating circumstances, the final punishment for passive bribery is significantly more than that for active bribery in actual sentencing. Although there are

undoubtedly criminal policy considerations behind this discrepancy, an excessive amount of it results in an excessively low cost for the active bribery offense; this enormous disparity also makes it difficult for the judiciary to establish a fair system of accountability, which is not helpful for the basic suppression of the corruption ecosystem.

2.2.2 Applications of penalties and seized property judgments that are irregular

Property penalties play a crucial role in punishing bribery offenses, but China's current laws and judicial practices regarding their application are characterized by a number of unresolved issues, including imprecise standards and poor execution. "The provisions on the types of penalties lay the foundation for the smooth realisation of a balanced relationship between crime and punishment."

First of all, there are no precise standards used to determine fines. In actuality, there are significant variations in the amount of fines imposed in various situations because the Criminal Law only allows for "concurrent fines" and does not specify how the amount of fines is calculated. Second, property confiscation is used too leniently. Although property may be seized in whole or in part under Article 59 of the Criminal Law, this provision does not clearly distinguish between property that is legitimate and property that is the profits of crime. These issues are further compounded by flaws in the system that is in place to enforce property sanctions. The major issue of "empty sentences" for property sentences arises from the fact that many bribery offenders transfer and conceal their property prior to sentencing due to the absence of an efficient system for property inquiry and preservation.

2.2.3 The punitive function's failure

One of the main problems with the existing penal system is the lack of a qualifying penalty. In China, the primary qualifying penalty is the forfeiture of political rights, which is rarely associated with bribery offenses unless the perpetrator receives a death sentence or life in prison. Other bribery offenses do not result in the deprivation of political rights. It may be because "the legislator tacitly assumes that civil servants who commit corruption offenses will naturally be purged from the civil service, so there is no need to add a separate provision on deprivation of political rights." This makes it difficult to achieve a special preventive effect because many bribery offenders are able to re-enter the relevant professions after their sentences have been served.

3. The criminal justice system's path to optimization and the penalty structure for bribery offenses in China

A systematic and scientific optimization plan must be developed following a thorough analysis of the issues with China's criminal justice system and the penalty structure for bribery offenses. The effectiveness of the governance of bribery offenses is directly tied to the realization of modernization of the national governance system and

governance capacity. In order to create a more stringent and effective bribery offence governance system, this chapter will offer a workable improvement path from the two dimensions of the reform of the offence system and the precise reform of the penalty configuration, based on the prior analysis of the current structure and logical conflicts.

3.1 Modification of the way offenses are grouped in the offense system

3.1.1 The legislative model of clusters of offenses is introduced, and a three-tiered system of clusters of offenses is constructed

As some academics have noted, "The amount should not be the only variable that determines the social harm of bribery... It should be more concerned about what kind of public power the public official sold, and what the bribe giver bought as a result." This suggests that the Chinese bribery offense system needs to be structurally redesigned from a systemic perspective. Through a clear relationship between the levels of offenses, it should strengthen the scientific application of justice by establishing "power seeking rent" as the central component of the three-tier crime group system. The first level for the core group of crimes - duty-type bribery offenses, to state officials as the subject includes the basic types of crimes directly infringing on the integrity of the act of duty, covering the crime of passive bribery, active bribery, good offices bribery and other traditional crimes, highlighting the "rent-seeking rights - transfer of benefits" It highlights the regulation of "rent-seeking and benefit-transferring" core behaviors. It should be noted that the criteria for the identification of State officials should be clarified, and it is recommended that the "substantive authority criterion" be adopted, focusing on the nature of the authority actually exercised by the perpetrator rather than the mere form of his or her status. For personnel of mixed ownership enterprises, the relevant provisions of the Law on State-owned Assets of Enterprises can be referred to, in accordance with the double standard of "proportion of state-owned capital holding + actual control" for the definition; the second level is the group of related offenses - non-functional bribery offenses, which is based on the principle of "fair market competition order". The second tier is the related offence group - non-office-based bribery offenses, which takes "fair market competition order" and "indirect protection of the integrity of office behaviour" as the legal interests, and focuses on the regulation of bribery behaviors occurring in the commercial field and influencing office behaviors through non-rights channels. For example, the offenses of passive bribery of non-State officials, active bribery of non-State officials and passive bribery through the use of influence; the third tier is a group of fringe offenses - derivative bribery offenses, which includes auxiliary offenses such as introduction of bribery and active bribery of influential persons, and highlights the regulation of non-core behaviors such as assistance and introduction in the chain of bribery offenses.

In terms of specific construction, it is advised that the offence groups' structure be created in accordance with the three-dimensional framework of "subject - mode of conduct - object of conduct" and that each offence group have two levels of basic and aggravated composition. For instance, the offence of passive bribery should be divided into "passive bribery in breach of duty" and "passive bribery not in breach of

duty," with the former carrying heavier statutory penalties. At the same time, the Criminal Law should be amended to include the "aggravated penalty clause for breach of duty" in order to increase the severity of punishment for those who willfully violate their duties in order to obtain benefits for others, as well as to reflect the harsh punishment for the abuse of power.

3.1.2 Improving and expanding the offenses: controlling emerging bribery schemes

The current offenses should be improved through legislative interpretation or changes to the criminal code, and new offenses should be developed eventually to address the issue of inadequate regulation of emerging forms of bribery. First and foremost, it is necessary to clarify the specific forms of "seeking benefits for others" and refine the essential parts of the passive bribery offense. This includes, but is not limited to, the kind and extent of the benefit, as well as specific demands. In addition, it is suggested that a paragraph be added to Article 385 of the Criminal Law to address the "emotional investment type" of passive bribery: "The long-term and repeated acceptance of property that may affect the impartiality of the act of office, the cumulative total of which reaches a larger amount, even though there is no specific matter of request, shall be punished as passive bribery." Clear "long-term" (e.g., more than a year), "multiple" (e.g., more than three times), "may affect," and other components of the standard-setting process are also in favor of the adoption of judicial interpretations. Legislative interpretation should expand the definition of "property" in the Criminal Law to include "digital assets and data interests with economic value" in relation to virtual property bribery. Additionally, the sentencing criteria should include guidelines for converting the value of virtual property. The "market price - purchase price - appraisal price" method of progressive determination has been put into place. It is suggested that the crime of "accepting bribes in anticipation of benefits" be added to the list of crimes for especially egregious option bribery. The clause states that "if a state official agrees with the requestor while in office to accept property or other benefits after leaving office, he or she shall be convicted and punished in accordance with the offence of accepting bribes, and the punishment may be heavier, as appropriate." In order to close the current legal loopholes, it is also made clear that "anticipated benefits" include, but are not limited to, employment agreements, equity awards, service contracts, and other forms of expression.

3.2 Accuracy improvements in penalty distribution

3.2.1 Using gradient design to balance the number of offenses and punishments

The range of penalties for bribery offenses in China must be judiciously adjusted based on the social hazards and circumstances of various bribery offenses in order to address the issue of offense imbalance and guarantee that the severity of the penalties is appropriate for the offenses.

"The more dangerous the offence is to the public good, the stronger the force that prompts people to commit it, and the stronger should be the means of stopping them

from committing it." So she creates "a corresponding ladder of penalties, from strongest to weakest, according to the degree of social harm of the offence." According to some academics, "unbalanced penalties mean that the same situation is treated differently, which is contrary to the minimum formal justice, not to mention substantive reasonableness." As a result, the "crime and punishment fit the crime" principle should be followed when rebuilding the penalty ladder for bribery offenses. A "base sentence + moderated" sentencing model should be established, with the "degree of breach of profession" and the "size of the loss caused" added on top. To make the legal penalty ranges of various grades more clear, adjustment elements like "the degree of violation of profession" and "the size of the loss caused" should be superimposed. The first step is to rebuild the punishment level for the passive bribery offense. The benchmark of "particularly large amount" is set by the current Criminal Law at 3 million yuan, which is out of step with the degree of economic development. It is suggested that a "dynamic amount standard" be implemented, wherein a "particularly large amount" is defined as 1,000 times the annual per capita disposable income of urban residents in the area where the crime was committed. Additionally, provincial-level judicial organs should be permitted to vary by 20% to account for regional variations. Nevertheless, the "breach of duty" should be considered a separate aggravating element, and the sentence may be raised by 30–50% in the appropriate sentencing level for cases that result in large losses or negatively affect society. Second, there should be a balance in the punishments for both active and passive bribery. Even though incarceration for fewer than five years is the minimum penalty for active bribery, real sentences are typically short. A "particularly serious circumstances" level should be established under article 390 of the Criminal Law. This level could result in a sentence of more than 10 years in prison for active bribery in one of the following situations: (1) bribing more than three people; (2) bribing in the area of major projects and people's livelihoods; or (3) causing the State to suffer losses exceeding 5 million yuan.

3.2.2 Enhancing the way property words are applied normatively

It is essential to develop unified standards for the application of fines and confiscation of property penalties in order to address the issue of irregularities in the current configuration of penalties for bribery offenses in China. Additionally, it is necessary to increase economic deprivation for corruption offenses.

It is suggested that a "two-track system of fines" be established, with the first track being a "proportional fine system" that applies to cases where the proceeds of crime can be accurately calculated and where the benchmark for fines is set at 1–5 times the proceeds of crime. The second track is a "daily fine system" that applies to cases where the proceeds of crime are difficult to calculate and where the average daily income of the defendant—which is theoretically calculated based on the average daily income of the previous three years—is used as a guide when imposing fines ranging from 30 to 300 days. The "daily fine system" is the second option. It is used in situations where it is challenging to determine the proceeds of crime and imposes a fine ranging from 30 to 300 days based on the defendant's average daily income,

which is theoretically determined by averaging their daily income over the previous three years. The unjust phenomena of "the rich being irrelevant and the poor being unaffordable" can be successfully avoided by dynamically modifying the fine amount in accordance with the defendant's financial circumstances.

A clear distinction between "proceeds of crime" and "lawful property" should be made with respect to the penalty of confiscation of property, and the extent to which this penalty might be applied should be made clear. Direct proceeds of crime, property converted from profits of crime, and other property related to the crime must all be specified by judicial authorities in their rulings. A "property registration and publicity system for bribery offenses" should be established in order to increase the transparency of the source of property, and the procuratorial authorities should carry out a thorough investigation into the property status of suspects during the investigation stage. These improvements should be made to the property investigation system concurrently. Furthermore, the system for connecting the criminal trial and enforcement processes, the mechanism for protecting the enforcement of property penalties, the requirement that preservation measures be taken with regard to suspects' property during the investigation stage, and the introduction of a third-party property investigation system must all be improved.

3.2.3 Building a systematic system of qualifying penalties

A multi-level institutional architecture should be used to alleviate the absence of qualifying penalties. First, adding the penalty of "disqualification from public office" to the Criminal Law is advocated at the most fundamental level. An extra five to ten years of prohibition from holding public office may be enforced for bribery offenses carrying a term longer than three years in jail; in extreme circumstances, a lifelong ban may be imposed. In addition to creating a nationally networked database of qualifications for office, this measure should be connected to the Civil Service Law and the Supervision Law. Second, it is advised that the guidelines for implementing the career ban be enhanced at the intermediate level. It is recommended that the restriction period be increased to three to ten years and that "all professions related to criminal behavior" be included in the field of application. A lifelong review system for occupational restrictions should be put in place for certain areas like financial and medical services. Lastly, it is suggested that a "compliance observation period" be implemented at the innovation level. A compliance observation period of two to three years might be established for businesses with small bribery offenses. During this time, the establishment of an anti-corruption compliance system would be required, and if the business passed, the qualification requirements could be lowered or eliminated.

A hierarchical and ordered system of penalties can be established with the help of the aforementioned reforms, allowing for the complete implementation of the deterrent, deprivation, and corrective functions of penalties.

4.Conclusion

This paper presents a systematic optimization plan from the dimensions of reforming the offence system and precisely reforming the penalty configuration. It does this by thoroughly analyzing China's bribery offence system and penalty configuration, exposing its inherent logical conflict and lack of external adaptability. Our nation's bribery offence governance system will be able to achieve the shift from "fragmented regulation" to "systemic regulation" with the help of the development of a three-tier crime group system with "power rent-seeking" at its core, the improvement of supplemental offenses to address new forms of bribery, the encouragement of the reconstruction of the penal gradient, the standardization of property penalties, and the systematization of qualification penalties. This will assist China in transitioning from "piecemeal regulation" to "systematic governance" and from "heavy punishment deterrence" to "precision crackdown" in its governance system for bribery offenses. In the end, this change creates a long-term mechanism of "not daring to corrupt, not being able to corrupt, and not wanting to corrupt" in order to provide a strong guarantee of the rule of law for the comprehensive construction of a modern socialist country. It also improves the deterrent and preventive effects of penalties in addition to improving the scientific and accurate application of justice.

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Affirmative Theory of the Status of the Constituent Element of "Hooligan Motive" in the Crime of Provoking Nuisances

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Abstract: The revision of the Criminal Law in 1997 split the offence of hooliganism into the crime of provoking nuisances and the crime of indecent assault on women and children, etc. Disputes have arisen in theoretical circles as to whether 'hooligan motive' is a subjective element of the crime of provoking nuisances. Firstly, the basic knowledge of legal logic is used to analyse the logical errors of the denial doctrine and the problems of practical implementation, thereby refuting its validity. Secondly, the affirmative doctrine is proved by showing the significance of 'hooligan motive' in limiting the scope of the establishment of the crime, distinguishing this crime from the other, and preventing the abuse of objective imputation and the underpinning clause. The affirmation of the elemental status of 'hooliganism' is a conclusion derived from the systematic interpretation of criminal law norms, and is a requirement of the principle of subjective-objective unity. The affirmative doctrine establishes scientific and reasonable criteria for the determination, ensuring the accuracy of justice and avoiding unfairness in the conviction and sentencing of specific cases.

Keywords: the crime of provoking nuisances; hooligan motive; legal logic; elements of subjective elements

Introduction

When the Criminal Law was revised in 1997, the offence of hooliganism was divided into specific offenses such as the crime of provoking nuisances and the crime of indecent assault on women and children, and the crime of provoking nuisances was set up independently, i.e., article 293 of the Criminal Law stipulates that: “Anyone who disrupts the social order by committing one of the following provocative acts shall be sentenced to not more than five years’ fixed-term imprisonment, detention, or control: (1) anyone who randomly beats another person under aggravating circumstance; (2) chasing, intercepting, abusing or intimidating another person under aggravating circumstances; (3) forcibly taking or demanding, or arbitrarily damaging, or occupying public or private property under aggravating circumstances; (4) creating a disturbance in a public place, causing serious disorder in the public place. Anyone who gathers others to repeatedly commit the acts in the preceding paragraph and seriously disrupts the social order shall be sentenced to fixed-term imprisonment of not less than five years and not more than ten years, and may be fined as well.” In recent years, the legal academic community has sparked controversy over whether “hooligan motive” is a subjective element of the crime of provoking nuisances. Some scholars are against the hooligan motive as the subjective elements of the crime. Judicial practice by the influence of the knowledge of the negative, the judicial determination of the crime of provoking nuisances is improper expansion or even generalization trend. This paper uses the legal logic knowledge of “hooligan motive” negative viewpoints to critique, for the affirmative argument, revealing its logical status and practical value in the provocation of the offence of determination.

1. The controversial focus of “hooligan motive” in the crime of provoking nuisances

According to Article 293 of the Criminal Law, the crime of provoking nuisances refers to the act of fabricating disputes without cause, causing unreasonable disturbances, inciting public disorder, wantonly provoking, or assaulting and harming innocent people, motivated by a desire to flaunt dominance, seek amusement, or pursue mental stimulation. Under the classification criteria for misdemeanors and felonies, the maximum statutory penalty for this crime is five years imprisonment, so it does not fall under a pure minor crime. From the perspective of constitutive element of crime, the object of this crime is the state’s public management order. The objective elements are manifested in the above four types of behaviors. The subject of the crime requires individuals aged 16 or older with normal mental capacity. And the subjective element is criminal intent. Among them, the most controversial issue is whether the subjective element requires the element of “hooligan motive”.

1.1 The dispute over the status of the elements of “rogue motives”

The crime of provoking nuisances was separated from the crime of hooliganism in the Criminal Law of 1979. In traditional legal interpretation, “hooligan motive” has been regarded as one of the subjective elements of this crime. This means that the perpetrator must have such a hooligan motive to constitute this crime, such as venting emotions, seeking mental stimulation, showing off strength and arrogance, or other abnormal psychological impulses to constitute the crime of provoking nuisances. This kind of motivation is often manifested as blatant contempt for national laws and regulations as well as social morality, and by provoking trouble to disrupt social order in order to achieve a sense of psychological satisfaction. Since the implementation of the revised 1997 Criminal Law, the theory of criminal law in our country has generally held a positive position. For instance, “when a perpetrator under the influence of motives such as seeking mental stimulation, venting negative emotions, showing off power, and creating trouble without cause, the hooligan motive serves as a key factor distinguishing this crime from others.”¹

However, in recent years, some scholars have opposed taking the criminal motive as an element of the subjective elements of this crime². Influenced by the denial theory, judicial practice also disregards the criminal constitutive status of “hooligan motive”, leading to the generalization of the determination of the crime of provoking nuisances.

1.2 The evidence for the denial theory

A variety of arguments have been put forward to establish the negation theory, attempting to negate the necessity of “hooligan motive” as the subjective element of the crime of provoking nuisances. The main reasons include: (1) The hooligan motive are ambiguous. The so-called motives of hooligan, such as seeking stimulation, venting emotions, and showing off strength and arrogance, are mental states without specific meanings and are hard to be recognized by others. They contain ambiguous and unclear content. Taking it as a culpability element of the crime of provoking nuisances does not have the significance of limiting the scope of the crime. (2) Infringement of legal interests is independent. Even acts without hooligan motive may seriously violate the legal interests of this crime. (3) Objective conviction is feasible. It is entirely possible to determine whether a certain behavior constitutes the act of provoking trouble based on objective criteria without take the hooligan motive as an element of responsibility for this crime. (4) Neither taking the hooligan motive as the subjective element of this crime nor improperly expanding the scope of punishment for this crime. (5) Not requiring the perpetrator to have a hooligan motive subjectively does not mean that the perpetrator does not have an intention subjectively. The prosecution must still prove the perpetrator’s intentionality. (6) Requiring the perpetrator to have a hooligan motive subjectively might be to distinguish this crime from others. However, this crime is not in opposition to crimes such as intentional injury, intentional destruction of property, extortion, or robbery. Proper application of

¹ Zuofu Wang (Ed.): Practical Research on the Specific Provisions of Criminal Law (Part II), China Fangzheng Publishing House, 2003, 1441

² Mingkai Zhang: Criminal Law (Part II) (Fifth Edition), Law Press, 2016, 1068-1069

the doctrine of imaginative concurrence of offenses can resolve overlaps without relying on motive. (7) The requirement that the actor is subjectively motivated by hooligan motive may stem from the induction of objective facts. However, criminal law is a normative study rather than a factual one. No one can guarantee that the crime of provoking nuisances that is not motivated by hooliganism will not occur.

Faced with the forceful challenges posed by the denial theory, recent editions of authoritative legal textbooks have adopted a more ambiguous stance toward the role of criminal motive in this offense: “The motives for this crime may be diverse. Some aim to stir up trouble to gain mental stimulation, some seek pleasure by causing wanton disturbances, some strive to show off their abilities by making a commotion, and some do so to prove their ‘capabilities’ and ‘courage’, etc.”³

2. The denial theory not only contradicts legal logic but also has poor practical effects

2.1 Legal-logical rebuttal to the fallacies of the denial theory

The arguments of the denial theory are riddled with logical fallacies and fail to persuade. Proponents of this theory present a torrent of reasons, with a lot of evidence and fluent speech. It seemed to be progressive and solid, but in fact, it couldn't stand up to scrutiny. Because if it either shifts concepts, changes the topic, or is ambiguous and vague. Analyze them one by one as follows:

i. “The so-called hooligan motives, such as seeking excitement, venting emotions, and showing off strength and arrogance, are mental states without specific meanings and hard to be recognized by others. They contain ambiguous and unclear content. Taking them as the responsibility elements of the crime of provoking nuisances does not have the significance of limiting the scope of the crime.” Here, commentators accuse the “hooligan motive” of being ambiguous and having no specific meaning. The question is: Is the “hooligan motive” truly devoid of concrete meaning, and is it genuinely unmanageable in judicial practice? During the decades from the entry into force of China’s first Criminal Law on January 1, 1980 to its expiration on September 30, 1997, judicial practice identified the crime of hooliganism, far more than hundreds and thousands cases. If the motive of hooliganism has no specific meaning and cannot be identified, it would be equivalent to saying that the crimes of hooliganism previously determined by judicial authorities were all confused and even all wrong cases — for how could a crime be justly adjudicated if it is determined based on an uncertain condition for the establishment of the crime? But such a misinterpretation of judicial practice over the past decade or so will surely not be tolerated by our country's judicial authorities.

³ Mingxuan Gao and Kechang Ma (eds.) : Criminal Law (7th Edition), Higher Education Press, Peking University Press, 2016, 543

ii. “Even acts without hooligan motives may seriously infringe upon the legal interest of this crime”. This reason contradicts the first argument. As mentioned earlier, the hooligan motive is something that is difficult to grasp and has no specific content. Here, it is certain that the “hooligan motive” is something that can be clearly defined, but the legal interest protected by this crime can still be violated without such a motive. The question is: Is the hooligan motive really a real “existence” ? The theory vacillates, first denying its definability and then tacitly affirming its relevance, which is a blatant self-contradiction. Furthermore, can the same legal interest be infringed upon by only one act? Not at all! For instance, property rights may be infringed by robbery, theft, or fraud. The theorist holds a dual attitude towards the existence of “hooligan motive”, both denying their existence and acknowledging their potential impact on legal interests. There is a mistake that the judgment they make does not conform to logical laws in terms of the relationship between the connotations of the logical antecedent and consequent terms.

iii. “Without taking the hooligan motive as the element of responsibility for this crime, it is also entirely possible to objectively determine whether a certain behavior constitutes the act of provoking nuisances. After determining the fact that the perpetrator assault others without cause (at will), what needs to be further judged is whether the objective circumstances are bad, rather than whether it was motivated by hooliganism subjectively.” Please note that if one does not rely on the hooligan motive, how can the fact that the perpetrator has “beaten others for no reason (at will)” be determined? Here, the arguer “engage in semantic subterfuge”, which means that they actually use rogue motives while explicitly denying its status as a constitutive element. Besides, unlike the concept of “circumstances” of criminal law in Germany and Japan, the term “circumstances” encompasses multidimensional meaning in China: “whether the nature of the social relationship violated by the harmful act is significant”, “whether the objective harmful result produced by the act or the danger of the act causing harm is serious”, subjective personality conditions such as “whether the actor has a more condemnable identity”, the perpetrator’s subjective mental state (including criminal intent, criminal negligence, the moral baseness of motives, and specific criminal purposes). However, the criminal laws of Germany and Japan merely limit “circumstances” to objective harm.

iv. The claim that “excluding the hooligan motive as a subjective element of this crime does not unduly expand its scope of punishment” is untenable. Logic tells us that the richer a concept’s connotation, the narrower its extension. Conversely, reducing a concept’s connotation inevitably broadens its extension. If the connotation of “the crime of provoking nuisances” is added - that is, the restrictions on the conditions for establishment are increased, its extension would shrink. Conversely, reducing the constituent elements necessarily expand the scope of the establishment of this crime. This is an unbreakable logical rule. The denial theory blatantly violates this irrefutable logical principle. As the analysis made by the author as an example of

assaulting others also proves that without the restriction of criminal motive, the criteria for establishing the basic offense of provoking nuisances would fully overlap with those of intentional injury.

v. The assertion that “the actor is not required to have a hooligan motive subjectively does not mean that the actor is not required to have an intention subjectively and be objectively convicted” commits the logical fallacy of shifting the debate’s focus. The arguer made a logical mistake of changing the topic here. Objective liability refers to the determination of guilt based solely on objective elements without considering subjective elements. In China, no one claims that the crime of provoking nuisances is a negligent crime, regardless of the understanding of the status of the hooligan's motive. The hooligan motive is a further limitation of the subjective elements of the crime of provoking nuisances on the basis of acknowledging that it is an intentional crime. That is to say, whether or not it is claimed that the hooligan motive is a subjective constituent element, it does not affect the attribute of this crime as an intentional crime and both require the significance of criminal intent in the conviction of this crime. Therefore, whether it is the negation theory of the hooligan motive or the affirmation theory of the hooligan motive, it does not advocate that conviction can be made merely based on objective elements.

vi. “Requiring the perpetrator to be subjectively motivated by hooliganism might be to distinguish this crime from others. However, this crime is not in opposition to crimes such as intentional injury, intentional destruction of property, extortion, and robbery. At the very least, by skillfully applying the the doctrine of imaginative concurrence, the issue of conviction can be reasonably resolved”. Here, the arguer uses the ambiguous word “might” . When we say “A” might be “B”, it subtly implies that “A” is not necessarily “B”. The author emphasizes the hooligan motive in the subjective aspect of the crime of provoking nuisances, which stems from the inherent nature of the crime itself. This element, of course, helps to distinguish the crime of provoking nuisances from other similar crimes, not merely a tool for distinguishing it from similar offenses.

vii. “The requirement that the actor is subjectively motivated by rogue motives might stem from the induction of objective facts. However, criminal law is the study of norms rather than facts. No one can guarantee that the crime of provoking nuisances will ever occur without a hooligan motive”. The arguer once again used the word “might” to make an ambiguous statement.

After the above analysis, it can be seen that the viewpoints of the denial theory lack convincing arguments. These arguments have logical flaws, such as violating the rules of the relationship between the connotation and denotation of concepts, substituting concepts in arguments, and being ambiguous in the definition and use of concepts and judgments. Consequently, logically speaking, the denial theory is untenable.

2.2 The misleading impact of the denial theory on judicial practice

The denial theory's proposition that the "hooligan motive" does not need to be regarded as a subjective constituent element of the crime of provoking trouble has raised some problems in judicial practice.

i. The negation theory has led to an overbroad application of the crime of provoking nuisances. The objective behavioral patterns and constituent elements of this crime overlap with those of other crimes. By disregarding the "hooligan motive", judicial officers may base convictions solely on superficial behavioral manifestations, while neglecting the perpetrator's subjective culpability, thereby arbitrarily determining this crime and inappropriately expanding the scope of application of this crime. The denial theory would lead to the wrongful determination of harmful acts such as provoking nuisances as crimes like intentional injury and intentional destruction of property. Because it ignores the "hooligan motive" behind the behavior and fails to reflect the evaluation of the subjective malignancy of the perpetrator, thus the evaluation of the case facts is not comprehensive.

For instance, the inability to effectively distinguish the crime of provoking trouble from other crimes and the crime of intentional injury: The "random beating of others" in the crime of provoking nuisances and the "intentional injury to others" in the crime of intentional injury are similar in objective behavior, but the crime of provoking nuisances requires the perpetrator to have the hooligan motive of "creating trouble for no reason" or "showing off strength and arrogance". Disregarding this motive blurs the boundary between the two crimes. For instance again, the distinction from the crime of intentional destruction of property: The "arbitrary destruction of property" in the crime of provoking nuisances overlaps with the crime of intentional destruction of property in terms of objective behavior. The negative theory may lead to an inability to accurately distinguish between the two crimes, as the object of the crime of provoking nuisances is random, while the object of the crime of intentional destruction of property is usually specific. Another example is the distinction from the crime of extortion: The act of "forcibly taking" in the crime of provoking nuisances may be objectively similar to that in the crime of extortion, but the perpetrator of the crime of provoking nuisances usually has a rogue motive of "showing off strength and being competitive", while the perpetrator of the crime of extortion aims to illegally possess others' property. Ultimately, the denial theory may lead to the crime of provoking nuisances becoming a "catch-all crime", incorporating acts that originally did not have criminal punishable nature into the criminal circle, which violates the principle of legality.

ii. The denial theory leads to improper sentencing in specific cases. The legal penalties for the crime of provoking nuisances differ significantly from those of offenses like intentional injury. For instance, the maximum statutory sentence for the basic offense of "provoking nuisances" is 5 years imprisonment, whereas intentional injury (resulting in minor harm) carries a maximum sentence of 3 years imprisonment.

If the “hooligan motive” is not taken into account and the case of intentional injury is determined as the crime of provoking nuisances, it will lead to the perpetrator facing a heavier sentence due to the incorrect determination of the charge, thereby causing injustice in the sentencing. On the other hand, if the “hooligan motive” is ignored and cases of provoking nuisances are wrongly identified as crimes such as intentional injury, it will lead to a relatively lenient sentence, and the result will be the indulgence of the offender.

The above analysis clearly demonstrates that the denial theory leads to the generalization of the application of charges and the unfairness of conviction and sentencing in judicial practice, failing to effectively distinguish the crime of provoking nuisances from other crimes. Therefore, emphasizing the “hooligan motive” as a subjective element of this crime is not only a theoretical necessity but also an inevitable requirement in judicial practice.

3. The justification of the affirmation theory on the “hooligan motive”

3.1 Deriving the affirmation theory: a systematic interpretation of criminal law provisions

To determine whether this crime requires a “hooligan motive” subjectively, it is essential to comprehensively considered in terms of the object elements, objective behavioral elements and the statutory sentencing framework of this crime. At the same time, it should also be compared horizontally with other similar crimes such as the crime of intentional injury and the crime of intentional destruction of property. A systematic interpretation of the criminal law norms for the crime of provoking nuisances leads to an affirmative conclusion.

Article 2 of the Judicial Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Provoking Nuisances (Judicial Interpretation No. 18 of 2013)⁴ indicated that the act of arbitrarily assaulting others and disrupting social order shall be deemed as “circumstances of a severe nature” under Item 1, Paragraph 1, Article 293 of the Criminal Law if it meets any of the following conditions: “(1) Causing minor injuries to one or more persons or slight injuries to two or more persons; (2) Causing serious consequences such as mental breakdown or suicide of the victim; (3) Beating others at will on multiple occasions; (4) Assaulting others arbitrarily with a weapon; (5) Arbitrarily assaulting mentally ill people, the disabled,

⁴ the Judicial Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Provoking Nuisances (Adopted at the 1,579th Meeting of the Judicial Committee of the Supreme People’s Court on May 27, 2013 and at the Fifth Meeting of the 12th Procuratorial Committee of the Supreme People’s Procuratorate on April 28, 2013) (Judicial Interpretation [2013] No. 18)

vagrants and beggars, the elderly, pregnant women and minors, causing significant negative social impact; (6) Arbitrarily assaulting others in public places, resulting in severe disruption of public order; (7) Other circumstances of serious nature.

Taking Item 1 of this Article as an example, “assaulting others and causing minor injuries to one person or slight injuries to two or more persons” qualifies as “assault under severe circumstances”, and may constitute the crime of provoking nuisances. If the denial theory which rejects the necessity of a “hooligan motive” were applied, the act of “assaulting others and causing minor injuries to one person” under provoking nuisances would share identical elements with the crime of intentional injury in cases of minor harm. However, according to the provisions of China’s Criminal Law, the maximum statutory sentence for the basic offender of the crime of intentional injury⁵ is three years of fixed-term imprisonment. The maximum statutory sentence for the basic offense of the crime of provoking nuisances is five years of fixed-term imprisonment.⁶ In both cases, although the four elements of the crime are exactly the same and there is no difference at all, the sentencing results will vary greatly. For specific cases, once a judge determines it as the crime of intentional injury, the maximum sentence can be three years in prison. Once a judge determines a specific case as the crime of provoking nuisances, the maximum sentence can be five years in prison. In such circumstances, if the “hooligan motive” is not emphasized, it will lead to the arbitrary determination of charges in judicial practice, resulting in the phenomenon of “inconsistent adjudication of similar cases”. It can be seen that the conclusion obtained by insisting on the denial theory is unfair and unreasonable.

If the denial theory is adopted and the motive of the hooligan is not taken into account, “assaulting others and causing slight injuries to two or more people” can still constitute the crime of provoking nuisances, such cases would be punishable by up to five years imprisonment. However, causing slight injuries to two persons does not meet the threshold for the crime of intentional injury. This demonstrates that the hooligan motive must be regarded as a subjective element in order to reasonably balance the legislative setting of the statutory penalties for the crime of provoking nuisances and the crime of intentional injury (minor injury).

⁵ Article 234 of the Criminal Law: “Whoever intentionally injures another person’s body shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance. Whoever commits the crime mentioned in the preceding paragraph and causes serious injury to the victim shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years. Whoever causes the death of the victim or causes the victim to suffer serious disability by extremely cruel means shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death penalty. Where there are other provisions in this Law, such provisions shall prevail.”

⁶ Article 293 of the Criminal Law: “Whoever commits any of the following acts of provoking nuisances and undermines public order shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance: (1) Beating others at will and the circumstances are flagrant; (2) Chasing, intercepting, abusing or intimidating others and the circumstances are flagrant; (3) Forcefully taking or seizing, wantonly damaging, occupying public or private property and the circumstances are serious; (4) Creating a disturbance in a public place and causing serious chaos in the order of the public place. Whoever assembles a crowd to repeatedly commit the acts mentioned in the preceding paragraph and seriously undermines public order shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and may also be fined.”

3.2 The affirmation theory: a requirement of the subjective-objective unity principle in criminal liability

The subjective-objective unity principle is one of the fundamental principles of China's criminal law. It requires that when determining a crime, both specific subjective elements and corresponding objective elements must be present simultaneously and be unified. This principle demands that convictions should not be made merely based on the mode of the act or the objective consequences of the act, while ignoring the subjective mindset of the perpetrator. Taking “hooligan motive” as the subjective element is a concrete manifestation of this principle in the crime of provoking nuisances. It not only reflects the subjective malignancy of the perpetrator but also limits the nature of their behavior, thereby effectively distinguishing the social harmfulness of the behavior. Logically speaking, motivation is the internal driving force of behavior and determines the degree of social harmfulness of the behavior. For instance, the same act of assaulting others, if driven by a “hooligan motive”, should be considered to inflict greater social harm than ordinary disputes. Therefore, the “hooligan motive” serves as a concrete manifestation of the principle of subjective-objective unity within the crime of provoking nuisances.

The unity of the subjective and the objective is the unity of “specific subjective elements” and “corresponding objective elements”. Objective attribution of guilt refers to the determination of a crime solely based on the objective consequences or harmful acts of the behavior, while ignoring the subjective mindset of the perpetrator, which may lead to the abuse of the charge. In the crime of provoking nuisances, if the “hooligan motive” is not emphasized, it may lead to confusion between the crime of provoking nuisances and similar crimes such as the crime of intentional injury and intentional destruction of property. These criminal offenses may be similar to the crime of provoking nuisances in the objective aspect, but their subjective motives are different, and the social harmfulness of the behaviors taken as a whole also varies. If subjective motives are not taken into account, due to the different understandings of judicial personnel, the determination of the charges may be made arbitrarily based on individual judgments, resulting in the phenomenon of different judgments for the same case. Therefore, emphasizing “hooligan motive” helps to prevent objective attribution and the phenomenon of different judgments for the same case, ensuring the fairness and consistency of the judiciary.

3.3 To distinguish the crime of provoking nuisances from other crimes, the affirmative view is necessary

The crime of provoking nuisances is separated from the crime of hooliganism, which is a “catch-all crime”. Nowadays, if the necessity of the “hooligan motive” is rejected, the crime of provoking nuisances will once again embark on the path of becoming a “catch-all crime”. The catch-all clause of the crime of provoking nuisances is prone to be abused in practice, leading to some ordinary disputes being wrongly identified as crimes. To prevent such abuse, it is necessary to clarify the necessity of the “hooligan motive” as a subjective element, and further clarify its connotation, narrow the extension of the crime of provoking nuisances, which could avoid the abuse of this

crime. According to the the Judicial Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Provoking Nuisances, the crime of provoking nuisances is only constituted when the perpetrator "creates trouble for no reason" or "creates trouble under pretext". This interpretation emphasizes the significance of "hooligan motive" in distinguishing the crime of provoking nuisances from other crimes. Therefore, the difference between ordinary disputes and provoking nuisances lies in that an ordinary dispute is usually triggered by specific matters, and the actor has no motive to "stir up trouble for no reason", while the act of provoking nuisances is often driven by hooligan motives such as "seeking excitement" and "venting emotions", and the behavior is groundless. By clarifying the "hooligan motive", the abuse of the cat-all clause could be effectively avoided, ensuring a clear boundary between ordinary disputes and the crime of provoking nuisances. This is a key element in distinguishing between crime and non-crime, as well as between this crime and that crime.

3.4 The judicial interpretation also holds the stand of the affirmative view

Article 1 of the above-mentioned "Judicial Interpretation" clearly stipulates: "Where an actor, for the purpose of seeking excitement, venting emotions, showing off strength and being domineering, etc., creates trouble for no reason and commits the acts stipulated in Article 293 of the Criminal Law, it shall be recognized as 'provoking nuisances'. Where an actor, due to occasional conflicts or disputes in daily life, pretexts to stir up trouble and commits the acts stipulated in Article 293 of the Criminal Law, it shall be recognized as 'provoking nuisances', except where the conflict is intentionally triggered by the victim or the victim bears the main responsibility for the intensification of the conflict. Where an actor, due to disputes over marriage and love, family, neighborhood, debts, etc., commits acts such as beating, abusing, intimidating others, or damaging or occupying others' property, it is generally not recognized as 'provoking nuisances', except where, after being criticized, stopped or punished by relevant departments, the actor continues to commit such acts and disrupts social order". In the author's view, this Article is actually a detailed explanation of the hooligan motives, such as "seeking excitement, venting emotions, showing off strength and and arrogance, and creating trouble for no reason", that is, it specifies under what specific circumstances the actor could be determined to have hooligan motives.

The above analysis demonstrates the necessity of "hooligan motive" in the crime of provoking nuisances, as well as its indispensable role in preventing objective attribution, clarifying the boundaries between crime and non-crime, and differentiating this crime from others crimes.

4. Conclusion

The most controversial issue in the understanding and application of the crime of provoking nuisances is whether the “hooligan motive” should be regarded as a subjective element. The author comprehensively refutes the existing problems of the negative view from both theoretical analysis and practical implementation, and then demonstrates the scientific nature of hooligan motives as an element of the subjective constituent. The “hooligan motive” is the conclusion derived from the systematic interpretation of criminal law norms, the requirement of the principle of unity of the subjective and the objective, and the key to distinguishing the crime of provoking nuisances from other crimes. The affirmative view can establish scientific and reasonable determination standards to prevent judicial arbitrariness, ensure the reasonable application of this crime, and provide a solid theoretical support for maintaining social order and protecting citizens’ rights and interests.

Research on the Corporate Governance of Chinese Legal Consulting Firms

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Abstract: Legal consulting firms hold a significant share of China's legal-services market. However, their operations raise several regulatory and ethical concerns. Key issues include unreliable service quality, the provision of legal services by individuals falsely claiming to be licensed attorneys, and collaborative arrangements with lawyers that effectively circumvent the professional-qualification regime. These problems are closely linked to the low entry thresholds for establishing legal consulting firms, blind spots in administrative supervision, and the limited applicability of professional ethics to non-lawyers. Although legal consulting firms do not fall within the traditional category of legal professionals, their active participation in legal service provision necessitates inclusion within a unified regulatory framework. Moreover, it is imperative to clarify and coordinate the responsibilities of judicial administrative authorities and market regulatory agencies, in order to effectively address conflicts of jurisdiction among different administrative bodies.

Keywords: Legal services; Legal consulting; Chinese lawyers; Unauthorized practice of law

Introduction

In recent years, the quality of services provided by legal consulting firms in China has become increasingly difficult to ensure. Incidents involving the infringement of clients' rights and interests have occurred with notable frequency. For example, a legal consulting firm in Wuhan obtained users' personal information under the pretext of assisting with rights protection and debt recovery. It subsequently defrauded clients by charging illegitimate consulting fees. More than 700 individuals were reportedly affected by this scheme.¹ In addition, some advertisers, under the commission of legal consulting firms, have produced promotional materials that simulate lawyer-led legal defense, thereby blurring the boundaries between authorized legal practice and unauthorized service provision.² One legal consulting firm claimed to be the best

¹ See https://mp.weixin.qq.com/s/VFNYzgyFj30_r0zgrgXOqg (last accessed September 22, 2024).

² Ning Market Supervision Penalty No. [2022] 1042.

model enterprise in China's financial industry. However, investigation revealed that this accolade did not exist. The State Administration for Market Regulation concluded that such false advertising undermined fair competition by depriving other businesses in the same sector of equal trading opportunities and increasing the cost for consumers to make informed choices.¹ A legal consulting firm publicly displayed information at its place of business claiming it had signed contracts with more than 3,000 lawyers.² However, the *Lawyers Law of the People's Republic of China* (hereinafter, the *Lawyers Law*) explicitly requires lawyers to practice within law firms; accordingly, lawyers are prohibited from practicing at legal consulting firms. Such misleading advertising blurs the boundary between legal consulting firms and law firms and risks eroding public trust in the legal profession.

This study obtained data from Tianyancha, a widely used corporate-information platform in China. The search criteria specified enterprise names containing the keyword legal consulting, an operational status of active or in business, and an organizational structure designated as either a limited liability company or a joint-stock company. This method yielded data on legal consulting firms across various regions.³

Using the same search criteria, information was also retrieved on law firms, in-house legal departments, patent agencies, real estate registration authorities, grassroots legal service offices, and legal aid centers.⁴ As shown in Table 1, a substantial number of legal consulting firms are currently operating in the legal-services market. The number of these legal consulting firms has already surpassed that of law firms.⁶

¹ Tai Market Supervision Penalty No. [2023] 00479.

² Lu Market Supervision Penalty No. [2022] 00035.

³ Based on statistical data as of October 16, 2024. When the keyword is used without limiting to entity names, a total of 489,673 results are retrieved nationwide. When limited to entities whose registered names contain the number drops to 60,456. This discrepancy relates to variations in scope of business, entity profile, address, brand, legal representative, patents, trademarks, shareholders, and key personnel. This paper uses the entity name-limited dataset. In this study, refer specifically to market entities whose registered names contain the phrase and whose organizational form is either a limited liability company or joint stock company. Other forms, such as sole proprietorships, partnerships, collectively owned enterprises, joint ventures, and individual industrial businesses, are excluded.

⁴ The data referenced here includes entities with in their names, an operational status of active or in business, but with organizational forms excluding limited liability companies and joint stock companies. These include sole proprietorships, partnerships, joint ventures, and individual businesses, according to Tianyancha's categorization.

⁵ Search criteria were as follows: (1) names containing with status active or in business; (2) names containing (fawu), active or in business; (3) names containing active or in business; (4) names containing active or in business; (5) names containing active or in business; (6) names containing active or in business.

⁶ If broader search criteria are used, the total number of legal consulting or legal service entities would increase.

Some legal service providers in China	Retrieved entity information
Legal consulting firms	49152
Law firms	42000
In-house legal departments	7111
Patent agencies	3179
Real estate registration authorities	3240
Grassroots legal service offices	394
Legal aid centers	1693

Table 1. Search Results for Selected Legal-Service Entities in China

Available reports indicate that in the 1970s, the number of lawyers in China was limited, and the scope of legal services they could undertake was relatively narrow. During that period, legal consulting firms emerged as an alternative channel for the provision of legal services. Based on the regional division of China's economic zones as defined by the National Bureau of Statistics, data were collected on legal consulting firms, law firms, non-corporate legal-service entities, and legal departments across the eastern, central, western, and northeastern regions of the country.¹ It was observed that the majority of legal consulting firms and law firms are concentrated in the eastern region of China. In contrast, within the legal-services market of the central and western regions, legal consulting firms outnumber law firms, indicating their relative dominance in terms of quantity.² This finding supports Zhou Yiqi's view that the distribution of legal services in China is uneven. Legal consulting firms, by providing services in the central and western regions, have to some extent contributed to improving access to legal services in areas where such resources are relatively scarce.³

1. Problems associated with legal consulting firms in China

As the number of licensed lawyers in China continues to grow, the supply structure of legal services is undergoing a profound transformation. The combined effects of market-based competition, evaluation mechanisms, and emerging service standards are steering the profession toward greater standardization, specialization, and internationalization. Advances in legal technology have further raised expectations for lawyers' technical competencies, yet many legal consulting firms still struggle to maintain baseline service quality. Core problems associated with these legal

¹ For regional analysis, the Eastern region comprises Beijing, Tianjin, Hebei, Shanghai, Jiangsu, Zhejiang, Fujian, Shandong, Guangdong, and Hainan; the Central region includes Shanxi, Anhui, Jiangxi, Henan, Hubei, and Hunan; the Western region covers Inner Mongolia, Guangxi, Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Qinghai, Ningxia, and Xinjiang; and the Northeastern region consists of Liaoning, Jilin, and Heilongjiang. As of the present dataset, Tianyancha does not include entries for Taiwan, Hong Kong, and Macao (China).

² The numbers referenced reflect the count of legal consulting companies and law firms, not the number of their employees. Therefore, no conclusion is drawn regarding staff size. Note that and are sometimes used interchangeably. This study focuses on the former.

³ Zhou, Y.Q. (2024). A Study on Legal Services Provided by Non-lawyers. Hebei Legal Vocational Education, (3).

consulting firms include the absence of robust quality-assurance mechanisms, misleading advertising that undermines the professional image of lawyers, and collusive practices with industry counterparts that erode the integrity of the professional-qualification regime.

1.1 Unreliable quality of legal services

Legal consulting firms are typically not required to pass professional-qualification examinations, undergo admission-to-practice reviews, complete continuing legal education (CLE), or participate in service-evaluation mechanisms. Consequently, the legal services they provide carry a heightened risk of serious departures from professional standards. Under the *Lawyers Law*, law firms are designated as the legal entities that bear civil liability for professional misconduct.¹ A client who retains a law firm may therefore seek remedies for professional negligence or service errors. By contrast, a client who hires a legal consulting firm often faces a thorny path to relief: complaints to the judicial administrative authorities or the market regulation authorities may be declined for lack of jurisdiction; and in subsequent litigation, a legal consulting firm may argue that it has already fulfilled its obligations to provide legal services, further increasing the difficulty of obtaining redress.

1.2 False advertising and its impact on the public image of lawyers

A legal consulting firm informed clients that it operated as a promotional subsidiary of a law firm and assured them that both legal staff and licensed lawyers would be assigned to handle their cases.² These legal consulting firms often impersonate lawyers in the provision of legal services, which can easily mislead clients into believing they are receiving representation from licensed legal professionals. When disputes or scandals arise, such incidents negatively affect the public image of the legal profession. They may lead to diminished trust in lawyers and reduce public confidence in the rule of law. Although lawyers themselves may bear no fault in these situations, the legal profession as a whole is forced to bear the reputational consequences of misconduct by legal consulting firms. Professional image is a core value that the legal community seeks to uphold and protect.

1.3 Commercial collaboration that undermines the professional-qualification regime

Law firms and lawyers are prohibited from soliciting clients through improper means, including disparaging other law firms or lawyers or offering referral fees.³ The professional ethics governing Chinese lawyers prohibit collaboration with legal consulting firms. However, in *Civil Judgment (2021) Xiang 01 Min Zhong No. 13850*, the legal consulting firm involved had promised the client that the case would be handled by a licensed lawyer.⁴ In *Criminal Ruling (2022) Hu 01 Xing Zhong No. 934*, the legal consulting firm in question was found to have engaged in legal representation activities despite not employing any licensed lawyers. Unlike the evasive practices adopted by such firms, the 2017 revision of the *Lawyers Law of the*

¹ *Lawyers Law of the People's Republic of China* (2017), art. 54.

² *Shanghai Shengjie Legal Consulting Co. v. Dong Yun*, Civil Judgment No. (2022) Hu 01 Min Zhong 12373, Shanghai First Intermediate People's Court.

³ *Lawyers Law of the People's Republic of China* (2017), art. 26.

⁴ *Changsha Zhengyi Legal Consulting Co. & Luo Guangxing v. Client*, Civil Judgment (2021) Xiang 01 Min Zhong No. 13850, Changsha Intermediate People's Court.

People's Republic of China establishes strict requirements for legal practice, clearly delineating the conditions under which individuals may engage in the legal profession.

2. Analysis of underlying causes

In China's legal-services market, legal consulting firms are numerous and their service quality is hard to assure. The primary causes are, first, the low entry barriers for establishing legal consulting firms and, second, inadequate regulatory oversight of such firms.

2.1 Low entry barriers to establishing legal consulting firms

Initially, the establishment of legal consulting firms required examination and approval by judicial administrative authorities and was subject to dual oversight by both judicial and market regulatory bodies. However, in 2004, the State Council abolished the administrative approval requirement for the establishment of legal consulting firms.¹ Since then, the creation of legal consulting firms has required only registration with market supervision authorities. Although both legal consulting firms and law firms provide legal services, the former operate under significantly lower entry thresholds.

2.2 Inadequate regulation of legal consulting firms

Chinese lawyers are subject to a comprehensive regulatory framework, including the *Lawyers Law*, the *Measures for the Administration of Lawyers and Law Firms*, and the *Code of Practice for Lawyers*. In contrast, legal consulting firms operate in a regulatory gray area. The insufficiency of regulation governing legal consulting firms is reflected in gaps in administrative oversight, the limited applicability of professional ethics, and the absence of industry self-regulation.

Administrative penalties imposed by market regulation authorities on legal consulting firms can generally be classified into two categories. The first category concerns irregularities in business operations. These include failure to commence business within six months without justified reason, suspension of operations for more than six months after commencement, failure to submit annual reports in accordance with legal requirements, failure to conduct business at the registered address, and failure to file tax declarations. The primary legal basis for these penalties is Article 211, Paragraph 1 of the *Company Law of the People's Republic of China*.²³ For entities that operate in non-corporate forms, the applicable legal instruments include the *Law on Sole Proprietorship Enterprises* and the *Regulation on the Administration of Market Entity Registration*.

¹ State Council, *Decision of the State Council on the Third Batch of Canceled and Adjusted Administrative Approval Items* (2004).

² *Company Law of the People's Republic of China* (2018 Amendment), art. 211.

³ *Company Law of the People's Republic of China* (2023 Revision), art. 260.

The second category of administrative penalties concerns the substantive business conduct of legal consulting firms. This includes the dissemination of false advertising, engagement in unfair competition, and the unauthorized provision of legal services by impersonating licensed lawyers.¹ The legal basis for such penalties includes Article 28, Paragraph 2, Article 34, Paragraph 2, and Article 55, Paragraph 1 of the *Advertising Law of the People's Republic of China*, Article 8, Paragraph 1 of the *Anti-Unfair Competition Law*, and Articles 13, Paragraph 1 and 42 of the *Pricing Law*.²³⁴

However, most administrative penalties pertain only to irregularities in business registration or operation, while official sanctions addressing substantive business misconduct by legal consulting firms remain limited. This reveals a regulatory gap in the oversight of such entities. In addition, different types of business conduct fall under the jurisdiction of different administrative bodies, reflecting a fragmented structure of legal regulation and administrative authority.

Type of Conduct	Regulatory Authority	Legal Basis
Irregular Business Operations	Market Supervision Authority	Article 211, Paragraph 1 of the <i>Company Law of the People's Republic of China</i> Article 67 of the <i>Regulation on Company Registration</i> (2016) Article 60, Paragraph 2 of the <i>Law on the Administration of Tax Collection</i> Article 36 of the <i>Law on Sole Proprietorship Enterprises</i> Article 24, Paragraph 1 of the <i>Regulation on the Administration of Market Entity Registration</i>
Unfair Competition	Market Supervision Authority	Article 8, Paragraph 1 of the <i>Anti-Unfair Competition Law</i>
False Advertising	Market Supervision Authority	Article 28, Paragraph 2 of the <i>Advertising Law</i> Article 34, Paragraph 2 of the <i>Advertising Law</i> Article 55, Paragraph 1 of the <i>Advertising Law</i>
Failure to Display Prices	Market Supervision Authority	Article 13, Paragraph 1 of the <i>Pricing Law</i> Article 42 of the <i>Pricing Law</i>
Unauthorized Practice of Law	Judicial Administrative Authority	Article 55 of the <i>Lawyers Law of the People's Republic of China</i> (2007, 2012, 2017 Revisions)
Impersonation of Lawyer	Public Security Authority	Article 46 of the <i>Lawyers Law of the People's Republic of China</i> (1996, 2001 Revisions)

Table 2. Administrative Penalties and Legal Bases

¹ Chang Market Supervision Penalty [2024] No. 360; Ning Market Supervision Penalty [2022] No. 875; Jingle Market Supervision Guang Penalty [2023] No. 14; Ning Market Supervision Penalty [2022] No. 1042.

² Tai Market Supervision Penalty [2023] No. 00479.

³ Lu Market Supervision Penalty [2022] No. 00035.

⁴ Xiang Market Supervision Penalty [2021] No. 20.

Although legal consulting firms engage in legal work, they lack critical components associated with the legal profession, including formal legal education, professional qualification examinations, continuing legal education, and participation in professional self-regulation. As such, they do not fall within the conventional scope of legal professionals and are not bound by the ethical standards governing the legal profession. Judicial decisions have indicated that some legal consulting firms actively promote their rights protection services through unsolicited outreach.¹ In contrast, promotional activities conducted by lawyers are subject to professional ethical restrictions. Lawyers are prohibited from soliciting business from unspecified individuals or the general public.²

The work performed by legal professionals is characterized by a high degree of specialization. This specialization raises both the threshold and cost of effective external oversight. In such contexts, industry self-regulation serves as a necessary complement to administrative supervision. For example, Chinese lawyers are subject to dual regulation by judicial administrative authorities and bar associations. In contrast, the governance of legal consulting firms lacks mechanisms of industry self-regulation, which has contributed to the persistence of service-related misconduct and regulatory disorder.

3. Governance strategies for legal consulting firms

“Although the integration of public bureaucracies and professional control mechanisms in modern societies has significantly reduced the space for fraud and the survival of technically or ethically unqualified practitioners, this does not mean that such individuals no longer exist within professional communities.”³ The core governance challenge with respect to legal consulting firms lies in their status as non-professional legal actors, which makes it difficult to apply conventional professional ethics as a regulatory tool. In response, it is advisable to shift the regulatory focus from the legal profession to the broader category of legal services. By reframing the object of regulation in this way, legal consulting firms can be brought back under unified supervision within the legal-services market, even in the absence of strict entry controls by judicial administrative authorities.

3.1 From a legal profession perspective to a legal services perspective

Lawyers are part of the legal profession, whereas legal consulting firms fall outside this category. “The legal profession is generally understood to possess both independence and exclusivity.” It is characterized by rigorous qualification

¹ Market Supervision Penalty [2021] No. 49; Pu Market Supervision Penalty [2022] No. 154; Pu Market Supervision Case No. [2022] 97.

² Market Supervision Penalty [2021] No. 49; Pu Market Supervision Penalty [2022] No. 154; Pu Market Supervision Case No. [2022] 97.

³ Rueschemeyer, D. (2010). *Lawyers and Society: A Comparative Study of the Legal Professions in the United States and Germany* (Y. Yu, Trans.). Shanghai: Shanghai Sanlian Publishing House. (Original work published in English)

requirements and disciplinary mechanisms.¹ In contrast, members of legal consulting firms are often not required to have a background in legal education, are not subject to qualification examinations, and are not governed by professional associations or legal ethics codes. However, these standards—such as legal education, continuing education, and professional examinations—are all grounded in the framework of the legal profession. When applied to non-professional legal actors, they may not offer effective regulatory leverage.

If one adheres strictly to the perspective of the legal profession, legal consulting firms do not meet the criteria for professional admission. As such, they are not recognized as members of the legal profession and are not subject to its ethical codes or mechanisms of self-regulation. However, legal services are not merely defined by professional identity but also by the nature of the activities performed. From the perspective of legal services rather than the legal profession, both legal consulting firms and lawyers engage in similar forms of legal service provision. The professional nature of legal services increases the difficulty and cost of effective external oversight, which in turn justifies the need for specialized regulatory mechanisms. Therefore, shifting the regulatory lens toward legal services provides a normative basis for subjecting legal consulting firms to formal regulation.

3.2 Incorporating legal consulting firms into the unified regulation of legal services

Legal consulting firms can also be categorized as non-lawyers legal practitioners. The regulation of non-lawyers legal practice has long been the subject of academic and policy debate. In the 1920s, some commentators observed that Wisconsin law prohibited only unlicensed legal practice in recorded court proceedings. They argued that the statute should be amended to prohibit any individual from engaging in legal practice without prior licensing, thereby encompassing a broader range of legal service activities. This perspective emphasized that legal practice is a privilege that should be exercised only by individuals of good moral character who have obtained specialized qualifications through extensive training.²

In contrast, Denckla contended that legal services provided by lawyers are not necessarily superior in all cases. Prohibiting non-lawyers legal practice, she argued, could restrict access to legal services for low-income populations and infringe upon the public's freedom to choose legal service providers.³

As an experimental model of non-lawyers legal practice, the state of Washington introduced the Limited License Legal Technician (LLLT) program. According to Aprile, LLLTs were authorized to provide services primarily in the area of family law. However, the high cost of training and education meant that LLLTs were not necessarily able to serve low-income populations. Moreover, because they were only

¹ Li, B.S. (Ed.). (2003). *Introduction to Legal Professional Ethics*. Beijing: Higher Education Press.

² Aarons, C.L. (1929). The Practice of Law by Non-lawyers. *Marquette Law Review*, 14, 1–21.

³ Denckla, D.A. (1998). Non-lawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters. *Fordham Law Review*, 67, 2581–2606.

required to complete a portion of the law school curriculum, LLLTs often lacked the capacity to handle more complex legal matters. Rather than narrowing the gap in access to justice, this model risked raising new concerns regarding the sharing of legal fees and the erosion of traditional professional ethical boundaries.¹

In light of the above perspectives, within the context of China's legal-services market, the regulatory oversight of legal consulting firms should be strengthened due to persistent problems such as the infringement of client rights and the unauthorized provision of legal services by impersonating lawyers. One possible approach is the establishment of a unified legal services regulatory body or the enactment of a comprehensive legal services law. Such measures would provide a formal framework for incorporating legal consulting firms into the broader regulatory architecture and addressing current deficiencies in oversight. A report by the United Kingdom's Office of Fair Trading identified several aspects of the legal services industry that may disadvantage consumers.² In a review of the regulatory framework for legal services in England and Wales, Sir David Clementi emphasized the need to establish oversight institutions with a clear focus on consumer protection.³ Against this backdrop, the Legal Services Board was established, tasked with supervising approved regulatory bodies and overseeing the operation of the Solicitors Disciplinary Tribunal.⁴

The unified regulation of legal consulting firms is not incompatible with the promotion of multi-disciplinary collaboration. Regulating legal consulting firms serves the purpose of ensuring the quality of legal services and maintaining market order. Encouraging multi-disciplinary practice, by contrast, aims to provide clients with integrated, one-stop legal services. In this regard, Section 2.6 of the *Legal Profession Act 2004* in New South Wales, Australia, introduced provisions for Multi-Disciplinary Partnerships (MDPs), removing the restriction on income sharing between lawyers and non-lawyers.⁵

In 2019, the *Hainan Special Economic Zone Lawyers Regulations* in China stipulated that certified public accountants, certified tax agents, certified cost engineers, patent agents, and other licensed professionals may serve as partners in specialized general partnership law firms.⁶ At the same time, the regulations provided that all legal service institutions and personnel within the region would be subject to unified supervision by the judicial administrative authority. Although this unified administrative oversight applies only within Hainan Province, it nevertheless

¹ Aprile, J. (2016). Limited License Legal Technicians: Non-lawyers get access to the legal profession, but clients won't get access to justice. *Seattle University Law Review*, 40, 217–245.

² See

https://webarchive.nationalarchives.gov.uk/ukgwa/20140402172414/http://oft.gov.uk/shared_oft/reports/professional_bodies/oft328.pdf (last accessed December 20, 2024).

³ See <https://legalservicesboard.org.uk/about-us/who-we-are#question-7> (last accessed December 20, 2024).

⁴ See https://legalservicesboard.org.uk/what_we_do/pdf/Regulatory_Approach.pdf (last accessed December 20, 2024).

⁵ See <https://legislation.nsw.gov.au/view/html/bill/c1b84e48-2ea9-6774-8ee6-ca82ac1870bd> (last accessed December 20, 2024).

⁶ Hainan People's Congress Standing Committee, *Hainan Special Economic Zone Lawyers Regulations* (2019).

represents a practical example of integrating legal service institutions into a centralized regulatory framework under judicial administration.

3.3 From fragmented regulation to integrated oversight

The regulation of legal consulting firms requires proper coordination between market regulation authorities and judicial administrative organs. In the past, members of the Chinese People's Political Consultative Conference have proposed strengthening oversight of legal service companies. Market regulation authorities have maintained that judicial administrative organs, as the original approval bodies, should bear primary responsibility for supervision. In practice, market regulators assist judicial administrative authorities in addressing violations such as failure to update registration, failure to complete cancellation procedures, failure to submit annual reports, and failure to disclose required public information.¹

At present, regulatory actions by market supervision authorities toward legal consulting firms primarily focus on procedural issues, such as unjustified suspension of business operations, failure to submit annual reports, and failure to file tax declarations. However, administrative sanctions addressing more substantive misconduct—such as infringement of client rights or disruption of market order—remain relatively rare. Due to the complexity of legal services, their regulation inevitably involves multiple administrative agencies. In his work *The Logic of Fragmentation*, Liu Sida argues that the fragmented nature of China's legal-services market is closely tied to the state institutions behind different categories of service providers. Improving the governance of legal consulting firms requires their incorporation into a unified regulatory framework for legal services. It is essential to clearly delineate the respective jurisdictions of judicial administrative authorities, market regulation departments, other relevant administrative bodies, and professional associations in order to ensure effective and coordinated oversight.

4. Conclusion

From the perspective of legal profession-based regulation, legal consulting firms are not bound by the requirements of legal education, qualification examinations, or professional self-governance. As such, they do not qualify as traditional legal professionals and are not subject to legal professional ethics. However, since they provide legal services, legal consulting firms can and should be brought under a unified regulatory framework for legal services.

The governance of legal consulting firms is not solely a matter concerning the firms themselves or their regulatory authorities. It also requires clarification of the relationships between legal consulting firms and their clients, as well as between legal consulting firms and licensed lawyers. The ethical rules governing the legal

¹ Hubei Provincial Market Supervision Bureau, *Response to Proposal No. 20241088 of the 13th Hubei CPPCC Session* (2024).

profession should also be further refined to prevent law firms and lawyers from engaging in business collaborations with legal consulting firms that undermine the professional-qualification regime.

Ultimately, once the responsible regulatory authorities are clearly designated, governance of legal consulting firms may be improved through several concrete measures. These include establishing appropriate qualification requirements, providing continuing legal education, formulating codes of conduct, and developing mechanisms for handling complaints and public reports.

The Model Texts of Data Circulation and Transaction Contracts Should Retain the Clause of "Invoice Before Payment"

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Abstract:The drafts for comments of the three Model Texts of Data Circulation and Transaction Contracts all included provisions requiring the issuance of a special value-added tax (VAT) invoice prior to payment. However, this “Invoice Before Payment” clause was omitted in the finalized versions of the three model texts. The draft of the Data Integration Development Contract (Model Text)—also a data circulation contract—did not include this clause from the outset, a decision that lacks sufficient justification. The exclusion of the “Invoice Before Payment” clause from all four model texts is open to question. The four Model Texts of Data Circulation and Transaction Contracts should retain the “Invoice Before Payment” clause, as this position is supported not only by comparative legal reasoning but also by the provisions found in Chinese tax law and civil law. In particular, the clause compels data circulation entities in China to proactively determine the price of data circulation, which in turn facilitates the efficient and lawful use of data in practice. Moreover, the clause serves an important normative function by helping to resolve the tensions between Chinese tax law and civil law, as well as between normative expectations and institutional realities. The proposed approaches, both in the short term and in the long term, are realistic and capable of effective implementation.

Keywords:Data circulation contracts; Model texts; Invoice before payment

Introduction

On July 2, 2025, the General Office of the National Data Administration and the General Office of the State Administration for Market Regulation jointly issued the *Notice on the Issuance of the Model Texts of Data Circulation and Transaction Contracts* (No. 78 [2025]) (hereinafter referred to as the “Model Texts Notice”). The Notice released four Model Texts of Data Circulation and Transaction Contracts, namely the *Data Supply Contract (Model Text)*, the *Entrusted Data Processing Service Contract (Model Text)*, the *Data Integration Development Contract (Model Text)*, and the *Data Intermediary Service Contract (Model Text)*.

The four Model Texts of Data Circulation and Transaction Contracts were developed under the leadership of the National Data Administration, with the participation of legal experts and data practitioners. They were formulated in response to practical issues, such as advancing the construction of foundational data systems, safeguarding fair competition, reducing the costs of data circulation and transactions, and promoting the compliant and efficient circulation and use of data. Based on the systematic extraction of common contractual elements among data circulation institutions, leading industry enterprises, and data companies, a set of draft texts for comments was initially prepared. After extensive consultation with relevant departments, local authorities, and various sectors of society, the finalized four Model Texts of Data Circulation and Transaction Contracts were ultimately released.

Article 6.3 of the draft for comments of the *Data Supply Contract (Model Text)*,¹ Article 9.3 of the draft for comments of the *Entrusted Data Processing Service Contract (Model Text)*,² and Article 4.4 of the draft for comments of the *Data Intermediary Service Contract (Model Text)*³ each provide that Party B (the data provider, data processor, or data intermediary, respectively) shall issue a valid special (or general) value-added tax (hereinafter referred to as the “VAT”) invoice in the same amount to Party A (the data recipient or data entrusting party) prior to each payment made by Party A. The applicable VAT rate shall be specified as _____. If Party A delays payment due to Party B’s failure to provide the invoice as agreed, such delay shall not constitute a breach of contract by Party A. These provisions may be collectively referred to as the “Invoice Before Payment” clause.

¹ Party B (the data provider) shall, prior to each payment by Party A (the data recipient), issue to Party A a valid value-added tax (VAT) invoice in the same amount, selecting either a special / general VAT invoice, with the applicable tax rate being _____. Any delay in payment by Party A (the data recipient) resulting from Party B’s (the data provider’s) failure to provide the invoice as agreed shall not be deemed a breach of contract by Party A.

² Party B (the entrusted party) shall, prior to each payment by Party A (the entrusting party), issue to Party A a valid value-added tax (VAT) invoice in the same amount, selecting either a special / general VAT invoice, with the applicable tax rate being _____. Any delay in payment by Party A (the entrusting party) resulting from Party B’s (the entrusted party’s) failure to provide the invoice as agreed shall not be deemed a breach of contract by Party A.

³ Party B (the intermediary) shall, prior to each payment by Party A (the entrusting party), issue to Party A a valid value-added tax (VAT) invoice in the same amount, selecting either a special / general VAT invoice, with the applicable tax rate being _____. Any delay in payment by Party A (the entrusting party) resulting from Party B’s (the intermediary’s) failure to provide the invoice as agreed shall not be deemed a breach of contract by Party A.

The finalized and officially released versions of the *Data Supply Contract (Model Text)*, the *Entrusted Data Processing Service Contract (Model Text)*, and the *Data Intermediary Service Contract (Model Text)* did not retain the “Invoice Before Payment” clause. This gives rise to a series of questions: Why did the draft for comments of the *Data Integration Development Contract (Model Text)* omit the “Invoice Before Payment” clause in the first place? What are the reasons for excluding this clause from all four Model Texts of Data Circulation and Transaction Contracts? Why should the “Invoice Before Payment” clause be retained in the Model Texts, and what are the legal and practical grounds for doing so? In cases where such a clause ought to have been included but was omitted, what legal or regulatory pathways are available to address the resulting gap?

1. The draft for comments of the data integration development contract (model text) should include the “invoice before payment” clause

According to the definition of data circulation as the process by which data flows among different parties, the draft for comments of the *Data Supply Contract (Model Text)* and the *Entrusted Data Processing Service Contract (Model Text)* both included the “Invoice Before Payment” clause. On the same basis, the draft for comments of the *Data Integration Development Contract (Model Text)* should also include the “Invoice Before Payment” clause. This is because data integration and development is essentially a form of data circulation and incorporates elements of both data supply and entrusted data processing. In accordance with the principle of formal justice, which requires that similar cases be treated alike, it is only logical that the *Data Integration Development Contract (Model Text)* also include such a clause. The activities covered under data integration and development typically include data opening, data sharing, and entrusted data processing, as well as the joint creation of data platforms, data spaces, data pools, and derivative data.

However, the draft for comments of the *Data Integration Development Contract (Model Text)* not only failed to include the “Invoice Before Payment” clause, but also omitted any incorporation-by-reference provision. Specifically, it contains no clause stating that, where the contract involves matters governed by the *Data Supply Contract (Model Text)* or the *Entrusted Data Processing Service Contract (Model Text)*, the relevant provisions of those model texts shall apply *mutatis mutandis*.

The possible reasons why the draft for comments of the *Data Integration Development Contract (Model Text)* did not include the “Invoice Before Payment” clause may include the following. First, from the perspective of purpose and means: in data integration and development, data supply and entrusted data processing serve merely as means, while the ultimate purpose is to jointly create data platforms, data spaces, data pools, and to

generate derivative data. These data platforms, spaces, pools, and derivative datasets generate income through both external and internal provision. Only when such data are provided externally or internally does the condition for incurring VAT liability arise.

Second, from the perspective of the direction of rights and obligations: the rights and obligations of parties to a data integration and development contract are generally aligned in the same direction. That is, multiple parties with a common goal jointly open, share, or entrust their respective datasets to a designated processor for the purpose of creating shared data platforms, data spaces, data pools, or derivative data. Typical scenarios include collaborative construction of specialized data zones for AI training, industry-specific data sharing and application platforms, or federated data resource pools formed through alliances. In contrast, the rights and obligations in data supply and entrusted data processing relationships are oppositional in nature. A data provider supplies data to a data recipient through means such as compensated transactions, gratuitous sharing, or licensed use. A data entrusting party delegates data it possesses or controls to a data processor, who is required to process the data in accordance with the instructions and requirements of the entrusting party.

Finally, from the perspective of the conditions under which VAT liability arises: where a party sells or gratuitously transfers data-related intangible assets or inventory, VAT liability arises on the date when payment is received or when a payment voucher is obtained. If an invoice is issued prior to either of these events, the date of invoice issuance shall be deemed the date on which VAT liability arises. In the context of data integration and development, the outcomes typically involve the collaborative creation of AI training data zones, industry data-sharing platforms, or alliance-based data resource pools. These activities do not constitute compensated sales or gratuitous transfers of data and therefore do not meet the statutory conditions for the occurrence of VAT liability.

However, none of the three reasons discussed above are valid. First, regardless of whether data supply and entrusted data processing are regarded as means or ends, as long as the conditions for incurring VAT liability are met, the obligation to pay VAT arises. The characterization of such acts as means does not exempt them from VAT liability. Second, the alignment of rights and obligations among the parties to a data integration and development contract is not a statutory ground for VAT exemption. Even when the parties share a common objective and mutually open, share, or entrust their respective datasets to a designated processor for the joint development of data platforms, data spaces, or data pools, such conduct essentially constitutes gratuitous use of data among different entities. According to Article 5, subparagraphs (2) and (3) of the *Value-Added Tax Law of the People's Republic of China*, adopted on December 25, 2024 and effective from January 1, 2026 (hereinafter referred to as the “VAT Law”), “entities or individual industrial and commercial households gratuitously transfer goods” and “entities or individuals gratuitously transfer intangible assets, immovables or financial commodities” shall be deemed as engaging in taxable

transactions and shall pay VAT in accordance with the Law. Third, in both of the above situations, as long as the statutory conditions for VAT liability are satisfied, the obligation to pay VAT shall apply.

In summary, based on the principle of formal justice that requires similar issues to be treated alike, all four drafts for comments of the Model Texts of Data Circulation and Transaction Contracts should have included the “Invoice Before Payment” clause.

2. Possible reasons for the omission of the “invoice before payment” clause in the finalized model texts of data circulation and transaction contracts

First, the reasoning under the *Civil Code of the People’s Republic of China* (hereinafter referred to as the “Civil Code”). The *Data Supply Contract (Model Text)* applies to scenarios in which the data provider supplies data to the data recipient through compensated transactions, gratuitous sharing, or licensed use. This model text is structured around data transactions as the typical form. A data transaction refers to an act of exchange between a data provider and a data recipient, whereby data in a specific form is transferred as the subject matter, and monetary payment or another form of equivalent consideration is provided in return. Such data transactions correspond to sales contracts under the *Civil Code*. Pursuant to Article 595 of the *Civil Code*, “A sales contract is a contract whereby the seller transfers the ownership of the subject matter to the buyer and the buyer pays the price for it.” In this context, the primary obligation of the data provider is to deliver the rights of possession, use, and operation of the data, while the primary obligation of the data recipient is to acquire those rights and provide monetary or equivalent consideration. It follows that the obligation to issue a VAT invoice on the part of the data provider does not constitute a primary obligation.

The *Entrusted Data Processing Service Contract (Model Text)* applies to situations in which the data entrusting party entrusts data it possesses or controls to the data processor, who is required to process the data in accordance with the instructions and requirements of the entrusting party. Pursuant to Article 919 of the *Civil Code*, “A contract of mandate is a contract whereby the mandator and the mandatary agree that the mandatary handles the affairs of the mandator.” According to Article 928 of the *Civil Code*, “Upon completion of the affair under the mandate by the mandatary, the mandator shall pay the remuneration thereto as agreed.” In a compensated entrusted data processing service contract, the primary obligation of the data processor is to complete the data processing activities and deliver the resulting data in accordance with the instructions and requirements of the data entrusting party, while the primary obligation of the data entrusting party is to pay remuneration. In an uncompensated

contract, the data processor's primary obligation is still to complete the processing and deliver the resulting data, while the entrusting party's primary obligation is to receive the result. It follows that, in both compensated and uncompensated entrusted data processing service contracts, the obligation of the data processor to issue a VAT invoice does not constitute a primary obligation.

The *Data Intermediary Service Contract (Model Text)* applies to scenarios in which the data intermediary provides intermediary services such as market promotion, information publication, client matching, transaction facilitation, and assistance in contract conclusion, with the aim of facilitating data circulation and transactions. According to Article 961 of the *Civil Code*, "An intermediary contract is a contract whereby the intermediary presents to the client an opportunity for entering into a contract or provides the client with intermediary services in connection with the conclusion thereof, and the client pays the remuneration." Under a data intermediary service contract, the primary obligation of the intermediary is to perform both information-reporting and matchmaking services. The former includes activities such as market promotion and information publication, while the latter includes transaction facilitation and assistance in contract conclusion. The primary obligation of the client is to pay remuneration. It follows that the obligation of the data intermediary to issue a VAT invoice does not constitute a primary obligation.

The *Data Integration Development Contract (Model Text)* applies to scenarios in which the parties to data integration jointly open and share the data they possess or collectively entrust such data to a designated processor for the purpose of collaboratively creating data platforms, data spaces, data pools, or derivative data. Typical use cases include the co-development of dedicated AI training data zones, industry-specific data sharing and application platforms, and federated data resource pools established through multi-party alliances.

In addition to incorporating elements of data supply and entrusted data processing contracts, the *Data Integration Development Contract (Model Text)* also contains characteristics of a partnership agreement when viewed from the perspective of the alignment of rights and obligations among the participating parties. According to Article 967 of the *Civil Code*, "A contract of partnership is an agreement between not less than two partners to share benefits at mutual risk for a joint enterprise."

For example, in the case of a general partnership, the primary obligation of a general partner is to open and share the data it holds with other partners and to bear unlimited joint and several liability for the debts of the partnership. The consideration for such data opening and sharing is the mutual benefit derived from jointly creating data platforms, data spaces, data pools, and generating derivative data. Such acts of data opening and sharing constitute capital contributions by partners and do not involve the issuance of VAT invoices. It is only when original data are processed into result data or products through the use of data platforms, data spaces, or data pools and then

circulated externally that a VAT obligation may arise. However, such an obligation is not borne by the general partner, but rather by the data provider or data processor. In light of the earlier analysis concerning the Data Supply Contract and the Entrusted Data Processing Service Contract—in which the obligation to issue VAT invoices does not constitute a primary obligation of the data provider or the data processor—it follows that participants in the *Data Integration Development Contract (Model Text)* either do not incur VAT invoice obligations, or, if such obligations exist, they do not constitute primary obligations.

A second justification is grounded in judicial practice. The *Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts (No. 17 [2020] of the Supreme People's Court*, hereinafter referred to as the “Judicial Interpretation on Sales Contracts”) explicitly provides in Article 4 that the obligation to issue a special VAT invoice constitutes an ancillary obligation.⁴ This doctrinal position has been consistently reflected in judicial application. In several reference cases issued by the Supreme People's Court, the obligation to issue a special VAT invoice has been recognized as an accessory duty rather than a primary contractual obligation. For example, in Reference Case No. 2023-10-2-227-001 (a dispute between a marine engineering company and a dredging company over a maritime salvage contract), as well as Reference Case No. 2024-08-2-079-001 (Tianjin Materials Trading Co., Ltd. v. Huizhou Petrochemical Co., Ltd. and Shanghai Valve Co., Ltd., a dispute over assignment of claims) and Reference Case No. 2024-08-2-141-001 (Guangzhou Cinema Company, Shenzhen Futian Branch v. an advertising company and Shanghai Information Technology Company, a dispute over an advertising contract), the Court uniformly held that the obligation to issue VAT invoices, while legally enforceable, operates as a supplementary obligation incidental to the core transactional duties of the parties.

3. Reasons why the four model texts of data circulation and transaction contracts should retain the “invoice before payment” clause

i. insights from comparative law. In the European Union, where the VAT system is widely implemented, a series of countermeasures have been developed in response to fraudulent practices in domestic business-to-business (hereinafter referred to as the “B2B”) transactions, where suppliers receive VAT from purchasers but fail to remit it to the tax authorities. These countermeasures include the reverse charge mechanism,

⁴ See also Article 7 of the *Judicial Interpretation (No. 8 [2012] of the Supreme People's Court)*, which adopts the same position regarding the legal nature of the obligation to issue special value-added tax (VAT) invoices. See further, Second Civil Division of the Supreme People's Court, *Understanding and Application of the Supreme People's Court's Judicial Interpretation on Sales Contracts*, People's Court Press, 2012 edition, p. 126.

the split-payment mechanism, and the source withholding regime. The application of these mechanisms has expanded over time, and their scope continues to increase.

A common characteristic of these countermeasures is the “Invoice Before Payment” model. Under the European Union’s VAT regime, VAT invoices are required to include the VAT serial number, taxpayer identification number, customer information, description of goods or services, price, tax rate, VAT payable, transaction date, and tax representative. These requirements are expressly stipulated in the *Council Directive on the Common System of Value Added Tax*.⁵ In the European Union, a VAT invoice serves not only as evidence of a commercial transaction but also as a key basis for VAT reporting and tax audit. The price refers to the amount agreed upon between the supplier and the purchaser for the sale of goods or services. It does not include VAT, but it constitutes the basis for VAT calculation. This is because VAT in the European Union is imposed on top of the net price.

The reverse charge mechanism is a typical example of the “Invoice Before Payment” model and serves as a primary measure against VAT fraud.⁶ Under the reverse charge mechanism, the obligation to declare and pay VAT is shifted from the supplier to the purchaser, who is responsible for both declaring and paying VAT to the tax authority.⁷ A necessary precondition for this mechanism is that the supplier issues an invoice to the purchaser clearly marked with the term “Reverse Charge,” indicating an amount that does not include VAT. Upon receiving the invoice, the purchaser declares and pays the VAT to the domestic tax authority and then pays the supplier the invoiced amount exclusive of VAT.

The split-payment mechanism is also characterized by the “Invoice Before Payment” model and serves as a secondary measure against VAT fraud.⁸ Under the split-payment mechanism, the supplier issues an invoice to the purchaser that includes both the price of the goods or services and the VAT amount. However, the payment made by the purchaser does not go directly to the supplier’s account. Instead, it is transferred to an account managed by a financial institution, such as a bank, or by an online payment service provider. These institutions or service providers then divide the payment into two parts: the VAT amount and the net amount payable to the supplier. The VAT portion is subsequently transferred to the tax authority, while the

⁵ Council of the European Union. (2006, November 28). *Council Directive 2006/112/EC on the common system of value added tax*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0112>.

⁶ Zidková, H., & Štastná, A. (2019). VAT collection methods. *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 67(3), 883–895.

⁷ The scope of application includes transactions such as the sale of electronic equipment, gas and electricity supply, construction services, waste and scrap recovery, gold sales, and the provision of carbon emission certificates. See Gong, T., & Guo, Y. (2024). Recent developments and prospects of value-added tax systems in major jurisdictions worldwide. *International Taxation*, (7), 28.

⁸ At present, only three EU member states—Poland, the Czech Republic, and Italy—have adopted this method of VAT collection. See Gong, T., & Guo, Y. (2024). Recent developments and prospects of value-added tax systems in major jurisdictions worldwide. *International Taxation*, (7), 28, Note 25.

remaining amount corresponding to the price stated on the VAT invoice is transferred to the supplier.⁹

The source withholding regime also features the “Invoice Before Payment” model and serves as a secondary measure to combat VAT fraud. Under this regime, the supplier issues a VAT invoice to the purchaser and charges both the price and the VAT amount. The VAT paid by the purchaser may either be remitted directly to the tax authority or transferred to a dedicated VAT account held by the supplier.¹⁰ The purchaser pays the price component stated on the VAT invoice to the supplier.

Only when a VAT invoice is issued in advance can the purchaser fulfill the function of declaring and paying VAT, which is essential to the effectiveness of countermeasures against fraud and to the proper operation of the VAT system.¹¹ Likewise, only when a VAT invoice has been issued can the purchaser make payment to the supplier based on the invoiced amount. Therefore, the “Invoice Before Payment” model represents an organic integration of VAT anti-fraud mechanisms and legitimate commercial transactions.

If the four Model Texts of Data Circulation and Transaction Contracts retain the “Invoice Before Payment” clause, they will provide useful guidance for countering potential VAT fraud in the performance of data circulation contracts in China. Moreover,¹² the clause will serve as a legal safeguard for ensuring the compliance of data circulation entities with tax and commercial regulations.

ii. the issuance of special VAT invoices constitutes a statutory obligation under tax law. Pursuant to the *Interim Regulations on Value-Added Tax* and the *Value-Added Tax Law of the People's Republic of China*, issuing special VAT invoices is a mandatory obligation imposed by tax law. The question arises as to why this tax obligation is recharacterized as an ancillary obligation under the *Civil Code*. Proponents of this interpretation commonly rely on Articles 598 and 599 of the *Civil Code*. Under Article 598, bills of lading and warehouse receipts constitute part of the seller's primary obligations in a sales contract. Article 599 further provides that, in addition to the documents required for taking delivery of the subject matter, the seller shall also deliver other relevant documents and materials, which are generally understood to include special VAT invoices. According to Article 4 of the *Judicial Interpretation on Sales Contracts*, the obligation to issue a special VAT invoice is classified as an ancillary obligation of the seller. Notably, this judicial interpretation is widely regarded as an explanation of the phrase “other relevant documents and

⁹ See Hu, T. (2021). The historical evolution and reform trends of value-added tax: A study based on international practice and domestic developments. *International Taxation*, (3), 6.

¹⁰ Gong, T., & Guo, Y. (2024). Recent developments and prospects of value-added tax systems in major jurisdictions worldwide. *International Taxation*, (7), 28.

¹¹ Jin, F. (2024). A comparative study on the nature and functions of invoices in China and abroad and its implications. *International Taxation*, (9), 49.

¹² This is because China's value-added tax (VAT) system was developed by drawing on the European Union's VAT framework. See Yang, X. (2025). Improving the value-added tax system to support high-quality and sufficient employment from a comparative international perspective. *China Taxation*, (8), 31.

materials” found in Article 599 of the *Civil Code*, even though the statutory provision itself does not explicitly refer to the concept of “ancillary obligation.”

The binary classification between primary obligations and ancillary obligations,¹³ particularly the approach that treats all documents and materials other than bills of lading and warehouse receipts as ancillary obligations, remains open to academic debate. To begin with, the distinction between obligations of performance and accessory obligations has historically been contested in legal theory. For example, in the context of sales contracts, whether the buyer’s obligation to take delivery of the subject matter constitutes an obligation of performance or merely an accessory obligation has long been debated.¹⁴ This indicates that the dichotomy between obligations of performance and accessory obligations may not be exhaustive, and the possibility remains that other distinct types of obligations exist. Further, the distinction between ancillary obligations and accessory obligations is itself controversial. Some scholars—particularly within the German legal tradition—draw the line based on the criterion of whether the obligation can be independently claimed in litigation: those that can be independently enforced are deemed ancillary obligations, while those that cannot are categorized as accessory obligations. Others distinguish based on functional analysis: obligations that serve the performance interest are classified as ancillary, whereas those that serve the inherent interest of the counterparty are deemed accessory. These doctrinal disagreements suggest that the very boundary between ancillary and accessory obligations is itself contested. Even if such a boundary were clearly defined, it would not preclude the recognition of additional, as-yet-unnamed types of obligations. Therefore, the deductive reasoning employed in the earlier classification may lack logical completeness.

Article 599 of the *Civil Code* provides that in addition to the document for taking delivery of the subject matter, the seller shall deliver to the buyer the relevant documents and information in accordance with the agreement or usage of trade.. This implies that the seller’s obligation to provide such documents arises only when there is either a contractual stipulation or an established trade custom. However, the obligation to issue a special VAT invoice arises from tax law and is mandatory in nature; it is not contingent upon any agreement between the parties or prevailing commercial practice. Therefore, the phrase “relevant documents and materials other than the document for taking delivery of the subject matter” in Article 599 should not

¹³ There is also ongoing debate concerning the distinction between primary obligations and ancillary obligations. For example, where the performance of an ancillary obligation directly affects the realization of the contract’s purpose, such an obligation may be recharacterized as a primary obligation. However, determining the existence and extent of a direct relationship between the performance of an ancillary obligation and the contractual purpose remains a contested issue. In this context, the author’s “step-by-step” approach has been acknowledged by the authors of the official commentary to the Supreme People’s Court’s Judicial Interpretation on Sales Contracts. See Sun Ruixi, *Contractual Obligations and the Right of Simultaneous Performance Defense*, published on the Peking University Legal Information Network. For detailed discussion, see Second Civil Division of the Supreme People’s Court (2012), *Understanding and Application of the Supreme People’s Court’s Judicial Interpretation on Sales Contracts* (pp. 132–133). Beijing: People’s Court Press.

¹⁴ Wang, Z. (1993). *General principles of the law of obligations: Basic theories and formation of obligations* (Vol. 1). Taipei: Sanmin Book Co. (as cited in Cui, J. (Ed.). (2003). *Contract law* (3rd ed., p. 63, Note 1). Beijing: Law Press.)

be interpreted to include special VAT invoices. Consequently, the obligation to issue such invoices does not constitute an ancillary obligation, nor does it amount to an accessory obligation under civil law. It is not a civil obligation at all, but rather a statutory obligation imposed solely by tax law.

iii. the “Invoice Before Payment” arrangement has a clear legal basis under tax law. Pursuant to the relevant provisions of the *Interim Regulations on Value-Added Tax* and the *Value-Added Tax Law of the People’s Republic of China*, the timing relationship between the issuance of a special VAT invoice and the receipt of the corresponding payment gives rise to three recognized invoicing modes: simultaneous invoicing and payment, payment before invoicing, and invoicing before payment. “Simultaneous invoicing and payment” refers to the situation in which, upon the occurrence of a taxable sale, the seller issues a special VAT invoice to the buyer at the same time as receiving the payment. “Payment before invoicing” refers to the scenario in which the buyer pays the sale price in advance, and the seller issues the VAT invoice within the prescribed period thereafter. In contrast, “Invoice Before Payment” refers to the situation in which, after the taxable sale occurs, the seller issues a special VAT invoice first, and the buyer makes the payment at a later time. According to Article 28, Paragraph 1, Item (1) of the *Interim Regulations on Value-Added Tax*, where a seller issues a special VAT invoice before receiving payment, the date on which the invoice is issued is deemed the date on which VAT liability arises. The buyer subsequently pays the sale price upon receipt of the VAT invoice.

iv. the judicial rationale for denying the “Invoice Before Payment” clause is subject to debate. Diverging views exist between judicial interpretations and reference cases regarding the classification of the obligation to issue a special value-added tax (VAT) invoice. Article 4 of the *Judicial Interpretation on Sales Contracts* defines such obligation as an ancillary obligation, while multiple reference cases have treated it as an accessory obligation. Given that judicial interpretations carry legally binding force and must serve as the basis for adjudication, whereas reference cases merely provide persuasive reasoning that may be consulted but are not binding, judicial interpretations should prevail over reference cases. Accordingly, the issuance of a special VAT invoice should be deemed an ancillary, rather than an accessory, obligation. Moreover, the reference cases themselves are not internally consistent on this issue. Some cases recognize contractual clauses imposing an obligation to issue a special VAT invoice as valid, while others hold them invalid. For example, in Reference Case No. 2023-10-2-123-002 (Shanghai Surveying Company v. Xi’an Surveying Company, M Company, and a third-party Group Company, a dispute over an intermediary contract) and Reference Case No. 2023-08-2-084-010 (Shenzhen Technology Company v. a Technology Company, a dispute over a sales contract), the courts upheld such clauses as effective. In contrast, in Reference Case No. 2023-10-2-227-001, No. 2024-08-2-079-001, and No. 2024-08-2-141-001, the courts invalidated such clauses, reasoning that the obligation to issue a VAT invoice is

merely an accessory obligation and thus cannot serve as a condition precedent to the buyer's primary obligation to pay.¹⁵ However, the legal basis in the *Civil Code* for declaring such clauses invalid is not clearly articulated in those decisions. It is well established in civil law that a seller may unilaterally waive the buyer's payment obligation; therefore, imposing a seller's obligation to issue a VAT invoice as a condition precedent to the buyer's payment is clearly to the buyer's benefit. Why, then, should such a clause be considered invalid? By comparison, the reasoning supporting the validity of "Invoice Before Payment" clauses appears more cogent. Indeed, it was for these very reasons that, on May 18, 2025, the author submitted a written proposal to the Institutional Development Division of the National Data Administration, recommending the deletion of the "Invoice Before Payment" clause from the drafts of the three model texts. This recommendation was ultimately adopted in the finalized versions of the *Data Supply Contract (Model Text)*, the *Entrusted Data Processing Service Contract (Model Text)*, and the *Data Intermediary Service Contract (Model Text)*.

v. the "Invoice Before Payment" clause serves as an effective mechanism for addressing the pricing difficulty of data circulation. At present, the challenge of accurately pricing data assets remains one of the principal obstacles to data circulation. Most enterprises that have formally recognized data assets on their balance sheets are state-owned enterprises, and their numbers remain limited. In addition, the lack of transparency in public transactions of data assets on data exchanges has further obscured the determination of cost and market price. By requiring the issuance of a special value-added tax (VAT) invoice prior to payment, the "Invoice Before Payment" clause imposes a structural incentive on data circulation participants to first negotiate and determine the price of the data asset. Without an agreed-upon price, the data asset cannot be circulated, as a VAT invoice cannot be issued in the absence of a specific transaction amount. Conversely, only upon issuing a special VAT invoice may the data circulation party lawfully collect payment. This pricing discipline embedded in the invoicing requirement helps promote the compliant, efficient, and market-oriented circulation and use of data.

4. Approaches to resolving the conflicts

There are both short-term and long-term approaches to resolving the conflicts between tax law and civil law, as well as between normative expectations and practical realities, in relation to the "Invoice Before Payment" clause. The short-term approach is to maintain the current status quo. In other words, the removal of the "Invoice Before Payment" clause from the four Model Texts of Data Circulation and

¹⁵ For this reason, on May 18, 2025, the author submitted a written proposal titled *Suggestions on Amending the Drafts for Comments of the Four Model Texts of Data Circulation Contracts* to the Institutional Development Division of the National Data Administration, recommending the deletion of the "Invoice Before Payment" clause from the drafts of three of the model texts. This recommendation was subsequently adopted in the finalized versions of the *Data Supply Contract (Model Text)*, the *Entrusted Data Processing Service Contract (Model Text)*, and the *Data Intermediary Service Contract (Model Text)*.

Transaction Contracts does not prejudice the right of the paying party to request the issuance of a special value-added tax (VAT) invoice from the receiving party.

i. it is a statutory obligation for the receiving party to issue a special value-added tax (VAT) invoice to the paying party. Article 18 of the *Invoice Management Measures of the People's Republic of China* (2023 Revision) (hereinafter referred to as the “Invoice Management Measures”) provides: “Where an entity or individual sells goods, provides services, or engages in other business activities, and receives payment in the course of such business operations, the payee shall issue an invoice to the payer.”

ii. a payee who fails to issue a special value-added tax (VAT) invoice when required by law shall bear administrative liability. Article 33 of the *Invoice Management Measures* provides: “Where a party fails to issue an invoice when it shall do so, or fails to issue the invoice in accordance with the prescribed time limit, sequence, format, or number of copies, or fails to affix the special seal for invoices, the tax authority shall order correction and may impose a fine of not more than RMB 10,000; where there are illegal gains, such gains shall be confiscated.”

iii. where a payee fails to issue a special value-added tax (VAT) invoice as required and causes losses to the payer, the payee shall bear civil liability for damages. In Reference Case No. 2024-08-2-079-001 (Tianjin Materials Trading Co., Ltd. v. Huizhou Petrochemical Co., Ltd. and Shanghai Valve Co., Ltd., a dispute over an assignment of claims), the court reasoned that Huizhou Petrochemical Co., Ltd. had the right to request the issuance of a special VAT invoice from Shanghai Valve Co., Ltd. at any time, but was required to allow the latter a reasonable period for preparation. If Shanghai Valve Co., Ltd. failed to fulfill its invoicing obligation and thereby caused loss to Huizhou Petrochemical Co., Ltd., the latter would be entitled to file a separate claim for damages.

The long-term approach is to rely on the *Work Procedures for the Construction and Operation of the Case Base of the People's Courts* (No. 92 [2024] of the Supreme People's Court) to remove from the case base the following three reference cases, which have led to inconsistent treatment of the same legal issue: Reference Case No. 2023-10-2-227-001 (Marine Engineering Company v. Dredging Engineering Company, a dispute over a maritime salvage contract); Reference Case No. 2024-08-2-079-001 (Tianjin Materials Trading Co., Ltd. v. Huizhou Petrochemical Co., Ltd. and Shanghai Valve Co., Ltd., a dispute over an assignment of claims); and Reference Case No. 2024-08-2-141-001 (Guangzhou Cinema Company, Shenzhen Futian Branch v. an advertising company and Shanghai Information Technology Company, a dispute over an advertising contract). This approach would eliminate the unfairness arising from the inconsistent classification of the same obligation across different cases. On this basis, the four Model Texts of Data Circulation and

Transaction Contracts could subsequently reintroduce the “Invoice Before Payment” clause through supplementary provisions.

5. Conclusion

The draft for comments of the *Data Integration Development Contract (Model Text)*, like the drafts of the other three Model Texts of Data Circulation and Transaction Contracts, should have included the “Invoice Before Payment” clause. The justifications for omitting this clause from all four model texts are unconvincing. By contrast, the reasons for retaining the clause are grounded not only in comparative legal analysis but also in domestic legal principles. The domestic legal rationale rests on a proper distinction between tax law obligations and civil law obligations, reconciliation of the divergence between civil legislation and judicial practice, and a practical response to the challenge of pricing data assets. Together, these elements reflect the innovative value of the clause. The proposed approaches to resolving the conflicts between Chinese tax law and civil law, as well as between normative expectations and institutional realities, range from short-term adjustments to long-term reforms, and are both realistic and feasible.

On the Professionalism and Marketization of Lawyers

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Abstract: The emergence of new-generation legal technologies, which are represented by artificial intelligence, is reshaping the legal profession by transforming its knowledge management, organizational structures, and commercial paradigms. The traditional professional dominance of lawyers is gradually waning, while novel modes of legal service delivery are rapidly emerging. This transformation has triggered an intense debate over the tension between legal professionalism and marketization. At the core of this debate lies the intensification of intra-professional competition, commonly referred to as involution, and the growing pressure of external market forces, including capital and technology. This paper argues that the legal profession is inherently characterized by public responsibility, specialized expertise, and professional self-regulation. It contends that the legal services market should operate under regulated market competition. More importantly, the relationship between professionalism and marketization is not a binary opposition but a complementary and evolving dynamic of integration and balance.

Keywords: Lawyers; Professionalism; Marketization; Legal Technology

Introduction

Professionalism and marketization constitute two essential dimensions for understanding the nature of the legal profession. With the rise of capital and technology, traditional theories of legal professionalism have come under significant challenge. Many lawyers today experience a growing sense of disillusionment, as lofty professional ideals appear increasingly fragmented by the harsh realities of practice. This tension has given rise to a pressing question within the legal community. Should lawyers adhere firmly to the values of professionalism, or should they embrace market-driven models of practice? How to strike an appropriate balance between these two forces has become a critical point of consideration for practitioners and policymakers alike.

1. Are lawyers businesspeople?

From their inception, lawyers, physicians, and teachers have been regarded as members of the professions, rather than participants in mere contractual or hire-for-service arrangements.¹ Max Weber further observed that the independent “practice” of physicians, lawyers, or artists reflects a form of autonomous professional specialization.² The professionalism of lawyers is characterized by three core attributes: public responsibility, specialized expertise, and self-regulation.³ From the perspective of public responsibility, the legal profession is fundamentally oriented toward public service, with justice and the public good as its core objectives.⁴ Émile Durkheim’s sociology of law likewise emphasizes that professionalization should be guided by a clear public-service orientation: professionals are expected to apply theoretical knowledge in practice to serve and give back to society. The legitimacy of such professions derives from the control rights conferred upon them by society as a form of delegated authority. Legal professional associations, which perform certain political functions, are legally empowered entities. This framework introduces the concept of “intermediary organizations” within society.⁵ In other words, a law firm is an *organization*, not a *company*. It fulfills political and public functions, rather than merely providing commercial legal services.

From the perspective of specialized expertise, legal professionals are individuals equipped with requisite political literacy, legal competence, professional ethics, and formal qualifications. They constitute a specialized group engaged in legislation, law enforcement, judicial adjudication, legal services, and legal education and research.

In China, the legal profession specifically refers to individuals who have obtained the Unified National Legal Professional Qualification and serve as judges, prosecutors, lawyers, notaries, and legal arbitrators, as well as civil servants who perform legal functions in administrative agencies. These functions include administrative penalty reviews, administrative reconsideration, administrative adjudication, and the provision of government legal counsel.⁶

The legal professional community formed through this institutional framework serves as a cornerstone of China's rule-of-law development. Building an independent, professional, and robust legal profession is essential to realizing a society governed by law. On December 6, 2021, President Xi Jinping, in the 35th collective study session of the 19th CPC Central Political Bureau, emphasized the need to strengthen political

¹ Huang, M. (2017). How do lawyers professionalize? A textual analysis based on ancient Greek and Roman sources. *The Jurist*, (3).

² Weber, M. (2019). *Economy and Society* (Y. Kewen, Trans.). Shanghai People's Publishing House. (Original work published in German)

³ Ji, L. (2022). *A reflection on the professionalism of lawyers in China* (Master's thesis, Soochow University).

⁴ Wang, J. (2021). *Legal professional ethics* (2nd ed.). China Renmin University Press. (p. 2)

⁵ Durkheim, É. (2015). *Professional ethics and civic morals* (Q. Jingdong, Trans.). The Commercial Press. (p. 113)

⁶ Wang, J. (2021). *Legal professional ethics* (2nd ed.). China Renmin University Press. (p. 4)

leadership over the legal profession. He called for guiding and educating lawyers to consciously uphold the leadership of the Communist Party of China, to support China's socialist rule of law, and to strive to become lawyers who meet the expectations of both the Party and the people.⁷

Accordingly, various mechanisms such as the legal professional qualification examination for market entry, the internship assessments for law practice registration, the annual evaluations of lawyers' professional competence, and the annual inspections of law firms, together with the requirements set forth by Xi Jinping Thought on the Rule of Law, all function to uphold and reinforce the professional standards of the legal profession.

From the perspective of self-regulation, the core of realizing the ideal functions of a professional association lies in its autonomy. Also referred to as co-governance, such autonomy enables lawyers to exercise self-management and internal oversight through bar associations, thereby ensuring compliance with industry standards and legal ethics.

The All-China Lawyers' Association is a statutory self-regulatory organization empowered by law to represent the legal profession. As the institutionalized professional association of lawyers, it plays a central role in safeguarding professional rights and implementing self-regulation. Since the restoration of China's lawyer system in 1979, the legal profession has evolved through several stages: from state-employed legal workers with no autonomy, to legal service providers with limited self-governance, and eventually to the current dual model—one that combines supervision by judicial administrative organs with autonomous governance by the legal profession itself. This evolution reflects a steady progression toward greater self-regulation, which remains the ultimate aspiration of the legal profession.

The self-regulatory nature of the legal profession is founded upon professional independence, and functions primarily through its specialized and social character. The independence of lawyers is also the foundation of both legal ethics and the protection of the right to practice. Thus, the autonomy and independence of the legal profession are defining features that distinguish lawyers from purely market-oriented legal consulting firms that lack the status and responsibilities of a true profession.

In summary, the core elements of legal professionalism include public responsibility, specialized expertise, self-regulation, and professional independence. These defining characteristics serve not only as the key criteria distinguishing lawyers from non-lawyers, but also as the normative foundation for resolving value conflicts among public interest, client interests, and lawyers' own interests. Moreover, they provide the theoretical basis for the legal profession to realize its unique social value, setting it

⁷ Sun, B. (2022, April 29). Promoting high-quality development of the legal profession through political leadership. *Ministry of Justice of the People's Republic of China*. Retrieved September 2, 2025, from https://www.moj.gov.cn/pub/sfbgw/zwgkztzl/xxxcgcxjpfzsz/fzszllqy/202204/t20220429_453992.html

apart from other providers of legal services. In this light, the concept of professionalism offers the most compelling response to the question: *Are Lawyers Businesspeople?*

2. Legal services as a regulated market of competition

The marketization of the legal profession is not inherently incompatible with its social responsibilities; rather, the tension between them can be reconciled. The commercialization of legal practice is, in itself, not objectionable, as it is rooted in social reality and shaped by external constraints and environmental factors. However, such commercialization must remain within appropriate limits. Excessive commercialization can obstruct the realization of lawyers' social responsibilities. Therefore, it is imperative to strike a balance between the pursuit of commercial interests and the fulfillment of public duties.⁸ In other words, while lawyers may pursue economic gain, they must also adhere to professional ethics and avoid undermining the public interest and their broader social responsibilities in the process.

The marketization of the legal profession has also introduced commercial risks, including professional responsibilities. These include intensified regulatory oversight and an increasingly diverse client base, both of which may affect lawyers' career development and the stability of their income. External regulatory agencies are gradually increasing disciplinary measures targeting the legal profession. Law firms not only face significant tax-related risks but are also subject to compliance scrutiny by institutions such as the China Securities Regulatory Commission. When a law firm receives large fines or is subjected to industry bans, equity partners are required by law to bear economic liability. These penalties often result in mass departures of partner teams and a decline in business operations. Some firms that rely heavily on online promotion have earned substantial profits while also attracting a large number of complaints, which has led to disciplinary action within the profession. The practice risks caused by such excessively commercialized behavior are continuing to escalate. Marketization without regulatory constraints results not only in punishment for individual rule violations but also in the erosion of public trust in the legal profession as a whole.

From the perspective of costs and benefits, economists generally believe that law firms, like all economic entities, operate on the basis of their members' self-interest. Lawyers must generate income by providing legal services in order to sustain the operation and growth of their professional activities, and their work is ultimately oriented toward the pursuit of profit.

In addition, as market entities subject to taxation, law firms are required by law to fulfill their tax obligations. Although they currently do not enjoy the same tax

⁸ Gu, C. (2011). On the trend of commercialization in the legal profession. *Legal System and Society*, (27).

treatment as corporate enterprises and are therefore subject to relatively unfavorable tax policies, tax compliance remains a statutory duty for every law firm. Furthermore, law firms must pay close attention to balancing costs and revenues. No partner is willing or able to absorb long-term financial losses. The pursuit of profitability compels law firms to continually upgrade their office spaces and improve both software and hardware infrastructure in order to enhance service quality and operational efficiency. These improvements are essential for attracting legal talent and securing clients in a highly competitive market environment. For these reasons, the commercial nature of the legal profession constitutes the economic foundation upon which both lawyers and law firms rely for their survival and development.

From the perspective of the internationalization of the legal profession, foreign-related legal services are an integral component of the socialist rule-of-law system with Chinese characteristics. Enhancing the Chinese voice and rule-making capacity in global legal affairs requires the development of world-class law firms. This effort aims to provide high-quality legal support for Chinese enterprises and citizens engaging in overseas activities and to safeguard the country's interests abroad.

For the Chinese legal profession to truly integrate into the international legal services market, it must not only strengthen its internal capacity and enhance its international competitiveness, but also confront challenges and seize opportunities in an increasingly competitive global environment. Participation in global competition in legal services is indispensable. For instance, under the United Kingdom's Legal Services Act of 2007, non-lawyer ownership of legal service providers is permitted in England and Wales, thereby allowing consumers to access legal services from commercial entities. Law firms without commercial orientation are poorly positioned to compete in the international legal services market.

To become internationally competitive and elevate the global voice of Chinese lawyers, law firms must strengthen their commercial capabilities in order to meet the legal needs of Chinese enterprises and citizens engaged in cross-border matters. The foreign-related legal services market should not be narrowly defined as limited to litigation representation and legal consultancy. Rather, it constitutes a broad legal service market that spans multiple domains, including business, taxation, and legal compliance.

In conclusion, drawing on stakeholder theory and the sociology of law, the intensifying "involution" of market competition is compelling the legal profession to accelerate its market-oriented transformation. However, legal practice must remain a form of regulated market activity that adheres to the rules of professional conduct governing lawyers. Only by expanding the legal services market, improving service delivery methods, and enhancing the quality of legal services can the profession respond effectively to increasingly stringent regulatory market conditions. These

market-oriented strategies are essential for advancing the modernization of the legal profession.

3. How to balance professionalism and marketization in the legal profession

The competitive and complementary relationship between professionalism and marketization in the legal profession is most clearly reflected in the legal services bidding market. Achieving a mutually beneficial that integrates both the economic and social value of legal practice, while resisting involution-style competition, requires the creation of a fair and mutually beneficial market ecosystem. To this end, all stakeholders must work to improve the allocation of market resources. In particular, law firms and bar associations must assume responsibility for balancing professionalism and marketization and for advancing reforms aimed at the high-quality development of the legal profession.

From the perspective of the internal legal services market, the self-disciplinary rules formulated by bar associations already allow lawyers and law firms to engage in advertising and marketing, as long as they comply with relevant standards of professional conduct.⁹ With the rapid growth of the livestreaming industry, new forms of legal marketing have continuously emerged. These include lawyers with high public profiles on social media and firms that rely heavily on online promotion. In some cases, the involvement of capital in controlling law firms has led to frequent public controversies and widespread concern. As a result, how to properly balance professionalism and marketization within the legal profession has become a prominent issue of internal debate.

First, a law firm is a partnership organization built on a foundation of personal relationships. The management of a law firm must ensure that its partners believe the firm is not merely a tool for generating profit but also embodies important non-financial professional ideals. These ideals should guide the partners in practicing law in accordance with the values of professionalism. Addressing this challenge makes it possible to build a stronger form of firm-specific capital, which becomes the core bond between the partners and the law firm. This capital is based on a combination of financial and non-financial returns that only a law firm can provide, rather than what purely market-oriented entities such as legal consulting companies are able to offer. Therefore, the market value and professional value of the legal profession can either complement or contradict each other. Each law firm must find its own way of navigating this dynamic and consider how to strike a balance under the

⁹ Baidu Baike. (2018, January 6). Rules on promotional activities for lawyers by the All-China Lawyers' Association (Trial). Retrieved July 28, 2025, from <https://baike.baidu.com/item/中华全国律师协会律师业务推广行为规则（试行）/23350760>

specific conditions it faces.¹⁰

Second, law firms should strengthen their capital base. Although they are not permitted to introduce external capital investors as equity partners, there are several approaches available to address the problem of capital shortages within law firms. One possible solution is to restructure internal capital through organizational reform among partners. This may involve transitioning from traditional partner structures such as pyramid-shaped, rocket-shaped, or diamond-shaped models to a flatter partnership structure.¹¹

Another approach is to consolidate small law firms with fewer than twenty lawyers through strategic alliances in order to form firms with over one hundred lawyers and achieve economies of scale. More importantly, there is growing expectation that judicial administrative authorities across the country will draw on the pilot reform experiences of cities such as Shanghai and Hainan. These reforms involve relaxing restrictions on partnership qualifications and allowing financial institutions, accounting firms, and legal technology companies to become equity partners in law firms. Such developments would introduce entirely new capital pathways for the growth of the Chinese legal profession.

Finally, in order to reconcile the demands of professionalism with the imperatives of marketization, law firms should attach great importance to the research, development, and application of legal technology, particularly legal artificial intelligence. Legal AI has become a critical productive factor for advancing the modernization of law firms. Whether addressing the efficiency pressures brought about by low-price competition, meeting the increasingly diverse legal service needs of clients, or responding to technological challenges posed by non-lawyer commercial entities, law firms must embrace legal technology.

Only by doing so can they successfully transition from traditional, craft-based models of legal service delivery to modernized legal service systems. This transformation is essential for adapting to the reality of a legal services market that is shifting from low-frequency, high-cost transactions toward a more inclusive and accessible model. The era of technological revolution in legal services, driven by legal technology, has already arrived.

From the perspective of the external legal services market, the more significant competitive pressures facing the legal profession come from outside the profession itself. First, legal consulting companies and legal service firms that operate outside the scope of bar regulation have proliferated rapidly. Although local bar associations in various regions have issued numerous formal statements and even coordinated with market supervision authorities in so-called campaigns to “rectify and clean up” these

¹⁰ Regan, M., & Lerman, L. (2024). *Big law: Commercial concerns and professional values in modern law firms* (W. Jinx i & L. Hua, Trans.). Law Press. (pp. 7–9) (Original work published in English)

¹¹ Wang, Z. (2024). A brief analysis of the development paths and models of law firms. *China Rule of Law*, (4).

entities, such efforts to exclude competitors and monopolize the legal services market lack a clear legal basis.

Nevertheless, regulated institutions such as banks, state-owned enterprises, and publicly listed companies, which are subject to internal compliance audits and third-party supervision, often require legal service providers to be licensed law firms employing licensed lawyers. This requirement stems from their own compliance needs and does not reflect the outcome of open market competition. As a result, the non-litigation legal services market—which accounts for a substantial share of total legal services—is expected to face even more intense competitive pressure.

Second, many lawyers increasingly feel the pressure of external competition, as legal fees continue to decline and regulatory requirements for professional conduct become more stringent. A majority of law firm partners believe that these changes reflect a permanent and structural shift in the legal services market. At the same time, the rise of legal technology companies has further intensified this trend of external market competition. However, no matter how fierce the external competition may become, the core elements of legal professionalism remain unchanged. The professional value and ideals of lawyers have not undergone any fundamental transformation. In a legal services market filled with both qualified and unqualified providers, the professionalism of lawyers stands out even more clearly and underscores the unique social value of the legal profession.

Nevertheless, the tension between maintaining professional ideals and facing the harsh realities of market competition continues to pose a fundamental dilemma. Finding an appropriate balance between professionalism and marketization remains an enduring and difficult challenge for decision-makers within law firms.

Finally, legal consulting companies and legal technology companies that target individual consumers (C-end) and private enterprises (B-end) have become strong market competitors supported by capital and technology. In contrast, the vast majority of law firms in China remain small-scale operations with fewer than twenty lawyers. These firms often lack not only funding and talent but also technological capacity. It is clear that in the current wave of competition driven by legal technology, most small law firms are at a significant disadvantage. Without reform and innovation, these firms will likely face eventual elimination as their senior partners grow older and retire, leading to a natural decline. Therefore, finding effective strategies to break this deadlock and reclaim the rapidly shrinking share of the legal services market has become a critical issue in the effort to balance professionalism and marketization within the legal profession.

4. Conclusion

Reform and innovation remain the only viable path to breaking the current deadlock. To that end, the tension between professionalism and marketization in the legal profession may be addressed through three interrelated strategies. One approach involves cultivating law firms as business communities founded on shared governance among partners. This entails moving away from the traditional cost-sharing model, which centers on dividing existing resources, and embracing a value-creation model that prioritizes expanding the interests of equity partners. Another important measure is to reinforce the legal profession's identity as a professional community supported by both material and non-material incentives. Structural safeguards should be established around the core components of professionalism, including public responsibility, specialized expertise, self-regulation, and professional independence. These safeguards help secure a defensible and sustainable position within the legal services market. A further imperative is to reimagine law firms as modern institutions driven by capital and technology. This requires a shift from traditional competition models based on human capital toward market-oriented models propelled by capital investment and technological innovation.

In short, as Stephen Hawking once observed, the most profound and increasingly influential transformation he witnessed in his lifetime was the rise of artificial intelligence.¹² In the decade to come, the era of legal AI entities will inevitably arrive. These entities will no longer serve merely as tools or assistants, but will become partners and collaborators in legal practice. In this future, the longstanding tension between professionalism and marketization will gradually evolve into a dynamic equilibrium, allowing for integrated and balanced development within the legal profession.

¹² Guo, Z. (2018). Five singularities that artificial intelligence may bring. *Theoretical Horizon*, (6).

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