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IMITATIVE PROFESSIONALIZATION:  
LAW AND MEDICINE IN EARLY TWENTIETH-CENTURY CHINA

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## Abstract

This is a comparative study of modern law and modern medicine as two emerging professions in early twentieth-century China. Borrowing insights from the sociology of the professions and the study of institutional diffusion, I suggest that the rise of these two Chinese professions was an outcome of cross-national institutional diffusion. In what I call “imitative professionalization,” modern institutional models for professional organization were transplanted to the host society through government reforms and state building projects, on the one hand, and the expansion of Western professions, on the other. Meanwhile, the institutionalization of the new practices was also found to be circumscribed by the social organization and especially the reactions of preexisting native practices, which could be potentially facilitating or obstructive. In this way, the dynamics of diffusion and the social embeddedness of its reception would simultaneously shape the distinct power relations for each of the professions thus emerged, despite the formal similarities in their professional organization. Of the two Chinese cases, the practice of modern law had emerged as a well-established jurisdiction defined by the bureaucratic dominance of the state judiciary, often at the expense of the autonomy and status of private practice. Modern medicine, on the other hand, had grown from an autonomous profession in private practice to one with technocratic control over public health administration. Yet the modern physicians had been forced to concede part of their jurisdiction to a sufficiently organized community of native-style physicians. This study should be of interest to those who work on modern professions in similar non-Western contexts; it also aims to contribute to the qualitative and historical research on cross-national institutional diffusion.



## **Chapter 1 Introduction**

The professions are privileged occupational groups that enjoy a legitimate monopoly in the field of their practice. Their exclusive privilege rests upon two essential claims: that only they possess the technical expertise to perform the tasks they profess and that their moral trustworthiness is guaranteed by a well-observed public service ethos. These claims are not a self-aggrandizing strategy for the marketing of their skills; they are supported by a set of institutions that ensure all professionals are adequately trained, strictly qualified, routinely regulated or self-regulated, and formally protected from any undue interference in their work. This institutional setting of the professions usually includes, among other things, specialized and advanced programs of training, a licensing system based upon an additional period of internship or a qualifying examination (or both), an associative community that both promotes the exchange of knowledge and the collegiate regulation of practice, and a body of state legislations that sanctify the legal status of the profession. As such, the professions are often considered an indispensable pillar of the modern society: they provide a variety of technical expertise that is critical for social functioning and well-being. Yet, all societies, past and present, have their own way, or ways, of managing expertise. What is unique to the professions is the formalization of its institutions and the acceptance of professionalism as a popular ideology: workers are proud of being professionals, occupations are proud to declare themselves professions, and societies are proud to invest in the professions as they strive to become more rationalized.

Historically, the emergence of the professions in Europe and North America was an extended process that had spanned much of the nineteenth and early twentieth century. That formative process was concomitant with the crystallization of the modern state and the growth of

the civil society, with several wide-ranging revolutions launched by the bourgeoisie. In the meanwhile, industrialization and, especially, the development of capitalist markets for all kinds of goods and services had driven the division of labor into more specialized task domains. This was further expedited by the expansion of higher education, the advancement in science, and the innovations in finance. As a result, law, medicine, engineering, science, and accounting, to mention just a few, emerged as privileged occupational groups that boasted of a high level of expertise and a noble sense of trustworthiness. Yet, variations in the configuration of these historical processes and in the relative power of social actors had given rise to the distinctive national constellations of professional power, despite their shared institutional appearances. In Britain and America, the limited authority of the state and its disinterest in the provision of knowledge-based services had largely left knowledge practitioners to a laissez-faire market for competition. In France and Germany, the autocratic state and its control of higher education made the credentialing of public officers a preferable path to professionalization. In turn, private professions in Continental Europe had enjoyed much less autonomy than their Anglo-American counterparts and were subject to more intimidating state intervention.

In the non-Western world, however, the birth of the professions had taken place not only against the backdrop of state formation and the creation of capitalist markets but, more importantly, in the context of Western colonialism and normative pressure. For one thing, the colonial expansion of the Western powers had itself depended upon the support of professional expertise. As colonial rules were established, the administration of the colonized population had demanded professional service of various kinds, including law, accounting, public health, statistical science, and so on. The British colonial governments in India, Africa, and Australia, for instance, had been a direct source for exporting British-style professions to these regions. On

the other hand, even countries and regions not under direct colonial rule had been subject to tremendous normative pressure that made Western professional models—and the knowledge they practiced—a highly desirable target for adoption. The voluntary emulation of Western institutions in Meiji Japan was one such example. In either case, direct colonial rule or normative pressure, the emergence of the professions in non-Western societies had involved the cross-cultural transfer of institutional models and knowledge systems. The condition was even more complicated where there had been a well-developed native tradition of practice. Although native traditions often suffered from a decline in legitimacy as they encountered the dominant practices from the West, their sheer prevalence and social organization were often at odds with the monopolistic objectives of the newly imported professions.

The question, then, is how would the cross-cultural diffusion of professional models affect the resulting power relations between the professions and the state, between the newly imported knowledge practices and the old native ones, and between the subgroups within a given profession? Meanwhile, how would the power relations between the state, the Western-educated professionals, the traditional knowledge practitioners, and various other parties involved affect the adoption and adaption of professional institutions? In other words, when diffusion and professionalization become an intertwined historical process, how would one shape the other, and vice versa?

### **1.1 Case Selection**

In this study, I address this theoretical issue by looking at two empirical cases: the rise of the legal profession and the medical profession in early twentieth-century China. The Chinese, not surprisingly, had an unusually long history of legal and medical practices. In practice and theory,

there was no lack of a fairly developed body, or bodies, of knowledge passed down and continuously refined by the Chinese from one generation to another. And by their last imperial dynasty, the Qing (1644-1911), one might speak of a well-established manner in which the practice of law and that of medicine were organized across the Chinese society. In spite of the arrival of Western merchants, missionaries, diplomats, and soldiers in the last two hundred years, until the early twentieth century, the practice of Western law or Western medicine in China had been limited to a few treaty ports and missionary societies. Only a very small number of Chinese had received any training in either.

That was changed within four decades. By the mid-1930s, a new set of professional institutions had been founded by the Chinese for both law and medicine. To a large extent, these institutions were modeled on their precedents in Europe, North America, and, most importantly, in Japan. Law and medicine—to be precise, modern law and modern medicine—had thus been formally established as two exemplary professions in what had become the Republic of China, itself an emulation of other modern states. This is not to say that traditional Chinese modes of law or medicine had been driven out of practice—not yet. They were still widely practiced outside of the urban centers or beyond the reach of the state’s policing capacity. Yet, the tide had turned: the institutional foundation of traditional practices had collapsed and their social legitimacy undermined, while those of the modern professions were clearly on the rise, attracting a whole new generation of practitioners that grew up in the first decades of the century. In 1934, forty law programs at the university or technical college level had a total enrollment of 11,000 and another 3,000 just graduated. In 1936, thirty-three medical programs at the tertiary level had a total of 3,000 students and 400 new graduates. Many of these law and medicine graduates would go on to apply for a state license before they opened their own practices or joined those of

others, while some would sit through a public service test before they were recruited by the judiciary or the public health agencies. As of 1936, over 10,000 lawyers had been licensed by the Ministry of Justice and over 5,000 biomedical physicians by the Ministry of Health (or the National Health Administration). The first Chinese bar associations were launched—and officially recognized—as early as 1912, and the first professional medical associations organized by the Chinese appeared in 1915. By the 1930s, a dual system of professional associations and scholarly societies had been established in both fields, with their representatives regularly attending the meetings and events organized by the international communities of law and of medicine. The regulatory framework for the legal and the medical practices in China was laid down, among other statutes, by the *Judicial Organization Law* (1910), the *Provisional Regulations for Lawyers* (1912), the *Physician Regulations* (1930), the *Method for Professional Organizations* (1931), and their subsequent amendments. In 1931, Chinese lawyers and physicians were officially represented as “professional groups” in the National Congress, the general assembly convened to discuss and vote on the country’s constitution.

In the meantime, however, the two newly established professions were distinct from one another in several important regards, despite their similarity in the basic institutional forms. The field of modern law had been split between a public sector, in which judges, procurators, and judicial administrators were selected through a highly competitive testing method, and a private domain, in which lawyers were qualified according to a looser criterion and were constantly subject to the supervision by the public judicial officers. Outside of the modern judicial and legal system, while the traditional magistrate’s courts still dominated most of the Chinese counties, their transformation was slowly underway and it was clearly a matter of time before they, too, were professionalized. On the other hand, medicine in Republican China had been divided

between the rising number of physicians trained in modern medicine, as mentioned above, and a nationwide traditional Chinese medicine community that struggled to redefine and legitimize itself as a quasi-modern, albeit separate, profession. The practitioners of modern medicine never achieved a monopoly, even nominally, of the medical field, although they kept firm control of the public sector—that is, public health as then understood and practiced. In fact, public health emerged in China largely as an outgrowth of the modern medical profession and was not so much segregated from the latter. In terms of the relationship between the state and the professions, the upper stratum of the legal profession was, from the very beginning, part of the state bureaucracy. Until the ascent of a party-state ideology in the 1930s, the Chinese judiciary had striven to be independent both technically and administratively, keeping political interference at bay. The state was also the main organizer of legal education, where a Japanese-style training of students at the technical college level had been prioritized over the development of a scholarly legal discipline at the university level. The Chinese bar never had much control over legal education. In fact, it never had a collective voice of its own vis-a-vis the state; the bar was placed under the direct professional and administrative supervision of the judiciary. In contrast, in the field of medicine, until the late 1920s, the Chinese state had done little in the regulation of medical practice and showed little interest in the promotion of a modern medical profession. Both medical associations and medical education were championed by a small group of medical elites, who received various forms of support from non-governmental sources. Medical regulation and public health initiatives were not so much as imposed by the state; rather, they were demanded by the medical profession. As those medical elites came to dominate state health agencies, they increasingly used that opportunity to expand their agenda for a medical and public health modernity.

The timing and historical context of the cases are crucial. They provide the opportunity structure for the introduction of Western professional models and push forward the social groups that would set in motion the dual process of diffusion and professionalization. The rise of the Chinese professions in the early twentieth century both reflected and affected the changing constellation of power dynamics, intellectual trends, and institutional maneuvers of its time. It was, first of all, a period that saw the demise of the Chinese imperial civil service examination and its replacement by a fledging modern educational system. For centuries, the civil service examination had been the central institution for the legitimation of knowledge claims and a key channel for upward social mobility. Generations of Chinese students had learned or even memorized the Confucian classics as they prepared for the examination and, if successful, moved on to a career within the officialdom. Both law and medicine, however, had remained on the periphery of the Confucian learning, and a career in law or medicine, under most circumstances, had been a secondary option for the traditional Chinese literati. Consequently, the termination of the imperial civil service examination, in 1905, caused a sudden and widespread crisis both intellectually and socially. The social legitimacy of traditional scholarship was being questioned, if not blamed for China's military defeat and economic plight against the Western powers. At the same time, students who still aspired to the status of scholar-officials were compelled to look for alternative career prospects. If the new professions of law and medicine hoped to establish their knowledge claims and social status, then they had to define them in a very different institutional context than that for knowledge practices in the past.

The decline of traditional institutions was accelerated by the increasing circulation of goods, people, and ideas between China and the outside world. Except for an aborted program back in the 1870s, the early twentieth century was the beginning of subsequent waves of Chinese

students going abroad for advanced studies. Since the 1900s, many traveled to a modernized Japan that emerged out of the Meiji Reformation as a major power in East Asia. Others headed for Europe and North America, especially as the US government assigned a large sum of war indemnities to the financial aid for Chinese students. They went into a variety of modern academic and professional disciplines that were unheard of in China. Moreover, they were exposed to the then-popular modes of organization for scholarly and professional communities. As they returned to their homeland after completing their associate, college, or even PhD degrees, they brought with them both the yearning and the templates for changing China. At the same time, a huge influx of foreign scholars, technicians, and professionals were drawn by the growing Western presence and the emerging capitalist markets in China. They not only catered for the foreign clientele in the treaty ports, but also went about educating the Chinese, converting them into Christianity, advising the Chinese government on multiple policy matters, and studying Chinese culture and society as a scholarly pursuit. In a certain sense, the vast land and population of the Chinese had become a new frontier, a fertile ground for all kinds of evangelism, profiteering, and social experimentation. As they set about peddling their ambitions and blueprints, the Western-educated Chinese and the Westerner in China became two threads of the same string that pulled the country towards Westernization.

The early twentieth century was also characterized by successive initiatives for the building of a modern Chinese state and the concurrent upsurge of Chinese nationalism. In the aftermath of the turn-of-the-century military defeat and social chaos, the Qing court launched a wide-ranging political and institutional reform in the last decade of its rule. The New Policy Movement, as it is known later, was a top-down initiative for state building and modernization that aimed to copy the success of Meiji Japan. Although it failed ultimately, considerable



achievements were made in several domains: the reorganization of the central government, the redesign of the educational system, and the retraining of the military. The Republic of China, founded in 1912, continued many of the Qing's reform initiatives. The founding of the Republic also spurred the growth of Chinese nationalism, which became especially volatile whenever geopolitical pressure or diplomatic tension was perceived as a threat to national survival. Yet, the Republic soon fell into a crisis caused, in part, by political factionalism and, in part, by its financial deficit. It was not until the late 1920s that a second wave of state building initiatives were brought about by the unification of the country under the Nationalist Party. Endorsing a Leninist party-state ideology for national reconstruction, the Nationalist regime offered new opportunities for knowledge-based practices. Projects of industrialization, university education, public health, and the like created new spheres of practice for expert knowledge. Yet, the state's corporatist control of civic groups also meant that political interference was at the height of its time. This was even more so as the tide of nationalism and the grip of political mobilization intensified, in the 1930s, against Japanese aggression.

This complex configuration of historical circumstances in early twentieth-century China made the two empirical cases an ideal starting place to probe into the theoretical puzzle raised above. China was not under direct colonial rule or foreign occupation before 1937, yet it had been subject to a tremendous amount of normative and geopolitical pressure from the colonial powers of Europe, America, and Japan. The Chinese state had embarked upon an arduous journey of modern state building, but its initiatives had concentrated on some domains rather than on others, thereby opening up new occupational opportunities in some areas more than in others. The Chinese had also accumulated sophisticated bodies of knowledge over centuries of native practices, but they were increasingly being challenged as new generations of students

were exposed to all sorts of Western knowledge and knowledge-based practices. My point of departure, therefore, is that the Chinese professions in the early twentieth century did not arise from the evolution of traditional knowledge practices. Instead, they were a result of the cross-cultural diffusion of professional institutions and the systems of knowledge they practiced. In both law and medicine, this process of voluntary borrowing from the West and from Japan can be observed in four main aspects: professional education, professional associations, licensing and regulation of practitioners, and the recognition of professional knowledge as a scholarly discipline. Yet, despite considerable similarities in their institutional outlook, the social organization of law and medicine also showed significant variations, especially in the power relations between the profession and the state, between the profession and other claimants of legitimate practice, and within the profession itself. Thus, the focus of this dissertation is on a detailed case analysis of the two emergent professions, in order to find out how that historical process of professionalization/diffusion actually took place and what led to the distinctions across the two fields—at least before a great part of China fell into Japanese occupation. Each of the two case studies asks the same set of empirical questions: What were the conditions for diffusion? Who were the leaders and supporters of the diffusion initiative? What role did the state play? How were the institutional models get selected? What deliberate adaptation was made in the first place? How were resources mobilized to build the new professional institutions and staff them? What obstacles and constraints were encountered? What happened to the native practices? How did the diffusion process shape the state-profession relationship? How did it secure, or fail to secure, the monopolistic status of the new profession? And how did it affect the intra-professional hierarchy?

## **1.2 Literature Review**

### Sociology of the Professions

Theoretically, the current research is informed by two bodies of sociological literature: the sociology of the professions and the study of isomorphic diffusion. Yet, for various disciplinary reasons, they have rarely spoken to each other. Social scientists were initially attracted to the study of the professions because they seemed to serve important functions for the organization of an industrial society. Their application of expert knowledge and their gentlemanly character of moral trustworthiness were often extolled, by the professions and the researchers alike, as an essential engine of social progress and an indispensable safeguard of social solidarity (Carr-Saunders and Wilson 1933; Durkheim 1933; Parsons 1939, 1968). In turn, the professions were protected from lay interference and enjoyed as much self-regulation and social respectability as they duly deserved (Goode 1957). Early empirical examinations of the professions focused on identifying the organizational characteristics that distinguish the professions from other occupations. Notably, Greenwood (1957) singled out five such traits: a systematic body of theory, professional authority, sanction of the community, a regulative code of ethics, and a professional culture. A further elaboration of the “trait” approach was the “stage” approach, which looked for a common sequence of markers that indicate the temporal process of an occupation’s professionalization. Wilensky (1964), for instance, found a convergence in the typical process by which most established professions have gone through: first, men begin doing the work full time and stake out a jurisdiction; then the early masters of the technique become concerned about the standard of practice and set up training schools; the teachers and the activists achieve further success of organization through either the transformation of an existing occupational association or the creation of a new one; finally, legal protection of monopoly is

acquired and a formal code of ethics is adopted. While the discussion of the traits and stages of the professions provided a useful list of formal measurements, it was essentially a theory of social evolutionary, where all occupations share the potential for—but only a few have so far reached—a more advanced form (for a less rigid version, see Millerson 1964). Like modernization theories in general, this teleological perspective did not regard such formal features as an institutional norm that invites diffusion and borrowing.

The 1970s witnessed a paradigmatic shift in the sociology of the professions. The functionalist understanding of the professions was replaced by a number of “power” perspectives that paid close attention to the conflicts and competitions both around and within the professions. Among the most important works of this group, Johnson (1972a) differentiated between three types of producer-consumer relationships that arise to reduce the structural uncertainty in the provision of specialized occupational skills: patronage, collegiate, and mediative. The Anglo-American liberal professions are considered the best example of collegiate control, where the producer defines the needs of the consumer and the manner in which these needs are to be satisfied. Combining this Marxist point of view with a Weberian analysis, Larson (1977) regards the process of professionalization as one in which the producers of specialized services seek to constitute and control a market for their expertise. Since marketable expertise is a crucial element in the modern structure of social inequality, professionalization is also a collective pursuit of upward social mobility. In this sense, professionalization is thought to be an attempt to translate one order of scarce resources—special knowledge and skills—into another—social and economic rewards. Another strand of power analysis of the professions was influenced by the Chicago School’s emphasis on the workplace (Hughes 1958). Freidson (1970) highlighted the knowledge base and workplace circumstances of the professions and argued that a profession is

autonomous at least in so far as it enjoys formal control over its work, which is achieved through a monopoly of its technical knowledge and its legitimacy in applying this knowledge to the problems of its clients. Even though the state can greatly affect the social and economic organization of professional practice, the control over the technical core of its work still provides a profession with the last defense of its autonomy. Moreover, to the extent that some occupations have to rely on the knowledge base controlled by other occupations, the former become subordinates in the inter-professional hierarchy. The topic of inter-professional competition and control was further elaborated in Abbott (1988). His main argument is that the professions are defined by the legitimate control of their respective task domains, or “jurisdictions,” which, taken together, might be called a system of professions. As internal or external causes of change affect the system, different professions compete with one another to create, modify, segregate, or abolish task domains so as to invent or reinvent themselves, and challenge others, as the legitimate occupants of these social spaces. The legitimacy of their jurisdictions is achieved through the interaction between the professions and external audiences such as the state, public opinion, or other players in the workplace. Works of the power approach greatly enriched our understanding of the social context of the professions. They provided a critical reflection on the relational aspects of the professions: between the producer and the consumer of specialized knowledge, between occupations and social classes, between the professions and the state, and between the different professions. The problem, however, is that most of these insights have been derived from the nineteenth-century Anglo-American cases. To what extent they can shed similar light on the professions elsewhere in the world is a question that remains to be explored.

It was not until the 1980s that the English-speaking literature turned to look at Continental Europe. As historical case studies and comparative analyses published one after

another (e.g. Rueschemeyer 1973; Geison 1984; Burrage and Torstendahl 1990; Cocks and Jarausch 1990; Jarausch 1990; Torstendahl and Burrage 1990; Jones 1991; McClelland 1991; Malatesta 1995; Krause 1996; Fourcade 2009), sociologists and historians began to recognize the idiosyncrasies of the Anglo-American experience. In the French, German, and other Continental European societies, the professions turned out to be much less “liberal” in terms of their professional autonomy, especially vis-a-vis the state. At the same time, the professionals were socially esteemed often not for their occupational status, but for their membership in the middle and upper-middle class (e.g. Kocka 1990). To account for these European variations, new ideal types were devised and existing analytical frameworks revised. Abbott (1988), for instance, took different national contexts as the diverse sets of external audiences that confront the professions, which led to their distinct forms of jurisdictional competition and professional organization. Collins (1990) distinguished between an Anglo-American and a Continental path for professionalization. A typical Anglo-American route is the formation of a monopolistic practitioner group operating on a market for services. An occupation became a high-status profession by forming itself apart from the state and attempting to use the state merely to legitimize its privilege, monopolization and self-regulation. A typical Continental route, on the other hand, is via the transformation of employment in bureaucratic hierarchies, under the impetus of academic credentialing and the aura of the nobility. Consequently, the driving force for the development of Continental professions was primarily the growth of the state. To this, Krause (1991) added a third ideal type for the professions found in Eastern Europe and Russia; together they form a continuum, which ranges from the essentially private Anglo-American professions to the state-involved professions of Western Europe and the state-employed professions of Eastern Europe. The historical and comparative case studies were a timely

corrective to the Anglo-centrism of previous scholarship. They placed the formation of the professions in their social and historical specificities and pointed out the distinctive roles played by the state in different national contexts. But these ideal types of professional organization were too often understood along national or cultural boundaries; they were not sensitive enough to international dynamics or intra-national variations.

Until recently, the sociology of the professions has scarcely paid any attention to the professions in the non-West. The first such writings emerged as an extension of the work on British professions. In several short pieces, Johnson (1972b, 1982, 1995) considered the significance of colonialism in molding the professions in the ex-colonies of the British empire, where he found a symbiotic relationship between the expansion of colonial administration and the spread of professional associations. Yet, under colonial or post-colonial circumstances, the professions were often dependent upon the patronage of the state and the professional associations were more related to individual career advancement than to occupational advancement. This line of inquiry into the intersection of professionalization and colonialism or post-colonialism was further explored by scholars affiliated with globalization studies, especially the globalization of law, medicine, and accounting. For instance, Halliday et al. (2007, 2012) identified a positive relationship between the active political engagement of the legal professions in the ex-colonies and the process of post-colonial state building—especially their propensity towards political liberalism. Dezalay and Garth (2002, 2010), on the other hand, showed how elite lawyers in post-colonial countries formed a comprador class, exchanging their investment in legal expertise with political power or market capitalization. In the case of Japanese colonialism, Lo's study (2002) traced the changing structural locations of Taiwanese doctors, during and after Japanese occupation, and connected them to the formation of a collective identity that

incorporated both their ethnicity and professionalism. In the field of accounting research, many articles have investigated the struggles in the spread of Anglo-American accounting standards, practices, and organizations into non-Western or non-capitalist economies (Caramanis 1999, 2002; Mennicken 2010; Ramirez 2010), which had often resulted in the reconstruction of an existing local jurisdiction along dominant professional models from the outside—what Fourcade (2006) termed “creative destruction.” This colonialism or globalization perspective on the historical emergence of the professions in the non-West has complicated past understandings of the power relations around and among the professions. The battlefield for the legitimate monopoly of expertise is now seen as fought between indigenous and foreign practitioners as much as between domestic and foreign (or international) regulators. In addition, the rise of professions was examined in close connection with post-colonial state building and nationalism. More research of this kind is needed, especially for regions not under direct colonial rule.

### Institutional Diffusion

Isomorphic diffusion has been a major research topic in sociology and organizational studies. Conceptually, the notion of diffusion refers to the process by which something, such as a disease, an idea, a new technology, or an institutional form spreads among a social system or across social systems. Classical diffusion studies originated from the research on the spread of technical innovations (e.g. Rogers 1962; Coleman et al. 1966; also see Wejnert 2002). Since the 1980s and 1990s, a new branch of diffusion research, influenced by the neo-institutionalism in organizational studies, turned to look at the diffusion of institutional norms and organizational practices (e.g. Tolbert and Zucker 1983; Meyer, Scott, and Strang 1987). This institutionalist line of inquiry is interested in explaining the similarities, or isomorphism, observed in the formal



structures and institutional rules among organizations within a particular environment. Here, diffusion is thought of as one primary mechanism that leads to organizational and institutional convergence. But where organizational institutionalism diverges from other schools of institutionalist analysis (e.g. the institutionalism in economics) is the proposition that diffusion takes place not (or not primarily) because of the efficiency that would be brought about by the new structure or the new practice; rather, it happens because all organizations need to secure social legitimacy and acquire resources and they can better do so when they conform to accepted models of what it means to be a proper organization in a given context (Meyer and Rowan 1977). Even when organizations have difficulty in adapting their actual practice to the generally accepted institutional norms, they tend to at least subscribe ceremonially to formal conformity and “decouple” their daily running from what they look like. The pressure for institutional isomorphism can take many forms; the three most well-studied ideal types of pressure are coercive, which results from political pressure, mimetic, which usually takes the form of imitating the most successful competitor or the best practice, and normative, which happens when the new model has been taken for granted (DiMaggio and Powell 1983). A prolific stream of empirical studies on institutional diffusion and isomorphism followed, which often used large-N, quantitative data and compared adoption rates cross-sectionally, treating diffusion as “epidemiology” (for reviews, see Strang and Soule 1998; Boxenbaum and Jonsson 2017).

Applying this cultural and normative perspective to the study of globalization and cross-national diffusion, organizational institutionalists developed an alternative to realist positions (e.g. modernization theory and world system theory). The gist of the “world society” theory is that globalization is a dual process of the consolidation of the global sphere as an overarching layer of social environment and the diffusion of institutional models to the social units embedded

in that global environment (Meyer et al. 1997; Georg and Drori 2009; for a review, see Höllerer et al. 2017). Such social units cover a wide range of modern institutions, including nations-states, educational systems, science, law, management, and even the individual, all of which have increasingly conformed to the rationalized norms of what constitutes a legitimate social entity of its respective type in a world society. From this rather constructive point of view, both nation-states and the professions are based upon rationalized organizational models originated from the West. As actors in the world society, they are embedded in a much broader environment than their own specific national contexts—that is, they are connected to a transnational community of other nation-states, professional organizations, and international organizations. At the same time, both nation-states and the professions are seen as “institutional carriers” that facilitate the diffusion of the world society model, either passively or actively (Scott 2003; Scott 2008; Czarniawska and Sevón 1996). The influence of the state ranges from coercive regulations to industrial policies to the direct involvement in public management. Meanwhile, the professions and other occupational communities form an allied source of new ideas and practices, sometimes with networks transgressing national boundaries. By stressing the cultural and normative dimensions of globalization, the world society approach points to a different manner through which professional legitimacy can be established, namely the conformity to globalized institutional norms. Yet, so far, world society researchers have not fully explored how the professions were spread to non-Western regions in the first place and who served as the carriers of diffusion when that took place.

A common shortcoming of the diffusion as “epidemiology” paradigm is its insensitivity to historical contingencies and the local adaptation of the model being transferred. Therefore, a small group of institutionalist studies chose to “take history seriously” (Kipping and Üsdiken

2014) and study diffusion as the “encounter with embeddedness” (Djelic 2008). They aim to provide a contextualized understanding of the variations and contingencies in the process of diffusion and appropriation, rather than on the common patterns of diffusion at the population level. Correspondingly, such research typically involves an in-depth, qualitative, and sometimes comparative, case study based upon the collection of a wide variety of primary and secondary data. An iconic study from this group is Westney’s (1987) examination of the transfer of three Western organizational models (the police, the postal service, and the newspaper) to a modernizing Japan during the second half of the nineteenth century. She located the historical contingencies in Japan’s selection of external models (e.g. timing, model availability, and the imbalance of information access) and differentiated between general models and models based upon specific organizations. The peculiarity of the Japanese society, as she found, is that the state played a crucial role as a modernizer and organization builder, especially when it came to emulating specific organizational models. Her study also showed that the transfer process did not end with the initial adoption of the models, since various forces continued to pull the adoption to and away from the original. In another exemplary study, Guillén (1994) compared the spread of three waves of management fashion—scientific management, human relations, and structural analysis of the large firm—in the US, Britain, Germany, and Spain. What he found from this broad comparative institutional study is that none of the processes of diffusion had followed a standard pattern. Instead, the rate and successfulness of adoption were conditioned by the configuration of a list of institutional factors in each national context: the mentality of local elites, the role of professional groups, the nature and extent of state involvement, labor responses and international pressures, in addition to the structural changes of the organization itself. In particular, the management professionals in his data played a mixture of roles: monopoly-

builders, servants of power, or technocrats and elite groups. Finally, Djelic (1998) looked at the introduction of the American model of corporate organization in France, Germany, and Italy after World War II. She identified three crucial conditions for large-scale, cross-national diffusion: a traumatic internal crisis that throws doubts over the legitimacy of previous institutions, asymmetrical geopolitical dependence which turns a foreign model into a superior example, and the cross-national network of actors that bridge the two nations. However, according to her analysis, varying degrees of geopolitical dependence would lead to distinct combinations of the mimetic, coercive, or normative types of transfer mechanism. Meanwhile, groups with the capacity to mobilize resistance, institutional settings that compromise the autonomy of political or administrative actors, and the limited infrastructural power of the state all emerged as factors or obstacles that would reshape the reception of the new model.

### **1.3 Analytical Framework**

The main theoretical objective of the present study is to suggest that the sociology of the professions and the research on institutional diffusion can both benefit from a historical examination of how Western models of professional organization had been adopted in the non-West. Using law and medicine in early twentieth-century China as two empirical cases, I show that the rise of these two Chinese professions was, by and large, a result of institutional diffusion, which I call “imitative professionalization.” Imitative professionalization happens when the formal organizational traits of modern professions—such as licensure and state regulation, professional associations and journals, formal training programs, and the formation of a professional-academic discipline—are being transplanted into a native society. In other words, instead of treating the processes of professionalization as nationally bounded trajectories, this

study draws attention to the cross-border diffusion of professions as organizational models.<sup>1</sup> From the perspective of diffusion studies, this process may be driven by external influences or by internal crises, and it may take any of the coercive, mimetic, or normative forms that sociologists have talked about (DiMaggio and Powell 1983). However, what interests me as the outcomes of diffusion is not how well and how far the original model has been accepted, or whether adaptation and deviation from the original are necessary given the circumstances of the host society. Rather, this study is more concerned about those outcomes that are of interest to the sociology of the professions, namely the resulting power relations for the new professions. In particular, the imitative nature of professionalization can affect but does not necessarily determine the relationship between the state and the new profession, nor does it prescribe the actual jurisdictional control of the latter. To avoid a narrow Anglo-American understanding of the state-profession relationship, I will instead call it the “form of professionalization.” That is, the result of imitative professionalization can take the form of an autonomous profession as in the classic Anglo-American case, or it can be one highly dependent upon the state—or even part of the state—as in the Continental and Eastern European contexts. On the other hand, “jurisdiction” is the particular field of practice over which a professional group has legitimate control or even monopoly. It denotes the power relations between different professions and between different specialties within a profession. In most Anglo-American cases, professional groups have been known to constantly fight over their jurisdictions until some kind of settlement is achieved temporarily (Abbott 1988). But the problem of jurisdiction in imitative professionalization can be very different, since the new profession is often confronted with a

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<sup>1</sup> However, this is not a study of the transnational professions, for the focus here is still on national professions, even though the social dynamics that generated had been cross-national.

long-established native practice that covers more or less the same task area. Their jurisdictional relationship is directly related to the process of diffusion.

The main argument of this study is that imitative professionalization is essentially shaped by two factors: the primary driving force of diffusion and the reaction of preexisting practices. In the two empirical cases, new knowledge practices and new ways of organizing those practices had been transplanted from abroad within a relatively short period of time. This did not happen by itself. Instead, it was spurred and supported by social groups and social processes that rose to be the driving force of diffusion. Two main types of driving forces are differentiated in this study: imitative state building and the expansion of Western professions. Imitative state building happens when external models of government are voluntarily borrowed by an indigenous society as part of its own political and institutional reform. This can be observed especially in the aftermath of a severe political crisis or during times of regime transition, which often leads to the reorganization of government institutions according to successful foreign precedents. Imitative state building becomes a driving force for the diffusion of professional models when part of the state bureaucracy itself is turned into a highly specialist division. In contrast, the expansion of Western professions does not necessarily involve a political or social crisis from the local society. It is the active dissemination of professional practices from their countries of origin to other parts of the world, which is often championed by established professional groups themselves or by their key patrons. What distinguishes the expansion of the professions from the proliferation of capitalist organizations is the tremendous amount of effort spent on the training of local professionals, often according to the standards set in the originating countries. That being said, imitative state building and the expansion of Western professions can sometimes be

brought together, especially when there is extensive cooperation between the government of the host country and the representatives of foreign professions.

At the same time, the outcomes of imitative professionalization are invariably circumscribed by the preexisting conditions of native practices. Since native practices often had their own bodies of knowledge and their own modes of social organization, the effort to transform their field of practice according to modern, Western models would put them into dangerous ground. What was at stake for the indigenous practices was not only their livelihood and clientele but, perhaps more important, the social legitimacy and social status that they had once enjoyed. While it remains an empirical question as to whether any given encounter between a modern profession and a native practice would turn out to a process of gradual assimilation, sharp confrontation, mutual benefaction, or a combination of them, I will draw attention to two organizational dimensions of native practices: existing administrative structure or regulation by the state and the organization of private practitioners. As long as the state has traditionally been involved in the administration or regulation of the native practice, it should at least have some bureaucratic infrastructure for that purpose. In that case, any attempt to transform that particular field of practice would require the cooperation or the readjustment of the existing bureaucracy. On the other hand, traditional practitioners in private practice can be already regulated by the state, or they can be left to themselves and the local society; they can be an organized group (or groups) with an elite leadership, or they can be a highly disintegrated and fragmented mass. Either way, they represented a force outside of the existing bureaucratic infrastructure that will potentially affect, and be affected by, the coming-of-age of a newcomer.

Now, the empirical cases. The early twentieth century was an era of great social, political, and institutional change for China. In both law and medicine, the first thing to be noted is the co-

existence of imitative state building and the expansion of Western professions. China underwent two major waves of state building endeavors due to political crises and regime transition: the New Policy Movement of the late Qing (1905-1911) and the national reconstruction programs under the Nationalist government (1928-1937). The building of a modern judiciary was among the top priorities of the first, while the launch of a state medicine system was an ambitious project from the second period. The reformist state also played an indispensable role in modern education, licensing, and the regulation of professional organizations. Meanwhile, the first decades of the twentieth century also bore witness to an increasing expansion of Western professions in China. This is most obvious in the institutional development of missionary medicine in the country and a whole generation of Chinese physicians trained in that process. Large numbers of Chinese students also went overseas to pursue a modern education. Upon their return, many were eager to apply their newly acquired knowledge in the modernization of their country or in the pursuit of alternative careers outside of an already crowded officialdom. They, too, began to organize themselves after Western or Japanese professional models.

However, the two empirical cases were distinct as to which—imitative state building or professional expansion—had been the primary force for institutional diffusion. In the field of law, the direct expansion of Western legal professions was minimal and had largely been confined to where extraterritorial courts existed. The initiatives for judicial reform had arisen in the wake of the political crisis that had undermined the Qing's imperial rule. Western- and, especially, Japanese-educated students of law were employed by the late-Qing government to assist the transformation of the imperial state into a constitutional monarchy. What came out of this grand state building effort was a modern judicial system largely based upon the Japanese model. The Chinese bar did not emerge until after the first stage of the judicial reform. In



contrast, the late-Qing wave of imitative state building had done little for the institutionalization of modern medicine. The initial steps towards a Chinese medical profession were spearheaded, instead, by Western missionaries and Chinese physicians who either studied under their tutelage or returned from overseas. They made steady progress in the organization of medical associations, the running of medical schools, and the localization of the medical discipline. It was not until the Nationalist period that the leaders of the modern medical profession (and their foreign supporters) seized an opportunity to control the agenda of the government's health policy. From then on, they were able to bring medical expertise into the programs of state building, especially in the institutionalization of public health administration and the introduction of a state medicine system.

What had emerged out of the varied combination of the forces behind institutional diffusion were three forms of professionalization: bureaucratization, autonomous profession, and technocracy. In the Chinese legal field, because the introduction of modern legal practice had been primarily driven by state initiatives for political and bureaucratic reform, the result was the bureaucratization of modern legal expertise and judicial personnel as part of the state. The Chinese lawyers and bar associations, while they were allowed for private practice, had been kept under close state supervision and suffered from an inferior professional status. In contrast, in the field of medicine, what had emerged before the late 1920s was largely an autonomous profession in the classic Anglo-American sense, with the private physicians taking leadership in almost every aspect of their organization and with minimal intervention from the state.<sup>2</sup> By the

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<sup>2</sup> With two qualifications, though. First, the medical associations did not have the licensing authority; second, there had been two main camps of modern-educated physicians in China, with important differences in their professional outlook (see the discussion of Japanese-trained physicians in Chapter Four).

1930s, when the medical modernizers seized control of government health administration and expanded their professional project into programs of state building, a medical technocracy had been formed. What had distinguished the technocratic organization of medicine and public health from the bureaucratization of law was the prioritization of professional service over the proliferation of bureaucratic offices and hierarchies.

**Figure 1** Forms of Professionalization

		Imitative State Building	
		Strong	Weak
Expansion of Western Profession	Strong	Medicine (Nanjing): technocracy	Medicine (late Qing and Beiyang): autonomous profession
	Weak	Law: bureaucratization	

Second, the diffusion and adoption of Western professional models had encountered varied reactions from the native practices, which, in turn, had been rooted in the distinct preexisting conditions of their social organization. In the field of law, late-imperial China already had a considerable bureaucratic infrastructure for judicial administration, which had become especially specialized at the central level. Both elite jurists at the Board of Punishments and legal secretaries hired by local magistrates—the two most important groups of legal experts—had been directly or indirectly dependent upon that official structure. This made them an easy target

for co-optation when judicial and legal reforms were launched by the late-Qing and the early Republican state. In contrast, the decline of imperial medical offices by the time of the Qing was one reason that state intervention over medical affairs had been minimal at the beginning of the twentieth century. Yet, of much greater significance for the transformation of medical practice in China was the fact that, by late imperial times, elite physicians of native medicine had been organized into various peer groups and have become an active participant in the local society. This made them an integral part of the local elite networks that had grown outside of the purview of the imperial state and prepared them for collective resistance to the upcoming incursions of the modern physicians. In other words, the native physicians in private practice were in a much better position than the state-dependent legal experts to defend their own social legitimacy.

**Figure 2** Types of Reaction from Traditional Practices

		Preexisting Bureaucratic Infrastructure	
		Strong	Weak
Organization of Private Practice	Strong		Native Chinese Medicine: resistance
	Weak	Traditional Chinese Law: co-optation	

Finally, what had come out of these varied configurations of the driving forces for institutional diffusion and the reactions from preexisting social organizations was the disparity in the

jurisdictional relations between the modern professions and the native practices. Here, what is especially worth mentioning is the fact that the introduction of both modern law and modern medicine to China had benefited from a high level of institutional support, no matter that support came primarily from imitative state building or from the expansion of Western professions. This makes the two empirical cases of this study somewhat unique, since many, if not most, other professions may not be able to do so.<sup>3</sup> Thus, given the strong overall support for imitative professionalization on the one hand and the distinct reactions from the native practices on the other, the resultant jurisdictional relations between the modern profession and the native practice had indeed diverged. In law, the traditional jurists co-opted by the late-Qing judicial reform actually became an important group for a transitional period before students of modern legal education gained sufficient experience in judicial work. By the 1930s, even though the magistrate's courts were still prevalent outside of the major urban areas, their reorganization and eventual replacement by the modern courts (and modern legal practitioners) was fairly predictable. In other words, the modern judicial and legal profession had enjoyed a complete jurisdiction over their practice. In contrast, during the late 1920s and early 1930s, physicians of traditional Chinese medicine mounted a national campaign to defend the legitimacy of their practice and secure themselves a legal status under the Nationalist regime. The success of the campaign, as well as the public and political support they were able to gather, resulted in a divided jurisdiction between the modern medical profession and the native Chinese-style medicine, each with its own body of knowledge and its own system of regulation. In fact, in the

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<sup>3</sup> I will briefly discuss two such cases in the same period of Chinese history in the concluding chapter, namely Chinese accounting and Chinese architecture.

aftermath of that jurisdictional confrontation, the native physician also began to adopt the formal institutions of a modern profession, which enhanced their social legitimacy.

**Figure 3** Jurisdictional Control

		Overall Driving Force for Professionalization	
		Strong	Weak
Resistance from Traditional Practice	Strong	Medicine: divided jurisdiction	
	Weak	Law: complete jurisdiction	

### 1.4 Methodology

This study is based upon a combination of primary and secondary sources. The general research strategy is that I first start by familiarizing myself with the “standard” secondary literature on the individual professions that had emerged in early twentieth-century China.<sup>4</sup> From there, I get a few hints as to what are the key professional, educational, and regulatory institutions that had been set up in the process of that historical development. I then look for more in-depth studies of the organization of those institutions, of the people that had populated them, and of the social

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<sup>4</sup> However, sometimes the “standard” account is quite recent publication or simply does not exist. For instance, the first general survey of public health in late-Qing and early-Republican China is Bu (2017), and the first comprehensive history of modern Chinese architecture is Lai et al. (2016). The “standard” account of the history of modern medical education in China is yet to be written.

conditions that had both prepared for and circumscribed their existence. As I peruse this body of secondary literature, I also get a basic idea of what primary data are currently available, both in published forms and in unpublished archives. When my empirical questions are not adequately addressed by existing research, or when I have doubts over the credibility of the secondary sources, I always make sure that I at least consult the primary sources that have already been published. This is made more feasible by the fact that many of these materials have been digitized over the years and can now be read online. While I did pay several visits to the libraries and archives in both Shanghai and Beijing, the main purpose of the study is not to uncover a bulk of new data and tell some fascinating new story. Rather, I see my research as a reconsideration of the “received wisdom” and, for that purpose, primary sources are mainly used to verify what has already been said or to provide additional information on what is missing in extant literature.

One potential problem with the secondary literature is that many are written by non-historians. Especially, most existing treatises on modern law and modern medicine in China are written by Chinese scholars in law and medicine. They often subscribe to a teleological way of historical thinking in which the prevail of modern law, the realization of judicial independence, and the continued progress of scientific medicine are taken for granted as the goals of modernization. Moreover, the aim of such historiography is to establish an authoritative account of the history of the field, of how it has made considerable progress despite various difficulties and rivalries, thereby further legitimatizing the cultural, professional, and social status of that practice. In that sense, many “standard” accounts of legal and medical histories are themselves participants in an ongoing process through which law and medicine have tried to consolidate their social legitimacy. This is best seen where such legitimacy has not been fully established—for instance, in traditional Chinese medicine and in the practice of modern law under party

dominance. Finally, studies by non-historians are sometimes susceptible to an uncritical use of historical data. A common mistake is the assumption that what had been said by eminent historical figures or by many contemporary observers must have some truth in it. Therefore, the condemnation of illegitimate or unqualified practitioners as seen in the primary sources is often taken, by the non-historians, as evidence of the *actual* chaos in the practice of the field. The social and political contexts that gave rise to the discourse of professional qualification have been left unexamined.

The other problem with the secondary sources is that the empirical studies of law and medicine in China are quite new fields for historians, which is especially so for medicine. What this means is that there sometimes exists a gap between an older generation of historians whose work has largely been concerned with the analysis of classical texts and official policies without examining the actual implementation of such textual knowledge or policies and a much younger generation of scholars and PhD students who have delved directly into individual case studies without bothering to check the bigger picture first (in any case, there is always some older version of the bigger picture to be used as a strawman for the individual case studies to argue against). Therefore, with a few important exceptions, little empirical work has been done on the part of the historians to verify the actual numbers of the modern courts, the modern hospitals, the lawyers and the physicians, the professional training programs, and other basic statistical information about the Chinese professions and professionals.

On the other hand, what has been of tremendous usefulness to the research of this study is a small set of historical studies that have already taken into consideration some of the sociological perspectives on the professions. A pioneering English-language book in this regard is Xu (2001), which compares several modern professions in Republican Shanghai, especially

with regard to their commonalities in state-profession relations. This state-society relationship framework can also be found in the work of several historians from, or trained at, the Central China Normal University, especially Zhu and Wei (2009). Their whole research agenda is an outgrowth of an earlier interest in the merchant societies and other types of civic groups in the late Qing and Republican periods. Finally, two recent collections in English, Alford et al. (2011) and Culp et al. (2016), have offered an even broader set of surveys of different modern professions and imported knowledge disciplines in early twentieth-century China as well as in the post-1978 reform era. I have not only relied upon some of their research findings as sources, but also benefited a lot from their insightful discussions on such matters as the role of the state, the complex ties between foreign and native professions, and the significance of the Chinese cases for the diffusion of knowledge or for the professions in the West.

In terms of primary sources, the most consulted type in this study is the professional journals, which provide firsthand information on the organization and activities of the professional associations and societies. They cover such items as the records of general meetings, the debates over professional and disciplinary issues, the changes in their internal organization—and sometimes with full membership lists. Occasionally, contributors presented their own surveys of the entire field or the conditions of professional training. Professional journals sometimes also served as a medium to promote the public agenda of the professions, to broadcast their responses to government policies, and to facilitate their interaction with other professional groups both domestic and international.

A second type of primary sources used in this study are the official yearbooks, government bulletins and gazettes, statistical reports, review articles by senior-level administrators, and published compendiums of archival materials. In contrast to the professional



journals, these sources typically provide a regulator's or a third party's perspective on the organization of the Chinese professions. Yet, the most important part of such sources lies in the statistical information they contain: the number, size, and distribution of training programs, the number of licenses granted annually by the government, the actual conditions of lower-level courts and public health units, and so on. The availability of such statistical data is, in itself, a result of the gradual institutionalization of social surveys and the rationalization of government administration in early twentieth-century China (Lam 2011). Their quality is not always guaranteed. Many of the statistical reports are incomplete (e.g. due to the divided nature of the political condition) and the standards used by different local agencies can be quite inconsistent. Therefore, the best one can do with them is to compare different sources and consolidate different data sets into a better estimate of the bigger picture. In addition, they should always be read with questions about what are potentially missing.

## **1.5 Outline of Chapters**

In the next chapter, I examine the social organization of preexisting native practices before the end of the nineteenth century. While preexisting conditions did not determine how native practices would respond to the advent of modern professions, they set the structural limits that their reactions can take and provide the organizational landscape that the new practices would encounter once they set out to transform the whole field according to modern, professional norms. In particular, my discussion will center on two organizational facets of the native practices: institutional infrastructure and internal stratification. Institutional infrastructure includes methods of training, ways of peer organization, and relevant government offices. Internal stratification is manifested through the status hierarchy of different practitioner groups,

their control over the knowledge being practiced and reproduced, and their varying relationship to the imperial government. The elite stratum of native practitioners is worth special attention since they were in a better position to take advantage of their status and the institutional resources at their disposal when modern practices were making inroad into their domain of expertise.

The rise of modern law as a profession in China is the subject of Chapter Three. It will begin with an overview of the turn-of-the-century political situation that gave rise to the New Policy Movement. This emergent political imperative, combined with the ascendance of geopolitical influence from Japan, led to a wholesale bureaucratic reorganization of the Qing government, which saw the birth of a Japanese-style court system and, as will be relevant to the chapters below, the sanitary police. On the institutionalization of the new court system and the preparation for its judicial personnel, I look at the organization and work of several central-level agencies. It was through them that a Japanese model was selected and implemented from above. The furtherance of the judicial reform into the provincial and local levels will be traced, which covers a period spanning from the late Qing to the Beijing government and finally to the Nanjing decade. Legal education will be discussed next and it will be shown that, until the 1930s, it was characterized by an overgrowth of substandard law programs and the underdevelopment of modern law as a scholarly discipline. This had consequences both for the employment of law graduates and for the authority of the law faculties on judicial and legal matters. The final part of the chapter will be focused on the Chinese bar, which emerged later in the judicial reform. Attention will be drawn to the bar's formal organization, its limited autonomy vis-a-vis the judicial authorities, and a few instances where it played an active role, professionally or politically.

In Chapters Four and Five, the introduction, growth, and professionalization of modern medicine will be examined in detail. The two chapters each cover one stage of that process: Chapter Four deals with the period from the late nineteenth century until the mid-1920s, while Chapter Five reviews further development during the Nanjing decade (1928-1937). For each period, my analysis will be organized around four main types of medical institutions: medical education, physician associations, medical regulation, and health administration. Since medical professionalization in China had grown out of the pioneering work of private practitioners, Chapter Four will devote considerable space to the discussion of professional associations and medical education, especially those under missionary control. They provided an Anglo-American professional model that Chinese physicians of modern medicine would follow. Meanwhile, the late Qing and early Republican health administration, though still in embryo form, had been shaped by administrative models from Japan. Chapter Five will pay attention to how medical leaders from private practice had seized an opportunity to control the Nanjing government's central health administration and, from there, to launch an ambitious state building project in public health administration and medical professionalization. It will be shown that the rise of public health can be regarded as a second wave of cross-border diffusion in which the practices and organization of state medicine were brought to China through professional and institutional ties. And once medical modernizers found their way into public office, they began to expand their jurisdiction to cover both curative and preventive medicine. However, the story of medicine is complicated by the fact that modern medicine (otherwise referred to in this study as Western medicine) and traditional Chinese medicine (or, Chinese medicine) had gone through quite different trajectories. Therefore, the changing social organization of Chinese medicine would be examined separately. In Chapter Four, I devote a section to how an occupation community and

identity for Chinese medicine had been on the rise during the first two decades of the twentieth century. In Chapter Five, I consider how that ultimately led to a successful social movement to defend Chinese medicine during the early 1930s.

The concluding chapter is more than a summary of research findings and a list of further directions for study. There I have included four mini case analyses: two other professions from China of the same period, accounting and architecture, and two additional cases from late nineteenth-century Japan, law and medicine. By bringing accounting and architecture into the discussion, I hope to show how law and medicine were, as mentioned already, unique in their connection to imitative state building and professional expansion. In comparison, accounting and architecture had gone through a slower process of institutionalization, with their respective jurisdiction less established than that of law or medicine. On the other hand, if the Chinese legal profession is compared to its Japanese counterpart, it will reveal potential ways in which a similar top-down state building approach can vary, especially in terms of the professional power for the bar. And when medical professionalization in China is compared with its Japanese precedent, it is immediately seen that the institutional survival of traditional Chinese medicine is more than a triumph of the native. In a way, the four additional cases provide glimpses of insight into what would happen otherwise from imitative professionalization.

## Chapter 2 Historical Background

For both law and medicine, China had a long tradition, or traditions, of native practice before the advent of Western models. These traditional practices and the social ground in which they had been embedded would define, or at least circumscribe, the social space which modern law and modern medicine—and modern organizations of law and medicine—were to occupy. In this chapter, I offer a background survey of Chinese law and Chinese medicine as they had been practiced and organized in late imperial times. While a lot has been written on these two fields by historians, my review will be highly selective. From a sociological perspective, I am less interested in the truth value of their knowledge claims or the efficacy of their practical application. What concerns me most are those social and institutional conditions that would potentially affect the encounter between the old and the new practices, turning it into a process of assimilation, replacement, coexistence, or otherwise. In the process of surveying this huge body of literature, I have narrowed down those preexisting conditions into two categories: the institutions that were related to the social reproduction or the society legitimacy of legal and medical work, and the major types of traditional practitioners whose livelihood and social status were depended upon such work.

For the first, the institutions of judicial administration and medical office will be examined, so too were the methods of legal and medical training available during the late imperial times. The judicial and medical arms of the Qing state bureaucracy were particularly relevant to the purpose of this study, since they constituted an important form of preexisting infrastructure which the process of modern state building could potentially assimilate. Moreover, the Qing judicial and medical administration also defined the official stance towards the social

legitimacy of legal or medical practice while, at the same time, employed the service of a carefully chosen group of technical experts. Once that official administrative framework is to be changed from above, what would happen to such legitimacy and these state-employed experts would be a question of interest. On the other hand, legal and medical training was an essential aspect of the social reproduction of these practices and their bodies of knowledge. As will be discussed shortly, before the arrival of modern professions from the West, such training had been done in a rather informal and unstandardized manner in China. To change the social organization of law and medicine according to professional norms therefore means to change their system of social reproduction, that is why they matter for the discussion of the following chapters.

For the second category, it will be found that, during late imperial China, both legal and medical practice can be broken down into three main groups of practitioners: those employed by the state as mentioned above, an educated or the elite stratum of practitioners outside the direct oversight of the state, and the more plebian types of practitioners who largely catered to a lower-class clientele and suffered from a dubious, if not illegal, status. I am particularly interested in the social organization of the first two groups, for two reasons. On the one hand, to the extent that these elite practitioners of traditional law and native medicine had been highly specialized by the nineteenth century, their livelihood, social status, and professional authority would be the most at stake in view of the professionalization agenda brought about by students of modern law and modern medicine. This is not to say they were predestined to fight for their practice; in fact, they could be the first group that the new system of professional organization needed to co-opt, if only to mitigate the short supply of manpower and make the transition easier. On the other hand, precisely because of their professional authority and higher social status, the elite jurists and eminent physicians were in a better position to mobilize social and institutional support for their

practice. Consequently, I will look at the leadership and peer organization of these elite practitioners to see if they had formed any occupational communities, status groups, or local networks that would be a potential source of social support.

## **2.1 Traditional Chinese Practices of Law**

To put it in the broadest terms, the field of law in late imperial China had been shaped by three structural and institutional forces. First, the judicial administration of the Qing had developed into a multi-level trial system with a highly formalized set of procedural rules (for a general discussion, see Bodde and Morris 1967; Zhen 1988). Second, the popular demand for judicial regulation and legal service had risen steadily as a result of population growth and economic development (for a review of the scholarship on the litigiousness of the Chinese society, see Huang 2018; for a discussion of the impact of economic development, see Chiu 2009). Finally, the Qing's state bureaucracy had not been expanded or optimized accordingly to deal with that mounting demand for its administrative capacity. Except at the top level of the judicial system, judicial work had not been a specialized line of task for the government; rather, it was performed by the same magistrates that were responsible for all the other administrative duties of their respective jurisdictions. Moreover, the discrepancy between the size of the officialdom and the number of lower-level civil examination degree holders had led to a huge oversupply of educated Chinese who were not successful in climbing the ladders of the officialdom (for the standard reference on this topic, see Chang 1955; Ho 1962). Private legal practice of law therefore emerged as one of the alternative paths to upward social mobility. They took both a semi-legitimate form and one that had been explicitly prohibited by the state.

In this section, I first provide a brief overview of the judicial system of the Qing. It is followed by a more in-depth analysis of the three main categories of legal practitioners: jurists at the Board of Punishments, legal secretaries working as personal staff for the magistrates, and litigation masters offering private legal counsel to the commoners. The discussion will cover their function and role in relation to the judicial system, their training as legal experts, and various aspects of the social organization of their practice. The main finding is that, by the nineteenth century, there had already been a substantial community of legal practitioners whose expertise was based upon a shared body of knowledge in the Qing Code and upon the direct or indirect employment of the judicial system. The Board of Punishments at the central level of the government and the elite jurists whose professional authority and specialist careers it had helped establish were the institutional pillars for the practice of traditional Qing law.

### **2.1.1 The Qing's Judicial System**

Except at the central level, the Qing judicial system was not a separate or independent division of the state bureaucracy. Justice was simply one of the many administrative responsibilities that fell upon the Qing magistrates at the county (县), prefectural (府), and provincial (省) levels,<sup>1</sup> until it required the attention of a more specialized group of judicial authorities in Beijing.<sup>2</sup> Under most circumstances, the county magistrate's office was the default court of first instance. All cases, both of criminal and civil nature, were initially investigated and heard by the county magistrate, who was authorized to adjudicate cases of minor punishment (usually involving sentences of no

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<sup>1</sup> By the late nineteenth century, the Qing had approximately 1,500 administrative units at the county/district/department level, nearly 180 prefectures, and 18 provinces (Ch'u 1962:2-3).

<sup>2</sup> The following summary of the operation of the Qing's trial system is based upon Ch'u (1962), Bodde and Morris (1967), Na (1982), Zhen (1988), and Na (1992).



more than bamboozing) and of a purely civil nature. For all the rest of the cases, the magistrate's duty was to detain the suspect if necessary, conduct the investigation as thoroughly as possible, write down his provisional opinion, and report the case to the prefecture. The prefectural magistrate would review the case and return it to the county level if he found something objectionable. If, however, he found no fault with the handling, then the case would be in turn submitted to the judicial commissioner (按察使) in the provincial capital. The judicial commissioner would conduct another round of hearing in which the defendants and witnesses were summoned to the provincial court. However, for the ruling of the judicial commissioner to be effective, it should be ratified by the provincial governor or governor-general. The latter was the highest administrative and judicial official at the provincial level, with the authority to decide cases that did not involve homicide and for which punishment was not heavier than penal servitude. Cases of a more serious nature were submitted to the Board of Punishments (刑部) in Beijing, which held the authority to decide all but the capital cases. Capital punishments would have to undergo a further step of joint review by the Board of Punishments, the Court of Judicial Revision (大理院), and the Censorate (都察院), which together known as the Three High Courts (三法司). The final authority of determining cases of an extremely severe nature and of those in which any Qing official was being charged against lied in the hands of the emperor himself.

As it can be seen from this extremely concise summary, the adjudication of judicial cases in the Qing had relied heavily upon its existing administrative structure. The higher the administrative position of the magistrate, the more judicial authority he was entrusted with, especially in terms of the punishment that could be decided at his discretion. For cases that went beyond his level of judicial authority, the review and ratification from a higher-level magistrate would be required, until the most severe cases reached the emperor himself. Once a case had

been started on this upward course, its further progress was almost automatic. Yet not all officials who had the authority to deal with judicial matters were judicial experts. The county magistrates and the prefectural magistrates were largely dependent upon their personal staff for the handling of these cases (more on the legal secretaries below). This was also true for most of the judicial commissioners and governors or governors-general at the provincial level. The only judicial experts in the Qing state bureaucracy were to be found in the Board of Punishments, to which I now turn.

### **2.1.2 Jurists at the Board of Punishments**

The Board of Punishments was one of the six main divisions of the Qing's central government (Bodde and Morris 1967:122-34). It was headed by a six-member directorate (堂官), below which were fourteen to eighteen supervisory departments, each headed by six departmental officers (司官). When a judicial case was referred to the Board, it would first be sent to one of the supervisory departments for consideration. The department would then submit a formal memorandum of its opinion to the directorate. If the decision was endorsed by the latter, the memorandum would be returned to the department and, on its basis, the department would prepare a formal reply to the originating province for the punishment, if any, to be carried out. However, if the directorate disagreed with the opinion of the department, it would make its own statement and send it along with the departmental memorandum to the Board's Office of Codification (律例馆). That office alone would be responsible for making the final adjudication over most such cases. Yet, cases involving capital punishments, as mentioned above, were subject to the joint deliberation of the Three High Courts and required the ultimate approval of the emperor if any death penalty was determined. Whenever a capital punishment was called for

a deferred execution, a further round of review—the autumn assizes and the court assizes—would be involved. Since the reign of Kangxi, an Office of Autumn Assizes (秋审处) had been set up under the Board of Punishments for that purpose.

It has been noted by legal historians that, during the course of the Qing, the jurisdiction of other judicial authorities at the central and local levels had been gradually reduced, while the Board of Punishments had increasingly become *the* central agency for the state's judicial function (Zheng 2015). In that regard, both the Office of Codification and the Office of Autumn Assizes had contributed to the concentration of judicial authority (Bourgon 2012). Besides providing its opinion on particularly difficult cases, the Office of Codification's main duty was to carefully pick from the accumulated body of completed cases and imperial edicts those with particular legal significance and incorporate them as new sub-statutes into the Qing Code. Such code revision was done every five years on a minor scale and every ten years on a larger scale, thus making the office the chief authority on Qing legal knowledge. Meanwhile, the Office of Autumn Assizes had been headed by the most experienced jurists selected from the departmental officers. It acquired a special status due to the significance of the autumn assizes in the Qing judicial system. The autumn assizes typically involved the final adjudication of the most complex capital cases and were partaken by the emperor in person, which often became the most high-profile annual event organized by the Qing judiciary.

In the meantime, the concentration of judicial authority in the Board of Punishments had happened in tandem with an increasingly specialist career for its jurists. Before the reign of Yongzheng (1722-1735), entry-level departmental officers at the Board were often selected from magistrates with extensive administrative experience elsewhere (Zheng 2015). The Yongzheng court, however, opened the candidacy for entry-level departmental officers to newly minted

*jinshi* (进士) and *shujishi* (庶吉士) degree holders. In other words, prior administrative experience was no longer a prerequisite: once the candidates finished a three-year probation period, they would be evaluated and, if qualified, wait-listed for departmental positions. For those who were appointed to the Board in this way, this offered them a launching pad to a potential judicial career right after acquiring the highest level of civil examination degrees, without having to spend much of their early years rotating among various central-level agencies or between central and local offices. Another change occurred in the method of promotion. When a vacancy occurred at the departmental level, the nomination for that position (题缺) had increasingly been left to the directorate of the Board, rather than being decided by the Board of Personnel (选缺). In this way, more emphasis had been put on the professional competence of the nominee, instead of his overall years of past experience (Zheng 2015). Promotion to the Directorate, or board-level positions, had also shifted away from political to professional appointments. A comparison between the Board directors from the mid-Qing and those from the late-Qing has found a significant rise in the proportion of those who had prior judicial experience, of those who had been promoted from the departmental positions, as well as in the length of their tenure as Board directors (Zheng 2015). The last three managing presidents (当家堂官) of the Board, Xue Yunsheng (薛允升), Zhao Shuqiao (赵舒翘), and Shen Jiaben (沈家本), for instance, had all started their career from the rank and file of the Board.

As judicial careers in the Board of Punishments became more extended and specialized, jurists got more opportunities for on-the-job training and legal studies. In fact, the Qing did not have a formal training system for its judicial officers (Chang 1994). Except for those who had studied law on themselves, most jurists had started out as non-specialists and only acquired their judicial training through a prolonged period of probation, candidacy, and junior-level positions

(Du 2010). Unlike other officials of a similar rank, jurists at the Board were solely devoted to the examination of judicial cases, without the distraction of other administrative duties (Zheng 2015). Since they had to base their judicial opinions upon a wide array of existing statutes, sub-statutes, and precedents, the Board's workplace culture was one centered around reading, self-teaching, and peer discussion (Du 2010). As their judicial experiences accumulated, jurists also authored and edited some of the Qing's best legal writings. The best of their works included, to name just a few, *A Bodkin to Unravel the Code* (读律佩觿), *General Examination of the Qing Code* (大清律例通考), and *Doubts from Studying the Sub-statutes* (读例存疑).

### **2.1.3 Private Legal Secretaries**

The second type of legal experts in late imperial China were the legal secretaries (刑名幕友 or 刑名师爷) on the private staff of the magistrates. As personal assistants to the county, prefectural, and provincial-level officials, they assisted their masters in the handling of their judicial duties. In fact, hiring a private staff had been a popular practice in China at least since the fourteenth century (Chen 2012:5-9). It had essentially arisen out of the discrepancy between the multiple administrative roles that a magistrate needed to fulfill concurrently and the lack of a permanent staff for his office. Its wide popularity was also due to the mismatch between the generalist education that most Chinese magistrates had been brought up with and the increasingly technical nature of the tasks assigned to their office (Ch'u 1962:93-96). The situation could be most demanding for the average county magistrate: inexperienced and without any subordinate officials, he nevertheless had to manage all the administrative tasks allocated to his office, including being the court of first instance. Therefore, hiring a capable team of private

secretaries was often the first thing that a new country magistrate had to do before he could officially assume his position.

Private secretaries were divided into different lines of works (Ch'u 1962:97-107; Guo 1996:85-119), but the legal secretary and the fiscal secretary were often the most important ones—for some small offices, they could be the only private secretaries employed or they could even be the same person (Guo 1996:118). Both legal and fiscal secretaries had to be knowledgeable about the Qing law: the former usually dealt with most criminal cases and those civil lawsuits over marriage or inheritance, while the latter typically managed legal disputes over land, property, contracts, and debts, in addition to handling fiscal matters for the magistrate (Gao 2000:36-40). Therefore, the legal and fiscal secretaries were the *de facto* judicial administrators of the magistrate's office. They were treated with respect and politeness and were usually regarded as friends and guests of the host official, who offered financial patronage in return for their technical expertise. Official records from the provinces of Shangdong and Fujian showed that, in any given year during the 1770s, an average of 1.86 to 1.88 legal or fiscal secretaries were employed by each office at the county, prefectural, or provincial level (Chen 2012). Although the representativeness of the two provinces and the particular period the data covered is open to discussion, this at least gives a rough estimation for 3,000 legal and fiscal secretaries working for the nearly 1,650 local administrators at any given year in eighteenth- and nineteenth-century China (Chen 2012).

For many practitioners, private secretaryship provided a second-best career when they did not succeed in the civil examination. Most private secretaries already had a classical education before they embarked on this alternative path. But to become competent in law or fiscal matters, they would have to acquire a more specialized type of training, often called secretarial

apprenticeship (习幕). Generally, such apprenticeship was not open to the public and almost never take place in formal educational institutions. Like other types of esoteric craft learning in traditional China, it was carried out through an exclusive master-pupil relationship between an experienced private secretary and his carefully chosen disciple: between father and son, elder brother and younger brother, within the larger family, or through some close native-place ties (Miao 1967). A secretarial apprenticeship usually took place at the magistrate's office for which the master worked and lasted a minimum of three years. That would be a period of intensive study covering both book learning and practical training (Miao 1967; Guo 1996:120-48; Chen 2012:10-17). The body of knowledge needed to be covered was perhaps no smaller than that of an average jurist, typically including the statutes (律) and sub-statutes (例) of the Qing Code, the compilations of prior cases (案), administrative handbooks, and often the secret manuscripts (秘本) written by other well-known secretaries.

Once his training was completed, the would-be legal secretary was expected to move onto a career of his own. Since there were no formal institutions for the recruitment of private secretaries, employment opportunities were often sought through the recommendation of the master or other types of informal channels. The typical career of a private legal secretary involved switching from one host official to another, or sometimes following the official to his new office if the latter decided to keep his personal staff with him (Guo 1996:149-65). The impact of native-place networks was especially significant for the social distribution of legal secretaries. It has been well recognized that a large percentage of legal secretaries during the Ming and the Qing had come from Shaoxing (绍兴) and other prefectures in Zhejiang, hence the popular designation "Shaoxing Shiye" (绍兴师爷). The aforementioned study on private

secretaries in Shandong and Fujian (Chen 2012:23) suggests that the natives of Zhejiang province had accounted for as much as 80 percent of all the legal secretaries found in those two provinces. Despite the prevalence of native-place networks, however, there had not been any formal institutions that represented the collective interests of the group.<sup>3</sup>

Finally, as judicial and administrative specialists working outside of the formal state bureaucracy, private legal secretaries had occupied a peculiar social status. Since most of them had at least passed a lower-level civil examination, they were distinguished from the commoners both by their degree titles and by their close affinity with the magistrates. Yet, private secretaries were not directly appointed by the government and were excluded from promotions within the state bureaucracy, unless they got a formal appointment by passing a higher-level civil examination. In terms of state regulation, the Qing had wavered uneasily between implicit recognition and deep distrust of these administrative specialists. To the extent that the court was concerned with potential abuses or corruption that would bring harm to its rule, it had always tried to keep an eye on private legal secretaryship. Various imperial edicts were announced to co-opt (e.g. asking officials to recommend able secretaries for government work), regulate (e.g. requiring officials to report the number and personal profiles of their private secretaries), or criminalize (e.g. bringing charges against those who were suspects of malpractice) the private secretaries (Chen 2015). However, these edicts did not seem to have been strictly followed by local officials and private secretaries largely remained outside of the state's direct supervision (Ch'u 1962:113-15).

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<sup>3</sup> Cole (1986) offers an in-depth look at the Shaoxing literati class, known for their work as private secretaries and government clerks.



#### **2.1.4 Litigation Masters**

The third type of legal experts in late imperial China were the litigation masters (讼师) who assisted people in filing or defending a lawsuit, or in bringing up a case to a court of appeal. The popular demand for private legal service is thought to be closely related to several institutional features of the Qing judicial system. For one, while trial procedures had mostly been based upon written documents, few commoners were literate, let alone knowledgeable about trial procedures (Fuma 1993:401). Therefore, those good at preparing trial documents or familiar with the operation of the judicial system would find it profitable to sell their knowledge and act as an agent for the litigant. It has also been pointed out that, with the intensification of official regulations on judicial review, ratification, and ruling deadlines, the court system during the Qing had placed enormous additional pressure on local officials who were expected to handle judicial cases appropriately (Chiu 2009). Consequently, litigation masters who were able to maneuver that top-down pressure would find it possible to influence the ruling of the court to the advantage of their clients. Although litigation masters were not allowed to appear before the magistrate's court, their service usually included plaint writing (often in collaboration with an officially recognized scrivener), devising strategies for trial performance, dealing with clerks and sub-officials of the court (sometimes with bribes), and, if necessary, filing the case to a higher level of court for appeal (Fuma 1993:402-12).

However, private legal service such as that provided by the litigation masters had been consistently outlawed by the Qing state. Litigation masters were often accused of profiteering from lawsuits, of morally corrupting the local society by contriving fake cases, of obstructing local administration by overburdening the magistrate's office, and of bribing the clerks and sub-officials. At least part of that official animosity had come from the inefficiency of the state

bureaucracy to deal with all judicial cases that had been put forward by the populace (Fuma 1993). In fact, the growth of population and economic development in late imperial China had not been matched with an increase in the government's administrative capacity, either through the expansion of the state bureaucracy (as in the number of official positions) or through the administrative division of the magistrate's office (as in the size and specialization of his staff). Instead of making the judicial system more accessible, the government resorted to normative pressure and punitive discipline to suppress the growing demand for private legal service. The normative ideal of a good society advocated by the state was one of moral self-discipline and social harmony, with as few lawsuits as possible (无讼/息讼). When that ideal was overshadowed by an overwhelming number of judicial cases brought to the magistrate's court, any attempt to assist bringing up lawsuits was deemed immoral, if not rebellious, behavior (Chiu 2008).

The official prohibition and stigmatization of litigation masters had made them the least studied group of legal practitioners in late-imperial China. So far, little has been known about their training, social organization, or demographic distribution. Their legal knowledge, as seen from the several secret handbooks they had written, was largely confined to practical advice on plaint writing and the procedures of the court, without any serious study of the extensive body of Qing codes and case records (Fuma 1996). There has also been very weak evidence that the litigation masters had organized themselves into any occupational communities. In fact, not all litigation masters were semiprofessionals who had engaged for an extended period of time in writing plaints and working out legal strategies for others, many had only incidentally offered legal assistance because they were better educated or knew better about the government—and therefore were not self-identified as litigation masters (Macauley 1998:105-15). What extant

literature seems to suggest is that there had often been a blurred boundary between lower-level degree holders who were not successful in their official careers, private legal secretaries who were in between their employments, and litigation masters of one type or another (Chiu 2004; Chen 2015). In other words, litigation masters and legal secretaries can be two sides of the same coin: the oversupply of lower-level degree holders had found its way to meet the demand, on the one hand, for judicial specialists assisting the magistrate's court and, on the other, for private legal counsel assisting the litigants, plaintiff or the defendant. Despite their illegal or semi-legal status, there had been little evidence that the prevalence of private legal practice had been significantly affected by repeated government attempts to abolish it. What the litigation masters had created was a loosely defined field of practice that was both dependent upon the Qing judicial system and, at the same time, remained outside the control of it. For most litigation masters, informal networks and personal connections were perhaps as significant as their plaintiff writing skills. Their practice sometimes involved the cooperation between those at the place of a lower-level court and those near a higher-level court (Lin 2009), or the shared interests between litigation masters and innkeepers who provided lodging to their clients (Hu 2010), or a close working relationship with scribes and clerks of the court (Fuma 1993:407-08; Macauley 1998:76). It has also been found that they were regularly employed by business communities to protect their commercial interests (Chiu 2009:41-47) or by other members of the local elite to resist tax extraction (Macauley 1998:146-94).

## **2.2 Traditional Chinese Practices of Medicine**

As a field of specialization, medicine, like law, was not an essential part of the education for the average Chinese scholar-official. Medical expertise had been traditionally regarded as a technical

craft, and physicians as artisans. Emperors needed physicians to attend to their own health problems, so did the high-ranking officials and the imperial army. Physicians were also called for during epidemic outbreaks and natural disasters. However, what had distinguished medical administration from judicial administration is the constant decline of medical offices and the withdrawal of state support for other medical institutions during the Ming and the Qing. In other words, medicine had ceased to be part of the Chinese state bureaucracy, except for a small group of palace physicians. On the other hand, medical developments and medical communities thrived in the private sphere and among the local societies. The most important trend in the social organization of medicine during late imperial times was the scholarization of medicine, that is, the gradual convergence between the circles of Confucian scholars and those of eminent physicians, between the cultural and moral values of the Confucian classics and those of the medical canon. In this process, one finds eminent physicians who had been eager to emulate the moral legitimacy and social status of the Confucian scholar. At the same time, like private legal secretaryship and legal counsel, medical learning and medical practice had also emerged as an alternative path for members of the literati class who did not succeed in their pursuit of public office. All this, however, was achieved at the expense of the lower strata of medical practitioners and other types of healers.

In this section, I provide an overview of the medical field in late imperial China, especially during the Ming and the Qing. I suggest that the decline of local medical offices and the isolation of the Imperial Medical Office had already put an end to medical administration before the advent of modern medicine. Based upon prior literature, I then offer a social analysis of the elite physicians in the local society, including their modes of reproduction, strategies of upward social mobility, and the professional and social ties that both connected them into a loose

community and extended their influence beyond that. At last, I give a brief survey of the plebian physicians and other healers from the lower classes, although they seemed not to have formed any substantial organization. The main finding of the section is that, unlike legal practice during the same period of Chinese history, medicine was not primarily dependent upon the direct or indirect support of the state. Instead, medical practice had thrived as private practices and as part of the local society. Especially, the most eminent physicians of the late imperial era had been incorporated into the local elite circles.

### **2.2.1 Official Medicine**

Unlike law, medicine and health administration had rarely been institutionalized as part of the state bureaucracy of imperial China (Gong 1998). While the Imperial Medical Office (太医) had been a longstanding central-level medical agency, its role had been largely limited to attending the emperors and their close associates. The only period that had witnessed strong state support for medical development and medical practice was the Song and the Yuan, that is, between the tenth and the fourteenth century. Interested in medical studies, Song emperors sponsored the compilation of medical treaties and expanded the medical institutions at both the central and local levels (Leung 1987, 2012). The Mongolian rulers of the Yuan even established medical offices at the central, prefectural, and county levels (Leung 1987) and enforced a corvee system that included, among others, medical households (医户) that were consigned to the study and practice of medicine for generations. However, the overall record of official medicine during the Ming and the Qing, according to the extant literature, was one of “increasing imperial indifference and neglect of medical relief and medical education alike” (Leung 1987:139-44). At the local level, signs of decline and eventual dysfunction were found in all types of public

medical institutions that had once been supported by the Yuan state. By the early Qing, the county-level medical office no longer enjoyed any official rank or official salary (Liu 1974). The situation was made even worse by the selling of local offices, which opened the floor for appointments based upon non-medical criteria (Ch'iu 2004). Not surprisingly, the opportunity for promotion to a higher medical office had greatly diminished (Feng 2007). At the same time, the majority of government-supported medical relief institutions, such as public dispensaries and public infirmaries, had ceased to function as early as the sixteenth century (Leung 1987:160-61). The Temples of Three Sages (三皇庙), founded during the Yuan as part of the official patronage for popular medicine, had also been abandoned (Chao 2009). Perhaps the only exception to this trend of state neglect and de-institutionalization was the continued recognition of epidemics as public health crises, which required both public and private efforts for medical assistance and disaster relief (Leung 1987).

Special mention should be made of the Imperial Medical Office (otherwise known as the Imperial Medical Academy), especially in comparison to the Board of Punishments in the judicial system.<sup>4</sup> First, the Imperial Medical Office was not a board-level (i.e., ministerial-level) institution. It was a semi-autonomous agency under the Board of Rites (礼部). The Commissioner for the Imperial Medical Office (院使) had an official rank of 5a, while the standard official rank for presidents of the central boards was 1b. During the Qing, the Imperial Medical Office mainly served two functions: providing medical care to the emperor, the imperial family, and sometimes to high-ranking officials, while also offering medical support and relief service to the Metropolitan area, especially during epidemic outbreaks or natural disasters. In

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<sup>4</sup> I have drawn most of the discussion of the Imperial Medical Office from Chang (2015).

addition to the Commissioner and two assistant commissioners (院判), its medical staff included imperial physicians (御医), medical secretary clerks (吏目), and master physicians (医士), which amounted to a total of about fifty members. Most of its staff were drawn from its in-house training program, which taught traditional Chinese-style medicine only. Medical students at the program were, in turn, selected from the offsprings of the imperial physicians or through the recommendations of local officials. Every six years, students who had already completed their studies were tested and, if successfully passed, made junior members of the master physicians. Promotions within the Office followed a strictly specialist career ladder, in which vacancies were filled by immediate subordinates whose medical expertise and loyalty to the court were guaranteed by a strong culture of conformity. These internal careers were typically very long—in fact, rarely would an imperial physician be made before the age of fifty. Like the elite jurists at the Board of Punishments, the elite physicians at the Imperial Medical Office also contributed to the development of medical knowledge. In the eighteenth century, the Office was at the center of the compilation work for the *Imperially Commissioned Golden Mirror of the Orthodox Lineage of Medicine* (御纂医宗金鉴), one of the most important medical encyclopedias in late imperial China (Hanson 2003; Feng 2015). However, unlike their counterparts in the judicial system, the elite physicians at the palace were not at the pinnacle of a whole medical administration system. By the time of the Qing, the Imperial Medical Office had degenerated into an isolated technical agency. It no longer performed any administrative function or even technical oversight over lower-level medical offices, as it once did during the Yuan. Even in the field of medical education, the Office had reduced its medical branches from eleven to nine and, later, to five, thus significantly reducing its own authority over several key medical specialties (Chen and Li

2009:569). By the time a reform plan was raised by its last commissioner during the New Policy Movement, it was already too late to change anything (Liang and Cao 2007).

### **2.2.2 Elite Physicians**

For most of Chinese history, medicine had been regarded as a technical craft rather than a branch of scholarly learning. A Confucian scholar-official might happily take up medicine as his amateur hobby or philanthropic endeavor, but never his chief means of living. Even the medical officers and imperial physicians had been accorded with lower ranks—except during the Yuan—than those who were appointed through imperial civil examinations. As such, professional physicians were, at their best, master artisans, who were considered much inferior in social status to the literati and the aristocratic class (Chin 2010). Against this historical background, what emerged since the eleventh century was the gradual rise of an elite stratum of physicians who successfully distinguished themselves from other, less prestigious medical practitioners (Hymes 1987; Chen 1997). They had achieved this both culturally and socially. Culturally, physicians in late imperial China had made painstaking efforts for the canonization of medical texts (Feng 2015), the idolization of legendary physicians in history (Yu 2014), and, finally, the construction of a medical historiography much in the same fashion as that for Confucianism (Chu 2006). They began to promote the ideal of the scholar-physician (儒医), who should combine both medical expertise and Confucianist moral ethics in his medical practice (Unschuld 1979; Yu 2011). The whole idea was to make medical knowledge and medical ethics a particular form of Confucianist cultural capital—an art of benevolence—so that medical practitioners would be able to emulate, or at least approximate, the social status of Confucian scholars.



Socially, the scholarization of medicine, or the creation of an elite stratum among physicians in private practice, was achieved in several additional ways. The most prevalent social mechanism for elevating the status of medical practice was through the establishment and perpetuation of medical lineages, which was a type of social institution that controlled the training of physicians and the reproduction of medical expertise across generations. During the Qing, since no formal medical training programs had existed outside of the Imperial Medical Academy, such lineages had become an important mechanism for the monopoly of esoteric medical knowledge and the status distinction of those who practiced such knowledge. The prime example of medical lineages can be found in the hereditary physicians (世医), who had often practiced the same medical specialty for many generations (Ch'iu 2003, 2004; Xie 2006; Wang 2012). It has been noted that the oldest of these medical households can be traced back to the Song dynasty, when government sponsorship of medicine and the popularization of medical knowledge had driven some members of the literati class into the study and practice of medicine (Chen 1997). After the Mongol's conquest of the Song, the Yuan state established a system of hereditary medical households (医户) as part of its overall corvée system (Ch'iu 2004). These medical households were responsible for the provision of medical service to the empire. In the meantime, the Yuan's abolition of civil examinations provided further impetus for students of Confucian studies to redirect their careers into that of medical practice, sometimes as a preparation for medical office (Hymes 1987). By the time of the Ming and the Qing, although medical offices were no longer sustained by the state, the status of the medical households and the literati-turned-physicians had been consolidated (Ch'iu 2003, 2004; Wang 2012). In fact, many of the eminent physicians that will be mentioned in Chapter Four for their role in the

organization of Chinese-style medicine in the early twentieth century were from such medical households.

While heredity was perhaps the most prevalent form of medical lineages, it was not the only one (Leung 2012:150-54, 185). Another important institution that had contributed to the scholarization of medicine was the medical sects, formed through real or fictive master-disciple relations that resembled similar groupings in the field of Confucian learning (Leung 2003). Again, that had origins in the period between the twelfth and the fourteen centuries (that is, the Southern Song, the Jin, and the Yuan), which saw the emergence of several charismatic and virtuoso physicians, each of whom had advocated for a distinctive revisionist medical theory. Among them, Liu Wansu (刘完素) held that diseases were caused by excessive heat in the body and advocated the use of cooling medicines. Li Gao (李杲) emphasized the importance of the spleen and stomach and ascribed all ailments to derangement of the digestive tract. He advocated aromatic stimulants to strengthen vitality. Zhang Congzheng (张从正) compared diseases to a foreign substance in the system which should be attacked and driven out by drastic drugs, such as diaphoretics, emetics, and purgatives. Zhu Zhenheng (朱震亨), on the other hand, thought that malnutrition was the root of all health issues; hence he extolled the value of tonics to nourishing the Yin elements of the body. All of these four master physicians had drawn a sizable following during their lifetime, but Zhu's and Li's theories were especially popular during the Ming and the Qing. A reconstruction of the sectorial lineage stemming from Liu to Zhu and then onto Zhu's various followers in subsequent centuries was illustrative of the proliferation of master-disciple relations (Wu 1992; Zhang 2015). Liu first began circulating his medical theory among his fellow practitioners and immediate followers—none of them, however, were from his own family. Later on, when his followers attracted their own followers, some, such as in the case of

Ge Sigong (葛思恭), would pass down their medical theory and style of treatment mainly to their sons and grandsons, while others, such as in the case of Luo Zhiti (罗知悌), would adopt a formal, Confucian-style teaching method and transmit the knowledge to his disciples outside of the family. Zhu, a student of Luo, revised Liu's theory and himself became the founder of a prominent new lineage. But many of those who claimed to be Zhu's followers had not actually studied with him in person. Instead, they had read his medical writings and proclaimed to be his followers through admiration.

By the Ming and the Qing, the endurance of medical households and the thriving of medical sects had made several cities and towns especially known for their clusters of eminent physicians. This was especially so in the Lower-Yangtze region, where population growth and economic development was steady, literacy was high, and the competition for civil examination degrees was ever fiercer—all of which tended to make medicine a more desirable alternative to upward social mobility (Wang 2010). Places like Suzhou (苏州/吴中), Huizhou (徽州/新安), Wujing (武进/孟河), Hangzhou (杭州/钱塘), and Shaoxing (绍兴) had emerged as regional centers of medical expertise. Some of them, such as Suzhou, were known for the sheer number and diversity of physicians who practiced there, while others, such as Xin'an, were known for their outflow of physicians who emigrated to other regions (Chang 2004; Feng 2007). By the nineteenth century, regional clusters of eminent physicians also started to emerge in the treaty port cities and new commercial centers like Shanghai (Scheid 2007).

One notable outgrowth of this regional concentration of elite physicians was the emergence of peer groups and medical societies. In Hangzhou, a group of physicians founded the Lushan Academy (侣山堂) in the seventeenth century (Leung 2003:148). In Suzhou, literati

physicians published an annual collection of medical treatises in the eighteenth century, which later became known as the *Collected Lectures by Suzhou Physicians* (吴医汇讲). This was arguably the very first Chinese medical journal (Li and Lin 2000:605-06). Outside of the Lower-Yangtze region, an early but short-lived “Medical Society for Harboring Kindness” (一体堂宅仁医会) had been organized by nearly fifty physicians in Beijing during the mid-sixteenth century (Xiang 1991). To a large extent, these medical societies that emerged in the late imperial era were an imitation of the scholarly societies organized by elite Confucian scholars. Unlike the craft guilds organized by artisans, they promoted the scholarly study of medical texts, offered charity service to the local society, and merged into the larger patronage and gentry network that extended beyond physician circles. In fact, the close network between eminent physicians and their scholar-official friends and patrons has been well documented. The most obvious evidence for such ties is found in the essays and other literary pieces that the latter had written as gifts or praises for the former. A sudden surge in the numbers of such writings between the thirteenth and the seventeenth century is believed to be the beginning of the gentry-class endorsement of the scholarization of medicine (Chen 1997). This phenomenon had continued well into the Qing, when esteemed scholar-officials wrote euphoric prefaces for the medical treatises by eminent physicians (Bretelle-Establet 2011). Interestingly though, the physicians were often praised not for their medical expertise, but for their scholarly learning and virtuous demeanors.

### **2.2.3 Other Healers**

To the extent that the account of medical history had traditionally been monopolized by the better-educated physicians and physician-historians, there was often little room left in such historical accounts for the plebeian physicians and non-medical healers. Yet, the reality was the

very opposite: medical officers, hereditary physicians, charismatic leaders of medical sects, and aspirants to scholar physicians of one type or another, these were probably the tip of the iceberg that had made up the world of healing arts and healers in imperial China. The rest of the iceberg consisted of itinerant doctors, witches, magical and religious healers, female healers, midwives, and the like. Some of them did not necessarily identify themselves as practitioners of medicine. Rather, medicine could be only one of the gadgets in their rather assorted toolkit. Because these physicians and healers did not belong to the educated and socially esteemed circles, they had left few written records about themselves or their practices. Their voices were simply lost in history. In fact, even today very little has been known of the social organization of these other physicians and healers—they were even less studied than the litigation masters. Consequently, my discussion here is impressionistic at best.

What has been well recognized is that many of these other practitioners did not have a fixed office for practice and, therefore, they were generally referred to as itinerant doctors (走方医), bell doctors (铃医), or country doctors (草泽医).<sup>5</sup> As their titles suggest, these doctors traveled from one place to another. They carried their medicine bag with them, set up their stalls near a bazaar or street corner where they could attract clients, and often used a bell to announce their arrival. Most itinerant doctors were probably illiterate and did not possess a formal education. Their medical knowledge largely consisted of secret formulas and clinical methods passed down orally from their fathers or masters. In addition to herbal medicine, they also utilized a wide variety of clinical interventions, such as acupuncture, massage, or surgery—which were considered too invasive or required too much physical contact to be used by the elite

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<sup>5</sup> My discussion of itinerant doctors is mostly based upon Qiu (2005) and Wang (2018).

physicians on their gentry-class patients. Indeed, itinerant doctors had been especially known for their skills in pulling teeth (取牙), healing skin blemishes (点痣), removing cataracts (去翳), and expelling worms (捉虫), none of which had required a substantial level of sophistication in medical knowledge, as in the case of the elite physicians. The mobile nature of their practice led many itinerant doctors to prioritize economic affordability (贱), immediate effectiveness (验), and general availability (便). Precisely because of their traveling practice, itinerant doctors had actually catered to a large variety of patients from all walks of life. Their popularity was especially to be found among the lower-class patients, or in the rural areas where few elite physicians resided. But it was also not uncommon for higher class patients or even the court to seek the remedy of itinerant doctors when other types of treatment had failed.

In addition, for the ordinary Chinese—and especially for the vast majority of the populace in the rural regions—access to the established physicians or even to itinerant doctors could be limited. What had been ubiquitous among them was the use of magic, exorcism, divination, charms and incantation in dealing with health issues (Croizier 1968:32; Andrews 2014:28-29). Some of these practices involved a visit or repeated visits to the local temple, where prescriptions were determined through a toss of bamboo sticks. The worshipping of particular healing deities was believed to be similarly effective, such as rubbing the part of a temple statute that corresponded to the location of their own disease. The other popular practice was going to a witch who offered a combination of ritual therapy and medication, usually with the use of charm, exorcism and incantation (Yang 2006:203-42). One particular form of that ritualistic healing, *zhuyou* (祝由), had even been adopted by official medicine and elite physicians since the twelfth century (Cho 2005). Other than that, none of these healing methods

were considered medical by the educated physician (Qiu [1915] 2006). In fact, most of these other healers had never been trained in medicine (Ma 2010:653-77).

In late imperial China, as the ideal of the scholar-physician came to dominate the elite stratum of medical practitioners, itinerant doctors and other healers were increasingly marginalized and stigmatized by established medicine. While their practice was not formally prohibited by the government, they had often been deplored by the elite physicians for their lack of intellectual sophistication, for the dubious nature of their formulas, and for the pecuniary incentives of their practice. They had become the “bad physicians” (庸医) against whom the elite physicians wanted desperately to distinguish themselves. Even legendary healers such as Bian Que (扁鹊) and Hua Tuo (华佗), both of whom had been famed for their clinical excellence, were no longer regarded as highly as their literate counterparts, such as Zhang Ji (张机). But for the purpose of this study, it would suffice to say that these more plebian types of physicians and non-medical healers seemed not to have established any knowledge tradition of their own. Nor had they formed any type of social organization as an occupational or status group. In other words, the practice of itinerant doctors and other healers had been both ubiquitous and poorly institutionalized. Consequently, although they might continue to cater to a lower-class clientele and survive in the vast rural areas, they were not in a likely position to significantly affect the institutional encounter between native Chinese medicine and modern Western medicine, as that took place in the early twentieth century.

### **2.3 Conclusion**

Two conclusions can be drawn from this background survey of traditional law and medicine in late imperial China. First, traditional legal work and medical work had not been organized as specialized occupations in a non-professionalized mode before the arrival of modern, Western-style law and medicine. In both law and medicine, one can speak of a highly recognizable Chinese tradition that had included a sophisticated body (or bodies) of expert knowledge, an internally differentiated population of practitioners, and a relatively stable mode in the social organization and reproduction of such expertise. But the mode in which law and medicine had traditionally been organized in China was quite different from that of a modern profession in the Western sense. There were no formal training programs in either field; there was no procedure to rule incompetent practitioners out of practice; there were few peer organizations—not even a local guild system—in which members of the same trade would jointly decide matters most critical to their practice. Moreover, there had been a wide range of variations between the two ingenious fields themselves. Notably, the organization of law had been centered around the imperial bureaucracy. The Qing government already had a multilevel institutional infrastructure for legal work and had employed the service of a small group of elite jurists at the top. While a much larger population of legal specialists were not formally employed by the state, they, as private legal secretaries to local government officials, too, had relied upon the running demands of the judicial system. In this way, the imperial government was both the chief employer, direct or indirect, and the main clientele for the two groups of people most specialized in traditional Chinese law. As for the social organization of medicine, however, the late imperial Chinese state had played only a minor role. Medical practice was organized in and by the local society, through medical households, master-disciple relations, and local charity communities. Eminent



physicians of traditional Chinese medicine had much closer ties to the local elites than they had with the officialdom. As a result, the practice of traditional Chinese medicine had been more diffuse (instead of relying on government appointments) and less formally institutionalized (there had been few formal medical offices or medical organizations until the beginning of the twentieth century) than that of law.

Second, if professionalization is a process that entails the exclusive monopoly, by an occupational group, of the legitimate reproduction and provision of a particular type of expertise, then any large-scale introduction of a new knowledge practice would have to deal with the existing practices in one way or another. In other words, law and medicine in China were not uncharted terrains; they were already occupied social spaces. The encounter between the long-standing indigenous practices and the newly arrived foreign practices can take place on several fronts: clientele, social legitimacy, institutional organization, and so on. And given the diffuse nature of legal work and medical work, it can take years, decades, or even much longer. In the chapters that follow, my analysis of such encounters will focus on issues of social legitimacy and institutional organization. What this background survey serves for that discussion is mainly two-fold. On the one hand, it would be of theoretical interest to see whether, and under what circumstances, the preexisting institutions for knowledge practices could be mobilized to facilitate or to resist the professionalization projects of the modern practitioners. For instance, was the bureaucratic infrastructure for judicial administration something readily appropriateable by the legal reform of the early twentieth century? Or, conversely, was the lack of a preexisting bureaucratic infrastructure in medical and health administration an obstacle for the medical modernizers? On the other hand, given the social organization of these two traditional practices in China, it is perhaps more useful to think of their reactions not as something from an

occupational collectivity, but a response from their elite stratum—in fact, as it will be seen in Chapter Four, traditional Chinese medicine only emerged as an occupational group (for itself) in response to the challenges posed by modern medicine. One might reasonably expect that the vested interest of the elite jurists of imperial law and the eminent physicians of traditional medicine would not simply give way to the rise of the modern professions. But were members of the traditional elite actually co-opted or forced out of practice? Or did they actively embrace the new practices to their own advantage? Otherwise, did they succeed to defend their own turf against the monopolizing attempts of the newcomers? While the details of the politics of professional competition will be discussed in the next chapters, it suffices to say here that these turf wars were often fought along ideological and social class lines. They were typically framed as tradition versus modernity (or, depending on one's position, as nationalism versus imperialism) and socially demarcated by the traditional-educated versus the modern-educated. It is in this sense that they were not identical with the turf wars between, for instance, the modern lawyers and the modern accountants over the work of bankruptcy liquidation.

### Chapter 3 Law

The norms and institutions of traditional Qing law, as described in the last chapter, had been dominant until the end of the nineteenth century. The only suggestion that had been brought up by the reform-minded jurists from the Board of Punishments was on the lessening of torture and other cruelties in the Qing's trial procedures and punishments. In the meantime, the expansion and influence of Western legal practice had been limited to the extraterritorial courts and mixed tribunals in the foreign concessions. Although these Western legal institutions had exposed both the Qing officials and the ordinary Chinese to Western practices of law, they had hardly left any direct impact on the Qing's own judicial administration. By the first decade of the twentieth century, the Qing had made a few small steps in the revision of its old codes and the promulgation of new laws—especially a new commercial code—partly in preparation for the termination of foreign extraterritorial privileges. In the second half of the 1900s, however, those small initial steps were replaced altogether by something much grander in scale: an imitation of the Japanese model of modern government and a state-led overhaul of the Qing's judicial system at both the central and the lower levels. This was not an effect of the expansion of Western legal professions. Instead, it was a radical state building project that the Qing finally took up in the aftermath of the turn-of-the-century political crisis and social turmoil. The Qing's desperate move to save its rule had come in tandem with a growing Japanese impact on almost every aspect of Chinese life.

In this chapter, I examine the rise of a modern judiciary and a legal profession in China since the turn of the twentieth century. I begin my analysis with a brief overview of the political context that had generated the late Qing judicial reform in the first place. As it will be seen, in

the aftermath of the First Sino-Japanese War and the Boxer Rebellion, a broad set of state building programs were launched by the Qing to reorganize its government and strengthen the country. Much of the institutional blueprint for what later became known as the New Policy Movement had been borrowed from Japan, which, by then, had emerged out of the Meiji Reformation as a major geopolitical power in Northeastern Asia. Of top priority on the Qing's reform agenda was the reorganization of its government into a Japanese-style constitutional monarchy, which included, among other things, the promulgation of new laws and an overhaul of its judicial system. Essentially, it was this political imperative to transform the Qing state according to Western—and especially Japanese—models that had provided the rationale and legitimacy for the judicial reform.

Next, I turn to look at the key judicial institutions that had emerged out of this process of state building. Several institution-building institutions were first created at the central level to lead the new system and supervise the rest of the reform. I suggest how some of them, such as the Constitution Commission and the Code Revision Commission, were heavily influenced by Japanese advisers and Japanese-educated students. In other cases, such as the Supreme Court and the Ministry of Justice, I draw attention to their initial reliance on the cooptation of traditional jurists. This, as I argue, was one way in which the institutionalization of a modern judiciary had benefited from the preexisting expertise of the old system. I then follow the building of the modern judicial system from the central level to the provincial and local levels. That task was left unfinished by the Qing when it fell, but was resumed by the Beiyang government and, after it, the Nanjing government. It turned out to be a much more complicated state building project than the central-level reforms. The expansion of the modern court system into the lower levels had been constrained by the Ministry of Justice's shifting policy agendas, by the central

government's poor financial conditions, and often by its limited control over the provinces. Fortunately, through the implementation of a new set of regulations on the recruitment, training, and personnel management of judicial officers, the specialization of the judiciary was at least partially achieved.

A second force that had shaped the Chinese judicial and legal profession in its early decades was the rampant growth of legal education. As the imperial civil examination was abolished during the New Policy Movement, traditional degree titles were being replaced by modern educational credentials. Legal education—or, more precisely, legal and administrative education—suddenly became the most sought-after preparation for the officialdom and other means of upward social mobility. Students, as well as veteran officials, rushed to the so-called *fazheng* programs, which initially enjoyed official endorsement as part of the state's educational reform. However, the growth and quality of such programs soon went out of the control of the state and created employment problems for the law graduates. On the other hand, as I shall point out, since modern legal education in China had been practically orientated and poorly defined from the beginning, the scholarly study of law did not evolve into an academic discipline until more than two decades later. As such, the college law faculties rarely emerged as an organized group to redefine legal education, or, for that matter, to influence legal practice in general.

Finally, I examine the formation and organization of the Chinese bar, which had been a by-product of the late-Qing judicial reform and educational boom. In fact, it was not until the Republican period that the practice of private legal service, formerly prohibited by the Qing, was finally legitimized as part of the Chinese legal system. Before long, lawyering had become an alternative career option for the vast number of graduates from the *fazheng* programs. However, the Chinese bar had been subject to the stringent regulation of the state from the very beginning.

In almost all aspects of its organization, the local bar associations had not enjoyed much autonomy. They had largely become a surrogate of the judicial authorities. Only when China's judicial sovereignty was at stake—for instance, over the return of the mixed courts in Shanghai—would the bar be allowed to play an active role both professionally and publicly.

### **3.1 The Political Setting: The New Policy Movement**

In the last decade of the nineteenth century, the Qing was brought into a direct confrontation with an expanding Japanese empire rising out of the Meiji Reformation. Their military encounter in the First Sino-Japanese War (1894-95) not only saw the demise of the Qing's modern navy but also the ceding of Taiwan and the Penghu Islands to Japanese control. According to the Treaty of Shimonoseki, signed in 1895, the Chinese were also made to recognize the independence, and eventual Japanese occupation, of Korea, which had long been one of the Qing's tributary states. Economically, China was to pay a huge war indemnity (200 million silver kuping taels) to Japan and open up four more treaty ports to foreign trade and investment (Hsu 1980:108). The loss of the war and the terms upon which the postwar treaty was negotiated had humiliated the Chinese. It put a tragic end to the Self-strengthening Movement, which, since the 1860s, had aimed at the modernization of the Qing's army, the building of a modern navy, and the borrowing of Western technologies for early industrialization (Elman 2004). The war came as proof that the Self-strengthening Movement had ultimately failed to strengthen the Qing against foreign powers. Therefore, the idea that China needed only to learn some technical know-how from the West was giving way to a more reform-minded stance for institutional borrowing. Radical reformers led by Kang Youwei (康有为) and Liang Qichao (梁启超) seized the opportunity to persuade the Guangxu (光绪) Emperor into declaring a wholesale reform agenda, later known as the Hundred

Days Reform (百日维新) of 1898 (Chang 1980). Nevertheless, their initiatives were aborted by a palace coup. With the return of the Empress Dowager Cixi (慈禧) into full control of the court, political reforms were suppressed, and reform-minded officials put on alert.

### 3.1.1 Studying in Japan

But the failure of the Hundred Days Reform did not prevent the growth of the Chinese demand for modern education. Especially, the Chinese had been impressed by a modernized Japan that had successfully challenged the Qing's geopolitical dominance among the East Asian countries. In fact, before the 1890s, except for a few who had known Japan firsthand,<sup>1</sup> most Chinese had known little about the social changes that were happening in Japan since the Meiji Reformation. It was in the aftermath of the First Sino-Japanese War that many educated Chinese turned to Japan for a more promising path to the modernization and strengthening of their own country. Even more conservative minds from the Self-strengthening Movement, such as the Viceroy of Huguang (湖广总督), Zhang Zhidong (张之洞), had supported the idea of learning from Japan. Zhang's famous *Treatise on Education* (劝学篇), written in 1898, was generally regarded as the unofficial proclamation of the Qing's studying abroad policy. It argued that studying in Japan was more preferable to studying in the West, since the former method was more economical, more manageable by the government, more accessible in terms of overcoming language barriers, and, most important, more efficient—for the Japanese had sifted through the Western classics

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<sup>1</sup> The best-known Chinese observer of Meiji Japan was Huang Zunxian (黄遵宪), who served as Counsellor to the Qing's Legation in Tokyo between 1877 and 1882. His forty-volume *Treaties on Japan*, completed in 1887, was the first comprehensive Chinese study of modern Japan.

and weeded out the less useful works for the Chinese society that was in many ways similar to Meiji Japan (Reynolds 1993:44).

At the same time, the Chinese eagerness for national salvation and re-strengthening was matched by the postwar Japanese foreign policy that strove to win Chinese goodwill as a strategic step of expanding Japanese colonial power in East Asia (Reynolds 1993:27-33). In 1898, the Japanese government expressed its willingness to host and bear the expenses of two hundred Chinese students. In the same year, through subsidies from the Japanese Foreign Ministry, an East Asia Common Culture Association (东亚同文会) was established to expand Japanese cultural influence in China and conduct China-related research projects. Inviting and supporting Chinese students to study in Japan thus became a major Japanese initiative that would extend into the 1920s. As a result, it might sound surprising that a “mutual joint exploitation” (Reynolds 1993:23) should have appeared so quickly after a major war being fought between the two nations.

The first batch of Chinese students sent by the Qing central government arrived in Japan in 1896. In 1898, the Qing made government-sponsored studies in Japan a formal educational policy, requesting all provincial authorities to select and send their own crop of students (Chen and Tian 1991:3-4). In 1902, a chief superintendent was appointed by the court to supervise all Chinese students staying in Japan (Chen and Tian 1991:383). But those early streams of the studying broad initiative would be immensely overshadowed by the waves of Chinese students who rushed to Japan after the mid-1900s. In 1904, as part of the Qing’s educational reform, the centuries-old institution of the imperial civil examination was abolished. For generations of Chinese students, the civil examination had been the steppingstone to a much-aspired career in the officialdom and the chief mechanism of upward social mobility. Its sudden termination



caused much uncertainty and social anxiety. As a makeshift measure before the Qing's new educational system was in place, the court announced a policy of granting traditional civil examination degrees to students who had obtained a Japanese diploma and passed the returnee examinations held by the Ministry of Education (Chen and Tian 1991:53-59). The first such examination was held in 1905 and it soon became a standard annual procedure until the end of the Qing (Chen and Tian 1991:61-62). Therefore, studying abroad was officially endorsed as the best preparation for government office, before there were enough number of modern schools in China.

The size of the Chinese student population in Japan rose accordingly. Between 1896 and 1901, there were no more than 300 students who had been sent to Japan (Saneto [1970] 1983:451), most of whom were sponsored by provincial governments. The size of the student population rose to over 500 in 1902, to over 1,000 in 1903, and finally, to an estimated total between 8,000 and 12,000 in 1905—many of them had now come on their own funding (Saneto [1970] 1983: 451; Reynolds 1993:48). This dramatic surge was followed by a gradual decline after 1907, when both the Japanese and the Chinese governments started to tighten their regulations. What occurred thereafter was a shift from “quantity” to “quality.” In 1907, the Qing signed a fifteen-year agreement with Japan that opened up, at full cost to the Chinese, five of Japan's elite national colleges and universities to a preset quota of 165 Chinese students per year (Reynolds 1993:59-61). In terms of gross numbers, between 1898 and 1911, a minimum of 25,000 students had traveled to Japan for some form of modern schooling (Reynolds 1993:42).

### 3.1.2 The Reform Edict of 1901

If the First Sino-Japanese War had struck the Chinese with a sense of social crisis and led to a political strife that ended with the triumph of the conservatives, the Boxer Rebellion at the turn of the twentieth century would bring an even stronger challenge to the Qing's rule and push even the conservatives towards an aggressive agenda of political and institutional reform. In 1899, the anti-foreign campaign that would be later known as the Boxer Rebellion broke out in several northern provinces. With support from the Qing court, the Boxers' violent rampages against foreigners and Christians went out of control within a short period of time. In mid-1900, their siege of the foreign legation quarters in Beijing and Empress Dowager's declaration of war against major foreign powers finally led to the military intervention of an international expeditionary force. The allied force of some 18,000 troops sent by eight foreign powers first captured Tianjin, the major port city in Northern China and the seat of the Beiyang Viceroy. From there, they proceeded to Beijing and rescued the foreign legation quarters. The Qing army and the Boxer bands could barely defend the capital. In August 1900, the Empress Dowager and the Guangxu Emperor fled to the northwestern province of Shaanxi, before the city was seized by the foreign expeditionary army. This catastrophe, the second time during her life at the court that the Empress Dowager had to flee for life, arguably made her radically rethink her most recent policies. The result was a full-scale reform agenda that was not dissimilar to the aborted Hundred Days Reform of 1898.<sup>2</sup>

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<sup>2</sup> For an overview of the New Policy Movement, see Ichiko (1980). For book-length studies in English, see Meienberger (1980) and Reynolds (1993). For recent takes by Chinese scholars on the topic, see Chi (2013). The following account of the general trajectory of the late-Qing political and institutional reform is largely based upon these works.

In January 1901, the Empress Dowager decreed the famous Reform Edict<sup>3</sup> that inaugurated the New Policy Movement for the building of a modern Chinese state. This landmark edict is worth looking at in some detail, for it succinctly captured the official endorsement for a Westernized reform agenda that would cover the field of law as well as many other aspects of institution building. Perhaps for the first time, the Empress Dowager was herself calling for a radical overhaul of the Qing's bureaucratic system: “[t]hose who have studied Western methods up to now have confined themselves to the spoken and written languages and to weapons and machinery. These are but surface elements of the West and have nothing to do with the essentials of Western learning.” The edict went on to assert that “administrative methods and regulations must be revised, and abuses eradicated,” and the best of Western examples be sought out and studied. On the potentially controversial issue of which tradition—Chinese or Western—should be regarded as the “essentials” for a modern China and which as the “applications,” the edict made a clever spin to justify the legitimacy of imitating the West. The reform agenda, said the edict, should without question stick to the fundamental principles of government derived from ancient Chinese teachings (such as “to hold high office and show generosity,” “to exercise liberal forbearance over subordinates,” “to speak with sincerity,” and “to carry out one’s purpose with diligence”). Yet the Western models for good government should not be treated as exotic precedents unassimilable to the Chinese: they were just as congruent with and reflective of the Chinese fundamentals. “To devote ourselves fully to China’s revitalization,” according to the edict, “[one should] suppress vigorously the use of the terms ‘new’ and ‘old,’ and to blend together the best of what is Chinese and what is foreign.” The

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<sup>3</sup> An English translation of the entire edict can be found in Reynolds (1993:201-04). The translation quoted here are his.

importance of new educational institutions, of training and selecting “upright and capable men” to run the new offices, was well recognized by the edict. “The first essential, even more important than devising new systems,” it suggested, “is to secure men of administrative ability. Without new systems, the corrupted old system cannot be salvaged; without men of ability, even good systems cannot be made to succeed.” To conclude her edict, the Empress Dowager solicited policy recommendations from high-ranking officials and overseas envoys on “all dynastic regulations, national administration, official affairs, matters related to people’s livelihood, modern schools, systems of examination, military organization, and financial administration.”

Two months later, a Bureau of Government Affairs (督办政务处) was created under Prince Qing (庆亲王) to review reform proposals and coordinate central planning. Among the proposals, the three joint memorials submitted by Liu Kunyi (刘坤一) and Zhang Zhidong (张之洞), two of the Qing’s most respected governors, were to set the general agenda for the first stage of the New Policy Movement (1901-05).<sup>4</sup> They recommended a full list of tasks that the government should immediately set itself to do. In terms of the Qing’s judicial system, Liu and Zhang deplored the cruelty of the Qing penalties and the inefficiency of the trials, which had relied heavily on torture and confession. They acknowledged the benefits of the evidence- and witness-based trials in the West and urged that similar procedures be adopted in the Chinese court. They advocated for the dismissal of clerks and runners at the magistrate’s court and the revision of judicial reporting rules so that local officials would not have the incentive to hide cases from their supervisors. In addition, the two governors recommended the building of a

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<sup>4</sup> The full Chinese text of the three joint memorials can be found in Yuan et al. (1998:1393-1450). Among English studies, Cheng (1976:53-69) has provided a detailed analysis of the judicial issues brought up in the joint memorials.

modern prison system, the drafting of new codes, and the creation of new courts for commercial and industrial activities, especially where foreign interests were involved. For those purposes, they deemed it necessary to employ foreign legal experts as advisers and instructors in the reform process.

In the meanwhile, the issue of foreign extraterritoriality was brought to the fore during the negotiation of the Mackay Treaty between the Qing and Britain.<sup>5</sup> Signed in 1902, this was a treaty for the readjustment of British commercial relations with China in the aftermath of the Boxer Rebellion. In Article XII of the final agreement, it was provided that, “China having expressed a strong desire to reform her judicial system and to bring it into accord with that of Western nations, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations warrant her in so doing” (Faure 2000). The inclusion of this provision was proposed by Zhang Zhidong who came to the rescue of the Chinese delegates when the initial meetings went into a deadlock (Gao 2007:16-20). James Mackay, the head of the British delegation, did not hesitate to give his consent to this ambiguous provision to appease his Chinese opponents. Nevertheless, this was the first formal statement on the conditions under which foreign extraterritorial privileges would be terminated. Similar provisions were included, almost verbatim, in the commercial treaties that the Qing subsequently signed with the United States, with Japan, and with Portugal. These ambiguous provisions, together with the fact that Japan had successfully ended foreign

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<sup>5</sup> The direct relevance of extraterritoriality to the late-Qing legal reform has been studied by Gao (2007).

extraterritorial rights in 1899, would thenceforth provide a strong and constant rationale for the Qing's judicial reform.

A direct outcome of this political push for legal reform was the reopening of the Office of Codification, from the Board of Punishment, as the Code Revision Commission. In 1902, the Qing appointed Shen Jiaben (沈家本) and Wu Tingfang (伍廷芳) as Co-commissioners of Code Revision to amend the old penal code. As Deputy President of the Board of Punishments, Shen was one of the best traditional jurists of the time and a keen advocate for the revisionist tradition set up by Xue Yunsheng (薛允升), former President of the Board (on Shen, see Wheeler 1998; Li 2000). His legal scholarship included the *Conspectus of Penal Cases* (刑案汇览), a three-volume collection of late-Qing judicial cases. Wu, on the other hand, was a graduate of the University College London and had been called to the British bar at Lincoln's Inn (on Wu, see Pomerantz-Zhang 1998). With a legal practice in both London and Hong Kong, he was arguably the most well-learned Chinese of the common law tradition and international law. Together, between 1904 and 1907, Shen and Wu selected a small staff and devoted themselves to the revision of the Qing code (Cheng 1976:122-95; Li 2000:207-26). Also, in that capacity, the Code Revision Commission started to translate foreign laws and launched a professional training program, the Peking Imperial Law School. In 1906, it finished the *Draft Criminal and Civil Procedure Law* and helped prepare the *Judicial Organization Law for the Supreme Court*. By the time it was reorganized in 1907, it had already begun to work on the general principles for a new criminal code. As Deputy President of the new Ministry of Commerce, Wu also supervised the drafting of the Qing's first *Commercial Law* and *Company Law* in 1904.

### **3.1.3 The Government Reorganization of 1906**

Even with an official pledge from the throne, the initial progress of reform was limited to the educational arena and the military. In 1905, the centuries-old system of the imperial civil examination was brought to an end. It was to be replaced by a Japanese-style modern educational system comprising primary, secondary, and higher education. At the same time, the Qing's new army, led by the Beiyang Viceroy, Yuan Shikai, began to introduce both Western methods of training and Western equipment. As the next chapter will mention, it was during this period that the Qing's army medical corps and medical academies were institutionalized. Yet, a turning point for the New Policy Movement occurred in 1905 when the Russo-Japanese War was fought on Chinese lands. Japan's epochal victory of the war was not only pivotal for the expansion of its colonial empire, it also taught another lesson for the Chinese. For the first time, an Asian neighbor once forced to open its borders and cede part of its sovereignty to Western powers had defeated a major European power on the battleground. It provided further evidence for the success of the Japanese model, even when it caused further infringements on the Qing's sovereignty and geopolitical interests in Northeastern Asia. Indeed, that was a Japan as much inspiring for the Chinese as it was threatening. With the promulgation of its first Constitution in 1889 and the convening of the Diet in 1890, Japan had emerged out of the Meiji Reformation as a constitutional monarchy and had defeated the Qing in 1894 and then Russia in 1905. A mounting pressure was put upon the Qing court to follow Western and Japanese models and expand the scope of the New Policy Movement to political areas. Such voices were heard from the Chinese students in Tokyo to the local scholar-gentry and industrialists, from the governors and governors-general who had dealt directly with the foreign powers to the reform-minded among the Manchus themselves (Meienberger 1980:22). The message of the First Sino-Japanese

War and the Russo-Japanese War seemed clear enough: the success of Meiji Japan was imitable if China, too, was going to adopt a constitutional government and build modern institutions for a new age.

In July 1905, the throne responded to the popular demand for reform by appointing four high-ranking officials as commissioners to visit Europe, the US, and Japan, with the objective of studying their systems of government. The commissioners set off in two groups in December: one led by Duke Zai Ze (载泽) and the other by Dai Hongci (戴鸿慈) and Duan Fang (端方). An Office of Government Reform (考察政治馆) was set up to collect and review the reports they sent back as well as other materials on Western examples of government administration. However different their itineraries, the two delegations were similar in their assessment of what they saw abroad: both endorsed the preparation for a constitution. Based upon what they had learned from the example of Meiji Japan, Dai and Duan proposed a top-down reorganization of the Qing's administrative system, which was to serve as a preparatory stage before the promulgation of a constitution and the convening of a parliament (Horowitz 2003). Among the top priorities for the proposed government reorganization was the establishment of an independent, multi-level court system that would be in charge of the state's judicial authority. The Empress Dowager was impressed, especially after learning that a constitutional monarchy, like that of Japan's, would preserve or even protect the status and privileges of the throne, while also strengthening the authority of the central government over the provinces. In August 1906, the Qing's highest-ranking officials were summoned and, apparently, the proponents of constitutionalism had won the day. With the support of her top advisers, the Empress Dowager finally announced the official mandate to prepare for a constitutional government in September 1906. A Government Reorganization Commission (编纂官制大臣) was created to work on the



detailed planning of the preparation, with Duke Zai and Prince Qing as lead commissioners (Mei. The roster of the Commission's staff revealed a dominant presence of students with a modern education, who were among the first to have finished their studies in Japan (Eastern Miscellany 1906).

In November 1906, with some significant reservations (e.g. the refusal to form a responsible cabinet), Empress Dowager accepted most of the reform agenda proposed by the Government Reorganization Commission. One of the declared goals for the government reorganization was the separation of legislative, administrative, and judicial authorities. Before a parliament was convened, however, the focus would be put on the reorganization of the administrative branch of the government and the building of an independent judiciary. This grand state building project started from the central government. The Qing's six central-level boards and other affiliated agencies were consolidated into eleven ministries, each in charge of 1) foreign affairs, 2) personnel, 3) finance, 4) education, 5) rites, 6) the interior (civil affairs), 7) war, 8) justice, 9) agriculture, industry and commerce, 10) the post and communications, and 11) the colonies. All ministries were to have clearly delineated regulations over their respective jurisdiction, function, organization, and personnel management. And each was to be chaired by one president and two deputy presidents, regardless of their ethnic background. In addition, the Court of Judicial Review was to be replaced by a new Supreme Court, while the Censorate would be retained. An independent Audit Department was to be set up; a Political Consultative Council was to function as the preparatory agency for the parliament, while both the Grand Council and the Grand Secretariat were retained.

The governmental reorganization was extended to the provincial and local levels in 1907. The Zhili Province, with its governor-general also serving as the Beiyang Viceroy, and the three

Manchurian provinces, from which the Qing's royal clan had originated, were selected as the testing ground for lower-level reforms. According to the agenda set by the Government Reorganization Commission, provincial governors and governors-general would remain in their position, but in each province three commissions (for finance, education, and justice, respectively) and two circuits (one for police and civil affairs, the other for agriculture, industry, commerce and communications) would be established to oversee specific areas of provincial administration. All governors, governors-general, and provincial commissioners would have their own staff and subsidiary offices, which would replace the private secretaries who had previously worked outside of the official bureaucracy. With specific regard to judicial matters, a three-level court system was to be launched in each province to take over the judicial work formerly assigned to the magistrate's courts, while the provincial justice commissioner was to succeed the formerly surveillance commissioner as the outpost of the Ministry of Justice.

Thus, it is during this second stage of the New Policy Movement that the planning for a modern, independent judiciary received its ultimate political legitimacy and was immediately put into practice. According to this blueprint, the Court of Judicial Review was replaced by a new Supreme Court; the former Board of Punishments transferred its two most important roles, that of adjudication and judicial administration, into the new Supreme Court and the new Ministry of Justice, the Censorate was retained but its scale and authority greatly reduced. The reorganization of central-level judicial offices was to be followed by a multi-level modern court system in the provinces. While the details of the Qing's new judiciary will be discussed in subsequent sections, it should be pointed out here that the rationale for the judicial reform had originated from the political arena rather than from the judicial field, and the overall agenda had been approved by the Qing's political leaders rather than by the elite jurists. Traditional jurists,

even leading figure among them like Shen Jiaben, had played a minimal role in the process of that political deliberation, nor were they in a legitimate position to raise serious objection to the reform agenda thus generated. But the role of the (early) returnee students should not be overlooked: some of those who had studied modern law in Japan were already on the staff of the decision-making commissions. It is largely through their work as assistants, translators, and editors that the Japanese model of judicial office and legal practice made its way into the Qing's imitative state building agenda (more on this in the next section).

The pace of the New Policy reform was accelerated when the court announced the *Principles of the Constitution* and the *Nine-year Program for Constitutional Preparation* in 1908 (Palace Museum Ming-Qing Archives 1979:67-68). The former was essentially modeled on the first chapters of the Japanese constitution, while the latter was a year-by-year to-do list of what needed to be done before the timely promulgation of the Qing constitution (which had been set for 1916) and the convening of the parliament (for 1917). The more detailed schedules for the various institution building projects were made and then supervised by the Constitution Commission (宪政编查馆), which, since 1907, had succeeded the Office for Government Reform as the leading organ and central coordinator of reform (more on this institution below). Between 1908 and 1911, the Qing state bureaucracy and its lower-level offices had essentially been preoccupied with the roadmap laid out in the *Nine-year Program*. In the judicial field, priorities were given to the promulgation of several important new codes, including a new criminal code, and the building of a four-level court system, with the Supreme Court at the top, the provincial high courts and the district courts at the mid-level, and the local courts as the court of first instance (initially set to be completed by 1915).

The death of both the Guangxu Emperor and Empress Dowager Cixi in 1908 left the New Policy Movement with additional uncertainties, for the new Emperor, Xuantong (宣统), was only three years old and the Regent, Prince Chun (醇亲王), was inexperienced in politics. In the meanwhile, the official promotion of constitutionalism and local self-government since 1906 had given rise to a large number of political and civic associations throughout the country. Local gentry, intellectuals, and the business class dominated the provincial assemblies (咨议局) when they were elected and met for the first time in 1909. They, too, made up the majority of the first session of the National Assembly (资政院), which opened in 1910. While the provincial assemblies were meant to be the preparation for the provincial legislatures and the National Assembly the preparation for the parliament, the popular demand for an immediate opening of the parliament escalated into four rounds of nationwide petitions in 1910. The Qing court was forced to cut down the nine-year schedule to barely four years, with the constitution being rescheduled for 1912 and the first parliament to be convened in 1913. In May 1911, a responsible cabinet was finally formed, which replaced the Grand Council, the Grand Secretariat, and the Bureau of Government Affairs as the head of the executive body. Prince Qing became the first Prime Minister in Chinese history, while the Constitution Commission was reorganized as the Legislation Bureau (法制院) under the cabinet. Yet, the dominance of Manchu members in the cabinet (eight out of thirteen) aroused further discontent among the ethnic Chinese. In October 1911, the revolt—or revolution, depending on one's point of view—that ultimately brought down the Qing was sparked off in Hubei Province and quickly spread to other regions. As a last-minute rescue, Yuan Shikai was appointed the Prime Minister in November to crack down on the revolutionaries; but it was already too late. In February 1912, with the abdication of the

Xuantong Emperor, the rule of the Qing was ended. Neither a constitution nor a parliament had been realized until then.

### **3.2 Imitative State Building: Judicial Reform**

The late-Qing legal reform had started in 1904 as a narrowly focused endeavor to eliminate the provisions for severe punishments in the Great Qing Code and promulgate a set of new regulations over commercial and industrial activities.<sup>6</sup> Both of these initiatives had been partially driven by the influence of Western examples and by the Qing's objective of terminating foreign extraterritorial privileges. Yet, it was the government reorganization of 1906 that turned this early code revision stage into something vastly different, namely a nationwide restructuring of the judicial system that spanned the next few decades. The new objective of the judicial reform was to create a modern court system that was both specialized and independent from the executive branch of the government. This was essentially part of the late-Qing efforts at imitative state building, the overall goal of which was to transform the Qing state into a Japanese-style constitutional monarchy. Like other projects of the government reorganization, the building of a modern judicial system was planned and implemented from the top. In the first stage, several central-level agencies were reorganized to separate the authority over judicial administration, adjudication, and code drafting. The former Board of Punishment was reorganized into the Ministry of Justice, which would be solely responsible for judicial administration. All matters of adjudication and appeal would be transferred to the new Supreme Court, while the Code

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<sup>6</sup> The *Company Law* of 1904 and its subsequent adaptations during the Republican era would help define the jurisdiction for the Chinese public accountants, see a short discussion in the concluding chapter.

Revision Commission would become an independent office in charge of revising and drafting codes. In the second stage, the planning for a multi-level court system began to be implemented at the provincial and local levels. Yet, the propagation of lower-level courts turned out to be a much slower process than the central-level reform and would be subject to several policy revisions during the Beiyang years and the Nanjing decade. A defining feature of the judicial reform was the professional requirements for judicial officers and the specialization of the judicial career. As a result, traditional legal experts who had been retained by the new judiciary during its early years were increasingly replaced by students of modern law who had made their way through a complex system of examinations and internal promotion.

### **3.2.1 Central-level Agencies**

In this section, I provide an analysis of four central-level institutions that were at the center of the late-Qing judicial reform: the Constitution Commission, the Code Revision Commission, the Supreme Court, and the Ministry of Justice. Because of their status as central-level agencies, they emerged as institution-building institutions that defined the organizational structure and operating rules for the whole judicial system. I will first draw attention to the organization of and the boundaries between these agencies. I suggest that the success of the judicial reform was not only dependent upon its political legitimacy, but also upon the existing bureaucratic infrastructure at the central level. I then make use of available records to examine the staffing of these agencies. The personnel aspect was important because it revealed how the transition was made from an older generation of traditional jurists to a younger generation of modern-educated law students at the Supreme Court. It also provided evidence for the process through which the transplantation of a foreign model took place. As it will be clear immediately, the introduction of

the Japanese model was facilitated by the work of Japanese advisers and Japanese-trained returnee students. In the planning stage, they helped lay down the organizational basis for the new judicial system. Later on, the Japanese-trained law students who had participated in the judicial reform of the Qing would take control of the early Republican judiciary and work on the further adaption of the model.

### The Constitution Commission

The Constitution Commission (宪政编查馆) was originally set up in 1905 as the Office of Government Reform (考察政治馆), which was responsible for collecting and reviewing the reports from the overseas government-study delegations. Since 1907, it had become the leading institution and central-level hub for the Qing's top-down government reorganization. Its various duties included the drafting of the constitution, the surveying of the population, the compilation of socioeconomic statistics, and the supervision of the reform progress according to the *Nine-year Program* (Cheng 2003:164-83). Eleven of the twelve men who had at one time been appointed the Constitution Commissioner (管理事务大臣) had held the Qing's highest of official titles, such as the Grand Councilor (军机大臣) and the Grand Secretary (大学士) (Peng 2011:212-31). The Chief Constitution Commissioner, Prince Qing (庆亲王), was the most powerful and trusted royal member of the time and would become the very first prime minister of the Qing cabinet in 1911. With respect to legal reform, the Constitution Commission was responsible for reviewing all the plans and drafts submitted by the Code Revision Commission before they were sent to the throne for approval. As the two institutional engines of the late-Qing judicial reform, both the Constitution Commission and the Code Revision Commission shared

the reformist agenda that, in order to transform the Qing state into a constitutional monarchy, it was paramount to establish an independent judiciary after the best of foreign models. Piecemeal revisions of the traditional Qing codes were not enough; it was necessary to replace the old codes with a whole new set of laws and regulations that were both consistent with the norm of modern legal practice and adaptable to the Chinese circumstances.

As an *ad hoc* institution created specifically for the government reform, the Constitution Commission and its predecessor, the Office of Government Reform, did not conform to the Qing's usual bureaucratic standards. It created an organizational environment in which the ideas of the foreign-educated students of modern law were routinely conveyed to the key policymakers of the reform. In 1905, when Qing delegates were sent abroad to study Western and Japanese governments, a group of returnee students were already employed for the work of translation, information collection, and report writing (Shang 2003:156-59). The Japanese-educated students were especially favored due to their language advantage, since the Japanese vocabulary of law and government could be readily borrowed by the Chinese (Shang 2003:4). The policy recommendations proposed by these overseas delegations—which impressed the Empress Dowager greatly in 1906—were also advised by several Japanese-trained students from the staff of Yuan Shikai, who had been highly supportive of the reform agenda (Shang 2003:5). When a committee was summoned in September 1906 to lay out the blueprint for the government reorganization, four of these Japanese-trained law students were selected to draft the planning materials: Jin Bangping (金邦平), Wang Rongbao (汪荣宝), Cao Rulin (曹汝霖), and Lu Zongyu (陆宗輿), all of whom would become key members of the judicial reform (Eastern Miscellany 1906). In 1907, the Office of Government Reform was formally renamed the Constitutional Commission, with two main technical divisions each responsible for compilation



(编制局) and statistics (统计局). Henceforth, the Commission employed a three-level internal structure that combined bureaucratic authority with technical expertise. It was chaired by high-ranking officials who, by their authority and experience, held great influence on the reform agenda. At the divisional level, it was directed by reform-minded traditional degree-holders with extensive experience in the Qing's old administration (Peng 2001:24-25). The actual workforce at the forefront of the translating, drafting, and editing tasks—that is, the rank and file of its staff—was made up largely of returnee students with a modern training in law and government administration. The Commission's two technical divisions together employed a staff of sixty-two members between 1907 and 1911, among which forty-three had an overseas education, including thirty-six who had studied in Japan (Peng 2011:212-31). In addition, Yang Du (杨度), a graduate of the Hosei program in Japan and the leading advocate for constitutionalism, was appointed its Chief Consultant (参议). In this way, the Constitution Commission provided an important institutional means through which those familiar with foreign practices of law could participate in the top-level policy-making process of the New Policy Movement.

### The Code Revision Commission

The Code Revision Commission was not an invention of the New Policy Movement. The practice of periodically entrusting a small group of elite jurists with the task of revising the Qing Code and its numerous sub-statutes can be traced back at least to 1645 and the last major revision was completed in the early 1870s (Chen 2009:29-38). It is therefore not surprising that when Shen Jiaben was appointed the Commissioner for Code Revision in 1904, he turned immediately to this office as his organizational apparatus. Led by Shen and the senior jurist Ji

Tongjun (吉同钧), the Commission initially devoted itself to the revision of Qing codes and the translation of foreign laws, which did not represent much a departure from its earlier work.<sup>7</sup> With the start of the government reorganization, the Code Revision Commission, too, underwent a major overhaul. In 1907, it became an independent legislative office under the direct auspices of the Constitution Commission. Shen, who briefly served as the Chief Justice of the Supreme Court, was reappointed as the Code Revision Commissioner. Now directly funded by the Treasury, the Commission enjoyed an annual budget of nearly 100 thousand taels, which made it reasonably well-financed to cover the salary and cost for its staff, including four well-compensated Japanese legal scholars: Okada Asataro, professor of criminal law at Tokyo Imperial University, Matsuoka Yoshimasa, judge at the Tokyo Court of Appeals with a specialization in civil law, Shida Kotaro, professor of commerce and law at Tokyo Higher Commercial College, and Shigejiro Ogawa, a Tokyo Imperial expert on prison studies (Reynolds 1993:182-85; Chen 2009:236-43). At the same time, Shen requested more Chinese staff members with modern legal training. His recruitment plan in late 1907 showed seventeen of the twenty-eight candidates with a foreign education (Chen 2009:98-99). Of the six who later became the directors of the Commission's two compilation departments, three had a Japanese background (Chen 2009:100-101). According to Chen's observation (2009:224-35), many of the staff members who joined the Code Revision Commission after 1907 were either traditionally educated bureaucrats with an admiration for the Japanese legal system or Japanese-trained students of modern law. Both were quite convinced of the superiority of Western law and were

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<sup>7</sup> Important revisions made during this period include the removal of redundant and obsolete provisions in the penal code, the restriction on the use of severe punishment, the prohibition on the use of torture in the investigation and trial of cases, the abrogation of collective responsibility, and the equalization of the legal status of the Chinese and the Manchus (Chen 2009:323-40).

passionate about the process of imitative state building. There is also evidence that some of the staff members were shared between the Code Revision Commission and the Constitution Commission, which aligned the working agendas of the two institutions on even closer terms (Wu 2006). In contrast, traditional jurists who did not fully embrace Western law—such as Ji Tongjun—had been increasingly marginalized (Yu 2002).

In this second stage, the focus of the Code Revision Commission switched to the drafting of new laws for the new court system. Between 1907 and 1911, it completed a long list of draft codes, including, among others, the *Draft Commercial Code* of 1909 (with the assistance of Shida Kotaro), the *Draft Prison Law* of 1910 (with Shigejiro Ogawa), the *Judicial Organization Law* (with Okada Asataro), the *Current Criminal Code* (with Ji Tongjun), the *New Criminal Code* (with Okada Asataro), the *Draft Criminal Procedure Law*, the *Draft Civil Procedure Law*, and the *Draft Civil Code* (with Matsuoka Yoshimasa).<sup>8</sup> Except for the *Current Criminal Code*, which was a piece of makeshift legislation based upon the old Qing codes, all the rest were modeled upon Japanese precedents. The *Judicial Organization Law* of 1910 was especially significant, as it laid down the official guidelines for the organization and operation of each level of courts. Its drafting process was quite revealing of the role played by the Japanese advisers (Wu 2006). The original draft, in Japanese, was composed by Okada Asataro and was largely based upon Japan's *Judicial Organization Law* of 1890. It was translated into Chinese by staff members trained in Japan and was revised by the two Chinese commissioners. It was then sent to

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<sup>8</sup> Both the *Judicial Organization Law* and the *Current Criminal Code* were sanctified in 1910 and the *New Criminal Code* in 1911, while other draft legislation remained unsanctified until the end of the Qing (Chen 2009:323-40).

the Constitution Commission for further review, before it was finally submitted to the throne for approval.

In many ways, the work of the Code Revision Commission during this period represented a radical departure from Chinese legal traditions. Compiled mostly under the leadership of Japanese advisers, some of the drafts had aroused tremendous controversy among senior jurists and high-ranking officials. A good example here is the *Draft New Criminal Code* of 1907. From the point of view of the judicial reformers, the new criminal code should both redress the issue of severe punishment in the old penal code and introduce important Western legal principles such as equality before the law, no penalty without a law, and corrective education (Qing 1972:1935-81). Yet, the draft code aroused strong criticism from the more conservative camp of the reformers, which included influential figures like Zhang Zhidong, one of the Constitution Commissioners, Ting Jie (廷杰), then Minister of Justice, Lao Naixuan (劳乃宣), a well-respected traditional scholar, and, within the Commission itself, Ji Tongjun, the leading traditional jurist. What they had found most objectionable was that the draft had deviated too much from the traditional rules of propriety and the moral ground upon which the Chinese social order had been based, such as the relationship between the sovereign and his subjects, between father and child, between husband and wife, between elder and younger brothers, or between man and woman in general (Meijer 1967:79-96; Cheng 1976:245-50; Li 2000:304-56). The critics were afraid that once the violation of the traditional mores was no longer punished, or no longer punished as severely as in the past, the reform would be detrimental rather than beneficial to the Chinese society. In a way, conservative reformers like Zhang Zhidong, who had urged upon code revision only a few years before, now found the steps to be too big (Gao 2007; Liang 2013). The controversy persisted even after several rounds of revision. It was only with the

support of Prince Qing, head of the Constitution Commission, that the draft was finally approved by the throne in 1910 as part of the fulfillment of its year-by-year roadmap towards a constitutional government.

### The Supreme Court

The 1906 imperial edict that officially launched the government reorganization also declared the end of the Three High Courts. According to the edict, a new Supreme Court would assume the authority over all case hearings, adjudication, and appeal, while the former Board of Punishments would be reorganized as the Ministry of Justice and retain the authority over judicial administration. Thus, the Supreme Court, which consisted of a criminal court, a civil court, and a semi-autonomous Chief Procuracy, became the country's highest judicial authority, with the Chief Justice having an official rank of 2a (正二品) (Han 2012:143-45). Shen Jiaben, former Deputy President of the Board of Punishment, was appointed the inaugural Chief Justice in 1907. Within one month into his new office, Shen submitted the *Supreme Court Judicial Organization Law* as the principle for the overall reorganization of the judiciary (Qing 1972:1849-54). Drawing his ideas mostly from the Japanese model, Shen proposed a four-level court system, including, in addition to the Supreme Court, the provincial high court, the district court, and the local court (or the justice office). However, Shen's proposal was met with objections from the Ministry of Justice, which, among other things, insisted on its authority over such administrative matters like the appointment of judges and the organization of lower-level courts (for a full-length study of this dispute, see Zhang 2007a). The contention was finally resolved by an edict that switched Shen's appointment with the Senior Deputy Minister of Justice. A resolution was soon reached between the two agencies: whereas matters like the

appointment of judicial officers and the organization of local courts were to be designated primarily to the Ministry of Justice, the Supreme Court would be exclusively in charge of adjudication and the review of appeals, including those involving death penalties.<sup>9</sup>

Having settled its jurisdictional boundary, the Supreme Court was still faced with the problem of recruiting competent judicial officers. The transformation of a central judicial authority made up exclusively of traditional jurists to one that was specialized in modern law was not made overnight. In Chapter Two, it has been noted that jurists at the former Board of Punishments had formed a small specialist circle by the nineteenth century. Meanwhile, by 1907, even the first Chinese students of modern law<sup>10</sup> had barely any experience in the adjudication of serious cases. Instead of promoting these inexperienced students of modern law directly into judgeship, the new Supreme Court decided to rely upon the well-experienced jurists of traditional law and supplement them with younger assistants or judge-candidates who had modern legal training. The process of appointing Supreme Court judges thus began in the second half of 1907. By 1908, most new appointments had been formally confirmed after a three-month probation period. Among the initial group of 67 Supreme Court judges and judge-candidates, only 6 had received a formal education in modern law (Han 2012:52-55, 61-65, 373-81, 410-15). By 1910, the general makeup of Supreme Court judgeship had not changed much: out of a total of 132 appointees who had, at one time, served as Supreme Court judges or judge-candidates, only 15 had received some kind of modern legal education, while the rest were all traditional

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<sup>9</sup> Before the promulgation of the *New Criminal Code* and the *Judicial Organization Law*, however, the Ministry of Justice would still be jointly responsible for the review of felonies submitted by provincial and Metropolitan courts and be in charge of the Autumn Assizes for capital punishments (Xie 2014:118-42).

<sup>10</sup> The first Chinese student who got a law degree in Japan was Tang Bao-e (唐宝锷), who graduated from Waseda University and was awarded a *jinshi* degree upon his return in 1905 (Wang 2001:92-93).

degree holders and/or jurists (Li 2018:79). When a judicial examination was held that year to qualify new recruits to the judiciary (more on this examination below), many incumbent judicial officers at the Supreme Court were exempted (Han 2012:65). Until the end of the Qing, competent traditional jurists from the old judicial system were able to secure their position both as central-level officials and judicial authorities. In this regard, they were successfully co-opted by the judicial reform and there had hardly been any resistance.

### The Ministry of Justice

The Ministry of Justice, reorganized from the former Board of Punishments, was also adapting to its new roles. Dai Hongci (戴鴻慈), one of the commissioners sent for the 1905 government study tours, was appointed the first Minister of Justice, with an official rank of 1a (正一品), two levels above that of the Chief Justice. Unlike Shen, Dai was not an expert in traditional or modern law, but he was a reform-minded bureaucrat and one of the key advocates of the New Policy Movement (Zhang 2007b; Xie 2014:46). Organizationally, because the transfer of case reviews to the Supreme Court was done in several stages, the Ministry of Justice initially kept four departments that oversaw felony cases. Jurists and administrative staff, if they had not been reappointed to the Supreme Court or the lower-level courts, were largely retained by the Ministry (Xie 2014:54-56). As of 1909, the four judicial departments of the Ministry still had a total staff of nearly four hundred (Xie 2014:68). In addition, four other departments were reorganized or created to take charge of purely administrative matters: personnel, finance, prison management, and general affairs. Two new councils were set up to assist the general planning of local courts, coordinate ministerial administration, and oversee the preparation of Autumn Assizes. Together,

the two councils initially employed about twenty legal specialists, among who no more than four were students of modern law (Xie 2014:74-79).

### **3.2.2 The Organization of the Court System**

Once the political legitimacy was established and the institution-building institutions ready, the next step of the judicial reform was to propagate the modern court at the provincial and local levels. The establishment of modern courts thus became an important component of the Qing's government reorganization in the provinces. And despite the regime transition from the Qing to the Republic and, later, from the Beijing government to the Nanjing government, the efforts towards a multi-level court system in China had been carried forwards by the ministries of justice under successive administrations. Essentially, this state building process had unfolded through, on the one hand, the increase in the number of modern courts across the country and, on the other hand, the standardization of that newly created bureaucracy. In the following, I provide a brief account of the organization of the modern court system from the final years of the Qing to the prewar decade of the Nationalist regime. Despite a promising beginning, the building of a modern judicial bureaucracy turned out to be not a smooth process at all. In part, this was affected by the changing policies of the central leadership. Some of the Ministers of Justice were radical expansionist in their policy agenda, while others took a more tightened approach. In part, the ups and downs in the development of the judiciary were caused by the weakness of the central government, which had to rely upon provincial and local funding to financially support the operation of the lower-level courts. But there was one institutional aspect in which the central administrators had made consistent progress, namely the standardization in the management of the judicial personnel. This was achieved through both the system of judicial examinations and



an additional set of personnel rules that aimed at ensuring the professional competence and trustworthiness of the judicial officers.

### The Expansion of Lower-level Courts

The planning for a nation-wide modern court system was first formulated by Shen Jiaben in the *Supreme Court Judicial Organization Law* (大理院审判编制法) of 1906 (Qing 1972:1849-54).

Drawing his ideas mostly from the Japanese model, Shen had envisioned a four-level court system comprising the Supreme Court, the provincial high court, the district court, and the local court or the justice office. Most of what happened in the next several decades had followed Shen's basic blueprint, although the feasibility of the local court would be repeatedly questioned. In 1907, as the Qing's government reorganization spread to the provincial and local levels, the Ministry of Justice began to take up its role as the central planner and supervisor of the lower-level courts.<sup>11</sup> The first step, besides the already launched Supreme Court, was to set up the lower courts in the capital which would then serve as the model for the provinces. That was accomplished in late 1907 with the opening of a high court, a district court, and five local courts in the Beijing Metropolitan area (Q. Li 2004:68-70). In the meantime, a *Provisional Regulation for Lower Courts* (各级审判厅试办章程) was released by the Ministry of Justice as the guiding principle for court organization and trial procedures in the provinces. The *Provisional Regulation* specified the organizational structure for each level of courts and prescribed the official ranks for

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<sup>11</sup> Recent Chinese studies on the state building efforts for lower-level courts during the late Qing and early Republican period include C. Li (2004), Q. Li (2004), Tang (2013), and Li (2018). In addition, Ouyang (2007) pays particular attention to the Southern judiciary based in Guangdong, while Xu (2008) remains the standard English work on the whole topic.

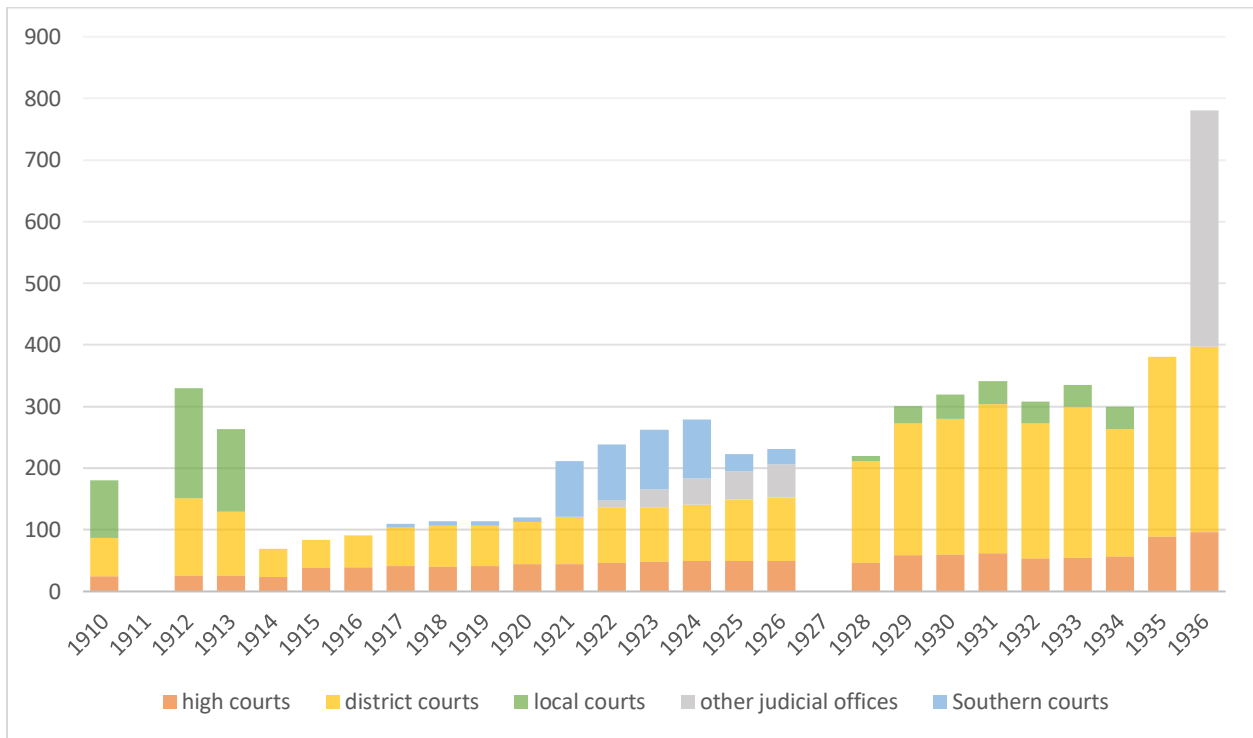
each level of judicial officers, much in the same way as the government reorganization had bureaucratized other lines of the Qing officialdom (Qing 1972:1857-67).

The Ministry of Justice's next move was to reorganize the judicial commissioner's office (按察使) in each province into the provincial justice department (提法司), which, in turn, should be responsible for the preparation of the provincial high court and the lower-level courts (Zhang 2011). Zhili and the three provinces in Manchuria were chosen as the first adopters to experiment with this new organizational model. In Zhili, modern courts were established in the same year as those in the Metropolitan area (Q. Li 2004:70-75). In Manchuria, modern courts first emerged in the Fengtian Province in 1908 (Zhang 2012:132-33). However, one important factor that had constrained the development of the judicial reform and the expansion of modern courts was judicial finance. In fact, the poor fiscal condition of the Qing and its belated attempt at a finance reform led to the policy that all provincial- and local-level reforms would have to be funded by provincial and local revenue (Tang 2013:234-38). In terms of the judicial reform, this meant that all provincial courts would be funded by provincial revenue while county-level courts would be dependent upon the county treasury, a practice that continued well into the Republic until the early 1940s (Wu 2008). The result was a constant negotiation and struggle between national, provincial, local governments over the finance of judicial offices (Xu 2008:149-57).

The pace of judicial reform was radically accelerated with the announcement of the *Nine-year Program for Constitutional Preparation* (逐年应行筹备事宜清单) in 1908. This was essentially a year-by-year checklist of state building projects that the Qing court had pledged for the timely formation of a constitutional government. With regards to the court system (Qing 1972:232-34), it was expected that the new courts at the provincial capitals and major commercial townships should be established by the end of the third year (1910), those at the

prefectural and county levels by the end of the sixth year (1913), and those at the district and village levels by the end of the eighth year (1915). Subsequently, the *Nine-year Program* underwent a major revision in early 1911, which moved forward the deadline for prefectural- and county-level courts to 1912, while removing the schedule for district- and village-level courts (Palace Museum Ming-Qing Archives 1979:88-92). According to this timetable, the Ministry of Justice revised the *Provisional Regulation* in 1909 and accompanied it with several other detailed guidelines for the courts to be set up at the provincial capitals and major commercial centers. In 1910, the newly sanctified *Judicial Organization Law* (法院编制法) replaced the *Provisional Regulation* as the definitive statute over the organization of the modern court system (Qing 1972:1819-34). In the same year, the first national judicial examination was held to qualify and recruit judges and procurators for the judiciary. By the time the Qing fell, the best estimate so far is that about 181 modern courts had been established, including the Supreme Court, 25 provincial high courts and branch high courts, 62 district courts and branch district courts, and 93 local courts (Q. Li 2004:221-24). The total number of court personnel (including judges, procurators, and court clerks) amounted to 2,500, with 2,280 in the provinces and the rest in the capital (Xie 2014:222). With less than two hundred district courts and local courts, this means that the vast majority of the 1,800 or so Chinese counties had still relied on the traditional magistrate's court for handling legal cases and judicial administration.

**Figure 4** Expansion of the Modern Judiciary in China before 1937\*



\*See Appendix A for details.

The regime transition from the Qing to the Republic did not cause any substantial departure from the reform agenda set out in the 1900s, at least for the field of law. Most of the judicial institutions were continued by the proteges of the New Policy Movement. The social legitimacy of a modern judiciary had been so well received that the total number of lower-level courts had almost doubled during the short interim period of 1911-1912, due to the institution-building fervor in a few provinces (C. Li 2004:103-10; Tang 2013:179). In 1912, President Yuan Shikai declared that, until the new laws of the Republic were promulgated, the codes of the Qing would remain in force, except for those provisions that were in obvious contradiction to the spirit of a republican government (Xu 2008:55). Thus, the *Judicial Organization Law* of 1910 remained as the guiding principle for the early Republican court system (Li 2018:125-27). When Xu Shiying

(许世英) was appointed the Minister of Justice, the construction of a four-level court system was officially resumed. Formerly the head of the Fengtian high court and the Chief Justice of the Supreme Court, Xu had a traditional Chinese education but, nonetheless, was a firm supporter of the judicial reform (for a discussion of Xu's role in the transition of the Qing judiciary to its Republican successor, see Han 2020). In 1912, Xu announced a radical five-year plan for the addition of more modern courts and the training of more court personnel (Xu 2008:59-60). His goal, as he conveyed to the provincial judicial administrators during the First National Judicial Conference, was to set up at least one district court in each county and train a total of forty thousand judicial officers by the end of the five-year period (Jiang 2014). In the same year, Xu also issued the *Provisional Regulation for Lawyers*, which, for the first time, recognized the legal status of the Chinese bar (the bar will be discussed separately at the end of the chapter).

However, Xu did not stay long enough to carry out his ambitious planning. Like the *Nine-year Program* of 1908, his five-year project turned out to be another short-lived episode of radical expansionism. A major shift took place during the term of Xu's successor, Liang Qichao. Unlike Xu, Liang and his advisers were more realistic about the financial capacity of the government and were more concerned about the professional competency of newly graduated law students (Jiang 2014). As a result, in 1914, Xu's radical five-year plan was replaced by a tightened policy, which opted for a three-level court system without the local courts (Tang 2013:97-114). This new institution-building agenda immediately won the support of both the president and the provincial authorities and it was approved by the National Political Conference held in the same year. According to a presidential order issued subsequently, the total number of district courts should be greatly reduced, while all existing local courts should be either closed or reduced to a subdivision of the district court. In their stead, the magistrate's court was to be

reinstalled as the main court of first instance in those regions, a policy that was later affirmed by the Second National Judicial Conference held in 1916 (Tang 2013:115-30). The consequence of this new agenda was dramatic, with the total number of modern courts dropped from 264 to 70 within a year (see Figure 4). In the remainder of the 1910s, as Liang's tightened approach was followed by his successors, the size of the modern judiciary increased only slowly, never exceeding that at the beginning of the decade. In 1919, in order to prepare for the abolition of foreign extraterritoriality, the Ministry of Justice laid out a moderate program for the addition of branch high courts and prefectural-level district courts (Tang 2013:132-38). In 1922, as a Commission on Extraterritoriality in China (法权委员会) was being organized to investigate the Chinese judicial system, a few dozen county-level judicial offices (县司法公署) were created, which was a reduced form of the local court in the original four-level system (Tang 2013:141-42). As a result, there was a visible increase in the total number of courts and judicial offices in the early 1920s.

Despite the political and military conflicts of the early Republican period, the Chinese judiciary remained a surprisingly unified system under the Ministry of Justice and the Supreme Court in Beijing (Tang 2013:213-32). The Ministry of Justice had been in control of the qualification, appointment, and assessment of judicial officers. It also maintained an administrative oversight on the nature and number of trials reported from each level of courts. The Supreme Court had regularly handled the appeals from the provincial high courts and, through its rulings and judicial explanations, had established itself as the definitive authority on judicial opinions. One major exception was in the southern provinces, where a separate judiciary

had been established by Sun Yat-sen's government<sup>12</sup> since the late 1910s. In defiance of the central government in Beijing, the Southern government launched its own Ministry of Justice in 1918, its own Supreme Court and Chief Procuracy in 1919, and its Administrative Court (平政院) in 1921 (Ouyang 2007:160-63). However, the organization of the court system under the Southern government had varied during the late 1910s and early 1920 (represented in the chart by the blue columns during 1917-1926). At the peak of their development, each of the 85 counties of the Guangdong Province had established one branch district court (Ouyang 2007:72-76). With the consolidation of the Southern government under the Nationalist Party and the unification of the whole country by the Nationalist Army, the two Chinese judicial systems would be merged under the Nanjing government.

Since the late 1920s, a new and rigorous wave of state building was initiated by the Nanjing government. In 1928, the central government was reorganized according to the vision of a modern Chinese state initially set out in Sun Yat-sen's political theory.<sup>13</sup> At the top of the

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<sup>12</sup> As the predecessor of the Nationalist government, Sun's revolutionary government was first established in Guangzhou in 1917. In defiance of the central government in Beijing, Sun adopted a Leninist approach to reorganize the Nationalist Party and called for a new revolution to re-establish the Republic on proper constitutional grounds. Between 1917 and 1926, Sun (who died in 1925) and his followers were in constant warfare with other warlords in the South. His government was forced down and re-established several times before it finally emerged as the Nationalist government in 1925. The geographic area over which it had actual control had varied greatly: at the pinnacle of its authority, it was recognized by the provincial authorities of Guangdong, Guangxi, Hunan, Yunnan, Guizhou, Sichuan, and controlled parts of Fujian, Hubei, Jiangxi, and Shangxi as well; at its lowest point, it was limited to the vicinities of the city of Guangzhou and the western and northern parts of the Guangdong Province.

<sup>13</sup> In his *Outline for the Nationalist Government* of 1924, Sun had laid down a three-stage road map for his fellow revolutionaries (Sun 1953). Military unification of the country, as achieved by his successors between 1926 and 1928, was the first stage. The second was a political tutelage government led by the Nationalist Party to educate the Chinese about their political and civil rights and prepare them for a constitutional government, which was to be the third stage. With their military success, the Nationalists declared the beginning of the second stage in 1928, so the Nanjing decade (1928-1937) was a period marked by the tutelage rule of the Nationalist Party. Sun's "Three Principles of the People" (*sanmin zhuyi*)—nationalism (*minzu*), democracy

government were five state-level councils, including the Judicial Council (司法院). Under the Judicial Council were the Ministry of Judicial Administration (司法行政院), the Supreme Court (最高法院),<sup>14</sup> the Administrative Court (平政院), and the Disciplinary Committee for Public Officials (公务员惩戒委员会). The new Ministry of Judicial Administration was the central-level agency responsible for the organization of the court system. Like its late-Qing and the early Beijing predecessors, it started out with another round of ambitious yet wishful planning. In 1929, the Ministry released a reform plan for the next six years (Ouyang 2007:76-81). A four-level court system was to be reinstalled; the goal was to have one court of first instance for each county, one district court for each prefectural seat or major commercial city, and the addition of branch high courts and branch supreme courts to facilitate the timely operation of the appeal system. It did not come as a surprise that the program was carried out poorly: except for a substantial growth in 1929, the number of new courts fell far short of the planning (Ouyang 2007:81-83). With the Japanese occupation of Manchuria after 1931, the total number of modern courts under Nationalist control had actually declined.

A more practical and effective program was implemented through the promulgation of the new *Judicial Organization Law* in 1935 (Ouyang 2007:83-87). Since it would be impossible to replace all adjudicating county magistrates any time soon, a three-level system was once again resuscitated. The Ministry of Judicial Administration's priority was placed on the expansion of district courts, branch district courts, and branch high courts. At the same time, county judicial

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(*minquan*), and people's livelihood (*minsheng*)—became the founding ideology of the party-state and his blueprint for a central government built upon the check and balance among its five main branches was realized.

<sup>14</sup> One important change during the Nanjing decade was the abolition of the procuracy as an independent office (Wang 1936). The procurator's office became directly attached to the respective court.



divisions (县司法处), similar to the county judicial offices under the Beijing government, were to be propagated. As a substitute for the local or county court, each county judicial division would have an adjudicating trial officer appointed by the supervising high court, while the county magistrate would be in charge of general judicial administration and act as procurator in criminal cases (Wang [1954] 2003:16-17). Additional regulations were issued by the Ministry in 1936, which allowed lawyers to appear before the county judicial division if the county magistrate also served as the procurator in the same trial (Wang [1954] 2003:62). Consequently, there was another upsurge in the number of modern courts and county judicial divisions after 1935. According to Ju (1936:6), as of 1936, 59 percent of the total counties, districts, and municipalities still relied upon the magistrate's courts for judicial matters, which was already a significant drop compared to the 92 percent just a decade earlier.

### The Management of Judicial Personnel

One direct outcome of such a large-scale state building project in the judicial field was a sudden increase in the demand for judicial personnel.<sup>15</sup> Under the traditional Qing system, only the jurists at the Board of Punishments were government specialists in adjudication and the hearing of appeals. The rest of the Qing officials and functionaries who performed a judicial role in one way or another were largely generalists in training—the best example being the average county magistrate, who was selected for his classical learning and acted as both the judge and the administrator for his jurisdiction. Therefore, as soon as a multi-level modern judiciary was under

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<sup>15</sup> Recent Chinese studies on the personnel aspect of the late-Qing and Republican judicial reform include C. Li (2004), Q. Li (2004), Bi (2009), Hu (2011), and Li (2018). In English, Strauss (1998) remains the only major study on the civil service personnel of Republican China, but it does not deal specifically with the judicial system.

way, the recruitment of adequately trained judicial personnel became an immediate problem for the government (Liu 2011). As I mentioned earlier, in the initial stage when the reform was limited to the central level, traditional jurists from the former Board of Punishments had been selectively appointed to the new judicial positions in the Supreme Court or the administrative positions in the Ministry of Justice. This also happened at the earliest established local courts, where traditional jurists and magistrates competent in their previous judicial roles were appointed to the newly created judgeships and procuracies. For instance, most of the sixty-three judicial officers appointed by the Zhili courts between 1907 and 1911 had held lower-level traditional degree titles; only seven of them had received some kind of modern legal education, including three who had studied in Japan (Li 2018:68, 240-43). In the Metropolitan courts, of the eighty-seven judges and procurators on the roster of 1907, none had completed any formal legal education (Li 2018:69, 231-39). According to another source, thirty-two of its fifty-six officers on the roster of 1909 were originally selected from among the rank-and-file of the Ministry of Justice (Xie 2014:197). In Manchuria, the profile of the judicial personnel was slightly ahead of its time: its roster of 1909 showed that twenty-five of its six-seventy judicial officers had received some kind of modern education in law, including ten who had been to Japan and another ten who had completed a one-year legal training program at the Mukden Legal Training Institute (Zhang 2012:135-36). In general, Li's comprehensive dataset (Li 2018:79) lists a total of 406 judicial officers appointed to the Supreme Court and the first three provincial courts between 1907 and 1910. Among them, 201, or 49.6 percent, had advanced-level traditional degree titles but no evidence of additional modern education. Lower-level traditional degree holders with no modern education accounted for another 111, or 27.4 percent. Only 38, or 9.4 percent, had received some

kind of modern education, including those who had acquired a traditional degree title in the first place.

The situation began to change in 1910 as the *Judicial Organization Law* (法院编制法) and the *Provisional Ordinance on the Examination and Appointment of Judicial Officers* (法官考试任用暂行章程) went into effect. Both of these regulations were imitations of Japanese precedents and they essentially required all judicial officers to be selected through—and only through—a two-round national judicial examination (C. Li 2004:50-51). The Qing's first judicial examination was held later that year (C. Li 2004:54-68). Eligible applicants included graduates from three-year *fazheng* programs and those from overseas programs. The examination was also open to officials and official-candidates with traditional education, provided if they met one of the minimum criteria on their status. Even private legal secretaries with a sound record of moral credibility would be eligible to take the judicial examination. The applicants were tested on the fundamentals of constitutional government, on the various Qing codes and sub-statutes, on the new laws implemented since the New Policy Movement, as well as on international laws and foreign legal traditions. A total of 841 applicants nationwide made it through the first round and were allocated to various local courts for a two-year probation period, before a scheduled second round of test (Li 2018:77). The pass rate, according to an estimation based upon the Beijing site, was around one in six (Q. Li 2004:77, 99). Those already in office by the time of the judicial examination were required to take a separate qualification test, unless otherwise exempted (Q. Li 2004:119-23). According to Li (2018:80-82), the first national judicial examination had an enormous impact on the personnel make-up of the Qing's new court system. The rate of judicial officers with a modern legal education had increased to 47.4 percent, a sudden upsurge compared to the 9.4 percent just two years earlier.

Although the Qing collapsed before it was able to organize the second round of judicial examination, the practice of selecting judicial officers through modern educational credentials and standardized civil service examinations was continued by the Republican state. In fact, attracting men of talents while increasing the standardization and efficiency of the state bureaucracy was a crucial area of state building pursued by the Beijing government under Yuan Shikai (Strauss 1998:29-32). This was not only limited to the judicial field but was intended to cover all public offices both at the central and provincial levels. The most important measure for the recruitment of public officials was the advanced-level and the regular-level civil service examinations that were first held in 1916, which became a regular institution throughout the rest of the Republican era. In the judicial field, however, a tightening of qualification occurred before the 1916 national civil service examination. During Xu Shiying's term as the Minister of Justice, all judicial officials were required to have at least a law diploma from the three-year *fazheng* programs or from an equivalent foreign institution. This essentially disqualified those with only a traditional degree and those with a diploma from the wildly popular short-term programs (C. Li 2004:113-24). Xu's policy resulted in a large turnover of judicial personnel even within his short term. In the Supreme Court, none of its ninety-seven officers and probationary officers from 1911 would remain in office two years later, while eight of them were reappointed to the Metropolitan courts (C. Li 2004:96-102; Li 2018:130-31). In the Metropolitan courts, only four of its sixty-two judicial officers in 1911 remained in office two years later. Most of the new appointees were selected, without going through a judicial examination, from those with formal modern education, even though many of them were not as experienced as those who had been laid off (Li 2018:135).

Xu's over-reliance on modern educational credentials, sometimes at the expense of actual judicial experience, aroused much controversy among the judicial circles. Many, including his successors in the Ministry of Justice, criticized his personnel policy (and his rather expansionist five-year plan) for potentially jeopardizing the social creditability of the new judicial system (Tang 2013:97-100). To redress the issue, Liang Qichao, the next Minister of Justice, organized a special judicial selection test (甄拔司法人员考试) in 1914 to reconfirm the appointments made in the previous years (C. Li 2004:174-88). In 1915, with the promulgation of a new *Judicial Organization Law* and the announcement of the *Order on Advanced-level Civil Service Examination* (文官高等考试令) and the *Order on Judicial Examination* (司法官考试令), the national judicial examination formally became integrated into the new civil examination system (Hu 2011:70-78). Beijing's first national judicial examination was held in 1916 and, like its late-Qing predecessor, it also adopted an inclusive criterion for the applicant's eligibility: those who had prior judicial experience but without a formal modern legal education needed to take a preliminary screening test (C. Li 2004:198-203). Test-takers who successfully passed the preliminary round would take both a written test and an oral test in the first round. Those who passed the first round would then be assigned to local courts for probation or enroll in a mandatory training program, which typically lasted one year and a half. Upon completion of the required probation period or training program, the candidates would be examined once again, and only those who performed satisfactorily in this second round would be officially appointed.<sup>16</sup> Between 1916 and 1926, the Beijing government organized five such national judicial examinations. A total of 778 candidates, including those who qualified through the 1914 special

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<sup>16</sup> Whether this was an imitation of the Japanese practice of recruiting judicial officers is a question to be further studied (Ji 1994). Indeed, the whole idea of civil service examination as developed under Yuan Shikai's rule could be another borrowing from Japan.

selection test, were selected for judgeship and procuracy through this standard method (Tang 2013:276). Additionally, the Ministry of Justice launched a Judicial Training Institute (司法讲习所) in 1915 to offer practical training to both incumbent and would-be judicial officers (Q. Li 2007:34-40). Applicants who had passed the first round of the judicial examinations had to complete the mandatory training at the Institute before they were eligible for the second-round tests.<sup>17</sup> Although no complete records have been found on the acceptance rates, the judicial examinations were probably more competitive than one can imagine. For instance, in 1919, the third national judicial examination had 1,729 applicants who passed the preliminary round, but only 189 of them made it through the first round—that was an 11 percent pass rate for a single round (Hu 2011:85-89).

After 1927, this model of a two-round, highly selective judicial examination, in combination with mandatory on-the-job training in between was continued by the Nationalists. In fact, the Nationalist government had organized its own judicial examinations and set up its own judge training institute when it was still based in the South (Wang 1936:36). After it was reestablished in Nanjing and replaced Beijing as the national government, the Nationalist government released its own set of regulations on the examination and appointment of judicial officers. Accordingly, the first three national judicial examinations during the Nanjing decade were held between 1928 and 1932, which admitted a total of 439 candidates from the first round (Hu 2011:137). In turn, these candidates were sent to the first three classes of a new Judge Training Institute based in Nanjing. One major change, however, was that the political ideology

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<sup>17</sup> By 1921, when the Institute was shut down due to financial difficulties, it had trained total of 437 graduates (Q. Li 2007:41). In 1927, a similar program, the Judicial Reserve Institute (司法储才馆), was set up by Beijing to continue the practice of on-the-job training (Hu 2011:109-114).

of the Nationalist Party was incorporated into the judicial examination and the training program (Hu 2011:124-25; Li 2012:107-10). After 1930, the judicial examinations were no longer held separately; they became a subsection of the advanced-level civil service examinations, which were held in 1933 and 1935, admitting another 92 candidates for judicial positions (Hu 2011:137). Three supplementary judicial examinations were organized before the outbreak of the war, including two provisional examinations, which admitted a total of 51 candidates, and one special examination held for members of the Nationalist Party, which admitted another 126 (Hu 2011:137).

In summary, 785 candidates for judicial positions were selected through the various judicial examinations during the Nanjing decade, almost equivalent to the number of applicants who had passed the first round of the examinations in the Beiyang period. Still, the total number of judicial officers qualified during the entire prewar period had been far short of the original planning: both the late Qing reform and Xu Shiyong's five-year plan had estimated a total demand for 18,000 judicial officers nationwide (Tang 2013:261-64), but only about 2,000 had been actually qualified by the mid-1930s, including those who had been exempted from the judicial examination. Given the huge pool of graduates from various programs of modern law and the much larger number of those who had been granted a lawyer's license during the same period (see the next two sections), the testing method had clearly set a higher standard for the judicial office.

In addition to a highly selective recruiting process based upon modern educational credentials and the judicial examination, there were several other sets of personnel rules to

undergird, if not ensure, the specialization and independence of the judiciary.<sup>18</sup> Some of these rules had historical roots in the traditional Qing officialdom, which, by itself, was a sophisticated system of examination, candidacy, evaluation, promotion, and discipline. The most important of these were the hierarchy of official ranks, the method of promotion, and the rules of avoidance. Together, they created an internal career ladder increasingly exclusive to qualified students of modern law, who were being routinely evaluated on their professional competence. It was only during the Nanjing decade that party affiliation became a political priority over the professional independence of the judicial personnel. But until the late 1930s, the success of the partification program had been limited.

As part of the state bureaucracy, all judicial personnel had both a position and a rank. The position was what defined an officer's realm of work; the rank was what prescribed his or her status, salary, and other benefits. Basically, the ranks of the judicial personnel were determined by mapping the judicial positions onto the existing hierarchy of official ranks. Ideally, since all judicial positions were not superior or subordinate to one another in a professional sense, their bureaucratic status was designated by their official ranks. In this way, judicial positions at the Supreme Court had ranks between 2a and 5a, while those at the lower courts had ranks between 4a and 7a. According to the Qing tradition, only the Chief Justice (2a) and the Deputy Chief Justice (3a) of the Supreme Court were directly appointed by the throne (or, during the Republic, by the President). The rest of the judicial personnel were appointed based upon the

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<sup>18</sup> The rules for judicial appointment, performance evaluation, and promotion were first laid down by the Qing in 1909 (Qing 1972:1877-79), before they were formally incorporated into the *Judicial Organization Law* of 1910 and its accompanied *Provisional Ordinance on the Examination and Appointment of Judicial Officers* (法官考试任用暂行章程) (Qing 1972:1819-36). The Beiyang government and the Nationalist government subsequently made several rounds of adjustment to that initial framework, but without much departure from it (Wang [1954] 2013:53-59; Bi 2009).



recommendation of the Ministry of Justice or simply by its decision. It is worth noting that the rank of the Chief Justice (2a) was one level below that of the Minister of Justice, which, like all ministerial chiefs, had a rank of 1b. The rank of the Chief Procurator (3b) was three levels below that of the Chief Justice, while the ranks of judicial officers at the Metropolitan courts were higher than those of their counterparts in the provincial courts. All these small distinctions in the official ranks of the judicial personnel bore witness to the legacy of the Qing's bureaucratic tradition, which continued well into the Republic.

With a hierarchy of positions and ranks come the rules for appointment and promotion (or demotion in some cases). In particular, the Republican personnel rules covered three procedural arrangements that were aimed at the specialization of the judiciary: the order of candidacy for entry-level positions (序补), performance evaluation and the promotion of incumbent officers (考绩/升转), and the special circumstances under which a particular type of appointment should be avoided (回避) (Bi 2009:157-65). The candidacy rules placed a great deal of emphasis on prior judicial experience and made entry-level judicial appointments already separate from those of executive positions. In addition, all promotions within the judiciary had to be reviewed by the Ministry of Justice and further approved by a Judicial Promotion Committee (法官升转委员会), which was chaired by the Chief Justice of the Supreme Court (J. Li 2007:119). Finally, in order to maintain the professional trustworthiness of the system, the rules of avoidance prevented certain types of appointments and prohibited certain types of practices due to potential conflict of interest. These included, first of all, the avoidance of political affiliation, which barred all judicial officers from political engagement, party membership, and representative elections (Xu 2008:62). The rule of avoidance also applied to personal connections, which precluded judges and procurators from being appointed to their home

provinces and home prefectures, or to positions directly related to those held by their close relatives. Similarly, it forbade lawyers who had served as judges, procurators, or court clerks to practice, within three years of leaving office, in the same area over which their former offices had jurisdiction (Xu 2008:67). A third area to be avoided was business activities, which were regarded as a direct cause for corruption (Bi 2009:204). In 1915, these rules of avoidance were consolidated in the *Judicial Discipline Law* (司法官懲戒法).

One significant challenge that was brought about by the Nationalist regime was against the rule of political avoidance. According to Xu Qian (徐谦), the Nationalist Minister of Justice from 1926 to 1927, since the Nationalist Party had been the leader of the military campaign to overthrow the Beiyang government, a party-dominated judicial system was essential to the advancement of judicial reform and the protection of judicial sovereignty (Xu 2008:85-86; Jiang 2010:65-80; Li 2012:52-58). Political neutrality of the judiciary, as the late Qing and the Beiyang governments had sought to achieve, was considered too detached from the people and therefore prone to corruption if it was not guided by the correct political ideology. This whole idea of the participation of the judiciary was further elaborated by Ju Zheng (居正), who served as the President of the Judicial Council during the 1930s and 1940s. Ju maintained that party dominance of the judicial system should have both an organizational and a juridical aspect: on the one hand, judicial officers should join the party or be selected from party members and, at the same time, they should be competent enough to apply party doctrines when adjudicating or reviewing cases (Xu 2008:91-92; Jiang 2010:80-93; Li 2012:139-47). For the Nationalists, then, political reliability would come before professional competency, if the two could not be attained simultaneously. In fact, the agenda for participation had started before the Nationalists came to power. In 1924, the Chief Justice of the Nationalist Supreme Court in Guangdong was ousted for

his refusal to support Party domination. Subsequently, all judicial officers in the Guangdong courts were ordered to join the Party (Li 2012:41-42). In 1926, the Nationalists officially rescinded the ban on party membership and declared that only party members of good reputation and with three years' judicial experience could be appointed to the judiciary. Since that time, the Guangdong Judge Institute began to include the teaching of Party ideology and Sun's *Outline* in its curriculum and, by 1926, it was reported that nine out of ten of its students had joined the Party (Li 2012:43-46). After the establishment of the Nationalist regime, all would-be judicial officers were required to complete the mandatory training program at the Judge Institute in Nanjing, which also taught party ideology (Li 2012:109-10). In 1935, Nanjing launched a special program to provide judicial training to selected staff members from party headquarters, so that they could be strategically placed into important judicial positions (Li 2012:152-55). By the late 1930s, the impact of these measures was beginning to be felt at least at the central level, where nearly 70 percent of the staff for the Judicial Council and 54 percent of the staff for the Ministry of Judicial Administration had become party members (Li 2012:155-56). Yet, out of the eighty Supreme Court judges in 1937, only thirty-four were party members. The overall percentage of party members should be lower for the 2,382 judges and 1,071 procurators of the whole judicial system (Xu 2008:89).

### **3.3 Legal Education**

With the termination of the imperial civil examination in 1904 and the launch of government reorganization in 1906, modern educational credentials had become the most sought-after form of cultural capital for the bulk of students who continued to aspire to public office. For students, legal education offered them more affordable access to modern educational credentials than most

other types of schooling. For the state, it was a practical method for re-tooling officials with traditional education and reducing its personnel redundancy. Thus, supported by both the state and private initiatives, legal education rose to be the most popular type of post-secondary education in the country. In the following section, I provide a historical account of the development of modern legal education from the second half of the nineteenth century until the mid-1930s. My main observation is that, partly due to the institutional influence from Japan and partly because of the weak state control over educational programs, legal education during the late Qing and Beiyang period had remained a poorly defined and poorly standardized field of study, one that had largely been conflated with the rather generalist preparation for, or retraining of, bureaucrats and administrators.

This had two important consequences for the professionalization of modern law in China. First, it gave rise to an oversupply of law graduates, many of whom had only a minimum familiarity with the study of modern law. In fact, law programs and law students had dominated the statistics of post-secondary education in early twentieth-century China. Many such programs had simply become diploma mills that offered crash courses for those who were desperate for a modern educational credential. The overgrowth of substandard legal education greatly affected the career prospects of law graduates, with only a small handful of them actually able to enter the judicial offices while many turned to other alternatives, including lawyering.

Second, the practical orientation and the substandard nature of the law programs also resulted in the belated development of modern Chinese law as a scholarly discipline. The absence of a scholarly legal community in China could be observed in the dearth of scholarly works and the lack of academic societies. That only began to change after the 1920s with the increased number of returnee students who had obtained advanced law degrees abroad and with

new educational policies in support of an American-style higher education that put more emphasis on the university level. By the 1930s, the academic branch of modern law was still in the making and it never had much influence on the institutionalization of legal practice.

### **3.3.1 Western and Japanese Influences**

Before the second half of the nineteenth century, the Qing did not have any formal institution for legal training. As discussed in Chapter Two, actual legal expertise had been acquired either on the job (especially for the jurists at the Board of Punishments) or through informal channels such as private tutoring or family lineage (especially among the legal secretaries). In 1867, W. A. P. Martin, the American Presbyterian missionary who had helped translate Henry Wheaton's *Elements of International Law* (1836) into Chinese, taught the first course on international law at the Peking Tongwen Guan (京师同文馆) (Wang 2001:130-52). That was a time when the Qing began to train students of foreign languages and international affairs for its treaty negotiations with the foreign powers. It was not until three decades later that the first formal law program emerged with the founding of the Tientsin University in 1895, the first four-year modern university in China (Wang 2001:153-59). Charles Daniel Tenney, the American missionary who served as its first dean, modeled the university on the American colleges of the time. Law was taught as one of the five degree programs it offered; while the program was really small, it remained the only university-level law program until 1906 (Wang 2001:184). In the first decade of the twentieth century, both the Shanxi University and the Peking University (the only other two universities in China by the time) began to admit students for legal studies (Wang 2001:170-84). The difference was that both Tientsin and Shanxi had a common law curriculum taught by American or British missionaries, whereas the Peking program was modeled on the Imperial

Tokyo University. By the end of the Qing, these small university-level programs had trained no more than a few dozen students (see also Cheng 2003:64-73).

A more important foreign influence on legal education in China had come from Japan, especially through the late-Qing wave of students who had been there for modern education. Among all Japanese programs that those students had rushed into during the 1900s, the most popular ones were on military training, normal education, law and administration (Pudles 2003:258). Of the 1,252 Japanese-educated students who passed the Qing's returnee examinations between 1905 and 1911, 813 had studied law and administration (Ye 1974:108-09). This trend continued into the Beiyang period. Between 1912 and 1921, 1,899 Chinese students graduated from various Japanese programs of law, government, and economics (the three were usually grouped together under the Japanese system) and the majority of them had majored in law (Ye 1974:133-36). Perhaps the single most important Japanese program that offered a tailor-made legal education to Chinese students was the accelerated program of law and administration at Hosei University (Pudles 2003:262-71). The Hosei program was launched in 1904 upon an agreement between the university and the Qing government. Covering three terms of six months each and designed to train a new generation of Qing officials, the program offered courses in modern law, government administration, as well as in finance and diplomacy. Although this was not a regular program in the Japanese educational system, the composition of the Hosei faculty was extraordinary, which included some of Japan's leading legal scholars of the time (three of them would later be employed by the Code Revision Commission as foreign advisers and instructors). By its closure in 1908, the Hosei program alone had awarded law diplomas to about 1,200 Chinese students, some of whom already had traditional degree titles when they first enrolled (Huang 1975:138-39; Pudles 2003:267). Other Japanese institutions that

had accepted Chinese students for specialized programs of law and administration included: Waseda University and its Chinese Student Division, Meiji University and its attached Keio Gakudo (Warp-and-Weft School), Toyo University, Chuo University (formerly Tokyo College of Law), and the prestigious Tokyo Imperial University (Supervisory Office for Chinese Students [1906] 2009:30-45; Saneto [1970] 1983:43-52). Among these, Waseda, Meiji, and Hosei had trained the largest number of law students who later passed the Qing's returnee examinations (Pudles 2003:259).

### **3.3.2 Schools of Law and Administration**

By 1906, while the rush of students to Japan began to recede, legal education back in China was just about to flourish. Yet, instead of the elite university-level law programs, it was the *fazheng* academies (法政学堂) that became the dominant type of legal education for a whole generation of Chinese students. To call it legal education was actually imprecise: the name *fazheng*—literally, law and administration—was a direct borrowing from the Japanese title of the Hosei program, so were the curricula. The first *fazheng* programs were set up by the provincial authorities, whose primary objective was not to train judicial officers or private legal practitioners. Instead, they were intended to expose lower-level officials and degree-holding candidates to the basics of modern law and government administration, so that they could be somehow prepared for the kind of constitutional government that the New Policy Movement was trying to build (Ye 1974:153-68). An equally urgent problem for the Qing was the redundancy in its administrative personnel. By the late nineteenth century, the gap between the number of official positions available and the number of candidates had widened to an unprecedented degree, partly due to the fact that degree titles were increasingly sold rather than granted through

the civil examination (Wu 2013). Thus, in every province as well as in the capital, there was a huge surplus population of degree holders who had to wait years before they would, if at all, be appointed. To offer them some practical training was both a way to keep them occupied and a method of selecting the cream of the crop. In 1906, the Zhili Governor-general, Yuan Shikai, launched the Zhili *Fazheng* Academy (直隶法政学堂), which was followed by the Metropolitan *Fazheng* Academy (京师法政学堂) in Beijing. This new type of institution soon attracted the attention of the Ministry of Education, which ordered all provincial governments to set up similar programs (Zhu 1989:475-77).

Perhaps the best illustration of the *fazheng* programs was the Metropolitan *Fazheng* Academy, praised by the Ministry of Education as the model school. The Academy offered a two-year preliminary program (预科) and a three-year regular program (正科) to students who had finished modern middle school (Zhu 1989:479-84). Since middle schools were only beginning to emerge in China, what actually became the default choice was the three-year auxiliary program (别科), which did not require any prior modern education and was mostly offered to junior officials or traditional degree holders. For those in their mid-career, the Academy also offered a one-and-half-year accelerated program (速成科), which was even more popular than the auxiliary program. In terms of their curricula, the three-year regular program was divided into a law track and an administration track (a third one in finance was later added). The law track offered courses in the Qing codes, constitutional law, criminal, civil, and commercial laws, procedural and administrative laws, prison management, as well as in international law, legal history, and moral ethics. The administration track covered some of the same legal courses, with the addition of public administration, public finance, and international relations. The auxiliary program did not differentiate between the two tracks and its curriculum



included a condensed version of both. The accelerated program did not even have a preset curriculum; students took crash courses in a bit of everything from the law and the administration curricula. Essentially, that was what the best of the *fazheng* programs was able to offer.

Following the Zhili and Metropolitan examples, *fazheng* programs soon went out of the control of the central-level educational authority. Almost every province had set up at least one or two such schools. The official incentive was that all *fazheng* students would be tested and ranked at the end of their studies; those who ranked in the top three tiers would be awarded with an official appointment (Zhu 1989:487-88). Some of the better funded programs had hired Japanese instructors, but the majority of the *fazheng* faculties were drawn from returnee students who had studied law in Japan (Wang 2001:206-16; Cheng 2003:290-308; He 2006:56-59). While private-run *fazheng* programs were initially banned by the Qing court, that prohibition was eventually removed in 1910, which gave rise to a further expansion of *fazheng* education (Ye 1974:185-95). Again, returnee students played a prominent role in the popularization of the private programs, as many of them had turned to teaching as an alternative career (Zhai 2012:187-97). Some started their own *fazheng* schools: the first of such was launched in Zhejiang in 1910. In Shanghai, a total of fourteen private *fazheng* programs had emerged within two years (Sun 2012:111-14; Shen 2016:34). Like the public programs before them, most of the private *fazheng* schools had relied heavily upon the auxiliary programs, which set even lower admission criteria than their public counterparts (Ye 1974:208-09).

Additional momentum for legal education was provided by the judicial reform. The Peking Imperial Law Academy (京师法律学堂) was opened in 1906 under the direct auspices of the Code Revision Commission. This was by far the most specialized program for judicial

training. Its students were mainly selected from incumbent officials, who were enrolled in either a three-year regular program or a one-and-half-year accelerated program, both of which were tailor-made for would-be judges and judicial administrators (Pan and Liu 1993:129-31). The curriculum of the school included not only those listed in the Metropolitan model, but also mock trials and courtroom internships. Its faculty were directly drawn from the legal experts of the Code Revision Commission, including several of the Commission's Japanese advisers (Wang 2001:188-99). Yet, the Peking Imperial Law Academy was an exception rather than the norm. With the acceleration of the judicial reform in 1909 and the promulgation of the *Judicial Organization Law* in 1910, it was estimated that a four-tier court system would require about 18,000 judges and prosecutors, 20,000 clerks and scribes, and another 50,000 court guards (Tang 2013:262-63). To supply such an enormous group of court personnel in a short time was a demanding task. Therefore, in 1910, the Constitution Commission ordered all provincial governments to expand the size and enrollment of their *fazheng* programs (Zhu 1989:489). This led to the creation of several new types of schools, such as judge training institutes, forensic schools, and prison management programs (Ye 1974:168-74).

According to the Qing's official statistics (See Table 1), in 1907, there were 28 *fazheng* academies nation-wide, with a total enrollment of 5,766. In 1909, the last year covered by the statistics, the number of *fazheng* programs had increased to 48, with a total enrollment of 12,282. In 1912, the first year of the Republic, the number of *fazheng* programs (many of which had been renamed as technical colleges 法政专门学校) had increased to 64, with a total enrollment of 30,808. That was at the height of the *fazheng* fervor. In fact, *fazheng* schools had become the single most popular type of post-secondary education in China during the first two decades of the twentieth century. In 1907, according to the aforementioned official statistics, *fazheng* academies

already accounted for 35 percent of the nation’s advanced-level modern schools and 41 percent of the total enrollment. In 1912, 56 percent of all advanced-level programs were specialized in *fazheng*, which attracted 77 percent of the total enrollment. According to the estimation of Tang (2013:268-72), annual *fazheng* graduates had increased from around five hundred in 1907 to over five thousand by the end of the Qing, until it peaked in 1915, of more than six thousand.

**Table 1** Legal Education in China, 1907-1916

<b>Year</b>	<b>Number of <i>Fazheng</i> Schools</b>	<b>Total Number of Post- secondary Schools</b>	<b><i>Fazheng</i> School Percent</b>	<b><i>Fazheng</i> Enrollment</b>	<b>Total Post- secondary Enrollment</b>	<b><i>Fazheng</i> Enrollment Percent</b>
1907	28	80	35%	5,766	14,117	41%
1908	38	92	41%	9,756	18,712	52%
1909	48	112	43%	12,282	20,648	59%
1910	N/A	N/A	N/A	N/A	N/A	N/A
1911	N/A	N/A	N/A	N/A	N/A	N/A
1912	64	115	56%	30,808	40,114	77%
1913	56	114	49%	27,848	38,373	73%
1914	44	102	43%	23,007	32,076	72%
1915	42	104	40%	15,405	25,242	61%
1916	32	86	37%	8,803	17,241	51%

SOURCE: Ministry of Education (1934); National Library of China (2009a, 2009b, 2009c).

The late-Qing and early Republican state had tried to curb the dramatic growth of *fazheng* education with heavy-handed intervention, but only with limited success. In a regulation released in 1910, the Ministry of Education demanded all three-year regular programs be extended to four years, all one-and-half-year accelerated programs be discontinued, and the adjunct programs be retained only on the premise that they too would be discontinued once the incoming students met

the admission requirement for the regular programs (Zhu 1989:492-98). How much this was effective in adjusting the structure and the size of *fazheng* education is hard to say, since the statistics for 1910 and 1911 are not available. But it is obvious that the transition from the Qing to the Republic had only driven many more agitated students, and educators alike, to *fazheng* programs (Pan and Liu 1993:461-64, 473-75). A second round of government intervention came when the Ministry of Education of the Beijing government set out to revise its overall higher education policy in 1913. It ordered all auxiliary *fazheng* programs to be shut down after current students had graduated, which led to a sudden drop in the number of *fazheng* students in 1915 and 1916. It also requested all private *fazheng* programs to register with the Ministry, otherwise their diplomas would no longer be officially recognized (Zhu 1990:613-15). Consequently, in 1913-1914, over a dozen private *fazheng* schools were shut down in the provinces of Jiangsu, Zhejiang, and Anhui (Zhu 1990:647-48). In the city of Shanghai, only one of the fourteen private *fazheng* schools had survived this official crackdown (Sun 2012:178). By 1916, as per national educational statistics, the number of *fazheng* schools had dropped to 32, with a total enrollment of 8,803, still the biggest portion of modern post-secondary education (See Table 1). It is worth mentioning that, by 1917, about ten thousand lawyer's licenses had been granted by the Beijing government, while, throughout the Beiyang period, fewer than eight hundred candidates for judicial offices were selected through the judicial examinations. In other words, there had been a huge gap between the number of *fazheng* students and those who actually qualified for judicial office or legal practice.

### 3.3.3 Legal Education in the 1920s and 1930s

A major change in China's educational policy appeared in 1922, with the implementation of a *Reform Act for the Educational System* (学校系统改革案). The *Reform Act* represented a shift away from the Japanese paradigm of post-secondary education, which had consisted of a large number of provincially based technical colleges and a small handful of national universities, to an American model, which regarded the university as the main form of tertiary education (Hayhoe 1996:45-46). With respect to legal education, the *Reform Act* saw the beginning of an enduring state effort to upgrade and standardize law programs. It extended university-level law programs to five years and those at the technical college level to three years (Zhu 1992:805-07). Official sources suggest that, in 1918, there were 6 university law programs and 34 technical colleges of *fazheng* studies in the country (Second Historical Archives of China 1991:176-90); by 1926, however, the number of the latter had declined to 23 (Second Historical Archives of China 1991:199-203). Yet, the source did not include the various private law schools that had not been formally approved by the central government. In Shanghai, at least 16 private institutions and two missionary schools had offered legal education between 1919 and 1929, including the Soochow University Law School and the Aurora University Law School (Shen 2016:48-70). Only one of these 18 schools, however, was on the government's list of 1926.

**Table 2** Legal Education in China, 1928-1937

Year	Law Enrollment	Total Post-secondary Enrollment	Law Enrollment Percent	Graduating Law Students	Total Graduating Students	Law Graduates Percent
1928	9,466	25,198	38%	1,420	3,253	44%
1929	11,434	29,123	39%	1,681	4,164	40%
1930	15,899	37,566	42%	1,898	4,583	41%
1931	16,487	44,167	37%	2,560	7,034	36%
1932	14,523	42,710	34%	2,713	7,311	37%
1933	12,913	42,936	30%	3,175	8,665	37%
1934	11,029	41,768	26%	3,478	9,622	36%
1935	8,794	41,128	21%	2,596	8,673	30%
1936	8,253	41,922	20%	2,667	9,154	29%
1937	7,125	31,188	23%	1,059	5,137	21%

SOURCE: Ministry of Education (1934); Ministry of Education (1948).

The Nationalist government that came into power in 1927 had largely followed the American model of post-secondary education and put even more emphasis on the development of university-level programs. Its overall higher education policy distinguished three types of institutions: the universities (which offered four-year programs<sup>19</sup> and included at least three different faculties among the humanities, the sciences, law, agriculture, engineering, business, and medicine), the independent colleges (which also offered four-year programs but included only one or two faculties), and the specialized school (which offered two- or three-year programs in one particular field of study).<sup>20</sup> Under this framework, legal studies were considered only

<sup>19</sup> Or five-year programs for medical studies.

<sup>20</sup> A series of legislations were promulgated between 1928 and 1930 to stipulate the organizational rules that each of these types of educational institutions should follow. These include, among others, the *University Organization Law* and the *Specialized School Organization Law*, both promulgated in 1929, the Ministry of Education's *University Regulation*,

appropriate at the university level or at the independent colleges. The *fazheng* programs from the late Qing and Beiyang era were therefore not allowed to admit new students unless they first upgrade themselves into independent colleges (Wang 2001:276). Consequently, most of these programs, public or private, had been either closed down or reorganized by the mid-1930s (Liu 2010:184-90). Moreover, by the early 1930s, national reconstruction and war preparation had risen to the top priority of the Nationalist agenda. Legal education, especially in its earlier form of *fazheng* programs, was blamed in the official discourse for attracting an undue portion of the country's educational resources (Chen 1990:6-11; Liu 2010:176-84). Nanjing started to promote advanced studies in science, technology, and engineering, while restricting the enrollment of the humanities and legal studies. In 1932, a second *Reform Plan* prohibited the launch of any new programs in law or in the humanities (Second Historical Archives of China 1994:1049-52). Even programs that had already reorganized themselves according to the university-level standard were subject to tight restrictions on their maximum program size (Liu 2010:189-90). As a result of these stringent policies, the overall law enrollment dropped sharply during the 1930s (Tang et al. 1995:314-21). In 1931, shortly before the second *Reform Plan*, there were a total of 16,487 students enrolled in law programs.<sup>21</sup> By 1936, law enrollment had dropped to 8,253, a 50 percent decline, while overall higher education enrollment decreased only 5 percent (See Table 2). The number of universities and independent colleges that offered law degrees also decreased from 33 in 1932 to 29 in 1936, among which four were no longer admitting new students. A similar

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*Specialized School Regulation*, and the *Methods for the Sponsorship and Registration of Private Institutions*, which were issued and amended between 1929 and 1931 (Second Historical Archives of China 1994:168-88).

<sup>21</sup> The number includes all students in the law schools, who typically majored in law, economics, or political sciences. No breakdown can be found on exactly how many were in the law department or majored in law.

change occurred in the government's policies on sending students abroad: overseas legal training, which had once been the top choice, had been deliberately kept down after 1932 (Liu 2010:191-93).

State intervention of legal education also intensified in its effort for program standardization. In the final years of the Qing, while the curriculum of the Metropolitan *Fazheng* Academy had been promoted as the official model, there was little that the central government could do to effectively control the quality of the burgeoning programs. The Beijing government, on the other hand, had largely left organizational and curricular issues to program administrators and faculties. The Nationalist effort on the standardization of legal education was much more persistent and effective. Since 1929, all law programs at the universities and independent colleges were subject to the joint supervision of the Ministry of Education and the Ministry of Justice, with the latter having the authority to disqualify any law program based upon their quality issues (Wang 2001:276-79). In the *Regulation on National University Law Curriculum*, announced in 1929, the Ministry of Justice required all existing law programs to submit their course schedules and materials for review. It also sent auditors to supervise degree examinations, awarding top graduates with ministerial certificates. In the subsequent years, both the Ministry of Justice and the Ministry of Education worked on a national curricular standard for legal training. In this endeavor, they were assisted by university-level legal scholars who were highly supportive of an emerging scholarly community for modern law. A comprehensive set of curricular standards was finally released in 1938 (Wang 2001:279-88).



### 3.3.4 Scholarly Community

Although law and administration had been the most popular branch of post-secondary education throughout the late Qing and early Republican period, it took almost three decades for Chinese legal studies to develop into a scholarly community and a research discipline of its own. Before the 1920s, the early modern legal scholarship in China, if it could be called scholarship at all, consisted mostly of translation and annotation of foreign codes and regulations, and of textbooks and reference tools based upon translated material (He 2006:65-66). In other words, that initial stage had been devoted to the translation and study of foreign law and was dominated by a practical orientation for the drafting of new codes and the training of judicial officers (Liu 2016). Of the 35 major legal works published in the late Qing, all but one were translations of Japanese and Western works (Li 1997). Theoretically oriented subfields of legal studies, such as jurisprudence, were largely overlooked. According to a recent study, of the 109 important works on jurisprudence published during the Republican period, only eight were published before 1927 (Li 2010:40). Few writings could amount to a Chinese scholarship in modern law before the late 1920s.

One reason for the slow development of Chinese legal studies could be found in the dearth of well-trained legal scholars: university-level law programs were few and small, and it was not until the late 1920s that they began to replace the *fazheng* schools as the main form of legal education. Chinese legal scholars before that time had typically been trained abroad. It would be revealing to take a brief look at the number of doctoral degree holders as an approximate indicator for the level of scholarly training they had received. Among a total of 442 Chinese who had received a doctoral degree in law from foreign institutions between 1905 and 1950, only four got their degrees in the 1900s (two from the US and another two from Germany)

and twenty-four in the 1910s (of which fourteen were from the US and five from France) (Wang 2011:358). Over three-fourths of all the doctoral degrees were earned during the 1920s and 1930s. While many Chinese students had crossed the sea to study law and administration in Japan, the vast majority of them had enrolled in the accelerated programs or technical colleges; only three doctoral degrees in law had been earned by Chinese and none of them were from before the 1920s. Graduates from the domestic *fazheng* programs typically stopped short of pursuing advanced-level law degrees: among all foreign doctoral degree holders, only twelve had previously studied at one of the *fazheng* schools before they continued their legal study abroad (Wang 2011:374). The lack of advanced-degree holders among the early Chinese legal scholars was confirmed by several other recent studies (Pei 2009:136; Cai 2016:63-106). This means that most of the students who had studied law in Japan or in the *fazheng* programs had not been trained as legal scholars in the first place. It was not until the late 1920s when the French- and American-trained doctoral students took up teaching posts back in the Chinese universities that a much better-trained scholarly community began to emerge (Cai 2016:102-05). In fact, among all the foreign doctoral degrees granted to Chinese law students, 227 were from French universities and 139 from American ones, which together made up 83 percent of the total (Wang 2011:354).

Meanwhile, before the 1920s, the best Chinese legal minds, whether by traditional or modern training, were mainly employed by the government. They worked as organizers of the judicial reform, as code drafters, senior-level judicial officers, judicial administrators, and, in some cases, as jurist-turned-politicians. In addition to their expert roles in the state bureaucracy, these elite jurists *qua* legal scholars also made an initial attempt to organize law societies in China. The Beijing Law Society (北京法学会) was founded in 1910 by Japanese-educated law graduates at the Code Revision Commission and the Imperial Peking Law Institute. They were

joined by leading jurists like Shen Jiaben and the Japanese advisers working at the two institutions. After the regime transition to the Republic, the Beijing Law Society was reorganized in 1913 and its members included most of the top-level officials in the Ministry of Justice, the Supreme Court, and the Legislative Office (Li 2000:379-82; Han 2020:139). It did not have a strict membership criterion: all law graduates from the university programs or the *fazheng* academies and all past or current judicial officers were eligible to join, which was essentially similar to the peer association organized by jurists in Japan and Taiwan. The stated goal of the Beijing Law Society was to establish a law school, publish a law journal, investigate judicial and legal matters (法学会章程 1913). While the first two goals were indeed fulfilled with the publication of the *Law Society Journal* (法学会杂志) and the launch of the Chaoyang College of Law (朝阳大学), the Beijing Law Society itself was short-lived and never grew into a well-organized professional association<sup>22</sup> equivalent to the CMMA or the NMA in the field of medicine. The Beijing Law Society's only long-term impact was on the development of legal education: the Chaoyang College of Law, founded in 1912 with a mostly Japanese-trained faculty, turned out to be one of the best private-run *fazheng* programs during the Republican period. For over three decades, it had sent cohorts after cohorts of graduates to serve in the Republican judiciary and its teaching materials had become so popular among Chinese students of law that they were actually regarded as the benchmark for *fazheng* teaching (A. Yang 2005).

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<sup>22</sup> While there is one dissertation (A. Yang 2005) and one collection of writings (Hsueh et al. 2001) on the Beijing Chaoyang College of Law, very little has been written about the BLS (see Wang 2018 for an overview of law societies in the late Qing and Republican period). The remaining issues of the *Law Society Journal*, as could be found in 全国报刊索引, contained almost nothing about the operation of the BLS: no member list, no meeting records, no planning documents, only a charter from the 1913 reorganization. It is therefore doubtful that the BLS had been actually functioning for any extended period of time.

However, during the rest of the 1910s and 1920s, there had rarely been any attempt, on the part of the Chinese law faculties, to organize themselves into a scholarly or occupational community, except for a few small circles at individual institutions. For instance, the Peking University had experimented, albeit without much success, with a social science research center in the early 1920s that had included its law faculty (Yang 2015). The Soochow University Law School, best known for its teaching of Anglo-American law in China, had published a bilingual law journal, the *China Law Review* (法学季刊), since 1922 (Sun 2008). The Chaoyang College of Law, the powerhouse for training judicial officers, had been publishing the *Law Weekly Review* (法律评论) since 1923. But it wasn't until the National Justice Conference of 1935 that a second effort was finally made for a national law society. This was the first large-scale meeting during the Nanjing decade in which representatives from all kinds of legal work were invited: party ideologues, judicial administrators, judges and procurators, prison wardens, bar associations, and law school faculties. Emerging out of this state-led effort was the China Law Society (中华民国法学会), sponsored jointly by the Judicial Council, the Ministry of Justice, and the Supreme Court (Jiang 2010:132-37). Ju Zheng (居正), the president of the Judicial Council, was also the chair of the China Law Society. The purported mission of the China Law Society was to unite the various sectors of the judicial and legal system and support the advancement of modern law based upon the political ideology of the Nationalist Party. Within two years, the society had set up a number of provincial and overseas branches. But its main achievement before the outbreak of the war was the publication of the *China Law Journal* (中华法学杂志), which became another influential law journal for the rest of the Republican period.

Finally, another organization that had grown out of the 1935 conference was the China Legal Education Association (中华法律教育会), which consisted of representatives from all university law faculties of the time (Jiang 2010:133). What is especially noteworthy was the near absence of any scholarly discussion on legal education until that time. The first piece of scholarly work on the state of legal education in China was written by the dean of the Soochow University Law School (Blume 1923). It would take another decade for Chinese legal scholars to start writing about the topic and exchanging their views through the law journals (Wang 2001:321-45) and book-length studies (e.g. Sun 1935). In other words, until the rise in the number of advanced-level legal scholars and the state-led initiative for a national community of legal professionals, the Chinese law faculties had barely any influence of their own over the organization and reproduction of the discipline.

### **3.4 The Chinese Bar under State Regulation**

The emergence of lawyers as an officially and socially recognized profession did not take place in China until the Republic. The judicial reformers of the late Qing had barely enough time to put together the barebones of a modern court system and recruit the very first batch of judicial officers before the empire collapsed. Private legal practice was, for them, a secondary issue that was only mentioned in passing in the drafts for the procedural codes. In this section, I examine the rise of Chinese lawyers and their bar associations in the context of the judicial reform and the wildly popular *fazheng* education. As I will show, the basic institutional model for the Chinese bar was borrowed from Japan, in which lawyers were qualified through a less stringent set of professional criteria and were put under the close scrutiny of the procuracy and the judiciary. But before I come to that, I will first look at how, despite the stigma that had long been attached to

the traditional litigation masters, the social legitimacy for private legal practice had been accepted by the Chinese state. Next, I trace the development of the state regulation of the bar and show how that had been compromised by the overgrowth of *fazheng* education during the first decades of the twentieth century. This, as I suggest, was one of the reasons for the constant attempt, on the part of the judicial authority, to tighten the licensing standards for lawyers and limit the autonomy of the bar associations. The main point, so far as the professionalization of law was concerned, was that, while the legitimacy of private legal practice had been officially recognized, the Chinese lawyers had always suffered from a lower professional status within the modern judicial and legal profession. The Chinese bar enjoyed almost no professional autonomy at all, except when they could combine their professional interests with the much more powerful political agenda of nationalism—for instance, in the strategic role it had played in defending the jurisdiction of Chinese courts against the extraterritorial privileges of foreign powers.

### **3.4.1 The Expansion of Western Law and the Legitimacy of Legal Practice**

As the previous chapter has shown, private legal practice had suffered from an unlawful status during most of the Qing's time. Litigation masters who assisted commoners in bringing up lawsuits and plaint writing were often stigmatized as pettifoggers and troublemakers in the public discourse. They were also blamed for over-burdening the magistrate's office with backlogs of cases, especially given the fact that the average Qing magistrate did not have a regular staff to handle his various administrative and judicial duties. Such deeply entrenched animosity from the state was not something that can be easily undone. The social legitimatization of private legal service—hence the status of the lawyer—took place only gradually during the second half of the nineteenth century. One major cause for that change was the expansion of

Western law in the foreign concessions, which exposed both the Qing government and the average Chinese commoner to Western trial systems.<sup>23</sup> In 1842, as part of the settlement for the First Opium War between the Qing and Britain, the *Treaty of Bogue* granted extraterritorial privileges to British subjects in China. Shortly afterward, the *Treaty of Wanghia* (1844) and the *Treaty of Whompoa* (1845) granted similar privileges to the Americans and the French. As a result of those treaties, foreign extraterritorial courts began to appear in China's treaty ports (Fei 1991). In Hong Kong, a British Supreme Court was established in 1844. In Shanghai, a British consular court was set up in 1847, followed by an American court in 1848 and a French court in 1849. In addition, Shanghai's first mixed court was founded in 1864 to hear cases that involved both Chinese and foreign subjects. In 1865, the British consular court was replaced by the Supreme Court for China and Japan. In 1906, the American consular court was likewise succeeded by the United States Court for China. Meanwhile, since 1882, a Court of Consuls had been created to hear cases brought against the Shanghai Municipal Council, the foreign administration that governed the city's International Settlement.<sup>24</sup> As the number and jurisdiction of extraterritorial courts expanded, they also brought the practice and practitioners of legal advocacy to China. In 1858, the British Supreme Court in Hong Kong already had eight barristers and sixteen solicitors on its register (Sun 2012:41). The first newspaper coverage of the appearance of lawyers before Shanghai's foreign courts can be found at least as early as 1862 (Chen 2008:41). In 1900, about fifteen foreign lawyers had established their practices in Shanghai's foreign concessions, and by 1912 that number had increased to forty-six, most of whom were British expatriates (Chen 2008:43). Chinese nationals, if they were involved in

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<sup>23</sup> Another form of exposure was through the Qing's various consulates in the West, which often employed various types of Western legal service in their operations (Sun 2012:32-40).

<sup>24</sup> For an overview of the foreign courts in China, see Wang (2016).

litigations at the foreign courts or the mixed courts, were also allowed to employ the service of a lawyer. In fact, in *Chang Chih-tung v. Louis Spitzel & Co.* (1896), Governor-general Zhang Zhidong himself had employed a British barrister to take his case to the British Supreme Court (Chen 2008:59-61). Perhaps the most high-profile litigation case from this period was the so-called Shanghai Sedition Trial of 1903 (also known as the Supao Case 苏报案), in which the Qing government was represented by a foreign legal advocate to appear before the Shanghai mixed court, for the charges it brought up against two radical revolutionaries who had spread anti-Manchu pamphlets (Chen 2008:78-80). However, in contrast to the expansion of Western medicine, which will be discussed at length in the next chapter, the expansion of Western law in China had been largely confined to the foreign courts in the various foreign concessions. Private legal practitioners, on their part, were not as actively involved in the organization of professional institutions as the missionary physicians of the same period.<sup>25</sup>

Within the Qing's own legal system, however, the issue of private legal counsel and the status of private legal practitioners were not raised until the drafting of new procedural codes. In 1906, as part of the work from its early stage, the Code Revision Commission completed a *Draft Criminal and Civil Procedure Law* (刑事民事诉讼律草案). Its main objective was to redress the problematic use of torture in traditional Qing trials and introduce the Western notion of due process, so that the trial procedure could be brought into alignment with international standards. Specifically, Articles 199 to 207 of this draft law addressed key issues related to the legal advocate, including its eligibility, registration, legal responsibility, disciplinary punishment, and the special status of foreign lawyers in Chinese courts (Qing 1972:1928-30). In the words of the

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<sup>25</sup> One notable exception, however, was the Soochow University Law School founded in 1915, which became a powerhouse of Anglo-American legal training in Shanghai (Conner 1994).



code revision commissioners, China was in need of its own lawyers for three reasons. First, legal advocacy was an essential part of any modern system law, as it had been found both in the West and in Japan. Second, the Chinese, when involved in cases at the mixed court, should not depend solely upon the legal service provided by foreign lawyers. Third, as legal practitioners, lawyers were potential candidates for judgeship once a new court system was launched (Qing 1972:1908). Such reasoning provided a glimpse into the rationale for the creation of a Chinese bar from the point of view of the reform-minded judicial experts of the late Qing period. It is worth noting that Wu Tingfang, one of the co-commissioners, was himself a British-trained barrister who had years of legal practice in London and Hong Kong. The draft's stress on legal advocacy—as well as the introduction of a jury—reflected Wu's professional experience with common law traditions and the Qing's strong urge to abolish foreign extraterritorial rights. Wu even recommended offering official ranks to qualified lawyers as an encouragement for prospective applicants (Sun 2012:66-71).

Unfortunately, the *Draft Criminal and Civil Procedure Law* of 1906 aroused a huge amount of criticism when it was sent to central-level officials and provincial governors for review (Gao 2007). It was subsequently shelved and never put into effect during the Qing. It would take another four years before the issue of lawyers was brought up again in the Qing's judicial reform. The *Judicial Organization Law* (法院编制法), which was ratified by the emperor in 1910, acknowledged the legal status of the legal advocate indirectly. Articles 64 and 66 of the law stipulated the code of conduct that lawyers should follow when appearing before a court. Articles 112, 118, and 119 regarded prior experience in lawyering as one legitimate prerequisite upon which an appointment to any judicial office could be made. And Article 121 prohibited judges from providing legal service during their tenure of judgeship (Qing 1972:1819-

34). From the *Judicial Organization Law*, it was clearly expected that there would be another statute to deal specifically with the regulation of the bar. In fact, the Japanese *Court Organization Law* (裁判所構成法) of 1890, upon which the Qing's *Judicial Organization Law* had modeled, had been accompanied by the Japanese *Lawyers' Law* (弁護士法) of 1893. But until the end of the Qing, no such lawyer's law was brought forward before the Qing court, let alone enacted.<sup>26</sup> It suffices to say that, before the fall of the Qing, the desirability of a modern Chinese bar had been acknowledged in the new legislation. But the court system that was being planned and built by the Ministry of Justice had, until then, solely focused on judges, procurators, and court clerks. Lawyers, even if their legitimacy was implicitly recognized, were not among the priorities of state building—they were not to be found in the Qing's *Nine-year Program* for the preparation of a constitutional government.

Changes were brought about by the 1911 Revolution that established the Republic. In fact, local initiatives had preceded that of the central government. For instance, in Suzhou, the provincial government of Jiangsu had started to organize its own bar with the announcement of a *Jiangsu Provisional Regulations on Lawyers* in late 1911 (Sun 2012:131). In Shanghai, a Republic of China General Bar Association was founded in early 1912 with the support of the Shanghai military government (Sun 2012:132-39). In Hangzhou, a Zhejiang Provincial Bar was established by a small group of Japan-trained law graduates in 1912 (Chen 2008). At the national level, it should be noted that the Provisional Government under President Sun Yat-sen publicly endorsed the practice of private legal advocates in the famous trial of Yao Rongze (姚荣泽), held

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<sup>26</sup> Recent scholarship has suggested that the Code Revision Commission did have one draft ready for the *Lawyer's Law*, but it was already too late for the draft to be submitted for official consideration (You 2012:50).

in Shanghai in early 1912. For the first time in a Chinese court, a jury was appointed, and lawyers appeared on behalf of both parties of the lawsuit (Sun 2012:150-54). With the inauguration of the Beijing government later that year, Chinese bar associations that had been recognized by various local governments or were still in preparation appealed to the new Ministry of Justice for the sanction of their legal status.

### **3.4.2 Licensing and Growth of Lawyers**

In 1912, the legal status of the Chinese lawyers was finally established by the *Provisional Regulation for Lawyers* (律师暂行章程), an unprecedented set of rules issued by the Ministry of Justice that prescribed the basic organization of the Chinese bar. Among other things, it set down the criteria for a lawyer's license, the procedures for registration, the professional code of conduct, the requirement for the bar associations, and the punishment for malpractice.<sup>27</sup> While the *Provisional Regulation* was a close imitation of Japan's *Attorney Law* of 1893, some of the actual regulatory conditions for the bar were unique to Republican China. The most obvious one was the fact that, although passing a government-administered qualification test was listed as the primary criterion for a lawyer's license, no such test was regularly held during the whole Republican period. (In contrast, lawyer qualification tests had been held regularly in Japan since 1873, even before the implementation of its *Attorney Law*.) The only exception was the 1917 national judicial examination (司法官考试), which included a sub-section for the qualification of lawyers. It was clear from the arrangement of the examination that the Ministry of Justice had adopted a double standard for the qualification of judges and that for lawyers: while any would-

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<sup>27</sup> A copy of the original *Provisional Regulation for Lawyers* (1912) and its 1917 amendment is included in Zhang (2003:194-201).

be judges should pass three rounds of tests and complete a mandatory training program before they would be appointed, applicants for a lawyer's license needed only pass the first two rounds of tests, without additional training or internship. Yet, thereafter, the judicial examination was revised to be applicable only to candidates for judgeship. In this way, what actually mattered for the licensing of Chinese lawyers was the exemption criteria from the qualification test. The *Provisional Regulation* of 1912 listed five types of candidates who could be granted a license without taking a test: graduates with a diploma from three-year Chinese *fazheng* programs, graduates with a certificate for at least two years of study at a Chinese or foreign technical college of law, graduates with a diploma from the one-and-half-year accelerated law programs (tailor-made for the bulk of returnees who had studied law in Japanese), instructors who had taught a major law course for three years at the university or technical college level, and former judges or former procurators. Thus, the primary criterion for a lawyer's license was the completion of a government-recognized program in modern law. Of the first 1,515 licenses granted by the Ministry of Justice between 1912 and 1913, 362 were to returnee students who had studied law in Japan and 1,128 to graduates of *fazheng* programs in China (Sun 2012:173-74).

The reliance on educational credentials for licensing meant that the size of the Chinese bar was also related to the growth and regulation of legal education. When the *Provisional Regulation* was released in 1912, the number of *fazheng* programs and the size of their enrollment were just about to peak. However, as I mentioned earlier, the prospect of finding a government job was already dwindling, as the Republican state began to take a stringent method

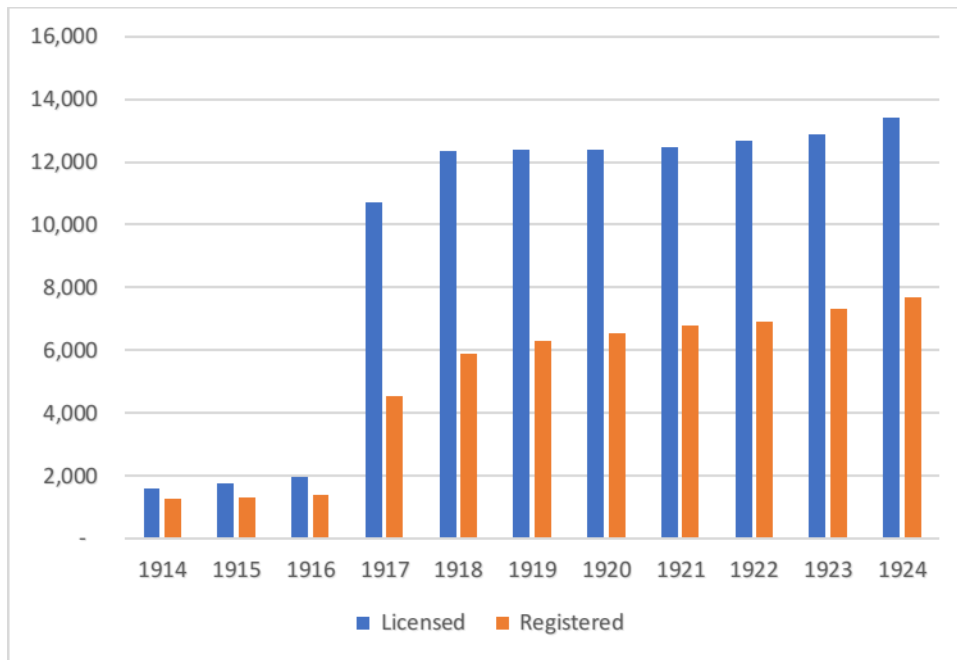
for the recruitment of governmental officials.<sup>28</sup> Even those who had studied law in Japan had increasingly turned to alternative options, such as teaching at the *fazheng* programs (Sun 2012:101-08). As such, it soon occurred to the law students and law faculties that lawyering would offer them another career opportunity or at least a side job. This was probably what turned some of the private *fazheng* programs into diploma mills, making quick money out of the widespread social anxiety over employment (Sun 2012:186-98). The Ministry of Justice was obviously aware of the situation and, from a regulatory point of view, was extremely concerned about the professional competence of the licensees. Thus, the *Revised Provisional Regulation for Lawyers* (修正律师暂行章程), released in 1917, provided exemption from a qualification test only to three groups of candidates: qualified judicial officers, those with a license temporarily suspended to avoid conflict of professional interest, and those already licensed by the Ministry since 1912. Instead of granting a new license to any applicant who met the credential criteria, a Lawyer Selection Committee (甄拔律师委员会), headed by the Deputy Minister of Justice, was in charge of examining each individual applicant and deciding whether to grant a license on a case-by-case basis. The result of this policy was almost immediate. The total number of licensed lawyers went dramatically from 1,959 in 1916 to 10,729 in 1917 and 12,361 in 1918, followed by a near-stagnation during the rest of the Beiyang period (see Figure 5). In other words, a great number of lawyers had obtained their licenses in 1917, just before the *Revised Provisional Regulation* went effective. Yet, of the 10,729 licensed lawyers in 1917, only 4,554 had registered themselves with any court, a mandatory requirement if they were ever to appear before the court. Even as of 1924, only 7,667 of the 13,396 licensees by then were registered. This suggests that,

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<sup>28</sup> There were certainly other factors that are worth looking into with respect to the availability of government positions. For instance, it has been found that the central government actually had difficulty paying the salaries of its judicial officers (Jiang 2014).

during the Beiyang period, about half of the licensed lawyers did not practice regularly—they had obtained their licenses only in case they needed to practice some other day.

**Figure 5** Number of Lawyers in China, 1914-1924



SOURCE: *Sifa Gongbao* (司法公报) Nos. 34, 60, 78, 96, 108, 128, 161, 181, 195, 212, and 214.

On the other hand, the geographical distribution of lawyers was affected by the structure of the court system and the location of state-recognized law programs. For instance, Beijing was the seat for both the Metropolitan courts and the Supreme Court. And, during much of the 1910s and the 1920s, it had the largest number of schools that offered law programs, including, as of 1917, one national university, one public technical college, four private universities, and two private technical colleges (Ye 1974:199-208). Not coincidentally, the Beijing Bar Association had grown steadily in size since its founding in 1912, with an average annual increase of 50 members until the end of the Beiyang period (Qiu 2012:55-60; Ng 2014:56). A recent study (Ng 2014:57-

63) of the educational background of the Beijing lawyers reveals that, except for the first few years in which returnee students from Japan had topped the list, graduates from the Beijing-based law programs had contributed the largest portion of the association's membership. In contrast, although the Shanghai district court had survived the 1914 downsizing of the court system, the Shanghai Bar Association had been much smaller than its Beijing counterpart (Qiu 2012:55-60). Another reason was the limited scale of legal education in Shanghai until the mid-1920s: since Shanghai was not the seat of a provincial capital, no public university or college had been set up by the government. Moreover, the Ministry of Education's crackdown on private colleges in the 1910s had wiped out all but one private law program in the city. Since the mid-1920s, however, private law programs reappeared in Shanghai as the Ministry of Education lessened its criteria for registration. By the mid-1930s, at least eight universities or colleges in Shanghai were offering degree programs in law (Xu 2001:219). In the meanwhile, as will be discussed shortly, the return of the Shanghai mixed courts to Chinese control greatly expanded the jurisdiction of the Nationalist judiciary in the region. As a result, membership of the Shanghai Bar Association witnessed an unprecedented upsurge in the early 1930s, surpassing Beijing as the largest bar association in the country (Chen 2008:185). Again, when the Nanjing government tightened its policy over legal education in the mid-1930s, the growth of the Shanghai bar slowed down accordingly (Sun 2012:204).

### **3.4.3 Lack of Autonomy for the Bar Associations**

As by the *Provisional Regulation*, the Chinese bar was not part of the state judiciary but was subject to its close supervision. According to Articles 22 and 23 of the *Provisional Regulation*, bar associations should be organized locally and put under the direct oversight of the district

procuracy, which, in turn, was attached to the district court. Each district court would allow only one bar association and no bar associations should be established at the provincial or national levels. While this was an imitation of Articles 18 and 19 of the Japanese *Attorney Law* of 1893, there was also the fear that any bar association on a larger scale would potentially go beyond the control of the judicial authorities, as reflected in Beijing's suppression of the effort to form a national association of Chinese lawyers (W. Li 2007).

In terms of their organization and administration, the local bar associations did not have much autonomy left to themselves. From the planning of constitution to the election of their staff, from their meeting schedules to what were allowed to be included in these meetings, virtually every detail of the bar association's daily operation was to be reported to the district procuracy, which, in turn, would relay to the district court and ultimately to the Ministry of Justice. The district procurator was required to be present at the bar association's general meetings and even at regular administrative meetings. In terms of membership, for a licensed lawyer to appear before any court, he should first register himself at the provincial high court and, at the same time, join the local bar association. All practicing lawyers should be a member of one and only one local bar association (later expanded to two), such that his practice would be restricted to the jurisdiction of one (later two) particular district court(s). Since membership was mandatory and there were no additional requirements for a licensed lawyer to join any particular bar association, the bar associations normally had no autonomous control over their membership, unless there was a good reason to suspect the credibility of a particular lawyer's license. Such exceptional cases had been reported from the 1910s, when the Shanghai Bar Associations raised doubts over the diplomas that were used by some of its applicants to acquire their licenses in the first place. The result of the investigation led to the rejection of these applications and the



hearing of the issue by the Ministry of Justice, which, in turn, revoked their licenses (Sun 2012:224-32).

The flip side of membership was disciplinary punishment. Section Three of the *Provisional Regulation* specified the rules that all lawyers should comply with in relation to the court or the client, and over their non-professional activities. Section Five prescribed the types of disciplinary punishment that would be applicable under different circumstances. In addition, the *Regulation of the Lawyer Disciplinary Committee* of 1913 provided more details on the specific types of malpractice and how they should be dealt with. The *Regulation of Lawyer Responsibility* of 1915 added further requirements on the professional ethics of the bar. In terms of the disciplinary procedure, the local bar associations were denied any authority to discipline their own members. Instead, a bar association should submit its proposal for disciplinary action to the district procuracy, which, in turn, should relay it to the provincial high court. The high court would then decide the issue through its disciplinary committee. Any appeals would have to be approved by the Minister of Justice before they were considered by the disciplinary committee of the Supreme Court. Importantly, members of the disciplinary committees were selected solely from judges and procurators. In a recent study of the actual enforcement of the professional discipline of lawyers, Zhang (2007) finds 68 cases that were brought to the attention of the various disciplinary committees between 1915 and 1920. All of the cases were brought forward by the district procurators and none were by the bar associations themselves. In 19 of the cases, appeals were made by the lawyer in question, but only 4 of these appeals were approved by the Minister of Justice and heard by the disciplinary committee of the Supreme Court. But any disagreement that arose between the bar and the higher judicial authorities was usually settled in favor of the latter.

On the other hand, the bar associations were allowed to retain some level of autonomy over their standards for pricing. Under Article 28 of the *Provisional Regulation*, a bar association should include in its constitution the maximum rates for the various types of legal service their members offered. Originally, lawyers were allowed to receive two types of compensation from their clients: a preset common fee (公费) and a flexible gratuitous compensation (谢金). But an order by the Ministry of Justice in 1915 had ruled the latter illegal. Several recent studies have confirmed the actual existence of these pricing standards, as they were found among the records of the bar associations in Beijing, Shanghai, and sixteen other cities during the 1910s and 1920s (Wang 1994:73; Qiu 2012:89-99; Sun 2012:262-72). Again, the pricing standards would have to be approved by the government. This could lead to some difficult negotiations between the regulator and the regulated, which, for instance, took place over the pricing standard of the Shanghai Bar Association when it was faced with an increasing level of inflation in the late 1920s (Sun 2012:265-67). In any case, however, there is insufficient evidence so far on the extent to which such standards were actually enforced during the Republican period.

In general, then, it might be said that, during the Beiyang period, the Chinese bar associations were carefully supervised by the judicial authorities, including the local procuracy, the provincial high court, and the Ministry of Justice. In the Nanjing decade, they were subject to the additional inspection from the Nationalist Party, which imposed a corporatist political framework upon all civic associations (more on this point in Chapter Five). This was mainly achieved through the reorganization of the bar associations' internal structure, in which lawyers with Nationalist Party membership were elected to bar leadership (Xu 2001:121-28; Li 2006:68-72).

#### 3.4.4 Issues of Jurisdiction

So far, the discussion of the Chinese bar has been focused on its organization within the regulatory framework defined by the Republican state. The overall picture is one in which the autonomy of lawyers and their bar associations had been severely constricted by the close supervision of the judicial authorities. On the other hand, several recent studies have drawn attention to the active involvement of Chinese lawyers in the government's effort to terminate foreign extraterritorial privileges. In the Beiyang period, for instance, when the Commission on Extraterritoriality in China was invited to investigate the Chinese legal system and determine whether it would be appropriate to end foreign extraterritoriality, the local bar associations were called upon to assist the reparation for that investigation (Li 2006:206-08). The Commission's decision not to recommend the termination of extraterritoriality provided further incentives for the Chinese government to continue its diplomatic endeavor in that regard. When the Nanjing government launched its own campaign to abolish foreign extraterritoriality, a National Association of Lawyers (中华民国律师协会) was formed to help promote the government's diplomatic agenda and mobilize wider public support (Li 2006:211-18). A more intricate episode took place in the multi-round negotiation for the return of the Shanghai mixed court,<sup>29</sup> conducted

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<sup>29</sup> The Shanghai mixed court of its International Settlement was founded in 1869 by an official agreement between the Qing and the foreign diplomatic body in Beijing. The court was originally chaired by a Chinese magistrate as the chief judge and a foreign assessor as the co-judge. Its jurisdiction included all minor cases that took place in the International Settlement in which the defendant was a Chinese subject, a non-treaty national, or a person with no nationality. In general, Chinese laws were applied in the mixed court; but when no Chinese law was applicable, foreign laws and precedents were considered, especially if the case involved a foreign party. The magistrate held the sole authority to adjudicate civil and commercial cases of a purely Chinese concern, but he had to share the judicial authority with the assessor in dealing with mixed cases or with criminal cases charged against the Chinese—in practice, the assessor's opinion usually dominated in these cases. Appeals over the verdict of the mixed court were accepted by the Shanghai Daotai's office and the foreign consuls. A significant change of events took place in 1911 when the foreign consular body assumed full control of the mixed court

in 1915-1924 (led by the Beijing government), 1925-1926 (led by the Jiangsu provincial government under General Sun), and 1929-1930 (led by the Nanjing government). The Shanghai Bar Association (SBA), while not formally a member of the delegates, had been an active participant at the negotiation table, providing vital professional opinions to the Chinese government and raising public pressure on the foreign consular body (Xu 2001:229-35; Chen 2008:211-18; Sun 2012:214-17). From a state-society relations point of view, scholars have regarded these cases as examples in which Chinese lawyers and their bar associations had become an independent voice from the civil society, especially when their appropriation of the discourse of Chinese nationalism had protected them from being narrowly defined by the stringency of the bar regulations (Xu 2001:266-67).

While the return of the Shanghai mixed court has been well studied by previous research, I want to point out three findings that were particularly relevant to the discussion here—that is, what the bar’s active participation in the anti-extraterritoriality movement revealed about its status as a modern profession. First, since foreign extraterritorial privileges and mixed courts had existed outside of the jurisdiction of the Chinese judicial system, the bar’s public engagement in the issue did not amount to a challenge of the professional and administrative authority of the Ministry of Justice. On the contrary, the SBA provided useful professional advice to the latter concerning the running of the Shanghai mixed court and the appropriate terms upon which it should be returned to the Chinese. For instance, in one of its early petitions, submitted to the

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during the political vacuum of the Chinese revolution. Thenceforth, the appointment of the Chinese magistrate and the finance of the court was controlled by the foreign consular body. The rules of the mixed court were amended in 1914 and 1919, which permitted foreign assessors to take part in the hearing of purely Chinese civil cases, while appeals to a higher judicial office were suspended. For a historical review of the Shanghai mixed court, see Kotenev (1925) and Stephens (1992).

Ministry of Justice in 1917, the SBA offered a detailed explanation of the history and the trial procedures of the mixed court and an article-by-article discussion of how the *Rules for the Mixed Court* should be amended according to the principles of the extant Chinese system—in particular, those set down by the *Judicial Organization Law* (Xi 2004:5-8). It is clear that the SBA, as a Shanghai-based local bar association, was more knowledgeable about the judicial conditions in the city’s foreign concessions than the government authorities in Beijing. It also justified its action by appealing to Article 30 of the *Provisional Regulation*, which specially granted local bar associations the right to raise policy recommendations over judicial and legal matters in general. The SBA’s own professional interests notwithstanding (see below), its active participation in the negotiation between the Chinese government and foreign powers reflected the common interests shared by the state judiciary and the bar, namely the expansion (or protection) of the jurisdiction of the Chinese judicial system. Its activism was therefore not regarded by the state as a transgression of its legal status; rather, it was welcomed as a helpful partner in the state-led initiative to re-assert Chinese sovereignty.

Second, the campaign to restore Chinese control of the Shanghai mixed court was at least partly driven by the interests of the local elites, including the Shanghai lawyers’ major clientele, the Shanghai business community. Throughout the 1910s and 1920s, the Shanghai local community had repeatedly lobbied both the central government and the provincial government for the return of the mixed court (Xi 2004). The SBA was certainly not alone in this effort; it was among more than a dozen Shanghai-based trade unions and native-place organizations, which, together, amounted to a substantial portion of the local business elite. The leading group of this local coalition was the Shanghai General Chamber of Commerce (SGCC). Originally founded in 1904 according to the Qing’s *Commercial Code*, the SGCC had been the central arbitrator for

commercial and civil disputes in the region (Xu and Qian 1991). Since a significant portion of Shanghai's Chinese business and industries were located in its foreign concessions, the Shanghai business elite had also been in close contact with foreign authorities such as the Municipal Council of the International Settlement. The SGCC, in particular, had played an important role in the settlement of the commercial cases at the Shanghai mixed court (Kotenev 1925:253-58). It even tried, albeit in vain, to interfere with the re-organization of the Shanghai court during the 1911 Revolution (Kotenev 1925:172-73). The loss of the control of the mixed court to the foreign consular body and the appointment of a foreign assessor to the hearings of even purely Chinese civil cases had since then threatened the power of the SGCC. It is therefore of little surprise that the Shanghai local business community wanted to restore the mixed court at least to its pre-1911 conditions, in which purely Chinese civil cases would be adjudicated by the court's Chinese judge. In this sense, at least part of the anti-extraterritoriality campaign was driven by the vested interest of the local elite circles.<sup>30</sup>

At the same time, what was also at stake for the Chinese lawyers was the competition, with foreign lawyers, for Shanghai's lucrative legal service market. In the Shanghai mixed court, there had never been a formal bar association; both foreign counsels (since 1879) and Chinese lawyers (since 1912) were admitted if they had been qualified to practice law in their own countries. By 1924, the Shanghai mixed court had a roll of over 200 lawyers (Kotenev 1925:206). To return the mixed court to Chinese control, or to its pre-1911 conditions, would almost certainly bring limits on the type of cases that foreign lawyers were allowed to handle. Therefore, the foreign lawyers in the mixed court expressed great anxiety over the Chinese effort

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<sup>30</sup> In contrast, the terms for the rendition of the mixed court, as reached through the negotiation between the Jiangsu provincial government and the foreign consular body in 1926, were largely condemned outside of the Shanghai commercial circles (Gu 2007).

and lobbied the foreign consular body to maintain the status quo as much as possible (Kotenev 1925:280-81). However, their attempt gave the Chinese an opportunity to respond in even stronger stances (Xu 2007:176-77). In the end, the SBA stood to win this intra-professional turf war: when the mixed court was re-organized as the First and Second Special District Courts of Shanghai in 1926, foreign lawyers were restricted to participate in only cases where foreign subjects were involved. The SBA went ahead to forestall any effort for a separate bar association in the foreign settlements and, in this respect, it enjoyed full endorsement from the Ministry of Justice (Sun 2012:237-40). By the end of the 1920s, the SBA had successfully monopolized legal practice under all Chinese courts in Shanghai; though foreign lawyers were not required to join the SBA, they now needed a Chinese license for their practice.

Finally, by the end of the 1920s, the political context for the Chinese lawyers' activism had changed. When the negotiation was resumed in 1929-1930, the Nationalist Party had already begun to enforce an unprecedented level of political control over all types of occupational associations. In 1927, the SBA was re-organized accordingly. Its new leadership comprised an executive committee (执行委员会) and a supervising committee (监察委员会), both of which were headed by eminent lawyers who were at the same time Party members. For instance, between 1927 and 1932, the SBA executive committee was dominated by political activists like Li Shirui (李时蕊), Tan Yigong (谭毅公), and Huang Huansheng (黄焕昇), all of whom were from the same division of the Nationalist Party Shanghai headquarters (K. Yang 2005). The SBA's supervising committee of 1927 also included Wei Daoming (魏道明), who later served as Nanjing's Minister of Justice between 1928 and 1930, during which time the final round of negotiation was conducted (Chen 2008:356). In addition to Party members among its leadership, the SBA was also subject to the direct political instruction of the municipal party headquarters.

From the proceedings of the SBA meetings in 1929, it has been found that that the representative of the Shanghai Nationalist Party headquarters had explicitly urged the SBA to continue its participation in the anti-extraterritoriality campaign (Li 2006:221). Political control or political mobilization, the Nationalist's agenda for the abolition of extraterritoriality would be well served either way by the bar's active participation. Indeed, as lobbyists sent by the SBA to Nanjing, Li and Tan were especially out of their usual lawyering roles between 1928 and 1930, making various proposals for the organization of the new court, the management of the Shanghai prison and police, as well as for the changing legal status of foreign subjects (Li 2006:219-37). Here again, the stringent hierarchy of professional authority and regulatory oversight seemed to be left aside, at least temporarily.

### **3.5 Conclusion**

The rise of the judicial and legal profession in early twentieth-century China is a prime example of imitative professionalization pushed forward by state building initiatives. Before 1905, there had been no modern court or lawyers in China proper; by 1935, a highly specialized judiciary reaching out to all provincial capitals and major urban areas, a state-regulated system of licensed lawyers and bar associations, and a whole host of advanced-level programs for law education had all been well-established. In the span of three decades, judicial offices and lawyerhood had replaced the private legal secretaryship and the litigation advisory of earlier centuries in offering career prospects and social status to a new generation of Chinese students now trained in modern, Western-style law.

That transformation did not grow out of the institutional or labor market dynamics from traditional law. While code revision was nothing new to the governments of imperial China, a



systematic overhaul in the conception of law and the social organization of legal practice would not have been possible without the introduction of legal knowledge and legal institutions from abroad. In this respect, I have shown that coercion from the outside, such as that through the treaty negotiation over extraterritorial privileges, did contribute to the social and political legitimacy for Western-style legal practice in China. But the main driving force for the cross-border diffusion of modern law was geopolitical influence, especially the geopolitical influence from a modernized Meiji Japan. It emerged in the aftermath of the First Sino-Japanese War and was facilitated by both a widely felt political crisis on the Chinese side and an expansionist foreign policy on the Japanese side. It was reflected in the employment of foreign advisers and instructors in Chinese agencies and programs, and in a much larger wave of Chinese students who went abroad (especially to Japan) for modern education. This flourishing flow of personnel and ideas happened concurrently with a centrally planned government reorganization of the late Qing state. In fact, the diffusion of modern knowledge practices and the beginning of modern state building were mutually constitutive: just as the former provided the blueprint, the technical know-how, and the manpower for the latter, the latter provided the political legitimacy, financial and organizational support, and new opportunities of career mobility for the former. The state building initiative towards a Japanese-style modern judicial and legal profession was so consistent that neither the regime transition from the Qing to the Republic or the turf wars among different Chinese warlords had been able to undermine its rationale or its institutional achievements. It continued well into the Nanjing decade even against the rise of another geopolitically induced agenda, which attempted to replace judicial independence with organizational and ideological control from the party-state.

Aside from geopolitical influence, the government reform that created the Chinese legal profession was also conditioned, for better or worse, by several preexisting circumstances. For the most part, the modern Chinese judicial system was not created anew. It was based upon a top-down reorganization of the old judicial institutions at the capital, the judicial commissioner's office at the provincial level, and the magistrate's court at the local level. Thus, the co-option of judicial experts from the old system was critical for a smooth organizational and personnel transition: reform-minded elite jurists from the former Board of Punishments emerged as the leadership of the new judiciary, while the rank and file of the old judiciary were retooled and reappointed to the new courts, before they were gradually replaced by judicial officers with formal modern education. In this way, experienced jurists of an older generation and the new graduates of modern legal training had formed a professional coalition that became the initial cornerstone of the modern Chinese judicial and legal profession. On the flip side, the top-down, state-centered approach to professionalization also perpetuated the traditional status distinction between public office and private practice. The Chinese bar did not come into being until after the late-Qing government reorganization, when a surplus population of law students began looking for alternative career options. And even with the official recognition of their legitimate roles in the new legal system, the Chinese lawyers and their bar associations had constantly suffered from a lower professional status and little professional autonomy. In fact, it might also be said that the state-centered approach to professionalization had preferred a state-centered professional model, where such intra-professional status hierarchy between the public and the private sectors can also be found in the legal system of Meiji Japan.

## Chapter 4 Medicine I: Late Qing and Early Republic

As Chapter Two has shown, while native medicine in China boasts a long and variegated tradition spanning many centuries, the social organization of medical practice had been based upon little more than households and master-disciple relations, with the imperial state playing a dwindling role in health administration. By late imperial times, there had been no medical schools, no medical guilds or societies, no official regulation over medicine or health matters—in short, no formal institution had emerged to prescribe the social organization of medical practice either as an occupation, a domain of scholarly pursuit, or a government function. That began to change in the nineteenth century with the arrival of Western physicians who came to spend entire careers among the Chinese. Although that was not the first Chinese encounter with medical practices from the West, it was the first time that organized medicine was ever introduced to the country systematically. As it turned out, the progress of medical science in the course of the nineteenth century and the acceleration of globalization through colonial trade, imperial warfare, and missionary zeal would make China a fertile ground for the dissemination of Western medicine and medical institutions. It is this combination of the absence of an indigenous medical profession, the lack of state control over health matters, and the vigorous diffusion of Western medicine on a global scale that had set the stage for the rise of the modern medical profession in China.

I divide my account of this historical story into two chronological periods, to be examined separately in this chapter and the next. The first period covers the late-Qing and the Beiyang (or the early Republican) era, which, in general, begins from the 1880s and lasts until the mid-1920s. The second is the prewar Nanjing decade, marked by the establishment of the

Nationalist government in 1928 and the outbreak of the Second Sino-Japanese War in 1937. Breaking down the story into two periods not only serves a narrative purpose (so that my chapters will not be overly long), but is also suggestive of an analytical point: the coming into power of the Nationalist government and the subsequent founding of a semi-autonomous health agency at the ministerial level was a turning point in the professionalization of medicine in China. Unlike the field of law, where judicial and legal reforms had been initiated by the Qing state and continued by subsequent governments of the Republic, new forms of medical organization had first grown out of the changes in private practice and at the local level. It was not until the Nanjing decade that an official agenda for state building in the realm of medicine and health administration was formulated and implemented by the central government. It is precisely in this sense that the rise of the Chinese medical profession can be regarded as a bottom-up process, in which the initiatives from below not only preceded those of the top, but eventually came to capture and redefine the latter.

In this chapter, I examine the early stage of medical professionalization in China by first looking at the development of missionary medicine. By the end of the nineteenth century, missionary physicians had increasingly identified themselves as medical experts rather than religious preachers. As part of the global expansion of the Anglo-American medical professions, they were the first to introduce to China the organizational models for a modern profession. Several of their professional institutions will be discussed in detail: the first medical associations they set up in China, the organization of medical training programs for the Chinese, and their painstaking effort to localize biomedical knowledge as a field of discipline. I argue that, in doing so, the medical missionaries not only trained the first Chinese physicians in modern medicine, but also prepared the latter with a whole set of institutional tools that could be readily picked up

for their own professional goals. Adding onto the missionary medical enterprise was the medical and educational investment in China made by the Rockefeller Foundation since the 1910s. Through the building of a world-class medical school in Beijing, the Rockefeller Foundation provided an example of the Johns Hopkins model of modern medical education.

Meanwhile, another wave of cross-border diffusion hit the Chinese medical field in the aftermath of the First Sino-Japanese War and the Boxer Rebellion. Like the legal reform that took off in the same period, this, too, was a manifestation of Japan's geopolitical influence in the early twentieth century. My analysis here will include several aspects of the Japanese model that was being adopted by the Chinese government: the launch of military medicine, the concentration of medical education at the provincial level, the regulation of medical and sanitary matters by the police, and the specialization of plague control and prevention. The influence of Japan was also carried by the Japanese-trained physicians. Upon returning to China, they, too, had set up their own medical organizations and devoted themselves to modern medical education. Yet, unlike those with a missionary or Anglo-American background, the Japanese-trained physicians were short of support from either the Chinese state or an expanding Western profession.

Finally, the social organization of native medicine had also undergone important changes since the turn of the twentieth century, which will be discussed at the end of the chapter. During the late Qing years, what one finds amidst the Chinese movement for civil society and local autonomy was the sudden emergence of medical societies, medical periodicals, and quasi-modern medical training programs, all organized by eminent native physicians and supported by the local gentry class and business communities. By the early Republican period, local medical groups had formed into a cross-regional network, especially out of their collective effort to lobby

the government for the inclusion of native medicine in the state educational system. Their organization and activism had paved the way for a more critical round of public campaigns that will be discussed in the next chapter.

#### **4.1 Expansion of Western Medicine**

To the Chinese who lived before the nineteenth century, Western medicine was something little known beyond a few small circles. An important agent in the initial introduction of Western medicine was the Jesuit physicians who served the late-Ming and mid-Qing courts. The early court of Emperor Kangxi (reigned 1662-1722) was especially known for its interest in European medical techniques, which led to the first Chinese attempt in the translation of Western medical texts (Puente-Ballesteros 2011). But an official ban on Christianity since the late Kangxi court had restricted all missionary activities to the Portuguese outpost of Macao. It was not until the early nineteenth century that Western medicine was again brought to China, now by physicians of the East India Company who propagated smallpox vaccinations and by the Protestant missions that began to see medicine as an aid for preaching (Lazich 2006).

To put missionary medicine in a broader historical context, it shall be noted that modern medicine and Christian evangelism did not go together from the start. It was the American missionaries who arrived in Canton in the 1830s that first appreciated the strategic importance of qualified physicians. At the request of their first China missionary, E. C. Bridgman, the American Board of Commissioners for Foreign Missions, an interdenominational body formed in 1810, sent Dr. Peter Parker to Canton in 1834, who then helped launch the Canton Hospital and

the Medical Missionary Society in China.<sup>1</sup> With his almost instant popularity among the Chinese—especially for treating eye disorders—Parker, in turn, went on to lobby the international missionary community for supporting medical work. His 1841 visit to Britain prompted the creation of the Edinburgh Medical Missionary Society, the first medical mission society in Europe. Yet it was not until after the promulgation of the *Medical Act* of 1858 that the term “medical missionaries” began to refer to those who had full medical training and qualifications among the missionaries (Hardiman 2006). The gradual acceptance of medicine as a useful aid to conversion and the increasing demand for medically qualified missionaries resulted in the establishment of several other medical societies after the 1870s: the London Medical Missionary Association in 1878, the New York Medical Missionary Society (later the International Medical Missionary Society) in 1881, the American Medical Missionary Society (based in Chicago) in 1885, and the Medical Missionary Society of Stuttgart in 1898. It was against this historical backdrop that the China Medical Missionary Association (CMMA) was founded in Shanghai in 1886. The immediate trigger of its birth was the International Medical Congress, which was going to be held in Washington D.C. in 1887. Discussions about sending representatives to this meeting finally led to H. W. Boone’s call for the launch of a professional association among the medical missionaries then working in China (Boone 1886). Meanwhile, the number of missionary physicians and hospitals increased slowly but steadily in the last decades of the nineteenth century: in the 1880s, there were about 60 medical missionaries, a dozen or so hospitals and a little over 20 dispensaries in the country; by the 1910s, the

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<sup>1</sup> However, this largely Canton-based organization was by no means a *professional* association. Its membership was open to anyone who was interested in sponsoring medical work in China, and its main task was more concerned with fundraising and hospital administration than about medical practices. For more on missionary medicine in China during the early-nineteenth century, see Wu (2000), Lazich (2006), and Tian (2011).

missionary medical enterprise had risen to more than 430 physicians, 260 hospitals and 380 dispensaries (Tian 1995).

What came with the growing number of missionary physicians and their medical institutions is the emergence of a quasi-national medical community,<sup>2</sup> connected through the CMMA and championed by a small yet devoted professional leadership. Increasingly, the medical missionaries began to prioritize the medical side of their work, regarding it as somewhat independent from, if not more important than, that of preaching (Young 1973). By the end of the nineteenth century, missionary physicians were hoping to see the kind of profession-wide consolidation as they had known firsthand in their home countries. The following section will inspect three aspects of that missionary endeavor towards medical professionalization. I draw attention first to the organization of the CMMA, which became the primordial example of Anglo-American professional associations for all its Chinese followers. The missionary physicians also worked hard at two other professional projects: the creation and standardization of modern medical education in China and the localization of Western medical knowledge as a scholarly field of study. With the growing number of Chinese physicians trained by missionary medicine, the cooperation between the foreign side and the Chinese side became both possible and necessary for the further expansion of the medical profession. In that sense, the professional projects started by the medical missions were carried on—and eventually taken over—by their Chinese students and followers.

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<sup>2</sup> In fact, this community extended beyond China proper and included medical missionaries in other parts of East Asia. The CMMA, for instance, had drawn its membership from Korea, Taiwan, as well as from Siam (CMMA 1887c).



#### **4.1.1 The China Medical Missionary Association (CMMA)**

The modern professions are distinguished from other types of social entities—as well as from traditional craft guilds—by their organization. In the Anglo-American world, the quintessential form of professional organization is the professional association. In Britain, the Royal Medical Society was founded in 1737, the Provincial Medical and Surgical Association in 1832, and the British Medical Association finally in 1856. In the US, the Medical Society of the State of New York was first established in 1794 and the American Medical Association in 1847. In other words, by the second half of the nineteenth century, national medical societies had become an institutional norm in the West and medical missionary societies, as mentioned already, followed closely behind. All professional associations of this sort had a few formal features in common, which made them *professional* associations, and the CMMA was no exception. They include a membership based upon modern educational credentials and a set of organizational procedures that ensures the self-governance of the profession: the election of the staff, the general meetings, the permanent and the working committees, and the publication of at least one professional journal. What was unique about the CMMA, however, is the fact that it was not recognized by any political authority—not officially by the Chinese government. Therefore, it did not have that exclusive authority over medical practice as granted through a royal charter or an official mandate. This had to wait until the rise of medical associations formed by the Chinese, who followed the organizational model of the CMMA and took upon themselves both a professional and a nationalistic agenda.

## Membership

When the CMMA was founded in 1886, its constitution laid out three broad goals for itself: the promotion of medical science in China, the advancement of missionary work and medical science in general, and the maintenance of the medical profession as a fraternity (CMMA 1887b). By then, no formal standard had been set down by the Chinese for practitioners of medicine. The CMMA's criteria for membership were perhaps the first attempt to do so, although it did not apply beyond the medical missionaries. Its members should be graduates from a nationally recognized medical college and should be engaged in active missionary work in China or other parts of East Asia. In addition to regular membership, the CMMA had two other membership categories: honorary members who were medical but non-missionary practitioners in China and corresponding members who were based outside of China (CMMA 1887b). Since no nationally recognized medical college existed in China before 1912, the CMMA was predominantly composed of British and North American missionaries who had a formal medical education from their home countries. Chinese medical men and women were rarely accepted before the 1910s. The first two Chinese members, Mary Stone (石美玉) and Ida Kahn (康爱德), were female physicians who had been trained at Michigan and worked as medical missionaries for the American Methodist Episcopal Mission in Jiangxi Province. They joined the CMMA in 1897 (CMMA 1897). With the growth of missionary medical programs in China, the question arose as to whether their graduates could be admitted. In 1908, the CMMA's executive committee expressed its willingness to welcome more Chinese members, provided that only regular graduates—not hospital assistants—holding medical degrees from a list of recognized schools were eligible and the missionary qualification should not be dropped (CMMA 1908). As a result, the Yale-educated physician and medical educator Yan Fuqing (颜福庆) joined the

CMMA in 1910 through the recommendation of his Yale-in-China colleague Edward Hume (Yan would become the first president of the National Medical Association of China in 1915). Only nine Chinese physicians were thus admitted prior to 1915, the year in which the total number of regular members had reached 329 (Shi 2010:37-38; Cui 2013:73). It was not until 1925 that the criteria of missionary engagement were finally removed. In 1926, Arther H. Woo (胡惠德) from Hong Kong became the first Chinese vice president of the CMMA and, three years later, the first Chinese president.

The changing membership criteria of the CMMA reflected the trajectory of professional expansion that Western medicine had undergone in late nineteenth- and early twentieth-century China. From the very beginning, the CMMA had held onto formal medical training as the prerequisite for its membership. When such training did not exist in China, it meant that only graduates from nationally recognized foreign medical schools were eligible. When formal medical programs began to emerge in China but without the support or recognition of the state, the CMMA became the *ipso facto* authority to decide, on professional terms, which Chinese programs were qualified and which, such as hospital-based training, were not. On the other hand, restrictions over the nationality and missionary engagement of prospective members were gradually lessened as Western medicine became increasingly localized. One important engine for that localization process was, in fact, the CMMA's own efforts on medical education, as will be discussed immediately. The pace for localization was further accelerated by the rise of runaway Chinese nationalism since the 1910s, which began to threaten the continued operation of the Christian missionary enterprise in China. In this way, the CMMA's membership became a footnote to the expansion of the medical profession, to the point that it was about to be overtaken

by the modern-educated Chinese, which ultimately occurred in 1932 with the merger of the CMMA and its Chinese follower, the National Medical Association.

#### Meetings, Elections, Committees, and the Journal

In addition to membership criteria, the associational life of the profession was based upon a full basket of institutions. When the founding members of the CMMA met in 1886, they elected John G. Kerr as the inaugural president, E. M. Griffith as the secretary and the treasurer (CMMA 1887a). Five vice-presidents (each representing one major geographical division) and a six-member board of censors were also appointed. The first general meeting of the CMMA was held in 1890, but it took another fifteen years before the second one was convened, after which the meetings became regular, held every two or three years. Attendance rose from 43 in 1890 (CMMA 1890) to 230 in 1920 (CMMA 1920), and a total of twelve general conferences were organized before the 1930s (Shi 2010:109). The general conference was a key mechanism for the progress of professionalization. It set up an institutional routine for the election of the staff, the review of past work, the planning for future projects, the appointment of sub-committees and councils, the exchange of professional opinions and medical information, and the deliberation over important issues regarding the association itself (Shi 2010:109-20).

Moreover, the general conference provided an opportunity for the CMMA to connect with outside groups. It was during the 1913 conference in Beijing that representatives of the CMMA were received by President Yuan, the first time that the association was honored by the head of the Chinese state (CMMA 1913). It was at one dinner party during the 1915 conference that the Chinese members of the CMMA decided to set up their own organization, the NMA. Subsequently, the two general conferences of 1917 and 1920 were jointly held by the CMMA

and the NMA. The conference of 1920 led to the founding of the Anatomical and Anthropological Association of China. The CMMA conferences also served as the occasion for the meetings of the Nurses' Association of China, which was founded with the CMMA's assistance in 1909. On the other hand, the CMMA sent delegates to medical conferences held elsewhere. Its participation in the International Medical Congress since 1887 and in the Far Eastern Association of Tropical Medicine since 1909 both strengthened its ties to the international medical community (Cui 2013:82-84).

Another organizational feature that the CMMA adopted for its professional activities is the committees and councils (Shi 2010:114-19). The CMMA's executive committee was established during the 1907 general conference. It was the main administrative organ of the association that took care of its daily operation between the sessions of its general conference. Other important CMMA committees included a whole line of small workforce teams entrusted with specific tasks or projects, such as those on nomenclature (1890), textbook (1905), publication (1905), research (1907), and the medical curriculum (1910). By the 1910s, a few committees had been expanded into councils, such as the councils on medical education (1915), public health education (1915), hospital management (1920), and medical research (1926). Some of the work done by these committees and councils will be discussed in more detail when I come to medical education and the standardization of medical terminologies.

Finally, the CMMA introduced to the Chinese the professional journal, a print medium for peer exchange on medical knowledge, professional organization, as well as on personal matters. Although it was not the first medical journal in China, the *China Medical Missionary Journal (CMMJ)*, launched in 1887, was the first that published continuously, setting up a model for all professional journals in the country thereafter. It started as a quarterly, turned into a bi-

monthly in 1905, was renamed the *China Medical Journal* in 1907, and became a monthly since 1923. A significant portion of the *CMMJ* articles were devoted to original writings on medical and clinical findings from China. According to the calculation of Shi (2010:106), a total of 136 such articles were published between 1887 and 1900. With the launch of the research committee and the increase in the annual number of issues, a total of 124 original papers were published between 1907 and 1909 and a total of 156 between 1917 and 1919 (Shi 2010:106). The *CMMJ* also served as a platform where the agenda of the CMMA leadership was communicated to its members and the feedbacks of the latter were gathered. For instance, the CMMA's policy over the consolidation of missionary medical programs was the focus of the May issues of 1905 and 1913. Its reactions to the Rockefeller Foundation's huge financial investment in medical education in China were discussed in the May and November issues of 1915. Its rising interest in the promotion of public health education was reflected in a set of six articles published in the July issue of 1915.

#### Native Follower: The National Medical Association of China (NMA)

A direct institutional follower of the CMMA was the National Medical Association of China (NMA), founded in 1915. By the 1910s, while the CMMA had opened its membership to Chinese nationals who qualified the professional and missionary requirements, the founding of the Chinese republic had also spurred a strong wave of nationalism, to which many of the educated Chinese were drawn. It did not come as a surprise that, during the CMMA's sixth general conference held in Shanghai, several of its Chinese members decided to launch their own medical association with the additional support from other Chinese physicians of modern medicine. The missionary origin of the NMA was clearly reflected in the background of its

twenty-one founding members: among them, eight, including its first two chairmen, had been regular members of the CMMA, another seven were alumni of the St. John's Medical School in Shanghai, a major missionary outpost (Liu 2013).

According to its constitution, the NMA's chief objective was to "promote goodwill and union among Chinese practitioners of Western medicine, to maintain the honor and the interest of the medical profession, to expedite the spread of modern medical science in China and arouse the interest in public health and preventive medicine among the people, to coordinate and cooperate with the existing medial forces in China, Chinese and foreign, in the working out of the above objects" (NMA 1915). In reality, the NMA initially saw itself as the younger Chinese brother of the CMMA. Most of its early efforts were devoted to areas in which the two organizations could cooperate and especially where it could fill the gaps left by the existing work of the CMMA. Two such areas were identified: the translation and standardization of medical terminology and the promotion of public health (Yen 1916; Yu 1922), both of which will be analyzed in later sections. It suffices here to say that the rise of the NMA further expanded the outreach of the modern medical profession, so that cooperation between the foreign side and the Chinese—and between different groups among the Chinese—was made more feasible than ever. The project on medical terminology, originally started single-handedly by a few medical missionaries, was turned into a collaborative enterprise with the additional participation of the Chinese medical experts and the educational authorities, before it grew into a multidisciplinary effort joined by other scientists. Meanwhile, the work on public health education had seen a close collaboration between the CMMA, the NMA, and the YMCA, until the end of the 1920s (Bu 2009).

Organizationally, the NMA was closely modeled on the CMMA. Its membership criteria were almost a direct copy of the CMMA's, except for the missionary requirement. Members were initially divided into three categories: "special members," with formal medical training from recognized medical schools and proficiency in at one foreign language, "regular members," who possessed similar credentials but spoke only Chinese, and "honorary members," who were non-practicing supporters of modern medicine (NMA 1915). Like the CMMA before it, the NMA also underwent a process of gradually opening up its membership to a wider constituency. This began with the removal of the distinction between the special and the regular categories, thereby leveling the professional status for all its non-honorary members. An additional member category was created in 1917 for non-Chinese nationals, a gesture to welcome the members of the CMMA (NMA 1917). By the end of the Beiyang period, membership of the NMA had grown to 477 (as of 1928), almost three times its own size a decade before (NMA 1932a).

Until its merger with the CMMA in 1932, the NMA had organized eight general meetings (NMA 2015). Its first general conference in 1916 already saw the launch of four sub-committees: editing, membership, medical terminology, and public health. More committees were set up in the following decade, including the ones on research (1917), translation (1924), forensic medicine (1930), and health education (1930). The 1932 amalgamation led to the further addition of a publication committee, a medical education committee, and a committee on missionary medicine. The NMA's flagship journal, the *National Medical Journal of China* (*NMJ* 中华医学杂志), had been published bilingually since 1915. After 1932, the *CMMJ* and the English edition of the *NMJ* were combined and became known as the *Chinese Medical Journal*.

However, there was one important respect in which the NMA was distinct from its missionary forerunner: its relationship to the Chinese government. Under international treaties



signed by the Qing and Western powers, the Christian missions enjoyed extraterritorial privileges to buy land, build churches, set up hospitals and schools for religious or charitable purposes without the consent of the Chinese authorities (Li 2001:63-70). Therefore, it was not until the 1910s that the CMMA began to seek Chinese cooperation. In contrast, the NMA was born with both a professional and a nationalistic understanding of itself (Tao and Wang 2014). On the one hand, it was to be the leader and gatekeeper of the medical profession, whose responsibility was to oversee a whole set of institutions to ensure the quality of medical training, the eligibility of medical practice, and the protection of professional rights. On the other hand, it saw medicine and public health as part of the larger social transformation towards a modern Chinese nation. In this regard, its success as a professional association would be dependent upon the support from the Chinese government.

The NMA's lobbying campaigns started almost immediately after its founding. Its most outspoken figure was Wu Lien-teh (伍连德), who succeeded F. C. Yen in 1916 as its second president. A graduate of Cambridge, Wu had become an internationally acclaimed medical figure through his successful leadership of the Chinese effort to control the 1910-11 Manchurian plague outbreak. He was subsequently awarded a *jinsi* degree title by the Qing court and appointed head of the Manchuria Plague Prevention Service. During the late 1910s and early 1920s, Wu and the NMA had repeatedly petitioned the Beiyang government for policies over the establishment of a central health agency, the state regulation of medical practice, and the state involvement in opium control (NMA 2015). On more than one occasion, the NMA had joined efforts with Japanese-trained physicians. For instance, they worked together in 1926 to persuade the Beijing government into earmarking part of the British Boxer Indemnity Fund for public health work.

#### **4.1.2 Missionary Medical Education**

Just as the introduction of modern medicine was championed by the Christian missionaries, medical education was also mainly a missionary enterprise, at least in the beginning. The first Chinese students of Western medicine were the native assistants trained by the missionary physicians. The most famous of them, Kwan Ato (关韬), began his apprenticeship in 1837 under the tutelage of Peter Parker, the American physician who founded the Canton Hospital. Both Benjamin Hobson at the Macao Hospital and William Lockhart at the Shanghai Hospital also reported Chinese pupil-assistants studying with them since the 1840s (Choa 1990:75). After the 1860s, such apprenticeships gradually transformed into more organized programs for medical training. The first formal training program was launched in 1866 at the Canton Hospital, followed in the next three decades by similar ones in Shanghai, Suzhou, Mukden, Hangzhou, Hong Kong, and a few other places where the number of missionary physicians had been slowly increasing (Wong and Wu 1936:437-505). However, most of these early programs were rather small, usually with a class between two and six students—only five of them actually had classes larger than ten—and the duration of study varied from three to six years. By the end of the nineteenth century, at least 462 Chinese students had been thus trained or were still in training at the missionary programs (Neal 1897).

Meanwhile, a small handful of Chinese students had studied medicine in Europe and America since the mid-nineteenth century. The first Chinese to ever complete a university degree in modern medicine was Wong Fun (黄宽 M.D., Edinburgh, 1855) (Choa 1990:80). Another well-known early graduate was Kai Ho (何启 M.B.C.M., Aberdeen, 1879), who later helped found both the Alice Memorial Hospital in Hong Kong and the Hong Kong College of Medicine

(which became the basis of the University of Hong Kong in 1910). The first Chinese female physician was Yamei Kin (金韵梅), who graduated from the Women's Medical College in the New York Infirmary in 1885. She was followed by three other Chinese women who went to study medicine in the United State during the 1890s and then returned to China as medical missionaries (Choa 1990:81-82). Other notable figures in this regard include the German-trained Xu Huaqing (徐清华), the first dean of the Beiyang Army Academy of Medicine, and the Cambridge-trained Wu Lien-teh, who would become China's iconic plague fighter and one of the founding fathers of the National Medical Association.

Back in China, the first years of the twentieth century saw an increasing amount of collaboration between different Protestant missions on medical education. In 1905, the third general conference of the CMMA passed a resolution that urged the various missions to stop scattering their limited financial and manpower resources among the smaller and isolated programs and, instead, concentrate their endeavors toward the formation of union medical colleges in large missionary centers (CMMA 1905). The same conference also saw the initiation of the CMMA's Publication Committee and Committee on Medical Textbooks to prepare standardized medical textbooks in Chinese (CMMA 1905). As a result, a number of union medical colleges were established in the first decade of the century: both the South China Medical College, at Canton, and the Shantung Union Medical College, at Jinan, were launched in 1904, the Peking Union Medical College in 1906, and the Hankow Union Medical College in 1908. However, with the exception of the Peking college, none of these medical schools were officially recognized by the Qing government, and they would continue to remain outside of the Chinese educational system until the 1920s.

During the Beiyang period, the CMMA took additional steps towards the consolidation and standardization of existing missionary programs. Notably, the *Report of Mott Conference Committee* (CMMA 1913a), announced during the CMMA's fifth general conference in 1913, set out the basic educational policies for the next decades. It reiterated the emphasis on the quality of medical training over the number of students; therefore, no new programs should be started until the existing union medical colleges were efficiently staffed and equipped. The report provided guidelines for the programs' staffing (a minimum of ten full-time medical staff), salary (higher pay in order to retain capable graduates), equipment, textbooks, and arrangements for clinical internship (typically during the final two years of study). Special mention was also made of the need to cooperate with Chinese authorities on the development and regulation of medical education, with the expectation that the staff, finance, and administration of missionary medical schools would be gradually transferred to competent Chinese educators. In 1915, during the CMMA's sixth general conference, a further report by the Curriculum Committee (CMMA 1915) classified missionary medical programs into two categories. Programs that met all the requirements on the course of instruction, admission, curriculum, internship, degree, staff, equipment, and hospital facilities would be approved by the CMMA as "Class A" programs, which were capable of offering medical degrees. Those at least conformed to the requirements on the course of instruction, admission, and curriculum would be recognized as "Class B" programs, which could grant certificates of graduation but not medical degrees. At the same conference, a Council on Medical Education was established to work on the further standardization of missionary medical education. It is worth noting that part of the drive for these efforts was from the fact that the CMMA began to recruit Chinese members since the 1910s, which made the standards of its own medical programs an utmost concern of professional self-

regulation. Nevertheless, to what extent these efforts had actually improved the quality of the missionary programs is hard to tell from available sources.

Perhaps the most important milestone for the professional expansion of modern medicine during the Beiyang period was the decision of the Rockefeller Foundation to invest in modern medical education. The goal of the Rockefeller philanthropists and educators was to promote medical education as a way of introducing scientific methods and modern higher education to the Chinese. Unlike the Christian missionaries who had worked among the commoners and reached out to remote places in order to spread the gospel, the Rockefeller Foundation's approach was secular and elitist. Its initial objective was to build a university-level medical school (originally two) in China according to the highest standard in the US (Ma 2013:178-200). After several initial surveys, it bought the PUMC in 1915 from the Protestant missions and transformed it into the Johns Hopkins of China. The PUMC reopened in 1921 with a 25-acre new campus, a full-time faculty of 57, a 225-bed teaching hospital, and an annual budget that would quickly rise to 900 thousand US dollars (Bullock 1980:53). In comparison to the realities of modern education in China, the PUMC's criteria of student admission were extremely high. Before 1925, it ran its own three-year pre-medical school, which provided scientific training to prospective students. After 1925, it drew most of its incoming students from the graduates of missionary colleges, especially the Rockefeller-sponsored Yenching University (Bullock 1980:113-15). In other words, the PUMC had largely complied with the standard of graduate-level admission as in the Johns Hopkins model. In terms of its curriculum, it also followed closely the example of the Johns Hopkins Medical School, which put great emphasis on laboratory training and clinical demonstration in hospital wards during its four years of training and one year of internship (Bullock 1980:93-95). Due to its high standard of admission and a rigorous English-teaching

curriculum, the average size of its annual enrollment was smaller than thirty. Yet, the impact of the Rockefeller Foundation and the new PUMC could not be underrated: it set up a standard for medical education that no other program in China at the time could possibly match. Over the next few decades, it was going to train a whole generation of American-style medical leaders for the country (Bullock 1980:125-33). Meanwhile, in response to the Rockefeller Foundation's China program, missionary medical education made several important adjustments, including the relocation of smaller programs to the Cheeloo University Medical School in Ji'nan, Shandong, making the latter the largest missionary medical program by then (Luesink 2004). In contrast to the elitist orientation of the PUMC, the Cheeloo program was deliberately taught in Chinese, as part of the missionary effort for the localization of medical education.

#### **4.1.3 Modern Medicine as A Knowledge Discipline**

As a group of professionally trained physicians, the medical missionaries sent to China were interested in the advancement of medical knowledge. This can be already seen in the objectives laid out in the CMMA's constitution, as well as in the original papers published regularly through the *CMMJ*. With the expansion of missionary medical education, the CMMA became increasingly concerned with the localization of modern medicine as a disciplinary field for the Chinese. This was achieved, first, through its pioneering work in the translation and standardization of medical terminology and, second, through the organization of medical research among and about the Chinese.

## Medical Terminology

For the cross-cultural diffusion of any knowledge system, the translation of terminologies was both a cultural and a professional challenge. Culturally, since native Chinese understandings of the human physiology and pathology were so different from modern biomedicine that it was often difficult to find the exact Chinese words for many of the medical terms used in the West. Therefore, new words or phrases had to be created, ideally in such a way that they would convey the right kind of cultural connotations associated with their technical usage. Professionally, the lack of a standard translation for medical terminology would be a huge hindrance to the enlargement of the medical community, since both teaching and peer exchange would have to rely upon the native language if they were ever to be carried out on a large scale. The earliest attempts to provide a reference list for modern medical terms in Chinese had begun even before the founding of the CMMA. In 1847, Thomas T. Devan, a Hong Kong-based medical missionary from the American Baptist Mission, published *The Beginner's First Book in the Chinese Language*, with a bilingual list of terms for diseases, anatomy, and medicine (Xu 2011:101). The first specialized medical reference book appeared in 1858 with the publication of Benjamin Hobson's 1,829-entry *A Medical Vocabulary in English and Chinese* (Sun 2010). In 1887, John Dudgeon, another important missionary figure, published his six-volume *A Medical Vocabulary*. By 1890, at least three other medical reference books had already been prepared by missionary physicians working in China (Sun 2010).<sup>3</sup>

The translation and standardization of medical terminology in Chinese was a central topic for the CMMA's first general meeting in 1890. A five-member Nomenclature Committee (later

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<sup>3</sup> An interesting Chinese counterpart to these individual efforts on medical translations was the work of Ding Fubao (丁福保), who reportedly translated nearly 80 medical titles from Japanese between the 1910s and the 1930s (Niu and Feng 2004).

renamed the Terminology Committee) was appointed, and P. B. Cousland of the English Presbyterian Mission became the leader of this collaborative enterprise (Zhang 1994). During the general conference of 1905, the Terminology Committee was made the first permanent committee of the association and an additional Publication Committee was set up to assist the translation and publication of medical treatises and textbooks. The publication of *Cousland's English-Chinese Medical Lexicon* in 1908 marked the first milestone for the CMMA's work in this respect. It was recommended by the CMMA as the standard for medical terminologies in China and became, indeed, a wildly popular reference book, reprinted ten times before 1950.

What the CMMA helped bring into being in the next few decades was significant: its work on medical terminology led to an organizational model for the translation and standardization of technical terms in all scientific fields. Initially, the founding of the Republic in 1912 provided an opportunity for the CMMA to seek Chinese cooperation on its terminology project. A turning point occurred in 1915 when the CMMA was joined by the NMA, the CMPA, and the Jiangsu Education Association to form a General Committee on Medical Terminology (医学名词审查会). By the time the first meeting of the committee was held, in August 1916, it had achieved a semi-official status with representatives from the Ministry of Education. A second meeting was held in January 1917, which saw the addition of a subcommittee consisting of science professors, who set out to work on the terminology for chemistry. In 1918, with a financial subsidy from the Ministry of Education, the committee decided to expand its scope of work and rename itself the General Committee on Scientific Terminology (科学名词审查会). Two new scholarly associations—the China Science Society and the China Natural History Society—joined the next year and a total of twelve meetings were organized between 1916 and 1926. By the late 1920s, the committee had eleven participating organizations and additional



representatives from university faculties. A total of forty-one volumes came out of this collaborative enterprise, including seventeen volumes on medical terminologies, six on chemistry, another six on botany, and four on each of the following: physics, zoology, and mathematics. By the end of the Beiyang period, eleven of these volumes had been approved and published by the Ministry of Education (Zhang 1996). Thus, in the course of thirty years, what started as the CMMA's committee on medical terminology had grown into an officially recognized, multi-disciplinary consortium on the introduction and localization of modern scientific disciplines. All participating organizations and individuals were reckoned as the authority on their particular domain of knowledge, a status that was further affirmed by the involvement of the Ministry of Education.

### Medical Research

In comparison, medical and clinical research in China had started quite late. The publication, since 1871, of the *Medical Reports* of the Chinese Imperial Maritime Customs, was the first organized endeavor to collect epidemiological statistics of the Chinese. Meanwhile, except for John Dudgeon's 1887 treatise, *The Diseases of China*, research by individual physicians were far from consistent. Among the authors of the 136 original papers published in the *CMMJ* between 1887 and 1900, only six had written more than five pieces (Shi 2010:69). One obvious reason for their lack of participation, if not interest, in medical and clinical research was that most, if not all, of the medical missionaries were full-time practitioners. Since their hospitals and dispensaries were typically understaffed and inadequately funded, they had little time left for research besides their work as physicians and medical instructors. This was compounded by the fact that most of the medical missionaries were general practitioners instead of specialists. As

such, their training in any particular branch of modern medical science might not have enabled them to conduct further research on their own.

The rigor for scientific research was finally kindled by the launch of the CMMA's Research Committee in 1907. For advocates of medical research (such as the first chairperson of the committee, James L. Maxwell, Jr.), the CMMA offered a unique opportunity since, by then, it had been the only corporate body of scientific workers in this vast piece of land (Maxwell 1907). Systematic study of the distribution, etiology, and treatment of the popular diseases of China would not only provide more practical knowledge to the medical practitioner but would also contribute to the advancement of medical science in general—one of the goals that had been listed in the CMMA's constitution from the beginning. Moreover, the publication of medical research done in China was a source of professional status. As Maxwell put it, "It is the aim of all of us to make the *CMJ* a journal recognized throughout the scientific world as the authority on scientific medicine in China...Raise the standard of scientific value of the papers in the Journal and the home papers devoted to this branch of medicine will have to review these papers in their own columns and so the wider constituency that these writers wish to reach will be attained" (CMMA 1910).

Thus, between 1907 and 1929, the Research Committee (expanded into the Research Council in 1926) carried out several series of medical research around China (Shi 2010:68-84; Cui 2013:140-54). The first set of studies, led by Maxwell, focused on the common intestinal parasites as found among the Chinese. It was a collaborative project consisting of various reports submitted by individual branch associations, which led to five committee reports published on the *CMMJ* between 1908 and 1910. A related output of the project was the publication, by Maxwell and W. Hamilton Jeffreys, of *The Diseases of China, Including Formosa and Korea* in

1910. In the second stage, from 1915 until the 1920s, the committee was led by G. D. Whyte to concentrate its work on the collection and analysis of the physiological and biological statistics of the Chinese population. This finally led to the organization of the Anatomical and Anthropological Association of China during the CMMA's 1920 general conference. The other long-term project that had already begun with the founding of the CMMA was the scientific study of traditional Chinese drugs. These studies were interested in isolating the clinically effective elements from traditional Chinese drugs and their results had been published both on the *CMMJ* and a number of international medical journals (Shi 2010:79-81). In 1923, a subcommittee on Pharmacology and the Investigation of Chinese Drugs was founded under the Research Committee to coordinate research efforts in this respect.

#### **4.2 Imitative State Building: the Japanese Influence on Health Administration**

By the end of the nineteenth century, although missionary medicine had been steadily expanding their institutions and fostering their followers in China, they had made little direct connect with the Chinese government. Individual missionary physicians had been hired by Chinese officials as program directors, medical instructors, or personal doctors, but, by and large, their engagement with—and influence over—the Chinese state had remained on an individual level. The interest of the Qing government, or at least as seen from reform-minded officials like Li Hongzhang, Zhang Zhidong, and Yuan Shikai, was in military medicine, for the military—the Qing's army and navy after the 1870s—was among the first few fields that had embarked upon a process of professionalization (Powell 1955). Therefore, early Qing initiatives for the training of medical officers had not come from health administration or the development of medical science. The first steps towards that direction would be taken only after the turn of the twentieth century and

were largely a result of the geopolitical influence from Japan. The Japanese had set an example for Chinese health administration through its enforcement of colonial medicine in occupied Tianjin and Beijing (as well as in Manchuria). Moreover, they were also going to help train a substantial number of Chinese physicians as Japan became the top overseas destination for Chinese students craving for a modern education. It was under such circumstances that imitative state building began to emerge in Chinese health administration and medical regulation, despite the lack of a strong political agenda or the external support from Western professions. In the following section, I first examine the rise of modern medical programs run by the Chinese. They range from the early military medical academies set up under the auspices of reform-minded officials to the Japanese-style medical schools, both public and private, founded since the Republic. I then trace the initial adoption of public health administration to the Japanese model of the modern police introduced through the occupation of Tianjin and Beijing during the Boxer Rebellion. However, the lack of preexisting institutional infrastructure made the bureaucratization of health administration a slow and disaggregated process. On the other hand, while the police were put in charge of urban sanitation and medical regulation, the plague prevention services that first emerged in the final years of the Qing were professionalized, which will be discussed next. Finally, I consider the role played by the Japanese-trained physicians. I argue that their professional organization had not been assisted by the expansion of Western medical professions or by the state building projects of the Chinese government. This put them somewhere in between the missionary physicians and the Japanese-educated legal experts, in terms of the general support they were able to mobilize for their professionalization.

#### 4.2.1 Early State Initiatives in Medical Education

The Qing's participation in modern medical education originally arose as part of the Self-strengthening Movement of the 1870s and 1880s, which saw a broadened Chinese exposure to Western cultures and a partial modernization of the Qing military forces. Medical courses first began to be offered at the Imperial Tongwen College (同文馆) in 1871 when John Dudgeon of the London Missionary Society was appointed the lecturer of medicine. This was the first lectureship ever set up by the Qing government for Western medicine (Balme 1921:161). In 1881, the Qing's first formal medical program, the Viceroy Hospital Medical School (天津总督医院附属医学馆), was founded in Tianjin, with the support of Li Hongzhang (李鸿章), the powerful Beiyang Viceroy. Supervised by John Mackenzie, also of the London Missionary Society, this three-year, English-teaching program had very small classes, but managed to train the very first batch of medical officers for the Qing's modern navy and army (Balme 1921:112-13). In 1894, the school was named the Beiyang Navy Academy of Medicine (北洋海军医学堂). A second wave of state initiatives in medical education did not arrive until after the Boxer Rebellion, when the influence of Japan began to be felt almost everywhere. In 1902, Yuan Shikai, Li's successor as the Beiyang Viceroy, revitalized the Beiyang program and transformed it into the Beiyang Army Academy of Medicine (北洋军医学堂), now with the assistance of Japanese instructors (Liu 2012:189-202). According to one official source, the Viceroy Hospital Medical School and its organizational successors had trained 216 graduates by the end of the Qing (Ministry of Health 1930). Similar military medical programs were set up in Guangdong, Sichuan, and Hubei, all supported by local authorities. Except for the one in Sichuan, which bore a French influence from Vietnam, all these programs of the 1900s had employed Japanese instructors and followed the Japanese model.

Since the turn of the twentieth century, Chinese students also began to pursue medical studies in Japan. But their numbers were rather small in comparison to those who went there for short-term legal training. According to one source, by 1907, enrollment of Chinese students in Japanese medical schools was around 95 (Niu 2003). According to another, a total of 789 Chinese students had studied medicine in Japan and returned to China before WWII (Kenjo 2014). The majority of these students had matriculated with the Japanese technical colleges of medicine—such as the ones in Chiba and in Nagasaki—which offered four-year programs in biomedicine or three-year programs in pharmacology. Few Chinese students had been able to attend, much less graduate from, the more elite medical programs at the Japanese imperial universities, at least not until the 1920s (Zhu and Hu 2017).

At the same time, official policy on medical education followed the paradigm set by the Japanese educational system. In 1912, the new Ministry of Education issued a *Regulation for Technical Colleges of Medicine* (医学专门学校规程) and a *Regulation for Technical Colleges of Pharmacology* (药学专门学校规程). They were close imitations of their Japanese precedents, which stipulated, among other things, the length of the programs (four-year medical programs or three-year pharmacological programs, each with an additional year of internship) and the officially approved curricula (Niu 2018). In the same year, the first three technical colleges of medicine were established: the National Peking Technical College of Medicine and two provincial medical colleges, one in Zhejiang and the other in Jiangsu. They were followed by several other provincial medical colleges that came forth in the next few years: Guangdong (1914), Zhili (1915), Shandong (1920), Jiangxi (1921) and Shanxi (1921). Most of these technical colleges were modeled upon the Japanese programs that bore the same name and from whose graduates their faculties had originally drawn (Niu 2018). In 1913, Tang Erhe (汤尔和),

the Japanese-trained principal of the Peking Technical College, managed to persuade the Ministry of the Interior to promulgate the *Provisions on Autopsy* (解剖条例), which, for the first in China, legalized human autopsy for research and forensic purposes. But even Tang's program had received little actual support from the financially stricken Beijing government (Asen and Luesink 2019). Other than these government schools, there had been slow yet steady growth in the number of private, non-missionary medical programs, with such new additions as Nantong (1912), Tongde (1918), and Sino-French (1921).

To put it together, the general picture of modern medical education during the late Qing and Beiyang era was one divided between the missionary and other foreign-run programs on the one side and the public or private programs run by the Chinese. At the end of the Qing (as of 1911), there were twenty-four medical programs, among which thirteen were operated by the Protestant missions, another two by the Germans, and one by the French Catholic church. On the Chinese side, five military medical academies had been set up by various authorities, while three private programs were opened in Canton and Hong Kong. My best estimation is that, by then, over one thousand Chinese had received some kind of modern medical training from these programs or otherwise from abroad.<sup>4</sup> In the 1910s and the 1920s, some of these programs were closed, relocated, or merged, while a few others were newly founded. Towards the end of the Beiyang period (as of 1925), a total of thirty-four medical programs were in operation, including thirteen private programs, nine missionary schools, eight public medical schools, two military

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<sup>4</sup> Neal (1897) found 462 Chinese students who had been trained (or still in the process of training) at the missionary medical programs. A 1930 government report gave an estimation of 349 medical students graduated, mostly from the military medical academies, before the founding of the Republic (Ministry of Health 1930). Additionally, a total of 39 returnee students who had studied medicine abroad passed the Qing's returnee tests (Tang 2013:59-61). The actual number of Chinese students who had been trained in modern medicine before the end of the Qing should be more than the combination of these three figures.

medical academies, and another two programs run foreign but non-missionary organizations.<sup>5</sup> The official statistics show a total number of 553 graduates in that year, but the figure covers only twenty-three of the thirty-four schools listed (Ministry of Health 1930). Nevertheless, one conclusion that one can at least draw from the existing sources is that the missionary programs were much smaller, with an average graduating class of no more than a dozen, while the Chinese programs were typically larger. The leading Chinese institution, the Peking Technical College of Medicine, had its first class of graduates in 1917 and a total of 363 students had graduated by 1926—that is, an average of 30 to 40 graduates each year (Luo and Sun 1992:13). As the next chapter will point out, with no serious intervention yet from the Chinese government, this divided state of medical education had led to an internal stratification among the modern physicians: those who had received a better medical education from abroad or at the missionary schools, and those who graduated from the larger but much less prestigious domestic programs. The lack of a unified standard for medical education would be a problem to be addressed in the Nanjing decade.

#### **4.2.2 The Police and Medical Regulation**

Death of patients from medical malpractice—or “bad physicians who kill patients (庸医杀人),” as the Chinese saying goes—was deemed a serious crime according to the Great Qing Code. But until the early twentieth century, the Qing’s administrative apparatus had not included any office that oversaw medical practices or public health. Local policies varied: a few magistrates held occasional qualification tests for medical practitioners in their region, while most others never

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<sup>5</sup> A complete list of modern medical schools before 1937 can be found in Appendix C.



bothered to do so (Long 2011:237-43; Lu 2012:168-72). The 1909 physician test organized in Nanjing by the Governor-general Duanfang (端方) was perhaps the most well-known of this kind (Andrews 2014:125-26). Yet, these tests were never regularized, nor did they give rise to a specialized testing authority (Lu 2007:50-58). It was in the aftermath of the Boxer Rebellion that modern institutions of health administration found their way into the Chinese bureaucracy.

When the control of Beijing and Tianjin was returned from a foreign occupation administration to the Chinese in 1902, it was agreed that the Qing would make every effort to ensure the safety of foreign nationals. An imperial decree ordered all provincial authorities to reorganize their ethnic Han troops—otherwise known as the Green Armies (绿营)—for that purpose (Han and Su 2000:124-31). In Beijing, a Bureau of Public Works and Patrol (工巡局) was established for the inner city in 1902, followed by a second such bureau for the outer city in 1905 (Ding 2011). More important, a Metropolitan Police Academy (京师警务学堂) was established as early as 1901, with the appointment of a Japanese dean, Kawashima Naniwa (川島浪速). Kawashima had been an advocate of Japanese-style police administration during the foreign occupation of the city. Through him, the academy employed a Japanese faculty and a Japanese curriculum, which taught the basics of hygienic administration as part of the police tasks (Xiao and Shi 2004; Bu 2017:41). In the nearby Zhili province, Governor-general Yuan Shikai was also highly supportive of the initiative and was among the first to launch local police bureaus and police academies (Rogaski 2004:186-190). Yuan, too, had relied heavily on the assistance of his Japanese advisers.

By the time the Qing decided to follow these early local initiatives with a central-level police agency, the Japanese model had been well received. In October 1905, the Ministry of the

Police (巡警部) was formally launched by the court, with its inaugural minister and deputy ministers all selected from the Beijing and Zhili police leadership (Li 2014). A Health Bureau (卫生科) was founded under the ministry, with its jurisdiction covering the inspection of medical academies, the regulation of physicians, the prevention and control of infectious diseases, and the supervision of urban hygiene. In turn, both of Beijing's two police bureaus were reorganized to include a health office. In 1906, as part of the same government reorganization that created the modern Chinese judiciary, the Ministry of the Police was expanded into the new Ministry of the Interior (民政部), with the Health Bureau upgraded to the Health Department (卫生司). The department had four subordinate bureaus: one for public health and health statistics, another for the regulation of hospitals, physicians, midwives, and pharmacists, a third one for the prevention and control of epidemics, and a fourth one for the regulation of food hygiene and drug use (Li 2014). In 1908, an imperial decree ordered all provincial governments to follow the example of Beijing and set up their own police circuits (巡警道) at the provincial level. A subsequent guideline released by the Constitution Committee laid down further details for the standard organization of this office. Accordingly, each provincial police circuit's office would have four subdivisions, including a health bureau (Han and Su 2000:147-48). After the Qing's fall, the bureaucratic structure in which health administration was to be performed by the police office was largely retained by the Republican government (Chen 2011:15; Gao 2014:96-97).

Like many other aspects of the late-Qing drive for government reform, the police office that was established, in part, to enforce hygienic regulation and oversee medical practice was based upon a Japanese precedent. The Japanese model of modern health administration had been established back in the early 1890s and successfully transplanted to Japanese-occupied Taiwan in the late 1890s (Iijima [2000] 2019:74-81, 89-97). It too had placed the central-level health

agency under the Ministry of the Interior, while local health administration was carried out by the sanitary police. Essentially, it was part of a modern state building process in which the government increasingly extended its regulatory arm into aspects of everyday life that had previously been governed by social customs or by the local society. Unlike the direct provision of health care, the police administration of health did not require the administrator to be a health professional himself. Therefore, neither the Ministry of the Police (or of the Interior) in Beijing or the various provincial and local police offices had been adequately staffed by medical specialists. In fact, only one of the nine directors of the Health Department during the Beiyang period had a medical background (Du 2014a:5), while the majority of the police personnel had been recruited either from police academy graduates or from veteran soldiers.

Recent studies on the actual health administration performed by the police have revealed their preoccupation with urban hygiene and environmental health rather than that of medical regulation (e.g. Zhou 2003; Lu 2007; Peng 2007; Du 2015). While a complete picture was not currently available for the overall progress made in medical regulation, there was at least a sense of unevenness and inconsistency among the various local initiatives. For instance, in Tianjin, where the local police bureau had been adopted early on, the first physician qualification test was not held until 1916 (Lu 2007:54-57). In Guangzhou, the major commercial center of the south, qualification tests for Chinese-style physicians were not held until 1922, when the city became the capital of the early Nationalist government (Zhou 2003:149-54). In the Chinese-controlled part of Shanghai, physician registration appeared as late as 1926 (Pang 1933:75-77; Yin 2013:106-16). As a well-documented case, Shanghai's first physician registration was co-organized by both General Sun Chuanfang's police bureau and health bureau, with the cooperation of eminent Chinese-style physicians. By 1928, a total of 1,429 Chinese-style

physicians and 397 Western-style physicians had been licensed by the Shanghai municipal government (Yin 2013:109).

One main exception was the Beijing Metropolitan Police Bureau, which had been in charge of two public hospitals since 1906 (Du 2014b). In 1908, the Ministry of the Interior released a *Regulation of Physicians* (取缔医生规则) (Wen 2007:39). Accordingly, the Beijing police organized its first city-wide examination of Chinese-style physicians (Lu 2007:51-54). In 1913, the Beijing municipal authorities released a *Provisional Regulation of Physicians* (取缔医生暂行规则) and a *Provisional Regulation of Midwives* (暂行取缔产婆规则). These regulations required that all applicants for a medical license should pass a qualification test unless they were graduates from recognized medical programs. By 1917, according to Gamble's survey (1921:118-19), there were 989 Chinese-style physicians, 109 Western-style physicians, and 184 midwives registered with the Beijing municipal government. That year also saw the promulgation of a *Regulation of Public and Private Hospitals* (取缔公私立医院规则), which stipulated the requirements for all hospitals and hospital staffs in the city (Ding 2011:164-73; Ma 2011). By the early 1920s, Beijing had a total of 1,928 officially registered medical practitioners, including 873 Chinese-style physicians, 460 Western-style physicians, 125 female physicians, 242 male foreign physicians, and 228 female foreign physicians (Chinese Sociological Society 1922).

Finally, in 1922, the Ministry of the Interior made an attempt at physician regulation by issuing a twin set of draft regulations. Like the *Regulation for Lawyers* promulgated by the Ministry of Justice a decade earlier, the draft was based upon a regulatory framework in which the central government would be in control of the licensing of practitioners while local authorities would take care of the rest of the regulatory procedures. In that sense, this was the

first official attempt to lay down a set of rules for medical licensing at the national level. Recognizing the complexity of medical practice in the country, the *Provisional Regulation of Western-style Physicians* (管理医师暂行规则) and the *Provisional Regulation of Chinese-style Physicians* (管理医士暂行规则) planned to provide licenses for two types of practitioners with different standards of qualification, based respectively on a modern or a traditional medical background. Lack of educational standards in the traditional medical practice was to be overcome by requiring applicants to pass a qualification test administered by the local police—somehow, no nation-wide medical practice test was yet on the horizon. Even the official titles for the qualified physicians were carefully chosen: *yishi* (医师 qualified Western-style physicians) uses the same Chinese character *shi* (师) as in *lushi* (律师 lawyers) and *kuaijishi* (会计师 accountants) to suggest a modern type of experts, whereas *yishi* (医士 qualified Chinese-style physicians) uses the same character *shi* (士) as in *fangshi* (方士 alchemists) and *shushi* (术士 diviners) to designate a traditional alternative. A third category, *yisheng* (医生 physician assistants), was reserved for those who practiced modern medicine without formal medical education (Pang 1933:70).

Yet, the compromise in physician standard pleased neither the traditional Chinese-style physicians nor the advocates for modern medicine. The reactions of the former will be analyzed in more detail in the section on traditional Chinese medicine. Meanwhile, physicians of modern medicine, too, expressed their dissatisfaction of being potentially subject to the caprices of local police authorities and the imbalance between their statutory obligations and statutory rights (Zhan 1922). In the end, the 1922 draft regulations for physicians were shelved and never actually enforced. Regulation seemed a double-edged sword for Chinese physicians on both

sides of the biomedical divide: they craved for some kind of official recognition but, at the same time, they were almost bound to reject the Japanese-style regulation that the early Republican government had to offer. The irony of history, however, would reveal itself when the Nationalist government began to enforce its physician regulation near the end of the decade. Those same groups that had objected fiercely to the 1922 regulations would find themselves in a much worse position where they had to fight for essentially the same terms.

#### **4.2.3 Plague Prevention**

The Tianjin Health Office (天津卫生局), founded in 1902, was generally considered to be the first modern public health institution in China.<sup>6</sup> Yet, few writers have paid attention to its failed integration with the new police system that was supposed to be in charge of sanitary matters. Building on Lu's (2007) recent findings of the institution and following Rogaski's (2004:186-90) observation on foreign influences, I shall suggest that the Tianjin Health Office, the North Manchurian Plague Prevention Service (founded in 1911), and the Central Plague Prevention Bureau (founded in 1919) constituted the other arm of the late-Qing and early-Republican health administration system, one that had dealt specifically with plague prevention and quarantine control. Unlike the police office, which was being propagated at each level of the state bureaucracy without much involvement of medical experts, plague prevention agencies were small task forces partly controlled by non-Chinese authorities. They were also staffed with probably the best medical scientists that could be found in the country, including foreign

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<sup>6</sup> The health office at Yingkou, built in the aftermath of the 1899 bubonic plague, was another early example of health administration (Du 2019).

nationals. In that sense, plague prevention was the first state building project in which the role of medical specialists became predominant.

The Tianjin Health Office was initially set up by the foreign occupation government between 1900 and 1902, during which time it launched a broad set of administrative interventions that were aimed at eliminating filth and germs from the city, in order to protect the foreign community from potential health threats from the Chinese population (Rogaski 2004:172-80). When the city was returned to Chinese control, it was one of the institutions that the Qing promised to continue. This was another case in which the Qing's struggle for political autonomy and administrative sovereignty had, at least in part, depended upon its determination to meet the "civilizing" standards of the foreign powers. Foremost among such standards were the maintenance of public order and public hygiene, both of which were crucial to the safety and business interests of the foreign community. In 1902, the Tianjin Health Office became one of the first Chinese agencies with a professionally-trained medical staff (Lu 2007:92).<sup>7</sup> It was directly responsible to the Beiyang Minister and its jurisdiction went well beyond the city of Tianjin to cover plague prevention and quarantine inspection in major ports and railroads along the northern coast of China. Financially, the Tianjin Health Office was supported by the Tianjin customs revenue, which had been consigned to the control of the foreign diplomatic body in Beijing for payment of the Boxer indemnities and the repayment of foreign loans. The unique status of this office had actually generated much tension with the locally based Zhili police, which, by the way, had employed no medical staff at all (Lu 2007:95-110).

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<sup>7</sup> Both of its director, Qu Yongqiu (屈永秋), and deputy director, Guan Jingxian (关景贤) were graduates of the Tianjin-based Beiyang Navy Medical Academy. Girard Mesny, a French faculty member at the Academy and former head of the office during the foreign occupation, was appointed its chief medical officer.

In Manchuria, plague prevention had become a highly contentious matter in the wake of the Russo-Japanese War of 1905. In the negotiations to reclaim administrative sovereignty, the Qing officials were again forced to establish medical and hygienic offices following the requirements of the colonial powers. By that time, however, the Japanese model of the police had been accepted by the court, so the local officials in Manchuria wasted no time in organizing their police stations and recruiting Western-trained physicians for their plague prevention facilities, often with the assistance from Tianjin (Benedict 1993; Hu 2013:145-96). When a deadly pneumonic plague broke out in 1910, Wu Lien-teh, then the deputy principal of the Beiyang Army Medical Academy based in Tianjin, was called upon to lead the Chinese front of the anti-plague campaign. Through strict enforcement of segregation and such unprecedented measures as the mass cremation of plague victims and the autopsies of unclaimed bodies, the outbreak was stopped in its sixth month, with an estimated death toll of up to sixty thousand (Zhang 2006:25). The success of Wu's plague control strategies not only provided a great opportunity to showcase the effectiveness of modern medicine to the Chinese and the credibility of the Chinese health administration to the foreign powers, but it also led to the summation of the first international plague conference held in China and the subsequent formation of a permanent medical institution. The North Manchurian Plague Prevention Service, established in 1911 under Wu's directorship, was to lead the country's effort in plague prevention for the next two decades. It conducted epidemiological and bacteriological research, produced its own vaccines, and provided free treatment for various kinds of contagious diseases. The headquarter of the service and its main plague hospital were located in Harbin, with five satellite hospitals located elsewhere. Like the Tianjin Health Office, it, too, was a Chinese institution set up under the pressure of foreign powers: it reported to the Foreign Ministry, while its funding came directly



from customs revenue (Flohr 1996:373-74). The senior medical staff of the service were foreign-trained physicians and medical scientists: for instance, the first senior medical assistant to Wu was Chen Sibang (陈祀邦), a Cambridge graduate, and the first chief medical officer was F. E. Reynolds, a bacteriologist from Edinburgh. In addition, by the time it was closed down in the early 1930s, a total of twenty-one Chinese physicians with domestic medical degrees had worked there (Nathan 1974). The institution's medical and public health reports were not only subscribed by foreign governments and international organizations but were also regularly published in international journals and conferences. Owing to his plague control expertise and international recognition, Wu had been an early advocate for a national system of public health based upon professional leadership. In 1932, after the Japanese occupation of Manchuria, he and his staff were relocated to Shanghai to direct the newly created National Quarantine Service.

When another pneumonic plague broke out in 1917, the Republican government obtained a loan from foreign banks to combat it. The mortality, around five thousand over a span of several months, turned out to be much lower than it was the case for the 1910-11 Manchuria outbreak (Zhang 2006:25). Consequently, the central government decided to use the remaining portion of the loan to set up a Central Epidemic Prevention Bureau (中央防疫处) under the Ministry of the Interior. The bureau began its operation in March 1919. Its main work included laboratory research, vaccine production, and field operations in times of plague outbreak. Similar to the North Manchurian Service, the bureau was funded by customs revenue and was subject to the supervision of an international finance board composed of both foreign and Chinese representatives (Bu 2017:116). So, again, this was a public health institution dependent on the approval of the foreign community since all appropriations made by the customs needed the support of the diplomatic bodies. On the other hand, the Central Epidemic Prevention Bureau

was entirely staffed by Chinese medical experts, with an average size of thirty-five, most of whom had been trained abroad (Xi 2003). It played an active leadership role in the country's fight against the 1919 outbreak of cholera (Iijima [2000] 2019:177-79, 202-07) and was a participating agency in the Beijing Public Health Experiment Station launched under the influence of John Grant, the PUMC public health professor (Bu 2017:120-21). As Grant and his PUMC colleagues would come to dominate the public health agenda of the Nationalist government, quite a number of the bureau's directors and staff members would continue their public health careers under the Nationalists—and even under the Communists after that.<sup>8</sup>

#### **4.2.4 The Limits of Early Health Administration**

So far, it has been shown that, by the 1920s, a wide body of ideas and practices relevant to public hygiene had already been introduced to China. Yet, imitative state building in the realm of medicine and health administration had been far less successful than the judicial and legal reform of the same period. Government support for medical education had not been extended from its initial focus on military medicine. No medical regulation had been enforced. The health bureaus of the new police were not professionally staffed, while the plague prevention services were the only government agencies that had actively employed medical specialists. By and large, the late-Qing and Beiyang governments had left medical and health matters to local authorities and social customs. Even in the Ministry of the Interior's draft for medical regulation, no mentioning was made of a physician qualification test to be administered by the central government. It is worth

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<sup>8</sup> A good example is Jin Baoshan (金宝善), trained in both Japan and the US, who became a ministerial-level health official during both the Nationalist and the Communist eras. My account here has been partly based upon his recollections.

considering why state building initiatives on health matters had remained rather underdeveloped, especially given the fact that both judicial administration and health administration—or police administration, to say the least—were part of the New Policy package for reform and were similarly influenced by Japanese precedents.

What I shall suggest is that the Qing's judicial reform had benefited from one important factor that was largely absent in the field of medicine: the availability of an extant institutional infrastructure that could be readily reworked for the new system. The old judiciary that had served the Qing until the end of the nineteenth century was already a highly specialized bureaucracy, with the elite jurists of the Board of Penalties at the center of adjudication and judicial administration. The organizational goal of the central-level judicial reform was to further separate that judicial expertise into a Supreme Court (which will be solely in charge of adjudication) and a Ministry of Justice (which will be solely in charge of judicial administration). Therefore, both these two new institutions had relied heavily upon the old judiciary and the old personnel for that transition. Indeed, it was with the leadership of such traditional jurists like Shen Jiaben that the building blocks of a modern court system were put together within a few years, even before the Qing's fall. In contrast, the Imperial Academy of Medicine was not an organ for medical or health administration, nor was there any other medical office or health system that the late-Qing reforms could begin with. In fact, it had not even occurred to the Qing government that medical and health administration could, or should, be conceptualized as whole new jurisdiction of the state. In the absence of a counterpart to the Ministry of Justice or the Supreme Court, there actually emerged several different central-level offices which all had partial jurisdictional oversight on health and medical matters: the Ministry of the Interior (which was basically the police writ large), the Ministry of Education (which set policies for medical

education), the military medical corps (which controlled the military medical officers and their training institutions), the Ministry of Foreign Affairs (which was in charge of the North Manchurian Plague Prevention Bureau), the foreign-controlled Customs Service (which controlled maritime quarantine), and several smaller agencies such as those responsible for railway hygiene. The lack of an expert leadership, the absence of an overall vision, and the fragmentation of administrative jurisdictions could all be related to the absence of institutional infrastructure.<sup>9</sup>

Moreover, the idea of a health administration system is one thing, the capacity to build one is another. Even in the more narrowly defined domain of the police, the Qing's state building initiatives had largely been crippled by a weak institutional foundation. The Ministry of the Police, founded in 1905, was a brand new central-level agency. Its leadership was drawn from the Qing's new army and from the Beijing and the Zhili police, which were themselves outgrowths of the foreign occupation between 1900 and 1902. In the provinces, the majority of the lower-level police officers comprised veterans from the Green Standard Army (绿营), the already defunct local troops made up by ethnic Han soldiers, while most of the senior-level police officers were either transferred from other government positions or selected from graduates of the newly established police academies (Han and Su 2000:172-83). The fact that the Qing's first police forces were partially drawn from its old military system was revealing, since, by the end of the nineteenth century, that system itself had been ridden with poor training, administrative corruption, and local fragmentation. What made the institutionalization of the

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<sup>9</sup> The other factor that I want to mention but not elaborate here is the possibility that the Japanese model of placing the Health Department under the Ministry of the Interior had distracted its Chinese followers from seeing medicine and health administration as a specialized jurisdiction of its own, even if they had not thought of that before.

police even slower was the lack of centralization: the intendants of the police circuits were appointed by the provincial authorities, not by the central government. Consequently, police organization had been quite unbalanced between different provinces and between different regions within the same province, depending, among other things, upon the personal initiatives of the local authorities (Han and Su 2000:136-43). The fact that the Ministry of the Interior, until the end of the Qing, had not been able to collect police reports from all provinces was an indication of the bureaucratic incompetency of the system (Li 2014:41).

#### **4.2.5 Professionalization of Japanese-trained Physicians**

In the chapter on law, I have discussed how Chinese students who had studied modern law and administration (or *fazheng*) in Japan became deeply involved in the Qing's legal reforms upon their return. Although *fazheng* was the most sought-after field of study during that period (shorter length of programs and perhaps the most accessible preparation, in place of the imperial civil examination, for a potential government career), a few Chinese students chose to study medical and scientific disciplines in Japan. What awaited them upon their return, however, was not a full-scale state building project in medical care or health administration. Extant studies have suggested that while the Qing did award traditional degree titles to those medical students who passed the returnee student examination, the best of them were appointed to the military medical corps and the military medical academies (Niu 2003; Kenjo 2014; Du 2018). Neither the police bureaus nor the plague prevention services provided much career opportunity for the Japanese-trained physicians. Nevertheless, those who did not go for the military medical careers found themselves actively involved in other professional roles, such as the running of provincial hospitals, serving as faculty members at the new technical colleges of medicine, introducing

modern medical writings to the Chinese public, and, of course, opening private practices (Niu 2003). As their number grew, they too began to organize themselves into a modern profession, one that was somehow separate from the medical missionaries or the Anglo-American trained.

In 1915, the Japanese-trained physicians launched their own medical association, the Chinese Medical and Pharmaceutical Association (CMPA 中华民国医药学会), in Beijing. The internal organization of the CMPA was modeled on the Japanese corporate societies of the time, as reflected in the very choice of titles given to its elected staff: *huizhang* (会长 chairman), *fu huizhang* (副会长 vice-chairman), *pingyi yuan* (评议员 trustees) and *ganshi* (干事 directors) (CMPA 1917b). Its membership was open to graduates of public medical schools in China as well as to those with formal medical training from foreign medical schools at both the university and the technical college level (a clear hint at the Japanese medical education system). Otherwise, those with profound knowledge about medicine or pharmacy could also be admitted with the approval of the board of trustees (CMPA 1917a). By 1925, membership of the CMPA had reached 414 (CMPA 1925b), and, by 1931, 835 (CMPA 1931b). It had two broad technical departments, one for medicine and the other for pharmacy; but no regular working committees had existed either under or alongside these departments. The CMPA held ten general conferences between 1915 and 1926. Since 1917, it had run a journal in Chinese but only published annually. By the mid-1920s, however, the *Journal of the CMPA* (中华民国医药学会会报) had been discontinued. A second journal emerged in the 1930s, by the name of *The New Medicine and Pharmacy* (新医药), and it survived until 1937 (Fan and Ye 2005).

Although, in general, the CMPA was not as active a professional association as the CMMA or the NMA, it had been on closer terms with the Chinese government. Not only did the

CMPA include members from such official ranks as superintendents of public hospitals, deans of public medical schools, and military medical officers, it had also put policy influence at the core of its agenda (CMPA 1917a). CMA members had lobbied the Beijing government for a Japanese-style medical curriculum to be adopted nationwide; they had petitioned the latter for a physician licensing system in which traditional Chinese-style medicine should be gradually abolished; and along with the NMA, they had also proposed the establishment of a specialized health agency under the central government (CMPA 1917c, 1918a, 1918b, 1925a). The most important figure in the CMA's lobbying efforts was Tang Erhe (汤尔和), its first chairman as well as the founding father of the National Peking Technical College of Medicine. Tang had both Japanese (and, later, German) medical training and political connections with the revolutionaries.<sup>10</sup> This dual role made him a key adviser for the Beijing government on matters of medical education and health administration. For instance, it was at his proposal that China's first *Autopsy Act* was promulgated by the Ministry of the Interior in November 1913. Yet even Tang was not influential enough to redefine Beijing's health policy or draw enough political support for the professionalization of medicine. By the mid-1920s, as Tang had largely left the medical field, the CMA went into hibernation.

In the aftermath of Beijing's failed attempt for medical regulation, the Japanese-trained physicians began a second round of professionalization efforts, this time by setting up locally based physician unions. Led by the Shanghai Physicians Union (上海医师公会), founded in 1925, physician unions mushroomed all over the country within a few years. In 1929 a National

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<sup>10</sup> After retiring from his tenure at the National Peking Technical College, Tang would go back to his political career, serving three short terms as head of different ministries for the Beijing government in the 1920s, ultimately ending up as the Minister of Education for the Japanese occupation government in the 1930s.

Federation of Physicians (全国医师联合会) was founded. Unlike the NMA and the CMPA, which saw themselves as both scholarly and professional organizations, these newer medical organizations were less concerned about the promotion of medical knowledge than they were about the occupational interests of Western-style physicians. It was in this regard that they resembled the local bar associations that emerged in the wake of Beijing's 1912 *Provisional Regulation for Lawyers*. A brief review of the Shanghai Physicians Union's business meeting reports and the proposals passed by the National Federation of Physicians between 1929 and 1936 reveals that their agenda was mostly focused on protecting physician rights and attacking the legal status of Chinese medicine, which they felt necessary given the Chinese-style physicians' increasing lobbying efforts (e.g. Shanghai Physician Union 1929, 1934). According to Zhao (1987:108-11), the Shanghai Physicians Union was led by a group of Japanese-trained hard-liners against Chinese-style medicine: the fact that native medicine had been abolished in Japan since the 1870s had a direct impact on their stance.

What I want to suggest at this point is that the situation of the Japanese-trained physicians during the 1910s and the 1920s were actually similar to other in-between professions that I mentioned in the first chapter (and will be elaborated a bit further in the concluding chapter). Unlike the Anglo-American trained physicians (as represented by the NMA), the Japanese-trained physicians did not enjoy the professional and financial support from an expanding Western profession such as missionary medicine or the Rockefeller medical enterprise. The most likely candidate for that role, the Japanese medical profession, had not been in close collaboration with the CMPA. Instead, the expansion of Japanese medicine had taken a colonialist approach, the focus of which was put on the colonies under its direct occupation (Perrins 2005; Liu 2009). Organized Japanese medicine in China proper was largely limited to a



few institutions that were more concerned about catering to the needs of expatriate Japanese than they were about training physicians and building hospitals for the Chinese (Huang 1982:69-112; Wang 2008). On the other hand, unlike students of modern law, the Japanese-trained physicians had a limited role to play in late Qing and early Republican era state building, nor were they able to significantly reshape Beijing's health administration to the benefit of the emerging medical profession. Therefore, the CMPA and the Japanese-trained physicians had very much relied upon themselves for professionalization. They tried to imitate the Japanese model of professional organization and, at the same time, to influence government policy over medical regulation and medical education. Yet, they made very limited success on either end. A telling anecdote is that when the Rockefeller Foundation was looking for potential Chinese medical leaders to sponsor as its supporters and affiliates on the government side, it found no such figure among the Japanese-trained that best met its agenda for professional expansion (Zhang 2020).

### **4.3 Traditional Chinese Medicine in Late Qing and Early Republic**

By the end of the nineteenth century, the social organization of traditional Chinese medicine had not changed much from earlier times. The Imperial Academy of Medicine had remained a personal service for the imperial family, while other types of official support for medicine or medical administration had been rare. For most Chinese-style physicians outside of the palace, medical knowledge and skill had been passed down either within the family, through master-disciple relationships, or by reading the medical canon (see Chapter Two). Communities of medical learning and practice had been typically centered around charismatic physicians who were recognized for both their technical expertise and philanthropic engagement. As cross-regional migration grew over time, some of the old medical lineages flourished across different

geographical clusters while others waned (Scheid 2007). Shanghai, Tianjin, Guangzhou, and other commercial cities had emerged as the new hotbed for native medicine. Meanwhile, a greater exposure to Western medicine had led to a heightened awareness of the latter's effectiveness in the treatment of specific illnesses. Taking an open-minded stance towards what they saw as the more useful part of Western medicine, several eminent native physicians began to advocate for various approaches towards a synthesis between the two types of medicine (Deng 1999:31-61; Pi 2008). In terms of medical education, an early pioneer for medical programs emerged in 1885 with the founding of the private Liji Academy of Medicine (利济医学堂) in Zhejiang, but the program did not survive into the twentieth century (Deng 1999:124-25).

#### **4.3.1 Organizations for Native Medicine**

Things started to shift gears in the aftermath of the First Sino-Japanese War, when salvaging and restrengthening the Chinese nation became a popular, even overwhelming, zeitgeist among the educated population. The Qing's New Policy reforms in the first decade of the twentieth century prepared the political and social ground for the sudden emergence of a vibrant civil society where numerous local societies burst out in all quarters of life, with the apparent purpose of promoting political, educational, and social change for the country (Chen 2011). The native-style physicians were no exception. Local medical societies, championed by eminent physicians and often with the patronage from the ranks of local officials, leaders of the gentry class, or the business community, mushroomed in more than a few provinces (Zhao 1987:75-77; Lu 2007:142-46). The treaty port cities and major commercial towns, again, took the lead. In Shanghai, at least four such medical communities were launched between 1903 and 1910: the Shanghai Medicine Association (上海医会), the Shanghai Medical Affairs Association

(上海医务总会), the China Medicine Association (中国医学会), and the Chinese-Western Medical Studies Society (中西医学研究会). In Guangzhou, the Guangdong Medical Advancement Society (广东医学求益社) was established in 1906. That same year also saw the founding of the Medical and Pharmacological Study Society (医药研究会) in Tianjin and the Liangjiayuan Clinic Medical Society (梁家园施医局医学会) in Beijing. In Zhejiang, the famous Shaoxing Medicine Society (绍兴医学会) was set up in 1908.

Among all practitioners and exponents of native medicine, those based in Shanghai had been the most active. The earliest native medicine societies in the city were centered around a small group of eminent physicians, including Chen Lianfang (陈莲舫), Cai Xiaoxiang (蔡小香), Zhou Xueqiao (周雪樵), and Ding Fubao (丁福保). Together, they organized regular meetings, collected medical books, held public lectures, and offered free medical service to the poor—a good combination of scholarly interest and public philanthropy that was not uncommon for the literati class (Yang and Lu 2009). A long-term patron for all these Shanghai-based initiatives was Li Pingshu (李平书), a wealthy veteran official and highly esteemed figure of the local gentry community (Lu and Yang 2004). Li had been an active leader in the modernization of Shanghai's various public enterprises, serving, between 1905 and 1913, as the first general director of the Shanghai Municipal Construction Bureau, the prototype of the city's modern municipal administration. Himself a scholar physician, Li was an open-minded advocate for the advancement of native medicine and, to its benefit, the borrowing of Western medicine. In addition to the sponsorship for medical societies, he helped set up the Shanghai Hospital in 1904, which offered both Western- and Chinese-style treatments. In 1905, he established the first

medical training program for women, teaching native medicine himself while inviting a missionary-trained female physician to cover Western medicine.

Another group of participants in the Shanghai native medicine societies were the native drugstores and drug manufacturers, whose business interest was directly tied to the practice of native medicine. In fact, the relationship between native medicine and native drugs could not have been more intimate: drugs were typically sold according to the prescription of the physicians, who, in turn, often set up their practice within the drugstores (Scheid 2007:183). Unlike the native physicians, however, the native drug industry had been historically organized through trade guilds. In Shanghai, big, medium, and small businesses in the native drug industry each had developed their own guild associations since the eighteenth century (Cao 2015:93-94). By the early twentieth century, the Shanghai drugstores and drug manufacturers had been incorporated into the city's various merchant associations, including the Shanghai General Chamber of Commerce.

From an organizational point of view, these medical societies organized by Chinese-style physicians were nowhere near a modern professional association like the CMMA or the NMA. Yet, they were an interesting development in their own right. They represented a hybrid form of occupational community, embodying, in part, the master-disciple relations of a typical Chinese craft guild and, in part, the scholar-gentry-business networks of the local society. As medical communities, they had gone beyond individual master-disciple clusters to advocate collaborative efforts in the study and advancement of traditional Chinese medicine. As part of the local society, they were highly supportive of the scholar-officials and the merchant groups that promoted local autonomy and self-government.

### 4.3.2 Collective Reactions to State Educational Policy

By the 1910s, local medical societies had started to connect themselves into a nationwide occupational community. While the circulation of medical journals had certainly broadened the communication between various medical groups, two important socio-political factors were directly related to the formation of a cross-regional alignment. One important drive was provided by the rise of Chinese nationalism. In particular, the 1905 anti-American boycott, in which the native medical societies had participated alongside the native drug industry, had set in motion a series of campaigns organized by various business and civic groups, all of which had come together under the umbrella of protecting national/native goods and industries (Wang 2001). The establishment of the Republic in 1912 brought further momentum to the surge of Chinese nationalism. In Shanghai, Li Pingshu and his physician friends launched a Federation of Chinese Medicine and Pharmacy (中华医药联合会), which replaced the Shanghai Medical Affairs Association as the united front of native-style physicians and the native drug industry (Yang and Lu 2009). However, a more immediate trigger for the cross-regional alliance of native medical groups was actually the Republican government's educational policy. In 1912, the Chinese-style physicians found out to their dismay that the new Ministry of Education had not included traditional Chinese medicine in its planning for a national education system. As a result, when a group of native physicians in Guangdong tried to register their new medical program with the local authorities, they were turned down (AMPA 1913b). Disappointment and fury soon spread across the native medical communities. Within a few weeks, leaders of the Shanghai physicians decided to wage a nationwide campaign to pressure Beijing for the official recognition of the status of Chinese-style medicine. Eminent Shanghai physicians Yu Botao (余伯陶), Yan Boqing (颜伯卿), and their associates called for the organization of an All-China Medicine and

Pharmacy Association (AMPA 神州医药总会). Among the attendees of the AMPA's first general meeting in 1913 were representatives from over a dozen provinces and even from overseas (AMPA 1913a). It was the first time that a cross-regional rally was summoned among practitioners of native medicine. They were joined by representatives from the native drug industry, such as Qian Xiangyuan (钱庠元) and Ge Jiqing (葛吉卿). In the next few months, the AMPA managed to enlist an even wider array of supporters from different sectors, including the chambers of commerce in Shanghai and Suzhou. Their list of honorary members included a total of fifty-six social notabilities, of whom one-third were revolutionary figures that helped found the Republic, another one-third were veteran Qing officials, and the rest were from the local gentry class or business circles (AMPA 1913a). In November, a delegation was sent by the AMPA to Beijing to speak directly with the Ministry of Education and the State Council. It demanded official support for Chinese medicine schools, hospitals, publications, and for the regulation of medical practice and the drug industry (AMPA 1922).

While Beijing made a few concessions to allow schools of native medicine to be officially registered, it did little to promote or support such programs. In 1917, the Shanghai Technical College of Chinese Medicine (上海中医专门学校) was launched by Ding Ganren (丁甘仁) and Xie Guan (谢观), two prominent physicians who had known President Yuan personally (Scheid 2007:235-36, 378). Their example was soon followed by a wave of similar schools. In the 1910s and 1920s, Shanghai alone was home to at least seven native medicine schools (Longxi 1928), twelve native medicine associations (Zhang and Shao 1998:522-25), and fourteen native medicine journals (Fu 2015:92). At least eighteen other native medicine programs had emerged in the rest of the country (Zhang 2011:22-32). Most of them were private,

but they marked a transition from traditional master-disciple relations to a quasi-modern mode of medical education.

In the 1920s, the Ministry of the Interior's attempt to regulate medical practice brought another occasion for the collective response of native medicine communities. Dissatisfied with the draft of the regulation and realizing that the lack of government support for Chinese-style medical education would greatly limit the number of medical licenses granted, the Chinese-style physicians in Jiangsu and Zhejiang Provinces decided to make a collective effort to resist this regulation (Wen 2007:48-50). In Shanghai, the AMPA, the Shanghai Society of Chinese medicine (上海中医学会), and the Chinese Federation of Medicine and Pharmacy (中华医药联合会) organized a series of meetings to coordinate their reactions. With the support of representatives from other cities and towns, a Jiangsu Provincial Association of Chinese Medicine (江苏全省中医联合会) was founded in the same year to petition both the Jiangsu provincial government and the Ministry of the Interior in Beijing.

To gain a long-term foothold in the practice of medicine meant that the private schools of native medicine should be allowed to register with the government, as some of them had already done so by the early 1920s, but that the government should open public schools of this type and provide administrative support for the advancement of native medicine as a field of study. To this end, the Chinese-style physicians also sought to recruit the endorsement of educational societies in their lobbying efforts (Deng 1999:136-38). In 1925, when the fourth general conference of the China Education Improvement Institute (中华教育改进社) was held, a proposal was submitted by delegates from the native medicine societies for the inclusion of schools of Chinese-style medicine in the national education system. Although the Society was

famous for its leading role in promoting modern education, a resolution was passed to adopt the proposal and referred it to the Ministry of Education (NMA 1926). In the same year, a similar resolution was affirmed by the National Alliance of Educational Societies (全国教育会联合会). Yet their proposals were dismissed by the Ministry of Education even before a thorough discussion was conducted (Wen 2007:47-48). Failed to elicit official support, advocates for Chinese-style medical education launched a National Committee for Chinese Medicine Textbooks (全国中医学校教材编辑委员会) in 1928 to discuss the standardization of the native medicine curriculum (Deng 1999:149-51; Scheid 2007:193). Thus, by the mid-1920s, native-style physicians had shown no sign of declining. They were no longer a disaggregated population of individual or family practices. Instead, they had formed a nation-wide network to offer mutual support against government intervention and were slowly adopting institutions that at least shared some modern outlook as the profession of Western medicine.

#### **4.4 Conclusion**

In this chapter, I have examined the institutional and structural changes of the medical field in China between the 1880s and the mid-1920s. In many ways, this was a period that marked the beginning of the Chinese medical profession. It is, of course, not to suggest that indigenous medical practice was rare to be found in previous times; but medicine as it had been organized until then was nothing like a modern profession. It was not until the 1880s—or until the twentieth century—that institutions of modern medicine and Chinese physicians trained in modern medicine began to make their way into the field of health care provision, which had been and still was dominated by traditional Chinese-style medicine. Yet, unlike the historical trajectory of modern Chinese law, the changing terrain of the Chinese medical field was not



brought about by the government's deliberative central planning, much less by the dynamics internal to the field of traditional Chinese medicine. Instead, it was through the increasing exposure to Western medicine and the increased interaction with foreign medical practitioners and institutions that the seeds for a modern Chinese medical profession were sowed—and sowed in different quarters without the planning and coordination of a visible hand.

In terms of cross-border diffusion of knowledge practices, at least two major sets of dynamics can be identified from this historical episode. On the one hand, this period saw the direct presence of organized Western medicine on Chinese territory proper: first led by the medical missionaries and later championed by medical philanthropists like the Rockefeller Foundation. While the political conditions under which these missionary and charity enterprises were able to penetrate Chinese society were nothing short of colonialism, the introduction of modern medicine had become a top priority on their agendas also because the medical professions in the Anglo-American world were themselves transforming into their modern shapes. In this sense, it was the expansion of the medical professions in the West—with the assistance of gunboats, missions, and philanthropists—that brought the Chinese into an unprecedented encounter with both the knowledge and the social organization of biomedicine. Before long, the Protestant medical missions had established a wide range of professional medical institutions in China: hospitals and dispensaries, formal medical training programs, medical associations, scholarly discussions, publications, and periodicals, (bi)annual meetings, and the first efforts to standardize the medical curriculum as well as medical terminologies in Chinese translation. In the first decades of the twentieth century, with the additional financial and technical resources from the charity organizations, China even became home to the single most prestigious medical school outside of the West. From the analysis of this chapter, it can be

learned that most of these institutional developments had been achieved through private efforts outside of the purview of Chinese (or foreign) authorities and would be impossible without the leadership of Western medical practitioners and the support of their funding organizations. In addition, the professional leadership of this institutionalization process also favored an elitist approach, in which the quality of medical training was prioritized over the number of practitioners.

On the other hand, the Chinese encounter with a modernized Japan since the end of the nineteenth century had provided a second route for the introduction of modern medicine. This was a route driven less by the expansion of foreign professions than by specific geopolitical pressure and influence, in which medical modernization was simply one small item on the whole checklist of modern institutions that Chinese reformers of the late-Qing and early Republican period had borrowed from Japan. The Sino-Japanese interaction in this regard had included sending Chinese students to study, among other disciplines, medicine in Japan, launching Chinese medical programs based upon a Japanese curriculum and with the assistance of Japanese instructors, organizing medical associations after their Japanese precedents, and assigning public hygiene supervision and plague control duties to the newly established Chinese police, as in the manner of the Japanese sanitary police. Since many of the Japanese-trained graduates were employed by state bureaucracy or served on the faculty of public schools, they were on closer terms with the government than did the Anglo-American trained. And because most of them had received a medical education at the vocational level, their impact was achieved less through professional eminence than through their group size and the relatively larger output of their training programs. Yet, the major disadvantage for the Japanese-trained medical modernizers was the absence of a strong state initiative on medical professionalization and the lack of

professional leadership among themselves. The limited resources that the late-Qing and the early-Republican governments had spent on medicine and health matters went almost solely into military medicine and plague control, with little actual support for medical education, professional regulation, or public health delivery. In other words, the Japanese model of medical professionalization and health administration was adopted in China only incompletely.

However, what remained the most persistent obstacle for these two driving forces of professionalization was the separated and fragmented structure of the Chinese medical field. Such division can be observed in the factionalism between modern physicians of Anglo-American training and those of Japanese training. It existed between the rising communities of modern physicians in general and the much larger population of traditional Chinese-style physicians—and certainly among the different local circles and genealogies within the latter. It also existed between adamant medical modernizers in private practice or from private institutions and a central government that had traditionally abstained from medical and health administration. Even as the Chinese government began to take on more health-related roles, its health policies had remained fragmented and was left to the individual agencies that had in one way or another employed medical expertise. Until the end of this period, none of the major medical groups had been able to overcome structural and institutional barriers, either to expel the other groups out of medical practice or to unite them in a comprehensive scheme of professionalization. The Anglo-American group was elitist in its professional self-regard and was hesitant over making any commitment in its cooperation with the Chinese government. The Japanese group simply lacked sufficient professional, financial, or political resources to carry forward their own professionalization project. The traditional Chinese-style physicians had not yet any vision for professionalization but were increasingly forming into peer organizations and

alliances to defend their social legitimacy and status. Finally, the Chinese state did not have a preexisting institutional infrastructure for medical and health administration—which was in sharp contrast to the state bureaucracy and expertise in law—and was itself ridden with other resource-consuming priorities which made health matters an urgency only during times of war or epidemic outbreaks. One of the rare incidents in which both groups of modern medical professionals and the Chinese authorities had achieved fruitful cooperation in health administration and delivery occurred in the 1920s at the Beijing municipal health stations. It was precisely from there that a new page was going to be turned for the professionalization of medicine in China.

## Chapter 5 Medicine II: The Nanjing Decade

From the first medical association to the first university-level medical program, from the effort to standardize Chinese translations of medical terminology to the scientific study of medical conditions in China, the last chapter has considered how the expansion of Western medical professions provided both the support and the model for the creation of a Chinese medical profession. In comparison, less support—or, for that matter, little intervention—had come from the late-Qing and the Beiyang governments, which, in the meanwhile, had been the main engine for judicial and legal reforms. By the late 1920s and the 1930s, with the coming into power of the Nationalist Party, a new wave of modern state building was on the horizon. Unlike the politically weak Beiyang government, the Nationalists had embraced a Leninist political ideology and had envisioned a much more ambitious modernization agenda, initially laid out in 1924 by Sun Yat-sen's *Fundamentals of National Reconstruction* (国民政府建国大纲).

According to Sun's blueprint, China should enter a so-called tutelage stage after the unification of the country under the Nationalist government (Sun 1953). During the tutelage stage, the Nationalist Party was to lead the whole country in national reconstruction, recovering social order from the devastating consequences of the civil war and building the cornerstones for an industrialized and educated democracy. Sun's unrealized dream (he died in 1925) had become his most immediate political legacy, which was turned into a national policy by Chiang Kai-shek when he officially declared the start of the tutelage period in 1928. In the next few years, a host of new initiatives in legislation, government reorganization, financial reform, and diplomatic relations had emerged to strengthen the control of the Nationalist government and prepare itself for the national reconstruction projects it had envisioned (Zanasi 2006). By the early 1930s, the

Nationalists had also started an extensive program for technical cooperation with the League of Nations. Covering such diverse fields as fiscal policy, public health, education, agriculture, engineering, and industry, this program was intended to be both a major facilitator for the country's industrialization and a diplomatic strategy to win international goodwill. It was in the midst of regime transition and national reconstruction that, for the first time, a Ministry of Health was set up by the Nationalists to handle China's health administration and medical system.

In this chapter, my objective is to first provide an institutional account of the rise of public health administration in the Nanjing decade. As it will be revealed shortly, the political situation during the initial establishment of the Nationalist government had provided a rare opportunity for the Western-trained medical modernizers to seize control of the newly created Ministry of Health. From that point on, these medical and public health experts began to cooperate with the Rockefeller Foundation and the League of Nations Health Office in the building of a state medicine system. In doing so, they introduced a new model of medicine to China, one had gone beyond curative medicine to emphasize the social benefits of preventive medicine. In contrast to the sanitary police of the late Qing and Beiyang ear, state medicine was going to be a combination of medical professionalization and bureaucratic expansion, which I call technocracy. Like the judicial reform, it was implemented top down, with central-level health institutions established first to serve as the nucleus for professional training and technical support. But unlike the bureaucratic nature of the judicial office, state medicine had paid particular attention to health administration among the rural population. I end the first section with a discussion of how public health administration and state medicine had opened up new career opportunities for medical and health professionals.

I turn next to the progress of medical professionalization made outside of state medicine: the new developments in medical education, the beginning of medical licensure, and the readjustment of medical associations under the Nationalists. In the field of medical education, this period decade saw increasing state support for university-level medical programs but the decline of missionary medical education. This resulted from changes in the government's higher education policy as well as from the surge of Chinese nationalism that began to threaten the continuation of the missionary enterprise. In medical regulation, an institutional breakthrough was finally achieved with the actual implementation of physician licensing under the auspice of the Ministry of Health. At least for the physicians of modern medicine, the process of licensing and registration turned out to be relatively straightforward, without much objection or disruption. With respect to professional associations, the Nationalists enforced a corporatist scheme in the management of civic and occupational groups, to which the medical societies also complied. They were reorganized as academic associations on the one side and occupational unions on the other. However, the boundary between the two was often ambiguous—for instance, both had been involved in the protection of physician rights and advocacy of medical ethics.

The last section of the chapter is devoted to a separate analysis of the Chinese-style physicians' campaign to defend the legal status of their practice. While this should normally be placed under the section of medical regulation and licensing, I have singled it out because it was precisely here that a confrontational encounter had broken out between practitioners of modern medicine and those of native medicine. My analysis will be focused on the organizational aspects of the campaign, including the emergence of a new leadership among the native-style physicians, their capacity to mobilize collective action and summon wider social support (thanks to the previous development in their social and professional organization, as discussed in the last

chapter), and the division within the Nationalist government that ultimately led to the successful legalization of Chinese-style medicine. The organizational consequence of this campaign was tremendous. It basically divided the field of medicine into two separate jurisdictions: one controlled by modern physicians and the other controlled by native-style physicians. Yet, even the latter had already begun to imitate the formal institutions of a modern profession.

### **5.1 Convergence of Professional Expansion and State Building**

During the late-Qing and Beiyang era, a small group of modern physicians and medical scientists had been employed by a new set of medical institutions controlled or funded by the government. For instance, they worked as faculty members at the public medical programs, as doctors at the public hospitals, or as scientists and technicians at the plague prevention agencies. But public health administration back then was mainly focused on environmental sanitation and was directed by a police force that had little expertise in medicine. Medical experts played a minimal role at the ministerial level of health administration and were largely excluded from policymaking. This was a situation that Chinese leaders of modern medicine had not been satisfied with. They were not happy with being subject to the supervision of the police, which possessed little medical expertise. Moreover, they were eager to see medicine and public health being promoted through a unified policy agenda—or, to put it in the framework of the current study—as part of state building. For instance, Wu Lien-teh, the director of the North Manchurian Plague Prevention Service, had ambitious hopes for replicating agencies like his across the country and had repeatedly called for the establishment of a specialized central-level health office (Flohr 1996). The opportunity finally came at the end of the 1920s when the Nationalist government decided to launch a new Ministry of Health.



In the following, I document the steps towards the building of a national health system, led by a group of Chinese experts in modern medicine and public health. This was something quite unprecedented in China. It marked a new stage where the expansion of Western medicine finally converged with the imitative state building of a reformist Chinese government. I would even suggest it was a case in which the medical modernizers successfully captured the state building agenda. They did so first by seizing control of the Ministry of Health. Similar to the late-Qing judicial reform, what was then set off in the 1930s was a top-down initiative for modern state building—in particular, for a professionalized system of state medicine. On the other hand, the work of the medical modernizers continued to bear a deep foreign imprint, as it had relied heavily upon the financial, technical, and educational assistance from foreign sponsors like the Rockefeller Foundation and the League of Nations. Since the model of state medicine was relatively new even in the West, its adoption and development in China actually offered another testing ground for the further expansion of Western medicine into public health, or “preventive medicine” as it was called. By the end of the 1930s, the frontier of public health work in China had moved down from the central level to the provincial and county levels, which was clearly an indication of its institutional establishment. As I shall point out below, the convergence of professional expansion and state building and the move from curative medicine to preventive medicine had various implications for medical education and medical associations as well. The professionalization of public health required an additional group of professionals and an additional set of institutions, while offering a few new roles that the medical associations were going to play.

### **5.1.1 The Rockefeller Influence on Public Health**

The idea of state medicine generally refers to the government's responsibility for the health of its people. It was a brand-new modern idea that first arose in nineteenth-century Britain and Germany, where public health legislations—such as the first English Public Health Act of 1848 and Bismarck's health insurance program of 1883—were passed under the demands of medical reformers. Its diffusion to the rest of the world was facilitated, among other things, by the development of modern medical science (especially the scientific understanding of bacterial disease causation), the rapid growth in international trade, and the West's increasing stake in colonial rule. Importantly, government policies over the prevention and control of communicable diseases had gone from a national concern to an international consensus, exemplified by the several rounds of International Sanitary Conferences since 1851. By the end of WWI, the effort to consolidate the administration of medical and public health under the central government had been an inherent part of the new systems of state medicine (Lucas 1982; Watt 2014:31-34). This emphasis on the state's role in health administration and health provision was eventually introduced to China in the 1920s, through the Rockefeller Foundation and the League of Nations Health Organization (LNHO).

Since the 1920s, the Rockefeller Foundation's medical enterprise in China gradually moved away from an elitist approach in sponsoring the best medical education and research possible—as represented by its investing in the PUMC, the Johns Hopkins of China—to a growing focus on applied knowledge and social experimentation (Ninkovich 1984). This reorientation took place in a decade when the social sciences were fledging and showing great prospects in facilitating social progress. By the 1930s, it had started to combine its earlier investment in medicine with its new interest in social research, as best exemplified by its rural

reconstruction programs (Litsios 2009). A key figure in this transition is John B. Grant, the inaugural public health professor at the PUMC.<sup>1</sup> Born to missionary parents stationed in China but educated in Michigan and Johns Hopkins, Grant had been recruited by the Rockefeller Foundation's International Health Board (later on, the International Health Division) to work briefly for its hookworm campaign in North Carolina, before he was sent to Beijing in 1921. Influenced by the British idea of social medicine and state responsibility for public health, He believed that public health was an integral part of the socioeconomic development of a society and that health care could be most efficiently achieved through an integration of preventive and curative medicine in a community-based health service (Bu 2014).

In Beijing, Grant was invited by the Ministry of the Interior to be an honorary adviser (Bu 2017:112-13). His most important achievement during the 1920s was the creation of the first public health station in China. In 1925, he helped organize the Public Health Experimental Station for the Metropolitan Police Department of Beijing, a collaborative project between the PUMC, the Central Epidemic Prevention Bureau, and the Beijing Metropolitan Police (Bu 2014:214-20). Departing from the laboratory-based Johns Hopkins model, Grant experimented with his own vision of a health station that combined medical service, disease prevention, vital statistics collection, and teaching purposes. The Beijing station was directed by a Chinese team of both Anglo-American and Japanese-trained medical experts, while Grant remained the unofficial guiding hand behind the curtain. By the end of the decade, it had served as both a training ground and an inspiring idea for public health work, with similar programs also emerging in non-urban areas, most of which directed by Grant's PUMC associates. Moreover,

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<sup>1</sup> For more on Grant's work in relation to the PUMC, see Bullock (1980:134-61). For the intricate connections Grant had developed among the medical and political circles in China, see his oral history (Grant and Benison 1961).

with the Beijing government replaced by the Nationalists, several members of Grant's team were appointed to the newly founded municipal health centers in Shanghai, Hankow, Tianjin, and elsewhere (Bullock 1980:147).

Grant himself had become the most articulate advocate for state medicine in China. In 1928, he published "State Medicine: A Logical Policy for China," an address originally delivered before members of the NMA (Grant 1928). In that article, he explained that the major deficiencies of the existing medical care in China lied in its inefficient distribution of curative facilities, especially in the form of an unjustified concentration of medical resources in the urban areas and among the rich. He went on to argue that state medicine—the entirely governmental responsibility for medical service for all people—was suitable for China since it would make certain outstanding benefits compulsory and ensure an adequate position for health and hygienic education (Grant 1928:76-78). According to Grant's proposal for state medicine, the first steps would be to train an adequate pool of manpower, to convince the political leaders that medical affairs are non-partisan and scientific in nature, and to establish a central-level medical authority with the power to implement health policy on a national scale (Grant 1928:79).

Grant's optimism was well-timed. During the regime transition from Beijing to Nanjing, he had been actively seeking the support of Nationalist leaders on that agenda (Bullock 1980:152). Grant himself knew all but two individuals in the first Nanjing cabinet on a personal basis; his PUMC associates, especially F. C. Yen (颜福庆) and J. Heng Liu (刘瑞恒), were on even closer terms with the Nationalists. Yen (Yale, MD 1909) was the director of the Yale-in-China program and the first president of the NMA. More important, he was a close family friend

with the Soongs.<sup>2</sup> In 1927, Grant and Yen proposed an organizational plan for a new Ministry of Health, which received endorsement from T. V. Soong and Sun Ko, two of the most powerful Nationalists<sup>3</sup> (Gao 2014). Liu (Harvard, MD 1913) was a classmate of T. V. Soong at Harvard and had served both as the president of the NMA and as the vice-director of the PUMC. In 1928, Grant and Liu presented another memorandum to the Nationalist inner circle. Their efforts finally paid off. The immediate cause is nevertheless political: Chiang Kai-shek at the time was trying to secure the political support of General Yan Xishan (阎锡山) by offering him a ministry-level position while keeping the former intendant's official rank unchanged. In this way, the Health Department of the Ministry of the Interior was reorganized into an independent Ministry of Health, with the former Minister of the Interior, Xue Dubi (薛笃弼), as the new Minister of Health (Bullock 1980:152-53; Yip 1995:45-47). Grant had known Xue personally back when the latter was the mayor of Beijing; he had also known the wife of General Feng Yuxiang (冯玉祥), Xue's political boss (Bullock 1980:152-53; Yip 1995:45-46). As it turned out, while Xue himself was a political appointee, most, if not all, senior-level technical appointments in the Ministry of Health were made according to Grant's recommendation, which showed an uneasy balance between medical experts trained from different foreign backgrounds (Fu and Deng 1996; Gao 2014). Most important, Grand managed to place some of his most trusted PUMC associates into the most important positions, including J. Heng Liu as the

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<sup>2</sup> The Soongs were among the most powerful political families during the Nationalist era. The three Soong sisters married, respectively, President Sun Yat-sen, President Chiang Kai-shek, and Kung Hsiang-hsi, the central banker and finance minister. Yen's father had been a lifelong friend with the Soongs' father.

<sup>3</sup> T. V. Soong was the younger brother of the Soong sisters and the brother-in-law of Chiang Kai-shek. He was a finance specialist and a leading diplomat for the Nationalist government. Sun Ko was the son of Sun Yat-sen. In the late 1920s, both Soong and Sun were members of the Nationalist Central Executive Committee (中央执行委员会).

Technical Vice Minister and P. Z. King (金宝善), from the Beijing Public Health Station, as the Director of Health and Sanitation. When Xue left office in 1929 after another round of political reshuffling, Liu succeeded him as the Minister of Health. In the next two decades, the Ministry of Health would be subject to several shifts in its name, official rank, and administrative structure—since 1931, it was downgraded to the National Health Administration (NHA), a semi-autonomous agency under the Ministry of the Interior and, later, directly under the Executive Yuan—yet Liu would remain in control of this central-level health agency until 1938. In staffing the rank and file of the new ministry, he had relied heavily upon the faculty and graduates of the PUMC (Yip 1995:47). As Yip (1995:44) points out, “[this] compares favorably with the record of other ministries, which, due to factionalism and political infighting, suffered from high turnover among key personnel. The longevity of Liu’s tenure facilitated the planning and development of health programs and ensured a relatively stable organization amid much political uncertainty.” Even after Liu’s departure, the NHA continued to be chaired by Grant’s PUMC associates: F. C. Yen from 1938 to 1940 and, after that, P. Z. King until 1947 (Jin 1996).

In addition to the technical appointments, the Ministry of Health also had two advisory boards, comprised entirely of Western-trained physicians and public health professionals. The first, the Central Board of Health, was made up of Chinese experts. According to the records, all of the seventeen members of the board were experts of modern medicine and most had been trained abroad, while no representative was selected among native-style physicians (Zhao 1987:112; Ye 2016:17). It is worth noting that they included several representatives of the NMA and the CMPA, as well as the health commissioners from five major Chinese municipalities.<sup>4</sup> In

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<sup>4</sup> By the beginning of the Nanjing decade, medical offices at the municipal level—though still limited to a few large cities—had also become highly technical. A recent study has found that sixteen out of the nineteen commissioners of health, who served in seven major Chinese

addition, an important political figure on the board was Chu Minyi (褚民誼). With a medical education from the University of Strasbourg, Chu was also a member of the Nationalists' Central Executive Committee and a close associate to Wang Jingwei, Chiang Kai-shek's most powerful rival in the Party. The Central Board of Health met twice between 1929 and 1930 to discuss policy proposals on medical and health administration as well as on medical education. It was from these meetings that radical medical modernizers like Yu Yunxiu (余云岫) began an official attack on traditional Chinese medicine, which received a firm political endorsement from Chu and Wang, to be discussed in a later section of the chapter.

### **5.1.2 Technical Collaboration with the League of Nations**

The other advisory board to the Ministry of Health was the International Advisory Council, made up of two foreign experts: Ludwik Rajchman of the LNHO and Victor Heiser of the Rockefeller Foundation's International Health Division (a third member, Arthur Newsholme of the British Ministry of Health, declined the invitation due to advanced age). This was a key arrangement through which the technical expertise of the LNHO and the financial resources of the Rockefeller Foundation were brought in to support the Chinese state building projects in public health.

Founded in Geneva in 1924, the LNHO made its initial effort towards potential cooperation with Chinese authorities when Rajchman, its medical director, visited the country in 1925 as part of a Far Eastern mission (Borowy 2009). In the same year, the LNHO opened a Far Eastern Bureau in Singapore, for the collection and distribution of epidemiological data among this area. The

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municipalities between 1928 and 1937, had an overseas medical training. About two-thirds of them had been trained in Anglo-American schools, which indicates an affinity to the NMA or the PUMC (Lai 2016:19-22).

service satisfied the commercial shipping interests of all countries concerned and it enjoyed broad support and cooperation, including the financial support from the Rockefeller Foundation's International Health Board. Meanwhile, a small group of Chinese public health officers, notably Wu Lien-teh of the North Manchurian Plague Prevention Service, were increasingly concerned about the near absence of any effective port sanitation infrastructure. They hoped that a comprehensive survey of Chinese ports be undertaken by a prestigious foreign institution as preparation for a national quarantine service. The LNHO seemed an obvious choice, and both the Rockefeller Foundation and the Chinese authorities, including the Minister of the Interior, supported the idea and offered assistance. In 1926, at the suggestion of the Far Eastern Bureau, the National Epidemic Prevention Bureau in Beijing began transmitting information to Geneva.

In 1928, the changed political situation in China provided new opportunities for international cooperation. The Nationalist government was eager to gain international recognition and to consolidate its position at the League. Yet, the prolongation of its seat in the League's Council, which China had held since 1926, did not receive the necessary two-thirds majority. In Geneva, it was feared that the deeply offended Chinese might follow the example of Brazil and leave the League. Under such circumstances, leaders of the League turned to technical cooperation as an incentive for China to stay (Zhang 1999). Meanwhile, John B. Grant, highly cognizant of the political vicissitudes in China, endeavored to bring in a neutral, stabilizing factor into Chinese medical policy. In his view, the League of Nations would be an ideal choice, since its stewardship would ensure that competent medical professionals be maintained in administrative and technical positions, making it possible to carry forward the nation's public health projects even in the case of another regime change (Bullock 1980:154). Therefore,



between 1928 and 1929, Grant helped to connect Rajchman with his Chinese associates. The newly created Ministry of Health invited him to become a member of its International Advisory Council. Rajchman happily accepted the invitation and visited China again during 1929 and 1930. His assistance in the organization of a National Quarantine Service in 1930 helped China to recover one area of administrative sovereignty. In Nanjing, Rajchman's professional partner in conceptualizing health plans included Health Minister Liu, who would become the Chinese member of the LNHO Health Committee. Moreover, Rajchman also made contacts with top-level policymakers in the Nationalist central government, above all with T. V. Soong. As Vice Chairman of the Executive Yuan, Soong was a key figure in the organization of the National Economy Council (全国经济委员会), which was to lead and coordinate the country's national reconstruction projects. Indeed, the League's proposal for technical cooperation came at the right moment: the Nationalists were just on their way to a decade-long initiative for industrialization. Therefore, the original agenda for technical cooperation in public health was soon extended to cover a number of other areas, including education, agriculture, industry, engineering, and finance (Wu [1933] 2003; Osterhammel 1979).

For the budding public health institutions in China, technical support from the LNHO was vital. By the 1920s, few of China's medical and health professionals had the experience of preparing and organizing a national health system. The LNHO's assistance, as well as that of the Rockefeller Foundation, was to fill the gap by introducing a European model of state medicine, which typically included a hierarchy of specialized health agencies at the central, provincial, district, and local levels (Lucas 1982; Dugac 2018). In late 1929, a proposal for the collaboration laid out the long-term policy goals and short-term reconstruction plans for a Chinese state medicine system (Yip 1995:55; Borowy 2009:209). The long-term goals were defined quite

broadly, including effective nation-wide results in child health, school health, and industrial health, as well as in social hygiene, vital statistics, general sanitation, epidemiology and communicable diseases. But the two short-term plans were quite concrete: first, the development of administrative principles best adapted to the conditions of China and, second, the provision of facilities for training personnel in the different branches of medical practice. In other words, the priority for the initial step towards a national health system would be put on the reorganization and consolidation of central-level health administration and on the training of technical personnel who were to staff the emerging institutions.

The key project of the first few years was the organization of a central institute of hygiene, called the Central Field Health Station (CFHS). Nine Chinese medical officials from the Ministry of Health and three foreign experts formed the original group working on the preparation of this station. Importantly, the LNHO helped to collect the advice from European schools of hygiene and, on the basis of their responses, Rajchman drew up a comprehensive scheme. Meanwhile, Berislav Boricic, director of the State School of Hygiene at Zagreb, Yugoslavia, relocated to Nanjing in 1930 as a full-time representative of the LHNO. There he was joined by the other two members of the foreign team: Brian R. Dyer, a specialist in sanitary engineering of the Rockefeller Foundation, and W. W. Peter, who had organized public health campaigns in Chinese cities back in the 1910s. Both Boricic and Dyer would remain in China until the outbreak of the war (Bu 2017:166). In addition, from 1933 to 1936, Andrija Stampar, former director of public health at the Ministry of Social Assistance and Public Health, Belgrade, served as another LHNO technical adviser in China (Yip 1995:54).

The CFHS began operation in 1931 under the directorship of J. Heng Liu and K. Z. King. It had nine technical departments.<sup>5</sup> Almost immediately, it set out to conduct several research programs and public health projects: sanitary engineering in the major urban areas, the collection of vital statistics, the training of maternal and child hygiene specialists, and the promotion of health education, school health and nutrition studies (Bu 2017:167). On the educational side, the CFHS worked with the Central Hospital and other affiliated institutions to offer undergraduate as well as graduate courses. It used internships to train doctors and nurses for public hospitals that were being built around the country. Essential to the development of a national structure of medical research and health administration, the CFHS had also helped establish 35 local health laboratories and branch stations in eight provinces by 1934 (Bu 2017:167). Meanwhile, Chinese health professionals and administrators were also being sent abroad for advanced training, often with fellowships provided by either the LNHO or the Rockefeller Foundation. By 1935, the LNHO had granted 28 fellowships to members of the CFHS and its affiliated institutions, usually for six-month studies in Europe (Bu 2017:168). The Rockefeller Foundation, in addition, had provided 32 fellowships for advanced technical and administrative training in the US, covering such subfields as bacteriology, entomology, hospital administration, public health, and midwifery (Bu 2017:168).

Thus, through the technical and financial assistance of the LNHO and the Rockefeller Foundation, a whole set of central-level medical and health institutions had been in operation by the mid-1930s. At the center of this emerging national health service were the two offices chaired by J. Heng Liu. The NHA, the reduced version of the Ministry of Health, was

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<sup>5</sup> These included bacteriology and epidemic disease control, chemistry and pharmacology, parasitology, sanitary engineering, medical relief and social medicine, maternal and child health, industrial health, epidemiology and vital statistics, and health education and school health.

responsible for health legislation and administrative supervision. It began reporting directly to the Executive Yuan. The CFHS, on the other hand, was responsible for technical and educational matters. It reported, after 1931, to the National Economic Council, the Nationalist's chief engine for national reconstruction and technical collaboration with the League of Nations. Under the joint administration of the NHA and the CFHS were a complex of national medical research, training, production, and prevention institutions: the Central Hygienic Laboratory (in Shanghai), the Central Hospital, the Central School of Nursing, and the National Epidemic Prevention Bureau. The National Epidemic Prevention Bureau had branch laboratories in Beijing and Lanzhou and coordinated the work of the Northwest Epidemic Prevention Bureau and the Mongolian-Suiyuan Veterinary Bureau. The NHA also took administrative control of the National Quarantine Service since 1935. In addition, a Central Midwifery School was founded in Nanjing and a National Midwifery School in Beijing.

### **5.1.3 State Medicine in Local and Rural Areas**

At first glance, the Chinese initiative to create a national health system in the Nanjing decade was similar to the late-Qing judicial reform that was aimed at the building of a modern court system. Both had started from the central-level agencies and both had borrowed from existing foreign models through the leadership of a few foreign-educated experts. What distinguished the health reform from the judicial reform, however, was the salience of a technocratic logic, instead of a bureaucratic one. In a bureaucratic development, the movement of state building from the agencies at the central level to the institutions at the local levels often took place through the replication, on a descending scale, of administrative offices, and its main challenges were about staffing, funding, and protecting its administrative jurisdiction from the illegitimate intervention

of other government offices. This is basically what had happened in the expansion of the modern Chinese court system from the Supreme Court and the Ministry of Justice to the provincial and local courts. Under a technocratic logic, however, the same movement from the central level to the lower levels was achieved not only through the replication of government offices but also through a professional reconsideration of the local conditions, so that additional institutional arrangements could be made to provide a better delivery of professional service. In the case of the Chinese public health reforms during the 1930s, this technocratic logic for state medicine was best reflected in its dual emphasis (not without mutual conflicts) on the building of a multi-level health administration system and the provision of health care to the largest number of population possible, especially the rural population (Gao 2012).

On the bureaucratic side—and much in the same fashion as the judicial reform—the institutional blueprint for a national health system was laid out top-down through central planning. Even before the founding of the Ministry of Health, a *Health Administration Policy for the Tutelage Period* (训政时期卫生行政方针) was released by the Ministry of the Interior. After the founding of the new ministry, it summoned its first administrative conference in 1928 which announced another guideline, the *Principles for the National Health Administration System* (全国卫生行政系统大纲). According to this updated planning document, each province was to have a health department and each municipality a health bureau. In 1929, the Health Ministry held a conference for specific issues related to health administration at the municipal level, which resulted in the *Plans for the Initial Implementation of Municipal Health Administration* (市卫生行政初期实施方案). All of these three early policy documents by the Nationalist government were aimed at clarifying the basic organizational standard and administrative functions that the system of health administration was to realize in the subsequent

years. But in many parts of the country, the actual progress in building such an administrative infrastructure would have to wait until the central-level institutions were ready to provide technical and organizational support. By 1934, in addition to maintaining specifically equipped field stations in thirty-five localities in eight provinces (Yip 1995:57), the CFHS had helped to establish county hospitals in Jiangsu, Jiangxi, Anhui, Shandong, and Hunan, among other provinces. In 1935, a Northwest Investigation Team was dispatched to the provinces of Shaanxi, Gansu, Qinghai, and Ningxia, where health centers were subsequently established (Yip 1995:83). By 1937, provincial health departments had been established in eleven provinces (Woodhead 1938:131-32). In addition, fifteen hospitals, three infectious disease centers, three hygienic laboratories, and thirty-one other health institutions were launched at the provincial level (Jin 1948). Municipal health headquarters were set up in nine cities (Jin and Xu 1937; Jin 1948), with fourteen hospitals, six infectious disease centers, two hygienic laboratories and sixty other health institutions at the municipal level (Jin 1948).

In the meanwhile, there was a second front for the delivery of medical and health services, the rural health programs. In the late 1920s, as mentioned above, pilot programs for rural public health were already being launched. In Dingxian, Hebei Province, experimental rural health centers were first set up in 1929 with technical and financial assistance from the Milbank Memorial Fund (Lin 2017). In 1932, the program was reorganized under the directorship of C. C. Chen (陈志潜), a protege of Grant and a public health graduate from Harvard. After conducting a careful social survey, Chen realized that the average village would not be able to financially support even a modern nurse. Therefore, he experimented with the idea of selecting and training village health workers from the villagers themselves and devised a three-tier network at the village, district, and county levels (Chen 1989:76). The result was encouraging: the annual health

expenditure for the average villager was even lower than their usual spending on traditional medicine (Chen 1989:72-98; Lin 2017). Around the same period, several other pilot programs for rural health were started in Xiaozhuang (near the city of Nanjing), Gaoqiao, Wusong (both near Shanghai), and Zouping (in Shandong Province), with support from both private sponsors and local governments (Li 1934; Yip 1995:75-80; Bu 2017:131-38).

J. Heng Liu and his associates at the Ministry of Health (and, since 1931, the NHA) were well aware of these developments. Faced with limited financial resources and manpower, Liu, too, endorsed the strategy of using carefully selected health centers as pilot programs and demonstration areas. His plan was to select three different sites as government-sponsored pilot programs for the CFHS's local outreach and experimentation. Each of the three sites would ideally cover an urban, a county-level, and a village-level environment (Lin 2017). By 1931, a demonstration health center had been established in Tangshan, a small town not far from Nanjing. Led by Yao Xunyuan (姚寻源), the Tangshan Rural Health Station was the first demonstration center initiated directly and supported entirely by the central government. But Liu's original plan for three different pilot programs covering three different types of localities never materialized. In 1933, the entire Jiangning County (of which Tangshan was but a small part), with over a thousand villages and a population of nearly half a million, was designated as an experimental area for public health. The three-tier network of health services pioneered at Dingxian was transplanted and further adapted. Across the whole country, seventeen county health programs were set up in the early 1930s: nine were co-organized by the local government and private organizations, five by private sources alone, two by county or municipal government alone, and one by the central government, with a total staff of nearly 200 (Li 1934).

By the mid-1930s, the NHA and the CFHS began replicating these rural health programs onto a larger scale. This is when the dual emphasis on administrative units and professional service could be conflicting. In 1932, the Second National Conference of Civil Affairs (第二次全国内政会议) approved an *Act on County Health Stations* (依照各地方经济情形设立县卫生医药机关以为办理医药救济及县卫生事业之中心案), which required each county, with consideration of its local circumstances, to establish a county hospital as the center of health affairs and medical relief within five years (Bu 2017:169). In 1934, however, the First National Health Conference (全国卫生行政技术会议) favored the CFHS's multilevel network based on the Dingxian model. The conference gave detailed instructions on the organization, staffing, and budget for a four-level rural health structure, so that local governments could apply this scheme to the extent they found feasible (Woodhead 1938:132; Yip 1995:83). The four levels of rural health institutions include the health center (卫生院) at the county level (县), the health station (卫生所) at the district level (区), the sub-station (卫生分所) at the township level (乡), and the health worker (卫生员) at the village level (村). In 1937, this multilevel organizational scheme for rural health was sanctioned by the Executive Yuan, the top administrative body of the Nationalist government. By then, the most generous estimation was that 242 health centers (or hospitals) had been founded at the county level, 74 health stations and sub-stations at the district and township level, as well as 90 other rural health organizations such as traveling clinics (Jin and Xu 1937; Woodhead 1938:131-32).

To Liu, Chen, and other Chinese medical modernizers of Anglo-American training, the rural health programs served as social laboratories, in which applied medicine could be combined with social sciences to effect change. The rationale was to experiment with the



introduction of modern health care in a small, defined area with the hope of applying the results to other, larger areas. These programs would also serve as places for field training, bringing medical school graduates in direct contact with the realities of rural China, which they perhaps had never encountered in the laboratories or in the textbooks. In this regard, the Chinese medical modernizers were not only infused with optimism in the potential benefits of applying scientific methods to social reform, but they were also highly receptive to the emerging trends in public health work outside of China (Yip 1995:72-74). In the United States, the idea of relating health services to a definite population or district began to emerge before the First World War. In the 1920s, Hermann M. Biggs, health commissioner of New York state, proposed for a network of health centers to be established in rural districts to compensate for the lack of medical personnel in those areas, which became known to the Chinese through the Milbank Memorial Foundation's involvement in the Dingxian program. Another important source of inspiration was the work of the Rockefeller Sanitary Commission (1909-14) in the eradication of hookworm in the southern United States, in which John B. Grant had participated firsthand. The commission chose selected demonstration counties as sites to educate local people about the benefits of public health and sanitation. Later, this experience in the rural south was transferred to Eastern Europe through the Rockefeller's International Health Board, which provided funding for many rural sanitation programs as well as for the reconstruction of state health services after the First World War. Unlike the United States, the governments of several European countries, including Yugoslavia, Hungary, and Czechoslovakia, created health centers that became part of a national health service. The Yugoslavian health structure, for example, combined a central Institute of Hygiene with a number of provincial institutes and district and rural health centers. These models for state medicine had traveled to China through the European advisers and LNHO-sponsored training

programs. Chen, for instance, had visited and studied Yugoslavia and other European health systems with LNHO sponsorship (Chen 1989:99-105). These foreign precedents greatly shaped the Chinese perception of the function of health centers: first, health centers would “demonstrate” modern public-health techniques and train students; second, they would act as part of the government’s health administration by providing curative and preventive medicine to the rural populations that needed them most.

#### **5.1.4 Public Health Careers**

Before the 1920s, few governmental positions had existed in China for students of medicine. Early members of the NMA and the CMPA had come from missionary medical institutions, plague prevention services, faculties of public medical schools, staff of public hospitals, as well as from private practice. In the 1930s, as public health became another jurisdiction for modern medicine, technical and administrative positions were created and training programs for public health were launched. New career opportunities and new forms of status distinction were now available for those with an adequate professional preparation. The establishment of the Ministry of Health and the ascendance of the Rockefeller-LNHO influence had actually led to the “capture” of health administration by medical leaders who originally worked outside of the state. I use the word “capture” both in the sense that the medical leaders had successfully expanded their professional agenda into areas of state building—which resulted in a system of state medicine—and in the sense that they had also created for themselves another domain of practice, with new career prospects and new forms of status distinction.

By the mid-1930s, an early cohort of professional health administrators had already embarked on a public sector career. In Nanjing, both the Ministry of Health and the CFHS had

been strongholds of modern-educated medical and public health specialists. J. Heng Liu, F. C. Yen, P. Z. King, and other associates of the circle, formed during the 1920s, around John B. Grant, the PUMC, and the Beijing Public Health Experimental Station would have an extended career trajectory consisting of different roles in the field of medicine: as practicing physicians, as medical school faculty, as leaders of the NMA, and as ministerial-level policymakers. This revolving door phenomenon was especially salient between the CHA and the NMA. All the three successive directors of the NHA between 1932 and 1947 (Liu, Yen, and King) had been presidents of the NMA. Conversely, among the twenty-five Chinese nationals who had served presidency or vice presidency of the NMA before 1937, ten were subsequently appointed to key positions in the CHA.<sup>6</sup> On the other hand, the technical arm of the health administration, the CFHS, had benefited from being part of the National Economic Council, the chief state apparatus for programs of national reconstruction and international technical cooperation. As the records of the CFHS show, it had maintained a highly specialized technical staff around fifty during the prewar years, with a stable leadership for most of its nine departments (National Economic Council 1933, 1934, 1936, 1937; CFHS 1934).

At the municipal and provincial levels, the sanitary or health bureau that was once subsidiary to the police had increasingly become an independent and specialized office. A recent study that looks at the career paths of nineteen municipal health commissioners during the Nanjing decade finds that all but three of them had a formal medical education and all but two had prior experience in medical practice or health administration (Lai 2016). For instance, Huang Zifang (黄子方) and Li Ting'an (李廷安), two directors of the NMA's Council on Public Health,

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<sup>6</sup> The list of NMA leaders can be found in Zhang (2010), while the list of senior level appointees at the Ministry of Health and the CHA can be found in Liu et al. (1995:612-15).

were appointed as the health commissioner for Beijing and Shanghai, respectively. Although the sample of this study was limited to the seven Special Municipalities (特别市), it provides evidence that health administration at the largest Chinese cities were already being headed by medical and health professionals. According to another study which compares the career data of thirty-nine provincial health directors between 1937 and 1945, all of them were professionally trained in medicine or public health and the majority (thirty-three) had studied abroad (Yang 2017). In addition, all but one of them had previous experience in health administration—some of these provincial health directors had come directly from the staff of the CFHS—and all but one would continue to work in the field of medicine and public health after leaving their provincial positions.

Moreover, in the course of the 1930s and the 1940s, a significant number of health administrators were selected and sponsored by the Rockefeller Foundation to study in the US, especially at Johns Hopkins and Harvard. According to Bullock (2014), at least eighty-five Chinese had been awarded the Rockefeller's Public Health Fellowship between 1917 and 1950 for graduate training at leading American universities. They had been primarily selected on the basis of their sending institutions: a total of twenty-five home institutions were covered and the majority of them were national or provincial health agencies, especially from Nanjing, Beijing, and Shanghai. All of these fellows returned to China and most of them spent their careers in health institutions rather than private practice. Indeed, at both the central and the provincial (or municipal) levels, many would remain in their technocrat careers of health administration, despite the war and even despite the regime change to the Communist era.

## **5.2 Medical Education and Medical Regulation in the Nanjing Decade**

In addition to the realm of public health and state medicine, the Nanjing decade was also a period in which government intervention intensified in medical education and medical regulation. The general reorientation towards an American-style post-secondary education system and the manpower demand from the national reconstruction programs meant that medical education began to receive direct support from the central government and was being upgraded to the university and college levels. Missionary programs, in the meanwhile, had found it increasingly difficult to operate under the political and regulatory conditions of the time. For those who had completed formal training in modern medicine, a physician licensing system was finally implemented by the Chinese government. Thanks to the professional and administrative authority of the Ministry of Health, the licensing and registration of modern physicians gained sufficient support from the practitioners and the medical societies, a stark contrast to Beijing's regulatory effort just a few years earlier. Finally, during its so-called tutelage period, the Nationalist regime started to take a corporatist approach in its relationship to civic and occupational groups. For modern professions like medicine, this basically required them to divide their associations into an academic line and an occupational line, represented, respectively, by the National Medical Association and the locally based physician unions. Unlike the bar associations from the same period, little evidence, however, had been found on the party control of the medical societies. Instead, they became adamant supporters for the professional interests of physicians, regardless of which category they fell under the corporatist scheme.

### 5.2.1 State Support for Medical Education

In the course of the 1920s and the 1930s, as I have mentioned already in the chapter on law, the American model for higher education had become increasingly popular in China. For medical education, this meant that the existing programs at the technical college level, which had stemmed from the Japanese model, were being reorganized as, or replaced by, more advanced programs at the university level (Choa 1990:95-110). Thus, the National Peking Technical College of Medicine went through several reorganizations until it finally became the medical faculty of the National Peiping University in 1928 and extended the length of its program to six years (Luo and Sun 1992). After 1928, the Nationalist government added a further momentum to that Americanization trend by setting up four additional medical programs at the university level under the direct auspice of the central government (Mu 2005:33-44): National Zhongshan (1926, previously the Guangdong Technical College of Medicine), National Tongji (1927, previously German), National Shanghai (1932), and National Central (1935).<sup>7</sup> A number of university-level medical programs were also established by provincial governments, including Henan (1928), Hebei (1932, previously the Zhili Provincial College of Medicine), and Guangxi (1934). In the meanwhile, however, there had been a growing awareness that university-level programs alone would not meet the country's demand for modern medical service. Therefore, both the LNHO advisers (Faber 1931) and a few senior statemen (Dai 1931) had favored the adoption of a two-tier medical training system, with university-level programs supplemented by less rigorous programs at the associate level. In 1931, Nanjing's *Regulation for Specialized Schools*

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<sup>7</sup> The National Shanghai College of Medicine was particularly notable since it was the first university-level medical program that was built by the Nationalists, under the directorship of F. C. Yen, the aforementioned inaugural president of the NMA and head of the Yale-in-China program.

(专科学校规程) listed medicine and pharmacology as officially supported categories of specialized schools (Xia 2014:54-58). Unlike the six-year university-level programs, these associate-level programs were to have a four-year curriculum, including one year of internship. As a result of this policy change, the medical technical colleges in Zhejiang, Shandong, and Jiangxi were reorganized as associate-level programs and continued to operate under provincial auspices. A specialized program in dentistry and another one in pharmacology were both founded by the central government in the mid-1930s.

Meanwhile, standardization of the medical curriculum had been put on the agenda of ministerial-level regulators. In 1929, a Committee on Medical Education was jointly created by the Ministry of Education and the Ministry of Health (Ministry of Education 1930). Its main objective was to supervise the quality of all medical programs in the country and work towards the standardization of medical education. The committee released a twin set of model curricula for the two tiers of medical schools in 1935 (Ministry of Education 1935). They specified what courses should be covered at each grade and how many hours for each course, even down to the details of weekly schedules. The committee eventually grew to incorporate several subcommittees that dealt more specifically with the training programs in nursing, midwifery, dentistry, pharmacology, and traditional Chinese medicine (Ministry of Education 1936). However, at least until the mid-1930s, not all programs had complied with even the most basic requirements—for instance, their program lengths still varied between three to eight years (Lee 1935:898-89).

An interesting new development during this period was the inclusion of public health as a branch of medication education, which is another manifestation of the expansion of the medical profession (Xia 2014:71-77). The aforementioned official curricula listed required course work

and internship on public health training for both levels of programs. Moreover, in the 1930s, several domestic schools began to launch their own public health departments. Two Shanghai-based programs, National Tongji and National Shanghai, both set up a department of public health in 1932, which sent their students to the nearby Wusong and the Gaoqiao experimental health stations for internships (Li 1934). Similar departments were found in National Zhongshan, Lingnan, Zhejiang Provincial, and Jiangxi Provincial, all of which had received financial sponsorship from the British Boxer Indemnity Fund (Lingnan University 1936; Zhejiang Provincial Medical and Pharmaceutical School 1936). The NHA and the CFHS, on the other hand, had organized various in-house training classes for their staff and new recruits. In 1936, they formally established the Public Health Training Institute (卫生署公共卫生人员训练所), which was comparable to the Training Institute for Judges under the Ministry of Justice. Before the outbreak of the war, around seven hundred public health professionals had been trained from these in-house classes and the Institute, including public health physicians, nurses, midwives, health inspectors, as well as specialists on maternal health and tropical diseases (Jin and Xu 1937). In 1937, another medical school, the National Zhongzheng, was founded for the specific purpose of supplying manpower to the state medicine system.

In contrast to the expansion of Chinese schools, missionary medical education had come into a stall. Already in the 1920s, the missionary educators started to face a mounting hostility towards their presence, sometimes even from their own students and Chinese faculty members. The Anti-Christian Movement (非基督教运动) of 1922, the Restoring Educational Sovereignty Movement (收回教育权运动) of 1924, and the May Thirtieth Movement (五卅运动) of 1925 all paved the way for the surge of a runaway Chinese nationalism and xenophobia that were particularly targeted at the Christian educational enterprises (Yang 2005). The situation went



even worse during the Nationalists' Northern Expedition, when some missionaries were killed by the troops while many others fled the country. Quite a number of missionary medical schools had to shut down during this difficult period (Lutz 1971:255-70). A further problem arose when they were required to register with the Nationalist government and comply with the latter's educational policies, otherwise their graduates would not be eligible for medical licenses. When the missionary colleges reopened after the regime transition, many had to reorganize their programs and school administration according to the requirements of the Ministry of Education, downplaying their evangelical objectives and promoting, instead, their service to the Chinese nation (Lutz 1971:271-83).

By the end of the prewar decade, the landscape of medical education in China had been overhauled. Out of the thirty-seven medical schools nation-wide, eight were national programs funded by the central government, eleven were public programs supported by provincial authorities, while eighteen were private schools.<sup>8</sup> Most of the missionary medical programs, with the exception of St. John, had registered with the Chinese government as private programs. In comparison to the situation in 1925, there had been a slight increase in the total number of programs (from thirty-four to thirty-seven), but a substantial rise in the number of programs that were managed by the Chinese government (from eight to nineteen). The overall size of all faculties at all these medical programs was around one thousand while the total annual budget was over six million yuan (Wu 1936). In particular, although the PUMC still led the rest of the

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<sup>8</sup> The numbers are based on Wu (1936), with the following additions: four added to the total number of programs (Hong Kong, Harbin, Yunnan Army, and Jiangsu Medical Administration), three to the number of provincial programs (Mukden, Yunnan Army, and Jiangsu Medical Administration), four to the number of private programs (St. John, Manchuria, Hong Kong, and Harbin). Note: the three programs in Manchuria—Mukden, Manchuria, and Harbin—were subject to Japanese control, while the Hong Kong University Medical College was under the British.

programs by a large margin,<sup>9</sup> the national programs under the direct auspices of Nanjing had become almost on a par with the missionary programs, especially in terms of the size of faculty and the amount of annual budget (Wu 1936:78-79). Total enrollment was well over three thousand, with an average graduating cohort of around six hundred each year (Lee 1933, 1935). According to Wu (1936), between five to six thousand students had graduated from these programs by the mid-1930s.

### **5.2.2 The Beginning of Medical Regulation**

Medical regulation during the late-Qing and Beiyang period had been characterized by sporadic local initiatives for the testing of practitioners and a belated attempt by the Ministry of the Interior to set a national standard, which, unfortunately, ended in vain. As soon as the Nationalist regime was in full operation, that regulative agenda was picked up by the Nanjing government. Even before the founding of the Ministry of Health, a *Provisional Regulation for Physicians* (医师暂行条例) had been drafted by the Japanese-trained medical officers in the Ministry of the Interior (Liu 1929). When it was finally released by the Ministry of Health in 1929, it became the first Chinese regulation on medical practice that was implemented nationally. Unlike the earlier attempt by the Beijing government, this new regulation did not make a distinction between the qualifying criteria for modern and for traditional Chinese physicians. Yet, its actual criteria were clearly drawn from conditions more applicable to the former. They included a formal degree from a government-recognized medical school, or a medical license from a foreign country, or

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<sup>9</sup> According to Wu (1936), the PUMC had a faculty of 139; the second largest faculty was that of the Shanghai, 78, while the average for the 27 programs with data was 36. In terms of funding, the PUMC's annual budget was 2,657,380 yuan; the second largest budget was that of Zhongshan, at 537,090 yuan, while only six other programs had a budget over 200,000 yuan.

successful completion of a government-administered examination based on modern medical knowledge (Chen 1996:631-33). With no announcement of such examinations on the horizon, the regulation practically limited eligible applicants to those with state-recognized educational credentials. Later that year, the Central Board of Health (中央卫生委员会) passed a somewhat different resolution, which recommended that all Western-style physicians with over three years of practice be immediately eligible for registration until the end of 1929 and all Chinese-style physicians already in practice be eligible for registration until the end of 1930. After these deadlines, however, it was advised that only graduates from government-recognized medical schools could be registered (Yin 2013:97).

While this regulatory scheme aroused a great deal of contention from the Chinese-style physicians (which will be discussed in the next section), its implementation among physicians of modern medicine went ahead without much trouble. One main objection it received was over the eligibility of graduates from missionary medical programs, many of which had not yet registered with the Nanjing government (Yin 2013:98-101). A revised version of the *Provisional Regulation* was prepared by the Ministry of Health in 1930. However, when it was submitted to the legislature for approval, an even stricter standard for physician licensing was insisted by the latter, which required all applicants, regardless of their educational background or years of practice, to take a government-administered qualification test (Chen 1996:641-42). To bypass this stricter requirement, an accommodation plan was worked out by the NHA (which had succeeded the Ministry of Health) in 1932. According to this plan, graduates of four-year medical programs that had not registered with the government and hospital-trained physicians with at least five years of internship would also be exempted from a qualification exam, provided that they had graduated or opened their own practice before 1929 (NMA 1932b). This seemed to

be a scheme that satisfied both the regulator and the medical profession. By the time the accommodation expired at the end of 1933, over two thousand Western-style physicians had been licensed (Yin 2013:104). A further extension of the accommodation was called for by the physicians, since many in the remoter parts of the country had not gotten a chance to register. This arrangement lasted until 1937, when the NHA organized the first national medical qualification test (Yin 2013:104-05).

According to Zhu and Lai (1935), by 1935, there were a total of 5,390 Western-style physicians licensed by the central government, including 4,638 Chinese (87 percent) and 752 foreign nationals (13 percent). Among the Chinese licensees, 3,843 were trained in China, while 795 received their medical education abroad. However, there was a huge geographical disparity in the distribution of these physicians. The five provinces with the greatest number of registered physicians were Jiangsu, Guangdong, Hebei, Zhejiang, and Liaoning, which together accounted for 69 percent of the total. Shanghai, as part of Jiangsu, alone had 1,182 licensed physicians, or 22 percent of the national total. It has also been noted that most of these physicians were in private practice, only 1,368 worked at hospitals. Records vary over the exact number of physicians that had been licensed before the outbreak of the war. One official source reports a total of 5,620 physicians registered at the Ministry of Health (or, later on, the National Health Administration) between 1929 and 1937 (Yin 2013:106). Another source states that, by September 1936, a total of 14,996 medical professionals had been licensed, including 8,703 physicians, 63 dentists, 479 pharmacists, 2,282 pharmacist assistants, 298 nurses, and 3,171 midwives (Central Statistics Department 1936:15-16). None of the Chinese-style physicians had been registered by then, so the numbers included only modern medical practitioners.

### 5.2.3 Medical Associations under the Nationalists

Unlike the registration of individual physicians, which could be determined by educational credentials or through testing, the regulation of medical societies was a more complex matter. It generally involves a larger set of political decisions on the relationship between the state and civic groups, between political and occupational organizations. The Nationalist regime, in particular, had adopted a corporatist approach in its treatment of civil groups (Xu 2001:95-102). On the one hand, its Leninist political ideology prescribed that the Party should be the sole leadership of the state and the state, in turn, should exercise an extensive oversight of all civic groups among its populace. This was the rationale behind the *Procedures for Organizing People's Associations* (人民团体组织方案), promulgated by the Party's Central Executive Committee in 1929. It classified civic groups into two broad categories: "occupational groups" (职业团体) and "social groups" (社会团体).<sup>10</sup> Both types of organizations were subject to the dual oversight of the Nationalist Party and the government (Chen 2014:154-76). Each civic organization should first acquire the consent of a corresponding party authority<sup>11</sup> and accept the latter's tutelage on organizational planning. Once these organizational matters were approved by the party authority, the association should then register itself with the corresponding level of government.<sup>12</sup> In addition, each civic association would also be supervised by the relevant government agency in their particular line of work. On the other hand, civic groups enjoyed

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<sup>10</sup> "Occupational groups" included groups such as agricultural societies, labor unions, and chambers of commerce, while "social groups" applied to student bodies, women's associations, cultural organizations, and charity groups.

<sup>11</sup> Typically, the party authority responsible for such regulatory oversight was the Department (or the Bureau) for Mass Training at various levels of party headquarters.

<sup>12</sup> The government authority responsible for this second layer of oversight was usually the department (or the bureau) of social affairs and, at the national level, the Ministry of the Interior, which could legally sanctify, discipline, or terminate the association.

political representation at the National Congress. The first official recognition of the professional groups came in 1931, when a National Assembly (国民会议) was convened to vote on the *Provisional Constitution for the Tutelage Period* (训政时期约法). The professions were one of the social categories from which the delegates were drawn (Wei 2011). Henceforth, professional groups were added to the two types of civic organizations mentioned above, but they were to be divided into two kinds: those that resembled the labor unions or trade unions (which fell under the category of “occupational groups”) and those that were organized as academic societies (which belonged to “social groups”). In the field of modern medicine, for instance, the NMA and the CMPA had registered themselves as academic groups that would devote themselves to the advancement of medical science and the development of medical education. The Shanghai Physician Union and other similar organizations had registered themselves as occupational groups, which tended to be more concerned about their occupational interests. Meanwhile, drug stores and pharmacists were not allowed to join the medical associations; instead, drug stores were to be organized into trade unions or, for the workers, labor unions, while pharmacists were to be a professional group of their own (Xu 2001:145-52). Thus, the National Federation of Medical and Pharmaceutical Associations was closed down in 1931.

Some groups had obviously benefited from this new regulatory scheme. The NMA, now a national scholarly society for medical science, would soon find itself striving to be *the* medical science society of the country. Its members had been routinely appointed to key positions in the Nationalist health administration (for the “revolving door” between the NMA and the state health agencies, see the earlier discussion on public health careers). Organizational-wise, it enjoyed an unprecedented increase in its size. Between 1926 and 1931, its membership had grown from 391 to 794, an almost twofold increase (NMA 1932a). Part of that could be attributed to the

concurrent growth of medical education: the top ten *alma mater* medical schools of its members were all based in China (most were run by the missionaries), from which a total of 369 members were drawn (Qin 2010:18). In 1932, as the result of the NMA's merger with the CMMA (to become the China Medical Association), there was another dramatic surge in its membership, to over 1,500 (NMA 1932c). A further step to broaden its constituency was taken in 1934, when it was decided during the NMA's tenth general conference that any physician already registered with the government could be admitted as an affiliated member, even if their educational credentials did not meet the higher standard of the association (NMA 1934). Interestingly, just as the changes in the membership criteria of the CMMA reflected its gradual move towards localization, the changing membership criteria of the NMA also belied its reorientation from an elitist group to a more inclusive one. By 1937, its total membership had reached 2,767, almost twice its size just five years earlier (NMA 1937).

While the Nanjing decade saw the ascendance of Anglo-American-trained medical experts in public health administration and the growing size of their professional organization, the Japanese-trained physicians increasingly lagged behind. The CMPA had been inactive after holding its last general conference in 1931. It was barely able to continue its journal, much less about going after other organizational objectives (CMPA 1931a, 1934; Fan and Ye 2015). The CMPA's status as the leading voice for the Japanese-trained physicians had largely been replaced by the National Federation of Physicians (NFP), a Shanghai-based umbrella body made up of physician unions from around the country. One major distinction between the Nationalist regulation on scholarly societies and that on occupational groups was that occupational groups were usually limited to the local level (the bar associations, too, were restricted in this way). Therefore, it took more than five years for the NFP to be approved by the government, even

though it held four general conferences in the meantime and strove to be a medium through which matters brought up by its member associations could be passed on to the government (National Federation of Physicians 1936).

In reality, the distinction between “scholarly” medical societies and “occupational” physician unions can sometimes be quite ambiguous. There was one important area in which the work of these organizations had overlapped: the protection of physician rights and the advocacy of professional ethics (which, by the way, are two sides of the same coin). The 1930s saw a sudden rise in the number of lawsuits that were brought against medical practitioners.<sup>13</sup> While this was probably an age-old tension between the physician and the patient that resurfaced under a new legal system, it was the first time that physicians responded in an organized manner. In 1933, the NMA launched a Committee on Professional Guarantee (业务保障委员会) to offer assistance to its members if they were involved in such lawsuits. It was chaired by Song Guobin (宋国宾), a French-trained physician and a keen advocate for medical ethics. Thanks to the NMA’s professional authority, most of the charges brought against physicians were either dismissed by the court or ruled in favor of the defendant (Long 2011:88-89). In 1933, Song published the first Chinese treatise on medical ethics, opening the floor for a heated debate on the moral responsibility of the physician. Subsequently, the Shanghai Physician Union announced a twenty-article code of conduct and the NFP, too, brought forward a ten-article ethical code that, ideally, all physicians in the country should abide by (Long 2011:340-46). This shared concern over professional ethics and professional rights reflected a new phase in the

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<sup>13</sup> One recent study has found at least 169 cases—which may have been the tip of the iceberg—between 1927 and 1949 in which physicians were prosecuted for alleged malpractice (Long 2011:76-87). Among these, 96 took place between 1933 and 1937.



professionalization of medicine in China. The Chinese physicians were not simply imitating the professionalization standards and professional organizations of the West, they were now addressing problems generated from the sociopolitical realities of their own country and their own times.

### **5.3 The Defense of Native Medicine**

The convergence of professional expansion and state building, the upgrade of medical education, and the beginning of physician licensing and medical regulation were all important achievements made by the modern-educated medical leaders during the Nanjing decade. In that process, they had hardly considered the incorporation of traditional Chinese medicine in their professional or state building projects, nor had they tried to convert Chinese-style physicians into practitioners of modern medicine. Instead, as Nanjing's physician regulations indicated, their objective was to propagate modern medicine—including its training, qualification, and social organization—for both curative and preventive purposes and to marginalize, if not immediately abolish, the practice of native medicine, to disqualify the legitimacy of the latter if it could not conform to the standards of the former.

This is a good place to consider and compare, for lack of a better word, the “fate” of traditional law and traditional medicine. In the field of law, the replacement of traditional jurists and legal secretaries by modern-educated judicial officers and private lawyers had taken place through a top-down government reorganization and a wave of *fazheng* programs that sold crash courses to those who needed to catch up with modern education. While the government reorganization uprooted the institutional basis upon which old forms of legal expertise had depended, the *fazheng* programs provided the fertilizers for a transitional generation. Instead of

being dismissed right away, the old-style legal experts found new roles and new appointments in the modern judicial system, or otherwise turned to government offices at lower levels. Yet, the practice of traditional Chinese medicine had not been dependent upon state bureaucracy. Except for the imperial physicians, traditional medical practitioners—both high and low—had catered to a more pervasive clientele and had reproduced themselves and their practices through the more informal social organization. What came as a mounting threat to their social survival was not so much about government reorganization or the loss of clientele, but the regulatory effort to dismiss their social legitimacy. And in that respect, the modern medical leaders had taken a much more radical stance than that of the judicial reform. The diffusion of modern medicine in China, which was mainly driven by the expansion of Western professions, had been packed with high-minded professionalism from early on.<sup>14</sup> Native medicine was not only considered an inferior body of knowledge but also an inferior system of social organization, with no formal training programs and no reliable way of telling the quack from the master. In addition, the Japanese policy of abolishing traditional medicine had set up a precedent, especially for those who had been trained in Japan.

In the following section, I provide a sociological analysis of the Chinese-style physicians' campaign to defend traditional medicine. Had the campaign been lost, the history of Chinese medicine would have been rewritten. However, my argument is that the outcome of the campaign had little to do with the comparative merits of Chinese medicine as applied knowledge. Thanks to the belated start of medical regulation, traditional physicians had already formed a cross-regional network of local medical societies by the 1920s. On the basis of such

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<sup>14</sup> In contrast, the introduction of modern law through imitative state building had been less concerned with upholding the standards of professionalism than the practical running of the state apparatus—modern law did not become a high-minded scholarly discipline until the 1930s.

organization, they were quick to respond to the Nationalist government's attempt to abolish their practice. Several important strategies were utilized in their collective struggle, including the mobilization of external support from the local society and the lobbying of key political figures through patronage connections. On the other hand, the Nationalist government was divided between the radical modernizers in the health administration and senior-level politicians whose support for different styles of medicine was often based upon non-medical factors. The outcome was a hard-won recognition of the legal status of traditional medicine, which provided it with access to the state apparatus but also urged it to adopt the formal features of a modern profession.

### **5.3.1 Organization and Leadership**

The immediate trigger of the campaign was the first conference of the Central Board of Health, which was held in Nanjing in late February 1929. Members of the board had included several Japanese- and European-trained physicians who were known for their harsh critique of native medicine but had not included any representative from the native medicine community (Zhao 1987:109-14). One important resolution passed by the Board was a *Principle on the Mandatory Registration of Traditional Physicians* (规定旧医登记原则), which required all practicing Chinese-style physicians to register with the government before the end of 1930 (Ministry of Health 1929). The resolution also prohibited Chinese-style physicians from organizing their own training programs and from publishing print materials on native medicine. While the Board was an advisory organ, its resolution nevertheless reflected the dominant attitude among the country's top-level health policymakers and the most elite modern physicians. The way it had planned to deal with traditional medicine was very close to what the Japanese government had done back in the 1890s: leaving the extant practitioners unaffected by the regulation but

forestalling the growth of a new generation of native-style physicians, so that the total size of native practice would begin to shrink and eventually be surpassed by that of modern medicine—which, by the way, happened in Japan during the 1900s (more on the Japanese case in the concluding chapter). But the Board probably had little idea of what unintended consequences its resolution would provoke.

News of the Board's resolution was carried by the Shanghai newspapers the second day. By the third day, representatives of the Shanghai native medicine community had telegraphed the Ministry of Health to express their objections and, at the same time, broadcasted their responses through the newspapers (Zhao 1987:114-15). Within a week, preparations had been made for a national rally of local native medicine groups. In March, a three-day National Convention of Medical and Pharmaceutical Groups (全国医药团体代表大会) was convened in Shanghai, which formally set off the campaign for the defense of native medicine. With over two hundred and seventy representatives from a hundred and thirty medical and pharmaceutical societies, the convention gave birth to a new National Federation of Medical and Pharmaceutical Groups (全国医药团体总联合会), which claimed to have obtained the support of over three hundred member organizations, including medical societies, drugstore associations (and their employee unions), medical schools (and their student bodies), and hospitals (National Federation of Medical and Pharmaceutical Groups 1929:3-22, 63-64).<sup>15</sup> This diverse array of medical groups had come from twenty provinces and from overseas, including the three coastal provinces where

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<sup>15</sup> Among these, 264 groups had provided either the names of their representatives or their addresses, which should suggest that they actually existed before the convening of the conference. The remaining 47 groups lacked such information, which could suggest that they were still in preparation or were formed during the conference.

Chinese-style physicians had already been socially active in the previous decades.<sup>16</sup> The very fact that this loose network of local medical communities was able to respond within such a short period of time and join together for a common cause suggests the extent to which practitioners of Chinese medicine had been organized by the late 1920s. As mentioned already, the first native medicine societies emerged in the 1900s along with other kinds of civic groups in the wake of the Qing's political and social reforms. By the end of the Beiyang period, these local physician communities had formed a cross-regional network, including local branch societies, medical schools, journals, and hospitals, some of which had actually been prompted by their collective reactions to the government's policy on medical education and, later, on physician registration (see the last chapter). The 1929 campaign to defend Chinese medicine was not an isolated event; it was the climax of a decade-long effort on the part of the native physicians for self-organization, government lobbying, and making their voice heard among the public.

The activism and leadership of the native-style physicians in Shanghai have already been noted in the last chapter. Actually, before this new round of regulatory initiatives from the Nationalist central government, the Shanghai physicians had successfully settled with the local authorities on matters of registration. Between 1926 and 1928, the native medicine societies of the city had twice helped their members to be licensed under, first, General Sun Chuanfang's short-lived government, and, later, the Shanghai municipal administration of the Nationalist government (Yin 2013:107-09). Yet, there was one major distinction between these earlier episodes and the 1929 campaign: the make-up of their leadership. By the late 1920s, the older generation who had been the pillars of occupational organization for the native medicine

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<sup>16</sup> There were 136 groups from Jiangsu, 63 from Zhejiang, 26 from Guangdong, 17 from Anhui, 12 from Jiangxi, and 11 from Fujian, all provinces located in the Eastern and Southeastern parts of the country.

communities had retired from their practice or passed away.<sup>17</sup> Zhou Xueqiao (周雪樵) and Cai Xiaoxiang (蔡小英), two important early figures, both died in the 1910s. Yu Botao (余伯陶), the founder of the AMPA and leader of the 1914 campaign, died in 1922. Ding Ganren (丁甘仁), founder of the Shanghai Technical College of Chinese Medicine and perhaps the most prestigious physician of the time, died unexpectedly in 1926. Li Pingshu (李平书), the influential scholar-official patron for Chinese medicine, died in 1927. They were followed, in their leadership of the native medicine community, by their slightly younger partners and heirs, such as Ding Ganren's business partners, Xia Yingtang (夏应堂), Xie Guan (谢观), and his second son, Ding Zhongying (丁仲英).<sup>18</sup> What had emerged by the late 1920s, however, was a new generation of Chinese-style physicians who had received a quasi-formal education under the tutelage of the older generation. The Shanghai Technical College of Chinese Medicine, which opened in 1916, stood out as the most influential breeding ground in this regard. Offering a five-year curriculum, the College was formed around leading physicians like the Dings, Xia, and Xie (Mingyi Yaolan Editing Board 1998:27-37). Its first class of graduates went into medical practice in 1921 and, by 1928, a total of 135 students had finished training (Mingyi Yaolan Editing Board 1998:144-50). Growing up in Shanghai during the 1910s and 1920s, this new generation of native-style physicians were well-exposed to civic organizations and political activism. They had set up their own student bodies, run their own medical journals, given regular lectures to the public, and even participated in major political events like the May Fourth

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<sup>17</sup> For brief biographies of eminent native-style physicians during the Republican era, see Deng (1999:379-405) and Deng and Cheng (2000:271-91).

<sup>18</sup> Other such figures include Zhu Shaopo (朱少波), Yun Tieqiao (恽铁樵), Lu Zhong'an (陆仲安), and Cai Jiping (蔡继平). For a general overview of the Shanghai native medicine community, see He (1997) and Zhu and Li (2010).

Movement of 1919 and the May Thirties Movement of 1925 (Mingyi Yaolan Editing Board 1998:37-41).<sup>19</sup> In 1921, graduates of the College launched the Shanghai Society of Chinese Physicians (上海中医学会), and, in 1927, they organized a medical program of their own, the Shanghai Institute of Chinese Medicine (上海中国医学院).<sup>20</sup>

To this new generation of Chinese-style physicians, the proposed licensing scheme from the Central Board of Health came both as a direct threat to their potential medical careers and as an outright denigration of their civic engagement. In fact, for the older generation of Chinese-style physicians, the proposed licensing scheme would ensure them a license and they would continue to benefit from the reputation and clientele that they had already established. This, after all, was the exact strategy of the Board, as it learned from the Japanese precedent. But things would be quite different for the younger generation, which were being trained in ever larger numbers at the native medicine programs. Many of them had barely started their practice; their prospect as medical practitioners, medical educators and writers, and organizers of medical communities would be jeopardized if the Board's proposal were enforced by the Nationalist administration. As it turned out, three figures from this younger generation of Chinese-style physicians would rise to the fore in the 1929 campaign, all of whom were still in their twenties or early thirties: Chen Cunren (陈存仁), Zhang Zanchen (张赞臣), and Jiang Wenfang (蒋文芳). A native of Shanghai, Chen graduated from the Shanghai Technical College of Chinese Medicine

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<sup>19</sup> In addition, newspaper coverage of the native physicians' participation in these political movements can be found in *Shen Bao* (申报), June 25 p.10 (1919), July 3 p.11 (1919), July 18 p.11 (1919), June 11 p.18 (1925), June 24 p.16 (1925), July 7 p.18 (1925), and Oct 21 p.18 (1925).

<sup>20</sup> In comparison to the Shanghai Technical College, this new school was more open to biomedical knowledge and had a more modern-style method in its teaching (Lei 2014:127-38). In time, it would surpass the Technical College to be the largest Chinese medicine program in Shanghai.

in 1927. He went on to open his own medical practice and launched a popular newspaper, the *Health Newsletter* (康健报) (Chen 2000:56). Zhang was the son of a Chinese-style physician from Wujin, Jiangsu, and he had studied under Xie, with whom he shared the same native place origin. After graduating in 1926, Zhang became the editor of an important medical journal, the *Springs and Autumns of Medicine* (医界春秋). Both Chen and Zhang were part of the native medicine community formed around the Dings and their associates, and it appeared that Chen was acquainted with an even wider circle of Chinese-style physicians and their patronage networks in the city (Chen 2000:32-75). Like Zhang, Jiang, the third figure, too, was from a medical family in Wujin (Wang 1998:44). He had been an active member of the AMPA and the editor of the *Longevity Newspaper* (长寿报). In 1928, Jiang helped organize the first national meeting on native medicine textbooks and was among the first to lobby the Nationalist government for legalizing native medicine (Jiang 1928). When news broke out about the resolution from the National Board of Health, Chen and Zhang lost no time in preparing a plan for collective action (Chen 2000:111-40). They sought support and assistance from their teachers—in particular, Xie and Ding Zhongying—who in turn helped organize a preliminary meeting among their close circles. Chen and Zhang also made clever use of the subscription lists of the *Kangjian Bao* and the *Yijie Chunqiu*, which they edited, to broadcast the news to the native medicine communities in other regions and solicit their participation in a nation-wide campaign. Perhaps even to their own surprise, within fewer than ten days, they were receiving active feedbacks from medical societies from all over the country.



### 5.3.2 Support from the Business Community

At the call of the Shanghai physicians, a national rally was convened in March 1929. Over two hundred representatives from more than one hundred native medicine organizations in fifteen provinces attended this three-day convention. On the first day, native drugstores in several cities organized a general strike in support of the event. Also present at the meeting were representatives from several influential merchant groups, including the Shanghai General Chamber of Commerce (SGCC 上海特别市总商会),<sup>21</sup> the Shanghai Merchant Association (SMA 上海特别市商民协会), the Shanghai Federation of Street Unions (SFSU 上海各路商界总联合会), and the Chinese Taxpayer Association of Shanghai's International Settlement (CTA 上海公共租界纳税华人会) (Xu 2001:198). Leaders of these supporting groups gave a public endorsement for the preservation and development of native medicine, defending its value as a useful body of healing methods and deploring its recent crisis as yet another example of the harsh impingement of Western influences. They also sent telegraphs to urge Nanjing to dismiss the Central Board of Health's radical proposal (National Federation of Medical and Pharmaceutical Groups 1929:30-32). By the end of the meeting, three general resolutions had been passed: the designation of March 17 as an annual "National Medicine Festival" (国医节), the establishment of the National Federation of Medical and Pharmaceutical Groups (全国医药团体总联合会) as a permanent organization, and the decision to send a formal delegation to Nanjing to petition the central government (Wen 2007:76-83).

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<sup>21</sup> The SGCC also brought its two affiliated associations, the National Federation of Chambers of Commerce (全国商会联合会) and the Association for the Protection of National Goods (中华国货维持会), which, despite their names, were under the leadership of the SGCC.

It has been pointed out that the campaign for the defense of native medicine had successfully adopted a nationalistic discourse, especially in its use of “national medicine” (国医) to designate “Chinese-style medicine” (中医) and “national drug” (国药) instead of “Chinese-style drugs” (中药) (Xu 2001:202-03; Lei 2014:109-11). Such nationalistic discourse had been regularly used by occupational and other civic groups in their political participation during the Nanjing decade. In fact, as Xu’s study of Chinese professionals during the Republican era suggests, nationalism was perhaps the only legitimate rationale when criticism of the government would be allowed under the Nationalist regime (Xu 2001:267). While I certainly agree with such analysis, I want to highlight the fact that the native physicians and their organizations were not alone in this campaign. They gained wide support from other groups in the local society, the most important of which came from the Shanghai-based merchant associations. As I have mentioned in the last chapter, part of that support had invariably come from the native drug industry, which had been traditionally tied to the practice of Chinese-style physicians. On more than one occasion, the two groups had offered mutual assistance during the late Qing and the Beiyang period.<sup>22</sup> The significance of the native drug industry cannot be exaggerated.<sup>23</sup> By the 1920s, the native drug industry had grown to be a significant sector of the country’s economy. According to a 1929 national survey, the industry had 4.6 million employees, two million farmers, and 600 thousand *mu* of farming land, with an annual sales volume of up to 96 million

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<sup>22</sup> In addition to what has been said in the last chapter, the native physicians in Shanghai had also supported the local drugstores in the latter’s objection to government regulation. In 1923, the Shanghai local authority demanded a registration fee from all native drugstores and prohibited them from selling Western-style medicine. Drugstore owners, native-style physicians, and the Shanghai General Chamber of Commerce led a successful boycott to stop the enforcement of the regulation (Qi 2013:32-34; Lu 2017:86-100).

<sup>23</sup> The problem, however, is that the native drug industry had rarely been studied by historians or even by scholars of traditional Chinese medicine. I leave it here for future research on the exact role played by the drugstores in this historic campaign.

taels (Deng 1999:336). For the government, it had also become a major source of tax revenue and international income, especially in treaty port cities like Shanghai and Guangzhou (Deng 1999:337; Tang 2001:118-19, 137-38, 218-20).

But there was another political cause behind the formation of the coalition between native physicians and the local merchant groups to defend Chinese-style medicine. In 1929, the Nationalist government in Nanjing was barely two years old, while the Nationalist Army had only recently captured Beijing and declared the unification of the country. The Nationalist Party was still readjusting its domestic policies from being a revolutionary force to being a ruling party and the corporatist scheme under which the party-state and the modern professions would interact in the following decades (as I mentioned in the previous section on modern medical associations during the Nanjing decade) had not yet been set down. What was especially at stake until then was the political future of the Shanghai merchant associations. The Nationalist Party's Second National Congress, held in 1926, had started a Merchant Movement (商民运动) that aimed at replacing the largely autonomous local chambers of commerce with party-controlled merchant associations (商民协会) (Zhu 2010). As the Nationalist Army captured Shanghai, the Shanghai capitalists and merchant groups had sought cooperation with Chiang Kai-shek, who was himself in conflict with the Nationalist left wing that endorsed an anti-capitalist agenda. In fact, Chiang Kai-shek relied heavily upon the financial resources of the Shanghai business community for his military campaigns in North China and his expulsion of the Communists. But Chiang's excessive demands for military budgets outgrew what the Shanghai capitalists were willing to offer. In response, Chiang used a series of coercive methods to force the latter to comply (Coble 1980:29-40). He put the president of the SGCC, Fu Xiao'an (傅筱庵), on the most wanted list and sent a pro-Nationalist committee to take over the Chamber. The SMA,

meanwhile, was founded by a group of pro-Nationalist industrialists and merchants in 1928. Backed by the Nationalist Party's Shanghai headquarters, it was in fierce competition with the SGCC for the leadership of the business community (Zhu 2010). Thus, the Nationalist Party's Third National Congress, being held in the same month as the campaign for native medicine, was a critical moment for laying out its policy on state-society relations and, especially, for the future of the competing camps from the Shanghai business community. Under such circumstances, public endorsement for traditional Chinese medicine was not only a matter of supporting the local medical community and the native drug industry but also—and perhaps more importantly for the SGCC—a pledge of political allegiance to the new Chinese state. In other words, the merchant groups that sent representatives to the Chinese-style physicians' 1929 convention were also using that occasion to vie for their political legitimacy and for the support of the native medicine community in return. It was to this common cause of protecting their legitimate status under the Nationalist regime that the Chinese-style physicians again found a mutually beneficial coalition with the more influential and more resourceful merchant groups.

### **5.3.3 Division within the Nationalist government**

The immediate outcome of the 1929 rally in support of Chinese-style medicine was its decision to send a five-member delegation to Nanjing to petition the new regime's top political leaders, since the Nationalist Party's Third National Congress was in session. The delegation was led by Xie Guan, former dean of the Shanghai Technical College of Chinese Medicine and a well-esteemed scholar beyond medical circles (Scheid 2007:377-83). The other four members were Chen Cunren and Jiang Wenfang, the two young organizers of the assembly, Sui Hanying (隋翰英), a representative for the native medicine community of Nanjing, and Zhang Mei'an

(张梅庵), representative for the Shanghai native drug industry. They were accompanied by several other prominent members of the native medicine community, including two nationally acclaimed physicians, Zhang Jianzhai (张简斋) and Lu Zhong'an (陆仲安), and the other young champion of the campaign, Zhang Zanchen. The delegation's lobbying efforts in Nanjing were well documented by Chen in his memoir (2000:122-40). According to his account, the general strategy adopted by the delegates was to leave aside the ministerial-level agencies, such as the Ministries of Health and Education, and petition directly to the top-level statesmen of the central government and the Nationalist Party. Thanks to the personal reputation and connections of the senior delegates, this strategy worked well. In fact, it turned out to be so successful that the list of personages that the delegation visited in Nanjing read like a who's who of the supporters for native medicine among the top echelon of the Nationalist political circles. Among them were Tan Yankai (谭延闿), president of the Executive Yuan (i.e. the premier), Yu Youren (于右任), president of the Control Yuan (i.e. chief government auditor), Dai Jitao (戴季陶), president of the Examination Yuan, Lin Sen (林森), vice president of the Legislative Yuan and would-be nominal head of the state, Jiao Yitang (焦易堂), chairman of the Organic Laws Committee of the Legislative Yuan, and Ye Chucang (叶楚傖), general secretary of the Nationalist Party's Central Committee. All these senior statesmen expressed their personal endorsement for Chinese-style medicine, some even consulted the delegates for their own health issues. The most crucial moment took place when the delegation was able to arrange a brief meeting with Chiang Kai-shek in person. Although Chiang was not as much a supporter of native medicine as those mentioned above, he assured the delegates that he would give orders to forestall its abolition—which he did. Thus, when the delegates finally had the opportunity to speak with the Minister of

Health, Xue Dubi, they were received with more hospitality than they could have expected—Xie and Chen were even officially invited as advisers to the ministry.

The campaign's successful mobilization of support from sympathizers among senior-level political figures actually revealed an internal division within the Nationalist government over its attitude towards native medicine. This division would come to the surface over and again in the course of the 1930s when the struggle for the legitimate status of native medicine moved from a popular campaign led by the practitioners to a prolonged contention within the Nationalist government. Roughly speaking, there emerged two types of internal division among the politicians and policymakers (Croizier 1968:134-35, 144-45). The first was among the senior-level politicians, who were themselves split between those highly supportive of Chinese-style medicine, those determined to oppose it, and those whose stance was somewhere in between. The second type of division occurred between the senior-level politicians and the ministerial-level bureaucrats. That is, whereas the former were divided in their opinions, the latter—especially those in the Ministries of Health and Education—were almost unanimously opposed to native medicine. The fact that the Nationalist Party's most powerful leader, Chiang Kai-shek, was not personally devoted to either side was probably one major reason that this internal division would ultimately grow into a lengthy political contention that would not be resolved even after the Second Sino-Japanese War (Wen 2007:179-86). Consequently, what one finds in the 1930s was, on the one hand, one group of senior (both in terms of their age and their status) politicians who raised various bills for the official recognition and institutionalization of Chinese-style medicine and, on the other hand, another group of equally well-established politicians who repeatedly turned down such bills, advocating instead for the abolition of native medicine (Deng 1999:307-14). The most prominent members of the first group included, among

others, Tan Yankai, Jiao Yitang, Chen Lifu (陈立夫), Chen Guofu (陈果夫), and General Feng Yuxiang (冯玉祥); while the second group was led by Wang Jingwei (汪精卫), one of the most powerful figures in the Nationalist Party and the premier of the government between 1933 and 1935, and Chu Minyi, the French-trained physician-politician. Outside of the top political circles, the Chinese-style physicians and their associations continued to be an important lobbying group, launching several other petitions during the rest of the 1930s (Wen 2007:83-94). Meanwhile, the hardliners against native medicine were backed by the staff of the Ministries of Health and Education as well as by all the major associations of modern medicine, such as the NMA and the Shanghai Physician Union. To what extent such polarization of stance reflected the actual ideational differences among Nanjing's political leadership was hard to verify. It is possible that this apparent division over Chinese-style medicine was yet another manifestation of the underlying political factionalism that had plagued the Nationalists throughout this period. For the purpose of this analysis, suffice it to say that it was largely this struggle within the political realm that had open up the space for the survival and institutionalization of Chinese medicine, especially at a time when medicine and health had increasingly become part of the state building process.

#### **5.3.4 Institutionalization of Native Medicine**

The campaign to save native medicine and the contention within the Nationalist government finally led to a long and arduous process of professionalizing Chinese-style medicine. That process had already begun in the 1900s and 1910s when practitioners of native medicine started their own medical societies, published their own journals, and organized their own training programs. What happened since the 1930s, however, was the reorganization of native medical

knowledge according to modern, scientific principles, the government regulation of native medicine practices, and the incorporation of native medicine into the corporatist model of the Nationalist party-state.

The first major milestone in this process was the Institute of National Medicine (INM 中央国医馆), established in March 1931, precisely two years after the 1929 campaign. Led by senior Nationalist statesman Jiao Yitang (焦易堂) and joined by several leading Chinese-style physicians, the INM was a semi-official institution for the advancement of Chinese-style medicine. In other words, it was organized as a government-supported academic body that should comply with the corporatist policies of the Nationalist regime.<sup>24</sup> Its main objective was to re-organize all variants of native medicine into a systematized body of scientific knowledge, otherwise known as the “scientization of Chinese medicine” (Lei 2014:142-47). This was an important step for transforming native medicine into something that would at least resemble a modern profession in terms of its disciplinary organization. By the mid-1930s, some initial progress had already been made: the formulation of a general disciplinary standard and the specification of individual subfields (编订学术标准大纲), the unification of Chinese-style medical terminology for diagnoses (统一中医病名), and the compilation of Chinese-style medicine textbooks and reference works (编审中医教材和标准著作). The first of these was especially notable, since it created a disciplinary structure—such as the differentiation between theoretical foundations and clinical applications—that can be used for teaching and research purposes. But the work of the IMN was not without its critics (Lei 2014:151-164). It generated as

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<sup>24</sup> At the same time, the National Federation of Medical and Pharmaceutical Groups, a direct organizational outcome of the 1929 campaign, had been closed down by the government because it did not comply with official guidelines (Wen 2007:85).



much controversy among the native medicine communities themselves as among practitioners of modern medicine. Many had serious doubts over the feasibility of turning Chinese-style medicine into a scientific discipline; some even deplored the efforts of the IMN as “neither donkey nor horse” (Lei 2014:162). Nevertheless, the INM moved on with its scientization project and managed to expand itself through provincial and local branches (Wen 2007:86-89).

Since the INM was mainly an academic institution, it did not have any administrative authority over the regulation of native medicine. This left the regulatory issues to additional rounds of contention among the Nationalist policymakers (Wen 2007:90-94). In 1933, three years after the enactment of the *Regulation for Western-style Physicians* (西医条例), a motion was put forward before the Nationalist Central Political Council (中央政治会议) for the promulgation of an equivalent regulation for Chinese-style physicians and for granting the INM with regulatory authority. The motion was co-signed by twenty-nine members of the Council, including the mayor of Nanjing, Shi Ying (石瑛), the director of the INM, Jiao Yitang, and one of the main opponents of native medicine, Chu Minyi. Jiao's other role as chairman of the Organic Laws Committee of the Legislative Yuan enabled him to have the draft of the regulation approved by the legislative process. But objection from the administrative branch of the government, led by Premier Wang Jingwei, left the regulation shelved for almost two years until it was finally implemented in early 1936 (by which time Wang had left office after barely surviving an assassination). The irony, however, is that while this new piece of regulation was essentially a slightly revised version of the unimplemented 1922 regulation by the Beijing government, this time it was applauded by the native medicine communities as another milestone in obtaining official recognition of their practice. Just like the 1922 draft, the 1936 regulation granted the Ministry of the Interior the authority to license and regulate Chinese-style medical

practice. In the same year, the NHA, then a semi-independent agency under the Ministry of the Interior, announced further guidelines on the registration of Chinese-style physicians (中医审查规则). In 1937, a semi-independent Committee for Chinese Medicine (卫生署中医委员会) was set up under the NHA as the top regulatory agency for native-style medicine (Wen 2007:100-02). Chen Yu (陈郁), vice director of the INM, was elected as its first chairman.

In this way, by the late 1930s and early 1940s, the legal and institutional status of Chinese-style medicine was finally put on the same footing as that of modern medicine. One remaining problem for the development of native medicine was its training programs. Since the *Regulation for Chinese-style Physicians* (中医条例) took a credential-based approach on the licensing of practitioners (the testing alternative was not put into place until 1946), it would be rather impractical unless the Ministry of Education also recognized the legal status of Chinese-style medical programs. This was finally resolved in 1939 when the Ministry of Education announced a standard curriculum for Chinese-style medical schools and began officially recognizing their legal status (Wen 2007:118). Yet, the Nationalist government offered little actual support for Chinese-style medical education: of all the training programs covered in Deng's (1999) extensive survey of the field, I have found no equivalent to the public or national programs for modern medicine. Most of the training programs for native medicine had been organized by eminent physicians on themselves or with the support of the local native drug industry. In fact, once the Nationalist regime was reinstated in most parts of the country after the war, the Ministry of Education began enforcing further restrictions on the organization of such programs (Wen 2007:119-21).

## **5.4 Conclusion**

Before the Nationalist era, as the last chapter has shown, the field of medicine in China was characterized by the lack of state engagement and the fragmentation among different communities of medical practice. However, the founding of the Ministry of Health in 1928 turned out to be a turning point. It was the beginning of a ministerial-level technocracy that would continue to shape, if not determine, medical and health policymaking in China until today. Once the Western-educated medical modernizers were put into central office and health administration was given a semi-autonomous status within the state bureaucracy, an ambitious package of state building and professionalization projects followed. In this chapter, I have provided an account of the diverse institution-building efforts championed by that technocratic leadership and the difficulties, struggles, or conflicts involved. In fact, the institutional and professional achievement of the medical reform was just as impressive as the judicial reform before it. Within less than a decade, the rudiments of a multilevel national public health system had been created from scratch. First, several central-level health institutions were established, which then served as the organizing hub and technical training camp for a whole army of medical and health professionals that were dispatched to provincial- and municipal-level outposts. And, for the first time, direct state support was granted to medical programs at national and public universities, which started to challenge the dominance of medical programs run by the missionaries. State regulation of medical practice and practitioners was finally implemented, while the status of the leading medical association was confirmed through the formation of a revolving door between top health policymakers and the leadership of the medical profession.

More importantly, the contrast between the medical reform of the 1930s and the judicial reform of the 1900s also makes an interesting case for theoretical consideration. For one thing, the building of a public health system and the state support for the medical profession were not driven by a political rationale. The sudden rise of the Anglo-American trained physicians into central-level health office was, as I have suggested earlier, an outcome contingent on personal contacts, political transactions, and appointment decisions made at short notice. After all, the initial appointees to the Ministry of Health—or to the Ministry of the Interior as well, for that matter—were chosen by the Nationalist political leadership as a balancing strategy between various factions and generals. In other words, the central health agency was not accorded with high political status and, therefore, was left to technocratic control. Moreover, while the general political agenda of national reconstruction and industrialization had provided a favorable environment for medicine- and health-related state building during this period, the support that the medical modernizers were able to summon from the political realm was far from absolute, as reflected in the struggle over the legitimate status of traditional Chinese medicine. Crosscutting political turf wars within the Nationalist Party, the confrontation between modern medicine and indigenous medicine ultimately led to official state recognition of the latter, much to the dismay of the medical leadership. Henceforth, traditional Chinese medicine went through a slow process of imitative professionalization on its own, withholding a separate domain of practice from both Western medicine and modern public health.

The other characteristic that had distinguished the building of a modern public health system in China was its continued reliance on foreign support. In comparison to the judicial and legal reform, which employed foreign experts in the drafting of new statutes, the institutions and the personnel for state medicine was dependent on much closer cooperation between Chinese

technocracy and foreign advising organizations, which included international government organizations like the League of Nations Health Office and private charity groups like the Rockefeller Foundation. The cross-border diffusion of knowledge practices was carried out not merely through codes, textbooks, and curricula; it was made possible both through the investment of foreign expertise and funding to their China programs and through the selection of Chinese personnel for advanced training in the West. Moreover, the process of diffusion went beyond imitating any existing foreign model: the prestigious medical training programs of an earlier decade were supplemented with experimental programs targeted at the community and the countryside, the high-minded elitism of medical professionalization was replaced with a more realistic understanding of the predicament of Chinese society. The rise into power of the Anglo-American camp also meant the changing relationship between the two main origins of external input, with the Japanese- and German-trained physicians losing much of their influence over medical professionalization or health policy. It was in this regard that one finds not the localization of one single, dominant foreign professional model, but the competition, hybridization, and adaptation of several models.

## **Chapter 6 Conclusion**

### **6.1 Summary of Research Findings**

In an age that has been accustomed to the prevalence of professional service and expert labor, it is perhaps all too easy to forget that the modern professions as they are known today did not come into existence until the last two hundred years. Moreover, the professions in different parts of the world had not been founded concurrently or upon similar social grounds, although their resemblance in self-designation and organizational format may delude one into the belief of a universal standard for professionalism. To better understand the social dynamics that had turned the professions into what they are today, the focus of the preceding chapters has been on their historical emergence in the late-developing countries of the non-West. In particular, I have delved into the formative decades for the modern legal profession and the modern medical profession in China. By broadening my analytical scope to include both the relevant government institutions and the private practices—that is, both jurists and lawyers, public health experts and physicians—my objective is to provide a comparative historical analysis of institutional transplantation, with a pair of cases from the same national-cultural background and situated in the same historical-political context. Theoretically, the aim of this dissertation is three-fold: the dynamics of cross-cultural institutional diffusion, the impact of diffusion on professionalization, and the transition from old modes of social organization to new ones—after all, legal work and medical work, among other knowledge-based practices, had existed in China long before the ascent of their latest incarnations.

The apparent trend that this research has so far documented is the introduction of modern law and modern medicine to China as organizational replications of their precedents in the West

or in Japan. It has been shown that a whole set of professional institutions originating from the West or from Japan had been transplanted to China between the turn of the twentieth century and the mid-1930s. These institutions covered the four interrelated organizational aspects of a typical modern profession: professional education and research (the academic aspect), professional association and autonomy (the associational aspect), licensure and state regulation (the regulatory aspect), and the growth of professional expertise inside the government (the bureaucratic aspect). In other words, both the Chinese legal profession and the Chinese medical profession of the early twentieth century had not grown out of the long traditions of imperial law or traditional medicine; instead, they were the products of cross-national institutional diffusion. Their emergence had depended upon a host of institution-building initiatives—both public and private, both Chinese and non-Chinese—that had aimed at the imitation of a particular set of foreign organizational models. This is the more obvious dimension of the social process that I have called “imitative professionalization.”

Underneath this overt similarity in institutional format, however, were distinct social forces that had stood out as the main agent for imitative professionalization. The creation of a modern judiciary and legal practice in China had been primarily driven by the projects of state building. That initially arose out of a severe political crisis that had led the Qing into an overhaul of its state bureaucracy. As part of that effort for government reorganization, a modern judicial system following the Japanese model was planned and organized by the central government. Consequently, most of the judicial and legal institutions were built in a top-down approach, with the higher-level state agencies holding the leadership and authority over the bureaucratization of a multi-level court system, the regulation of judicial personnel, and the policies over legal education. The Chinese bar was established only later in that state building process, partly as a

result of a burgeoning market in legal education. It had since then been kept under close state scrutiny and mostly deprived of its professional autonomy. The Chinese law professors, for their part, did not emerge as a scholarly community until an ambitious Nationalist government started to consolidate the judicial and legal field under the party-state.

Such a highly bureaucratized form of professionalization and the absolute state dominance over private practice were in sharp contrast to the professionalization of modern medicine. In so far as the Qing's state building initiative was concerned, the development of biomedicine had been limited to military use and epidemic control. Yet, it was primarily through the expansion of the Anglo-American medical profession—missionary medicine in particular—outside the purview of the Chinese state that the institutional ground for a modern Chinese medical profession had been prepared, with formal medical training programs, hospitals and dispensaries, autonomous medical associations, meetings, publications and even medical research. Moreover, private initiatives did not stop at that. Since the late 1920s, the medical modernizers, with the support of international health organizations and charity groups, succeeded in capturing the government's central health agency and expanding their professional project into the state building agenda for a national health system. Even as the Nationalist regime moved increasingly towards corporatism, the Chinese medical and health experts managed to maintain much of their technocratic autonomy and opened up new careers in public health administration.

On the other hand, when the practices and organizations of a modern profession were first being transplanted to a new host society, they were likely to be constrained by the preexisting social conditions and by the long-standing native practices. This was especially so when the legitimacy and social status of the latter were at stake. In fact, one of the Qing's first steps in building a modern judiciary was the co-optation, retooling, and reappointment of elite



jurists from the old imperial judiciary. Since there had been no organized legal practice independent of the state, that essentially eliminated any potential resistance from the traditional practitioners of law. In addition, as veteran officials and old-school jurists were provided with opportunities to acquire at least partial training in modern law, they, in turn, facilitated the institutional transition to the new judiciary. By the Nationalist era, even as the lower-level courts were still under construction, the jurisdictional monopoly of modern law had been well-established.

In the case of the modern medical profession, the preexisting social terrain into which they had trodden was quite different. Elite physicians of traditional Chinese-style medicine had long practiced outside the purview of the imperial state and had enjoyed firm support from the local society. As they were promoted into reaction by the new institutions of medical education and medical regulation, they began to ally themselves through a nation-wide network of local medical societies. Their extant organization and their strategy of resorting to public campaigns won the native physicians much wider social and political support than the traditional legal experts could possibly mobilize. By the early 1930s, practitioners of Chinese-style medicine had triumphed in the defense of their social legitimacy and legal status, even against the bitter opposition from the central-level health administrators. To further secure their jurisdictional status vis-à-vis the modern physicians, they too started to adopt professional institutions such as formal training schools and a registration system. In other words, the jurisdiction of medical practice in China had been divided between modern and native physicians.

## **6.2 Additional Cases of Imitative Professionalization**

As I mentioned earlier, the professionalization of law and medicine in early twentieth-century China were, in certain respects, two extreme cases. Few other domains of expertise—perhaps except for the military and higher education—had been accorded such a political priority as the building of a modern judicial system. And few other programs of modern, or quasi-modern, education had been half as crowded as the *fazheng* programs of the day. To a large extent, that combination of political priority and occupational or career prospects had made the judicial and legal professions *the* benchmark for all other Chinese occupations to emulate. On the other hand, few modern enterprises—perhaps with the exception, again, of higher education—had received so much and so consistent external support as modern medicine: the Christian missions, the Rockefeller's, the League of Nations, and the numerous foreign institutions that had helped train Chinese physicians and public health experts. It is no wonder that by the 1940s, the Chinese public health experts had become a rather internationalist group, such that, after the Communist takeover of the mainland, quite a number of them would move onto a career in international health organizations.

### **6.2.1 Other Chinese Professions**

Most other emerging professions in early twentieth-century China had fallen somewhere in between. That is, they had grown up with varying mixtures of half-hearted government consent and inconsistent external support. In the space below, I provide a broad-stroke sketch of two such examples: accounting and architecture. In several ways, the rise of modern accounting in China can be compared to that of modern law, except that no sweeping reform had been brought to the government's financial bureaucracy with a high level of political exigency. Architecture,

on the other hand, was more similar to medicine, in which private initiatives had long predated any serious attempt of government regulation or state building. In both accounting and architecture, however, professionalization took a lot longer to materialize. While the first Chinese students of modern accounting and architecture had been trained in Japan at about the same time as their peers in law or medicine, they were only beginning to enjoy the status of a recognized profession since the 1930s, with very few formal training programs (especially at the university level), a much smaller constituency of licensed practitioners, and belated adoption of government regulations. Their relationship with traditional practices was another matter worth consideration. In both accounting and architecture, the encounter between the modern and the traditional had turned out to be much less radical than what had happened in the field of law or medicine. Modern Chinese public accountants had to cater to the needs of a business world still dominated by traditional methods of bookkeeping. They were also divided, internally, between an agenda for aggressive Westernization and one of a gradual, revisionist nature. Chinese architects, meanwhile, had not been bothered with traditional practices at all. Instead, they tried to re-interpret native architecture as a stylistic version of Chinese nationalism, which turned out to be highly effective in winning their social legitimacy and clientele.

### Chinese Accounting

As in the case of medicine, late-imperial China was home to several indigenous bookkeeping methods that had served a plethora of organizations including the imperial government and the cross-regional operations of native banks (Guo 1982; Gardella 1992). Modern accounting was introduced, in the nineteenth century, with the arrival of Western business enterprises, the foreign-financed railroads, and the British control of the Imperial Maritime Customs Service. But

it was not until the late 1900s that the first Chinese students of modern economics, finance, and accounting were trained, mostly in Japan<sup>1</sup> or in the US.<sup>2</sup> Recruited by the civil examination held for returnees, they were immediately appointed to key positions in the Qing's new Ministry of Revenue (度支部) or the Great Qing Bank (大清银行). Yet, the Qing's official efforts on fiscal and accounting modernization had yielded much less achievement than its judicial reforms, partly because of the dearth of financial and accounting students and partly due to the highly decentralized nature of its fiscal system (He 2013). The situation continued well after the founding of the Republic, despite the addition of a few new institutions. In 1912, the Ministry of Finance (财政部) was joined by a new Audit Office (审计处) and the accounting department of the Ministry of Communications (交通部); together the three formed the core of fiscal and budgeting expertise at the central government (Zhao 1996:1-58).<sup>3</sup> In 1914, Beijing released the

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<sup>1</sup> Among those who would rise to key technocratic positions in the fiscal and audit agencies of the early Republican government were Wang Jingfang (王璟芳), Qian Yingqing (钱应清), Tan Lisun (谈荔孙), Yang Ruimei (杨汝梅), Wang Zhichang (王治昌), and Xie Lin (谢霖).

<sup>2</sup> In fact, Chen Jingtao (陈锦涛), the first Chinese who received a PhD in economics from the US, was a classmate of Wang Chonghui (王宠惠) at Beiyang (Tientsin) University. Both Chen and Wang were sent by Beiyang in 1901 to the US for further studies and both got their PhDs from Yale. Once back in China, Chen was employed by the Ministry of Revenue and participated in various roles for the fiscal and banking reforms during the last years of the Qing. He was made the first Minister of Finance when the Republic of China was founded in 1912. Wang, who had spent the 1900s mostly abroad, was appointed the first Minister of Justice. Liu Ruiheng (刘瑞恒), who would become China's first Minister of Health in 1928, was also a graduate of Beiyang. He was sent to the US in 1906 and was among the first Chinese who got a medical PhD (Harvard) from the US. Liu worked at various medical institutions before he was recommended for the chief government position in public health. This brief comparison reveals that in both law and finance the earliest Chinese students with PhD degrees from prestigious American universities were immediately employed by the government upon their return, whereas those who studied medicine had to start their careers with private practice or foreign employment. During the late Qing and early Republic period, few government positions were available for medical graduates, except in the military.

<sup>3</sup> The Ministry of Communications was put in charge, among other matters, of the accounting reforms in the four main public utility services: railroads, power, postal service, and shipping (Guo 1982).

first Chinese *Accounting Law* and the *Standard Government Accounting Methods* (China Accounting Society and Second Historical Archives of China 1990:30-35, 543-70). Both the Ministry of Finance and the Audit Office had organized small in-house training programs to train their staff. Yet, there was nothing like the building of a multilevel court system or the widespread fervor for legal education.

Limited in their own scale, the government accounting reforms had little impact on commercial accounting. It was two other institutional developments that introduced modern accounting and modern accountants to the Chinese private sector: the reforms of the modern banks and the promulgation of the *Company Law*. During the 1910s, first the Bank of China (formerly the Great Qing Bank) and then the Bank of Communications hired the Japanese-educated banking specialist Xie Lin (谢霖) to modernize their accounting systems. Xie's success at the country's two biggest modern banks eventually led to the adoption of Western accounting methods by the whole modern banking industry (Xu and Xu 2008). Meanwhile, Xie himself emerged as the leading advocate for public accountancy. In 1918, his proposal for the official recognition of public accountants received prompt approval from the Ministry of Agriculture and Commerce (农商部). Upon his further advice, the *Provisional Regulation of Public Accountants* (会计师暂行章程) was promulgated in the same year and Xie became the first licensed public accountant in China. Yet, even with official recognition, the growth of the accounting profession was extremely slow in its first decade: only thirteen licenses were granted by 1921 and fewer than three hundred by 1927 (Pan 1934). In both 1923 and 1925, the Beijing government had to lower the qualification requirement to encourage more application.

One apparent reason for the slow growth of public accountancy is the underdevelopment of modern business education in China. While Western bookkeeping methods had been taught at

in-house training programs at the central government or the modern banks, or by local business academies (商科学堂), the first college-level accounting course was not offered until the 1910s, at Peking University. The first accounting departments did not emerge until 1921, when both Fudan and Southeastern, two Shanghai-based universities, launched their accounting programs. By 1935, there were only twenty-four universities or colleges that had a business school or a business department, which presumably offered accounting courses; the overall enrollment was around 3,000—not much larger than the size of medical education at the time (Cheng 1935).

On the other hand, there had been an insufficient amount of demand for the public accountant's work, especially given the fact that most Chinese businesses were still using indigenous methods of bookkeeping. Since the *Provisional Regulation* of 1918 made no task area the exclusive domain of the public accountant, much of their early commissions had come from non-accounting requirements stipulated by the Chinese *Corporation Law* (公司律): the registration of new businesses, the registration of trademarks, and the change of a business's legal status (Fu 2008; Wei 2009). Throughout the 1920s and 1930s, public accountants made persistent efforts to expand and consolidate their jurisdiction. For instance, among the very first petitions raised by the Shanghai Institute of Accountants (上海会计师公会), after its founding in 1925, was to make the participation of the public accountant a mandatory requirement for corporate governance (Wei 2009). They also lobbied the government to make all bankruptcy liquidations their exclusive domain of practice, so that neither lawyers nor foreign accountants should be authorized to provide these services any longer (Fu 2008). Another important domain of expertise for the public accountant was in the preparation and verification of tax documents, especially as the Nationalist government began collecting sales tax in 1932 and income tax in 1936 (Lin 2006; Fu 2008). Meanwhile, Chinese public accountants also set out to educate the

indigenous business community as well as the general public about the benefits of adopting a Western-style bookkeeping system. However, they were divided, among themselves, between a thorough adoption of Western standards or a modification of traditional bookkeeping as a first step (Wei 2012).

Finally, in the 1930s, with the specialization of government accounting agencies and accounting personnel, the adoption of a corporatist regulatory framework, and the apparent unification of the field under an officially sanctified national society, the Chinese accounting profession moved increasingly in the same direction as law. The main drive for this new development was brought about by the Nationalist state building agenda: an independent Directorate General in Budget, Accounting and Statistics (主计处) was created in 1931 to take over the budgeting function from the Ministry of Finance, while the Audit Office (审计部) was separated from all ministerial-level authorities (Zhao 1996:62-78). Since 1933, the advanced-level civil service examination had included a special section for accounting and audit personnel, which made licensed public accountants eligible to apply (中国会计史料选编). Meanwhile, like the Chinese bar, local accounting associations were reorganized as occupational trade unions, and a national federation of all local accounting associations was established and headquartered in the capital. However, Chinese public accountants successfully challenged the requirement that all licensees join the Nationalist Party (Lin 2006). Two scholarly accounting societies were launched in the mid-1930s: the Society of Accounting Administration (计政学会) and the China Accounting Society (中国会计学社). Like the China Law Society from the same period, the China Accounting Society was a quasi-official entity that would both unite and oversee the various subsections of the accounting professions—government accounting officials, public

accountants, and accounting academics. But a recent analysis of its make-up and leadership clearly suggests that it was overwhelmingly dominated by the officials among them (Wei 2010).

### Chinese Architecture

The rise of architecture as a specialized field of expertise in China was a twentieth-century story.<sup>4</sup> In the past, since traditional Chinese buildings were typically based upon wood structures, it was the work of the (grand) carpenter to do both the designing and the construction. The design of Chinese houses was carried out in modular units, as measured by the number of columns, their heights, and the distances between them (Ma 1991; Zhang 2010). It also took into consideration the divinatory aspects of the environment—otherwise known as Chinese geomancy. Such building knowledge had been mostly passed down through individual master-disciple relations and had left few written texts except ritual manuals like the *Luban Jing* (鲁班经) (Ruitenbeek 1996; Chen 2010). As craftsmen, carpenters were, in general, illiterate and of a low social status (Yu 2012; Moll-Murata 2018:293-319). They were organized through local guilds and their practices varied across regions (Bradstock 1984; Zhao and Deng 2001). As Western-style buildings became increasingly popular in the urban areas, some of these traditional Chinese carpenters started to learn Western building techniques under a foreign apprenticeship or on their own (Lou and Xue 2004; Wang 2011). Reinventing themselves as modern-style builders, these carpenter-turned-builders set up construction companies (营造厂) and drafting offices (打样间) to reap profits from the booming real estate markets of the Chinese metropolises. In the meanwhile, traditional carpenter guilds began to transform themselves into

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<sup>4</sup> So far, the most comprehensive scholarly treatment of the topic is Lai et al. (2016), which is largely based upon the earlier publications of its various contributors.



trade unions, the best-known example of which was the Shanghai Builders' Association (上海市建筑协会), which existed during the 1930s (Qian 2011).

Yet, the carpenter-turned-builders were not the driving force for professionalization. Their artisan background and lack of formal education made them an unlikely candidate for transplanting a knowledge-based practice from foreign origins. Two other groups emerged as leaders of the Chinese architectural field: Western-educated civil engineers and students with a formal education in modern architecture (Wang and Xu 2004; Lu 2009). The first of these was the direct outcome of the Qing's earliest studying abroad programs, launched in the 1870s to train engineers for its nascent modern army and navy, and, later on, for its fledging modern industries like mining, railroads, and telegraph (Bastid-Bruguière 2013). By the end of the nineteenth century, academies of industry (实业学堂) had been set up in a number of Chinese locations, often with the assistance from foreign instructors. Yet, architectural training was not among the priorities of these early engineering and industry programs. Many Chinese civil engineers had picked up building design at the request of their projects, not out of their training. And their designs were often found to be based upon the close imitation of foreign styles and exemplars (Lu 2009). This began to change in the 1900s and 1910s when more than a few dozen Chinese students received a formal architectural education in Japan, especially from the Tokyo Higher Technical School (Xu 1991). In the following decade, another group of students, many sponsored by the Boxer Indemnity Fund, enrolled in American architectural programs, which had by then been dominated by the Beaux-Arts paradigm. The University of Pennsylvania alone had attracted over twenty Chinese architectural students between 1918 and 1927 (Lai 2007:131-43). As a result, during the 1920s and the 1930s, as these Japanese-, American- and, in some cases, European-trained students of modern architecture returned home and opened up their own

practices, they became the first generation of professional architects in China. They were eager to establish themselves professionally.

The Chinese architects' professionalization project progressed along two lines: the creation of architectural programs at the college or university level and the formation of architectural societies. Their general strategy was to distinguish themselves from traditional Chinese builders by emphasizing the scientific nature of modern building designs while, at the same time, contrasting themselves against civil engineers by highlighting their artistic sensibilities and stylistic sophistication (Li 2004). The first Chinese architectural program was founded, following the Tokyo model, in Suzhou in 1923. By the mid-1930s, four other college-level programs had been launched, although some had failed to survive more than a few years. These programs were typically small, and their curriculum varied from the Japanese, the American, to the French style of training, reflecting the different educational backgrounds of their faculties (Qian 2006; Zhang 2011). Eventually, the program at the National Central University became the leading model of the discipline and its Beaux-Arts curriculum was officially recognized by the Ministry of Education as the national standard. In the meanwhile, the Shanghai Society of Architects emerged in 1927 as the first professional association in architecture, which soon renamed itself the Society of Chinese Architects (中国建筑师学会, SCA). Organized mainly by US-trained returnee architects, the SCA was adamant in promoting the public visibility of the architectural occupation and in setting up standards for architectural practices (Qian 2011:107-31). However, the SCA's membership was extremely small and locally based; nor were its professional standards endorsed by the central government.<sup>5</sup> A second and more scholarly-orientated organization, the Society for Research in Chinese Architecture

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<sup>5</sup> See *Shiye gongbao* (实业公报), No.148&149, p.15-16.

(营造学社), was founded in 1929, which brewed the first generation of Chinese architectural historians (Yan 2016). What provided the Chinese architects with an unprecedented opportunity for social recognition was the Nationalist government's national reconstruction projects since the late 1920s, especially the ceremonial buildings that called for a highly symbolic design to convey a proper political connotation (Rowe and Kuan 2002; Lai 2007) and the multiple urban planning programs launched by ambitious municipal governments (Cody 1996; Wang et al. 1999). This gave rise to a number of high-profile projects known for the classic Chinese elements in their design. Yet, at least until the end of the 1930s, the Chinese architects never seriously challenged the social legitimacy and market position of the carpenters, the builders, or the civil engineers—or, for that matter, the foreign architects in China (Zheng 2014).

On the other hand, regulation of building practices and practitioners was of little concern to the authorities in imperial China, except for the construction and maintenance of royal residences and tombs (Moll-Murata 2018:69-108). Building regulations first emerged at the local level when Western models of municipal administration were introduced through the treaty ports or the brief foreign occupation of Tianjin and Beijing (Lai 2007:25-84; Tang 2009). At the central level, the Qing's new Ministry of Police (and, its successor, the Ministry of the Interior) had included a Department of Buildings (工筑科/营缮司). Yet, few of the early regulatory efforts were aimed at the practitioners of building activities.<sup>6</sup> By the 1920s, a new wave of municipal administration was ushered in by Western-educated civil engineers and students of administrative sciences. This technocratic model of municipal administration—often with a bureau of public works (工务局) to oversee road and building matters—first began in the

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<sup>6</sup> For an overview of the building regulations during the late Qing and early Republican period, see Fan (2014).

Nationalist-controlled city of Guangzhou and soon spread to other major cities as the Nationalist army conquered the country. It was against this historical backdrop that the first municipal ordinance over building practitioners was released by the Municipality of Shanghai in 1927, in which architects became an officially recognized category of technical experts (Wang et al. 1999). It was followed in 1929 by the *Technician Registration Law* (技师登记法), which granted the central-level regulatory authority to the Ministry of Industry (实业部). In turn, the Ministry of Industry ordered each municipality to have its own regulation over the practice of registered technicians. Thus, by the early 1930s, quite a few municipal governments had followed the example of Shanghai in implementing their own ordinances on engineers, architects, and builders (Fan 2014). However, it was not until 1938, with the reestablishment of the Department of Buildings (营建司) under the Ministry of the Interior, that several important national regulations—such as the *Architecture Law* (建筑法 1938), the *Urban Planning Law* (都市计划法 1939), the *Regulation for the Building Industry* (管理营造业规则 1943), and the *Regulation for Architects* (建筑师管理规则 1944)—were announced in the midst of the Sino-Japanese War (Li 2013). It should be mentioned that the inaugural director of the Department of Buildings was the architect Ha Xiongwen (哈雄文), a Penn-educated member of the SCA.

### **6.2.2 Professions in Meiji Japan**

Since the professions in China had borrowed much of their inspiration and organization from Japan, one might naturally wonder how well the Chinese cases of professionalization resemble those of Japan. Japanese law and Japanese medicine, for instance, had gone through a tumultuous period of transformation during the second half of the nineteenth century. By the

early twentieth century—that is, by the time Chinese students flocked to Japan for modern education—both law and medicine had already emerged as well-established modern professions. A brief discussion of the two Japanese cases will reveal that, indeed, the two countries—Meiji Japan and early twentieth-century China—were similar in at least two important socio-political respects. First, both were faced with a serious regime crisis at the beginning of their respective time period. The early Meiji government, like the late Qing court, was faced with the threat of Western powers on the one hand and a weakening control of local administration. In response, both would resort to a far-reaching reform program from the top, hoping to build a centralized modern state and (re-) establish the authority and administrative capacity of the central government. Second, the rise of the modern professions in both countries had relied upon a concurrent expansion of modern education, which would not have been possible without a high volume of cross-border interaction—especially the assistance of foreign experts and resources. In that sense, studying abroad and hiring foreign advisers were common strategies for both countries as they began to accumulate various kinds of expertise of Western origins. Yet, as I will explain in more detail below, the Japanese cases are remarkable in the early onset of centrally planned state building. In both fields, the paths to a modern profession had been charted out in the late 1860s and early 1870s, almost immediately after the political success of the Meiji Restoration. Even though private medical programs had preceded that by a few years, they were soon incorporated into a modern education system topped by the public universities. By the turn of the twentieth century, when Japanese political reforms were consolidated in the release of the first Japanese constitution and the convening of its first Diet, the professional institutions for law and medicine were also reconfirmed by a series of parliamentary deliberations and legislation, something that the Chinese would finally be able to do in the 1940s.

## Japanese Law

The termination of Japan's self-isolation by American gunboats in 1853 and the subsequent opening up of the country through a series of international treaties had given rise to tremendous social and political turmoil that ultimately ended the Tokugawa government. After the restoration of the emperor's rule in 1868 and the seizure of lands previously controlled by the Shogun and the domains, the Meiji government looked eagerly to the West for institutional innovations (Westney 1987). The Iwakura Mission (岩倉使節団) that visited the US and Europe during 1871-73 would set an example for the Qing's official study delegations of 1905-06. The Japanese government also employed a large group of foreign advisers while, at the same time, launched a long-term program for sending students abroad. In terms of judicial and legal reform, one common rationale between early Meiji Japan and late Qing China was the revision of the so-called unequal treaties and the abolition of Western extraterritorial privileges, which was dependent upon their adoption of a judicial system that would satisfy Western expectations. Japan's institutional reform in the field of law began in 1871 with the creation of the Ministry of Justice and the launch of a public law program to train judicial officers, which eventually became the law faculty of the elite Tokyo Imperial University.<sup>7</sup> In 1872, the *Regulation of Judicial Affairs* (司法職務定制) set down the general structure of the whole judicial and legal system, which consisted in the judiciary, the procuracy, and three types of private practitioners based on the French model: the legal advocate, the legal scrivener, and the notary. Subsequent legislation and ministerial regulations further specified the organization of the court system, the training and

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<sup>7</sup> For an overview in English of the organization of the Japanese judicial system since late Tokugawa period, see Röhl (2005:711-69).

qualification for judicial officers and legal advocates, as well as the procedures for handling civil and criminal cases (Rabinowitz 1956). The Japanese legal reform reached a second milestone with the passage of the first Japanese constitution in 1889 and the meeting of its first national Diet in 1890, followed by the promulgation of the *Judicial Organization Law*, the *Civil Procedure Law*, the *Criminal Procedure Law*, and the *Lawyers Law* in the early 1890s. What had resulted from these top-down institution-building initiatives was a clear status hierarchy between public judicial officers (i.e. judges and procurators) and private legal practitioners, demarcated by the type of schooling they had received and their separate qualification standards (Ding 2003). Inferior in professional status, the Japanese bar associations were put under the direct supervision of the local procurator's office, a practice that would be later picked up by the Chinese. Thus, it might not be surprising that, in the decades after the 1890s, consistent efforts were made by the Japanese lawyers and their associations for the unification of judicial and legal qualifications and the self-regulation of the bar—which, however, wasn't realized until after World War II (Ding 2003).

While many of the written codes and formal structures of the Japanese judicial system had subsequently been adopted by the Chinese, what the latter did not, or could not, copy is the historical process that the former had gone through during its formative years. In other words, what had set Japanese law apart from the Chinese in the first place was precisely the fact that it took Japan almost two decades to consolidate its judicial and legal institutions. That initial period, the 1870s and 1880s in particular, was one in which the social and political roles of the Japanese legal advocates remained highly fluid (Flaherty 2013). Such fluidity was reflected, first of all, in the changing standards of qualification and in the ambivalence towards non-licensed practitioners, which allowed many traditional inn solicitors to continue their practice. Moreover,

during that transitional period, Japanese legal advocates had set up what in today's terms would be a combination of law firms, private law schools, and political parties. Despite their exclusion from judicial office, they had created a space for the study and interpretation of law in a burgeoning Japanese civil society, and quite a few legal advocates had emerged as the champion of political activism during the Freedom and People's Rights Movement. Their identity as *zaiya hoso* (在野法曹), or "legal professionals not in office," had won them a disproportionate voice compared to their small number and short history, such that when the first national Diet was elected, legal practitioners had constituted the third largest category of its members (Flaherty 2013:258). By the 1890s, when a series of codes and regulations consolidated the institutional roles of private legal practice, the Japanese legal profession had already acquired a considerable foothold in constitutional politics and their private law programs had grown into full-scale universities.

In contrast, the Chinese legal advocate was a latecomer to the judicial reform and the constitutional movement. By the time the Republican government promulgated its first regulation of the bar—a regulation that was mostly based upon its Japanese precedent from the post-1890s period—the role of the Chinese lawyer had already been highly circumscribed. Chinese lawyers never arose to much prominence in political activism—except, as Xu (2001) has pointed out, in campaigns of Chinese nationalism—nor did they contribute much to legal education. Private legal practice in Republican China did not become a field for *zaiya hoso* as in Japan; rather, it offered lucrative commissions for those who had political connections or prestigious foreign credentials. One of the only instances in which the Chinese bar had gone for political activism was the organization of the Society for Promoting the Rule of Law (法治协进会), which appeared in the midst of a renewed momentum towards constitutionalism



(Xu 2001:245-49). But that effort was soon smothered by the military success of the Northern Expedition. Whatever civil society that had emerged during the late Qing and early Republican period was eventually stifled by the coming into power of the Nationalist party-state.

### Japanese Medicine

In medicine, the Japanese, too, had a long history of their own practices. *Kanpo* (or *Kampo*) medicine, first introduced from China in the seventh century, had been locally adapted and become widely popular by the Tokugawa era. It was not until the early nineteenth century that Western medicine, in the form of Dutch studies (*Rangaku*), began to gather an increasing following (Rubinger 1982). While the isolation policy of the Tokugawa government and its ban on Christianity had prevented a strong foreign medical presence comparable to that of the medical missions in late Qing China (Bowers 1980:130-56), it is important to note that many of the first Japanese students in Western medicine had come from *Kanpo* families, which, until that time, had held hereditary medical offices in service of the Shogun and the feudal lords (Liu 2018). Another difference between the Japanese and the Chinese is that the Japanese state was quick to take over the leadership for medical professionalization and public health modernization. In the 1850s, the late Tokugawa government rescinded its ban on the study of Western medicine and offered official sponsorship to the Navy Academy in Nagasaki (which would build Japan's first Western-style hospital) and the Institute for Vaccination in Edo (which would become the medical faculty of the Tokyo Imperial University). Moreover, in the early 1870s, the new Meiji government solicited the opinion from Dutch-trained physicians on the options for a medical and public health system to be adopted nationally. It was from these central-level deliberations that the adoption of German medicine was confirmed and put into

practice, at a time when no Japanese physician had been trained in Germany proper (Bowers 1979; Johnston 1995). As researchers have pointed out, the inclusion of Western medicine among the Meiji government's priorities for state building was, at least in part, due to the successful introduction of smallpox vaccination and the advantage of Western medicine in treating the casualties of the Boshin War, which founded the Meiji regime in the first place (Bowers 1980; Jannetta 2009). In 1872, a Bureau of Sanitation was set up under the Ministry of Education. In 1874, Nagayo Sensai (長与専齋), the second director of the bureau, announced the famous *Medical Act* (医制), which officially set off the state-led process of institution building in the fields of medical and health administration, medical education, medical licensure, and the regulation of pharmacy (Ministry of Health and Welfare 1976 vol.1:36-43). Nagayo, himself a third-generation Westernizer from a *Kanpo* family (Jannetta 1997), had been sent by the government on the Iwakura Mission to study European health administration. Upon his return, he served as director of the government's top public health agency until 1892, overseeing the development of modern Japanese medicine in its most formative years.

The Meiji state's leadership in medical modernization had several institutional consequences for the medical profession. First, Japan developed a two-tier system of medical education, centered around elite public universities. The best students<sup>8</sup> were selected and funded by the government to study medicine in Germany, while German instructors were hired to lead

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<sup>8</sup> An interesting comparison between the Chinese and the Japanese in the transition to modern education is that while the former showed an over-concentration in legal and government studies, the latter embraced more eagerly medical and scientific fields of study. Without further evidence, I could only suspect that the centuries-old imperial civil examination system, even after its termination, had led the Chinese to favor careers in the government, while the lack of such a system in Japan had prepared the Japanese mind—especially that of the lower samurai class—to more practical and technical pursuits.

the medical program at Tokyo Imperial University (Kim 2014). By the 1890s, German-educated physicians had formed an elite medical circle that presided over the country's top medical programs, research laboratories, and army medical corps (Bowers 1965; Liu 2018). Below this elite tier were the technical and vocational colleges of modern medicine funded by prefectural governments or private sources, which included programs that were more open to non-German influences (Kim 2014:142-43). The objective of these programs was to train the average clinician rather than the medical scientist or the medical professor. It was precisely this tier of medical education that was imitated by the various provincial medical colleges in Republican China. However, missionary medicine had remained on the margins of the Meiji society. By the end of the nineteenth century, with the rise of anti-Christian sentiment, medical missionaries had either withdrawn from the country or turned their endeavors to the promotion of nursing, female education, and health care for the poor (Washington 2013; Fujimoto 2020).

Second, following the blueprint set out in the *Medical Act*, a state-administered medical licensing system was established within a few years, which significantly shaped the structure of the Japanese medical profession. Graduates of the two-tier medical education system were automatically granted a medical license; otherwise, applicants would have to pass a national medical qualification exam—until the first decade of the twentieth century, the majority of modern physicians had been qualified through the latter (Ministry of Health and Welfare 1976 vol.2:573). A perhaps unanticipated outcome of this licensing scheme was the status hierarchy among the licensees—tier-one graduates, tier-two graduates, and those licensed through testing—which grew to an intense and prolonged intra-professional struggle that had lasted for almost forty years, until a compromise was reached by the promulgation of the *Medical Practitioners Law* in 1906 and the formation of the Greater Japan Medical Association in 1916

(Steslicke 1972). On the other hand, the most striking difference between medical professionalization in Japan and that in China is to be found in its impact on traditional practices. In Japan, state regulations had allowed all traditional *Kanpo* physicians to be licensed if they had been in practice before 1875 but had denied them the right to train future generations of practitioners—thereby, in effect, making traditional medicine gradually die out with the aging of its last heirs. Although *Kanpo* physicians had organized the first Japanese medical associations to protest such state action, they ultimately failed to change the government’s agenda (Steslicke 1972). And by the 1900s, they had been outnumbered by modern physicians (Ministry of Health and Welfare 1976 vol.2:573). What had made the Japanese *Kanpo* physicians’ protests futile—or why they had not persisted after being turned down by the Diet in 1895—remains a question to be investigated further.

Third, while medical education and physician licensing both turned out more or less in the way as planned by Japanese medical officials, public health administration did not. Nagayo had initially envisioned a national public health administration led by the Ministry of Education and supported, at the local level, by British-style health committees (Wang 2020). However, successive outbreaks of cholera and other infectious diseases during the 1870s and 1880s led the Meiji government to concentrate its public health administration on epidemic control and prevention (Johnston 1995:163-84). In 1879, the Central Sanitation Board—made up of medical experts as well as representatives from multiple government departments—was set up to take charge of public health policies, while local sanitation boards were launched to coordinate plague prevention campaigns at the forefront. It was through this drive for effective epidemic

surveillance that the police<sup>9</sup> had been accorded a central role in public health administration. By the late 1880s, when the government reorganization moved to the prefectural and local levels, all public health and medical administration work had been put under the jurisdiction of the police, a trend that had already been suggested in the transfer of the Bureau of Sanitation from the Ministry of Education to the Home Ministry in 1874. In other words, the Japanese approach to containing infectious diseases in the second half of the nineteenth century had relied heavily upon the intrusive policing of the population by non-medical personnel, while the role of physicians in public health was relegated to a secondary place. It was this system of the sanitary police that was later adopted in the Japanese colonies of Taiwan and Manchuria, and finally by the late Qing and early Republican Chinese government. In China, however, the police dominance in health administration was soon to be challenged by the American-educated medical modernizers.

### **6.2.3 Summary of Additional Cases**

Now it is time to summarize the four additional cases that I have just brought to the discussion of imitative professionalization. Of course, my conclusions will be extremely tentative, since these cases have not been examined in any depth. The point is to begin applying the theoretical framework introduced in the first chapter to more cases of a similar nature and see how that framework can be further calibrated. Both law and medicine in Meiji Japan seemed to be the precedents of what would later happen in the Chinese judicial field in the first decades of the

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<sup>9</sup> In a sense, this was also a result of the competition between the professionalization of the Japanese health system and that of the Japanese police, which had switched from the French to the German model and gained the support of key political figures (Westney 1987).

twentieth century—indeed, the Chinese not only imitated the Japanese model but also how the Japanese had put together that model in the first place. In all three cases, imitative state building had played a crucial role as the primary engine for institutional borrowing, while the expansion of Western professions had been at best a facilitating force. Much of the existing state bureaucracy and the traditional practitioners employed by the state had been repurposed or co-opted for the development of the new practice. In the case of Japanese medicine, it has been found that the native practitioners had been extremely divided among themselves, with some championing modern medicine while others defending native medicine. This discordance in the reaction of the native practice was at least part of the reason that the latter group had ultimately failed in their attempt to change the government's radical reformist policy. In the end, what emerged in both Japanese law and Japanese medicine was a modern profession that enjoyed full control of its jurisdiction but was severely circumscribed by the bureaucratic authority of the state. It would take the Japanese lawyers and physicians more than half a century to finally secure themselves more autonomy and professional status vis-à-vis the state.

In the two other Chinese cases, the growth of the modern profession had been much slower since it was not a top priority on the state building agenda, nor did it receive much support from an expanding Western profession. In fact, a good indicator of institutional support is who had been the promoter and funder of professional training. In both accounting and architecture, training programs had largely been organized by the Western-trained Chinese professionals themselves. While they did have some level of influence over specific government offices (such as the fiscal and audit departments or the public work bureaus) and they did set up a few professional organizations to promote public awareness of their practices, neither of these initiatives seemed to have dominated their professional agenda. Therefore, I would tentatively

call it a hybrid form of professionalization, in which it was yet unclear where the profession was going. On the other hand, slower growth, lack of institutional support, and an unclear professional agenda had aroused few reactions from the native practices. Instead, without an immediate threat to their social legitimacy, native practices had an extended period of exposure and adjustment to the new practices, which could potentially lead to the gradual transformation of the former. In any case, until the new profession grew to be significant enough or was able to secure the support of the state, it had to live with an indeterminate jurisdiction—by the 1930s, neither the Chinese accountants nor the Chinese architects had held much authority to define, much less guard, its jurisdictional boundary.

**Figure 6** Summary of Additional Cases (Form of professionalization)

		Imitative State Building	
		Strong	Weak
Expansion of Western Profession	Strong		
	Weak	Japanese Law / Japanese Medicine: bureaucratization	Chinese Accounting / Chinese Architecture: hybrid professionalization

**Figure 7** Summary of Additional Cases (Types of Reaction)

		Preexisting Bureaucratic Infrastructure	
		Strong	Weak
Organization of Private Practice	Strong	Traditional Japanese Medicine: discordance	
	Weak	Traditional Japanese Law: co-optation	Traditional Chinese Accounting / Traditional Chinese Architecture: slow transformation

**Figure 8** Summary of Additional Cases (Jurisdictional Control)

		Overall Driving Force for Professionalization	
		Strong	Weak
Resistance from Traditional Practice	Strong		
	Weak	Japanese Law / Japanese Medicine: complete jurisdiction	Chinese Accounting / Chinese Architecture: indeterminate jurisdiction

### 6.3 Topics for Further Research

These four brief considerations of additional professions from Republican China and Meiji Japan may serve as a starting point for the recalibration of the theoretical framework developed in this study. Nevertheless, the sociology of professions and the study of institutional diffusion are both



broad fields of inquiry. Even with a few more cases, the present study has left little space to unravel all the theoretical threads it has touched upon. In this final section, I list four areas of inquiry that are worthwhile directions for further research. Together, they provide suggestions for a multifaceted research agenda on the historical changes of knowledge practices in the non-West and how they have shaped the human condition in general.

### **6.3.1 Professions**

In this study, much of the story of the early twentieth century Chinese professions has been told from the perspective of the supply side. That is, I have focused on the providers of professional expertise rather than its consumers. Except for cases in which the state was itself the major employer of professionals—as in the judicial system and the public health administration—little investigation has been done on the historical emergence of or changes in the demand for such practices or services. The demand side matters greatly for the professions when it was mediated by the state or when it was adequately organized to confront the supply side (Johnson 1972a). Yet, generally speaking, research on historical demand is difficult, especially when that demand was diffuse and was rarely recorded in any institutionalized form. For instance, it is almost impossible to know the amount, distribution, and changes in the demand for legal service or medical care of a given region before there were well-kept trial records or hospital records. Even when these records were available, one might still wonder what had not gone into them, such as instances when professional services were delivered outside of institutionalized venues. The problem could be the worst when individuals or families were the direct consumers of services and when services were delivered without any institutional filtering beforehand. When did the Chinese litigant begin to bring his case to a modern court more often than in front of a local

headman? Or for what kinds of illness did the Chinese patient begin to turn to Western medicine more often than they consulted traditional Chinese medicine? Such questions are important if one really wants to get a bigger picture of the changing world for legal and medical practices, but they are almost certainly unanswerable. The inquiry is more manageable when it comes to demand that was generated by public entities or was brought up through institutionalized means. It is, for instance, possible to know the exact number of buildings that were constructed or renovated in major Chinese cities during the early twentieth century, so that an estimation can be made of the actual amount, type, and changes in the demand for modern-style architecture. It is also possible to count the number of Chinese business enterprises and make a reasonable guess about the amount, type, and changes in the accountants that were required. It would make the demand side story all the more researchable if a given service was required by the state, such as in taxation, regulatory compliance, or social welfare.

A second topic that merits further attention is the different types of intra- and inter-professional competition that occur in processes of imitative professionalization. So far, the encounter between modern Western professions and traditional Chinese knowledge practices has been the primary type of competition that is examined here. This type of encounter had mostly been framed in ideological terms: the new versus the old, progress versus backwardness, modernity versus tradition, or simply the West versus the East. In other words, indigenous knowledge practices began to lose their social legitimacy once they could not adapt to the ideational and organizational standards prescribed by the rising ideological dominance of the modern professions. But not all professional competition had taken place along those lines. For instance, the confrontation between Chinese lawyers and foreign lawyers in Shanghai's international concessions was an example of intra-professional competition between modern

Chinese practitioners and their Western counterparts. In fact, Western professions and professionals not only served as models for emulation, but they also came into direct competition with their Chinese followers, especially when the former had established practices in China. Westerners, because of their advantages in training, reputation, size, or existing clientele, had often dominated the professional service markets when they first emerged in China. But that competitive edge gradually diminished as their Chinese followers grew in number, expertise, and social status—who often had the additional advantage of politicizing the competition in nationalistic terms. The Chinese government, in turn, saw this as an opportunity to extend its regulatory jurisdiction, often cloaked in an attempt to protect Chinese sovereignty. This happens even today when the US Security and Exchange Commission requires all US-listed Chinese companies to have US-approved auditors, which the Chinese find objectionable. Yet, there was a third type of professional competition: one that was between two or multiple modern professions. As mentioned earlier in this chapter, this could emerge in the workplace contention between lawyers and accountants, between engineers and architects, or between lawyers and forensic experts. While this type of inter-professional turf wars was the closest to the idea developed in *The System of Professions*, it would be interesting to see how that had affected—and had been affected by—the process of international diffusion. The concurrent cross-cultural diffusion of different knowledge practices—perhaps themselves undergoing a jurisdictional or status struggle with one another in their home countries—seemed to offer opportunities for exporting such turf wars and, whenever possible, reshaping the domestic battlefields from which they had originated.

### **6.3.2 Diffusion**

In terms of diffusion processes, one crucial distinction made in the current discussion is whether a new system of practice was first adopted by the state and then trickled down to the private sector or whether it began with a small group of private practitioners and gradually made its way into state policy and even a part of the state bureaucracy. Yet, the causes for such distinction are left unexplained—they are regarded as factors exogenous to the theoretical framework here. Of course, that issue deserves its own attention. In fact, two kinds of answers might be readily available. The first, informed by the world society theory, has to do with social norms that shape what a modern state should consist of or look like. According to this culturalist perspective, whether a given institutional domain should be among the priorities for state building is prescribed by the prevalent idea or model of the state at a particular historical time. Different models of the state exist, but over time, as the world society theory finds, there has been an increasing convergence of these models across the globe. For instance, even in the West, public health was only beginning to become part of state function in the second half of the nineteenth century and cross-national variants existed widely. By the 1920s, when the Chinese government embarked upon a new wave of state building efforts including those on public health, state medicine had become a well-established norm even in countries previously dominated by private delivery of medical care (this was achieved, partly, through a series of international health conferences and especially through the work of international organizations like the LNHO). In other words, as the norm of the welfare state grew steadily out of the West and disseminated into other parts of the world, a proper modern state was increasingly supposed to provide certain knowledge-based services, such as hygienic regulation and health delivery, that were previously

thought of as belonging to private matters.<sup>10</sup> A realist point of view, on the other hand, would place more emphasis on specific sources of coercive pressure or the very nature of regime crises. In both early Meiji Japan and late Qing China, for instance, the central government was under tremendous pressure both from within and outside. To address such pressure, the two governments had regarded the abolition of foreign extraterritorial privileges as an important policy objective. And to do so, they were eager to convince the Western powers that they had adopted key modern institutions—such as a modern judiciary—which would meet Western expectations. In the meanwhile, Japan, as an island country, was particularly plagued by successive outbreaks of infectious diseases in the second half of the nineteenth century (due, to a great extent, to the increase in maritime transportation after it opened up to foreign trade) while its armed forces had seen high rates of non-combat casualties from the spread of beriberi. The Japanese response to such overwhelming health risk was through direct state intervention, as best illustrated by the use of police forces and state-funded laboratory research. In contrast, early twentieth-century China did not have as severe a health crisis as Japan did then. The Chinese epidemic outbreaks were limited to the coastal cities and along the railways, and there had not been a strong enough political rationale for the immediate adoption of a national public health system. That might be part of the reason that public health had not been a priority for the Chinese government; instead, it started with the medical missionaries.

Lastly, for the connection between knowledge diffusion and social mobility, a relevant research direction is how imitative professionalization can facilitate the spread of certain forms of cultural capital while undermining others. As the current study has suggested, the rise of the

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<sup>10</sup> At the same time, one might check the historical changes in the norm of the body to see how matters of health and diseases had been understood and handled.

modern professions in China was, in a way, an aftermath of the development of modern education and the labor markets created by the modern educated. The termination of the imperial civil examination and the start of government reorganization meant that traditional types of cultural capital—proficiency in Chinese classics and the possession of traditional degree titles—were devalued as currency for social mobility and status. In their stead, modern credentials, such as educational degrees and professional licenses, became the default launching pad for a decent middle-class career or even social eminence. In addition, these credentials had a built-in hierarchy among themselves, as one could tell through the diminishing social prestige that was attached to graduates of elite foreign institutions, national or public universities, private universities, associate or vocational programs, and apprenticeship or on-the-job training. Much of the intra-professional conflicts among the Chinese themselves had been demarcated by that credential hierarchy, or even by status distinctions within the same category of educational achievements (as between the US-trained and the Japan-trained). Yet, one should not take this reshuffling of cultural capital as something unique to the modern age. The two case analyses remind us that both practitioners of law and medicine in late imperial China were secondary in social status as compared to the Confucian scholar-officials, and they had both aspired to the status of the latter through the Confucianization of their knowledge practices. Thus, it would be quite revealing to compare this newer round of global cultural capital diffusion with previous phenomena of a similar kind, which were perhaps less globalized in hindsight but were equally, if not more, cosmopolitan by the standards of their own times. My first impression is that the rise of the Confucian physicians since the eleventh century was in many ways comparable to the ascent of biomedical physicians in early twentieth-century China: both were taking advantage of a new form of cultural capital and both relied on the state to consolidate the value of that capital.

Further empirical studies are needed to see if, or in what sense, the global diffusion of cultural capital through professional training and licensure was a historical continuation of—rather than a departure from—mobility patterns in traditional empires like that of China.

## **Appendix A Growth of Modern Courts in China before 1937**

Since 1910, the modern Chinese judiciary varied between a four-level court system and a three-level one. At the top was the Supreme Court. Below the Supreme Court were the provincial high courts (高等审判厅/高等法院) and branch high courts (高等审判分厅/高等审判分庭/高等法院分院). Below the high courts were the district courts (地方审判厅/地方法院), branch district courts (地方审判分厅/地方审判分庭/地方法院分院/地方法院分庭), and district courts attached to high courts (高等审判厅附设地方庭). At the lowest level were the local courts (初级审判厅) and county courts (县法院), which were discontinued between 1914 and 1928.

Various other judicial offices were established, sometimes as a temporary measure, as the courts of first instance, including judicial departments (审判处/县司法处) and judicial offices (县司法公署). In addition, between 1917 and 1926, the Southern government founded its own modern court system. With the Nationalist government coming into power in 1928, all courts previously controlled by Beijing or by the Southern government were unified under Nanjing. The best estimation for the numbers of modern courts (except for the Supreme Court or its variants) in China before 1937 is presented in Table 3. Data for 1911 and 1927, the two years that saw a regime change, are not available.



**Table 3** Number of Lower-level Modern Courts in China, 1910-1936

Year	High Courts	District Courts	Local Courts	Other Judicial Offices	Southern Courts	Total
1910	25	62	93	-	-	180
1911	N/A	N/A	N/A	N/A	N/A	N/A
1912	26	125	179	-	-	330
1913	26	103	134	-	-	263
1914	24	45	-	-	-	69
1915	38	46	-	-	-	84
1916	39	52	-	-	-	91
1917	41	62	-	-	7	110
1918	40	67	-	-	7	114
1919	41	66	-	-	7	114
1920	44	69	-	-	7	120
1921	44	77	-	-	91	212
1922	46	91	-	11	91	239
1923	48	89	-	29	96	262
1924	49	92	-	42	96	279
1925	49	100	-	46	28	223
1926	49	103	-	54	25	231
1927	N/A	N/A	N/A	N/A	N/A	N/A
1928	46	166	8	-	-	220
1929	59	214	28	-	-	301
1930	60	220	39	-	-	319
1931	62	242	37	-	-	341
1932	54	219	35	-	-	308
1933	55	245	35	-	-	335
1934	57	206	37	-	-	300
1935	89	292	-	-	-	381
1936	96	301	-	384	-	781

SOURCE: *Sifa Gongbao* (司法公报) Nos. 34, 60, 78, 96, 108, 128, 161, 181, 195, 212, and 214; Commission on Extraterritoriality in China (1926); Ju (1936); Wang (1936); Q. Li (2004); Ouyang (2007); Tang (2013).

## **Appendix B Medical Schools in China before 1937**

So far, no comprehensive data have been found on the enrollment and graduates of medical schools in China. Government statistics, such as Ministry of Education (1934; 1948) and Second Historical Archives of China (1994), covered consecutive years but were rather incomplete, while surveys conducted by researchers, such as Lee (1933; 1935) and Wu (1936), were more complete but covered only individual years. The problem had arisen from the fact that many medical programs run by the missionaries or by other foreign entities had been outside of the purview of the Chinese authorities until the 1930s. This was further complicated by the fact that over the years many programs had changed their names, undergone several rounds of reorganization, merged or separated with others. Table 4 is a summary of all the known programs of modern medicine in China before 1937. They are listed in ascending order of their founding year. Those without an indication of their closing year were still in operation at least as of 1937.

**Table 4** List of Modern Medical Schools in China before 1937

No.	English Name(s)	Chinese Name(s)	Type	Year Opened	Year Closed	Note
1	Canton Hospital Medical School - South China Union Medical College - Lingnan University Medical College	博济医校 - 南华医学堂 - 岭南大学医学院	Missionary	1866		Closed between 1912 and 1936
2	Viceroy's Hospital Medical School - Peiyang Medical College - Naval Medical College	天津医学馆 - 北洋医学堂 - 海军医学堂 - 海军军医学校	Military	1881	1933	
3	Soochow Hospital Medical School	博习医校 - 东吴大学医科	Missionary	1883	1909	Merged into No.6
4	Hangchow Medical School	广济医院医科学堂 - 浙江广济医学专门学校	Missionary /Private	1884	1925	Merged into No.30
5	Hong Kong University Medical School	香港西医书院 - 香港大学医学院	Private	1887		
6	East China Union Medical School	华东协和医学校 - 金陵大学医科	Missionary	1888	1917	Merged into No.12
7	Soochow Women's Medical College - Women's Christian Medical College	苏州女子医学校 - 上海女子医学院	Missionary	1891		
8	Mukden Medical College	盛京医学堂 - 奉天医科大学 - 辽宁医科专门学校 - 盛京医科大学 - 辽宁医学院	Missionary /Provincial	1892		
9	St. John's University Medical School	圣约翰大学医学院	Missionary	1896		
10	Hackett Medical College for Women	广州女医学堂 - 夏葛女子医学校	Missionary	1899	1936	Merged into No.1
11	Peiyang Military Medical Academy - Army Medical School	北洋军医学堂 - 陆军军医学校	Military	1902		

**Table 4** (Continued)

No.	English Name(s)	Chinese Name(s)	Type	Year Opened	Year Closed	Note
12	Shantung Union Medical College – Cheeloo Christian University Medical School	山东共和道医学堂 - 齐鲁大学医学院	Missionary	1904		
13	Canton Army Medical School – Canton Provincial College for Medicine and Pharmacy	广东陆军军医学堂 - 广东公立医药专门学校	Military /Provincial	1904	1921	Merged into No.22
14	Szechwan Army Medical Academy	四川军医学堂	Military	1904	N/A	
15	Wuchang Medical Academy - Hupeh Provincial Medical College	湖北陆军军医学堂 - 湖北医学专门学校 - 湖北省立医科大学	Military /Provincial	1906	1927	
16	Peking Union Medical College	北平协和医学院	Missionary	1906		
17	Shanghai German Medical School – National Tung Chi University College of Medicine	上海德文医学堂 - 同济医学校 - 同济医工专门学校 - 国立同济大学医学院	German /Private /National	1907		
18	Hankow Union Medical College	汉口大同医学校	Missionary	1908	1917	Merged into No.12
19	Kwong Hwa Medical School	广东光华医学堂 - 广东光华医学专门学校 - 广东光华医学院	Private	1908		
20	North China Union Medical College for Women	协和女子医学校	Missionary	1908	1923	Merged into No.12
21	Deutsch-Chinesische Hochschule	青岛特别高等专门学 堂医科 - 德华大学医科	German	1909	1914	Merged into No.17
22	Kung Yee Medical School – National Chungshan University College of Medicine	广东公医学堂 - 广东公医医学专门学校 - 广东公医医科大学 - 国立广东大学医学院 - 国立中山大学医学院	Private /National	1909		

**Table 4** (Continued)

No.	English Name(s)	Chinese Name(s)	Type	Year Opened	Year Closed	Note
23	Aurora University Medical School	震旦大学医学院	French	1909		
24	Canton Christian College Medical Department – University Medical School – Pennsylvania Medical School	格致书院 - 岭南学堂	Missionary	1910	1914	Merged into No.9
25	Foochow Union Medical College	福州协和医学校	Missionary	1911	1922	Merged into No.9
26	Peking Medical College – National Peiping University College of Medicine	国立北京医学专门学校 - 国立北京医科大学 - 国立京师大学校医科 - 国立北平大学医学院	National	1912		
27	Harvard Medical School at Shanghai	哈佛医学院	Missionary	1912	1916	Merged into No.9
28	Hospital Doumer Medical School - Chung-fa Medical College	中法韬美医校 - 广东中法医学专门学校	French	1912	1927	
29	Manchuria Medical College	南满医学堂 - 满洲医科大学 - 国立沈阳医学院	Japanese /National	1912		
30	Chekiang Provincial College of Medicine and Pharmacy	浙江公立医药专门学校	Provincial	1912		
31	Kiangsu Provincial Medical College – National Shanghai Medical College	江苏公立医学专门学校 - 江苏医科大学 - 中央大学医学院 - 国立上海医学院	Provincial /National	1912		
32	Nantung Private Medical College	南通医学专门学校 - 南通学院医科	Private	1912	1938	Merged into No.54
33	West China Union University School of Medicine	华西协和大学	Missionary	1914		
34	Oriental Medical Academy – Nanyang Medical School	医学传习所 - 亚东医学专门学校 - 南洋医学院	Private	1914	1931	Merged into No.45

**Table 4 (Continued)**

No.	English Name(s)	Chinese Name(s)	Type	Year Opened	Year Closed	Note
35	Yale-in-China Medical School – Hsiang-Ya Medical College	湘雅医学院 - 国立湘雅医学院	Missionary /Provincial /National	1914		
36	Shantung Provincial Medical College	山东医学讲习所 - 山东公立医学专门学校 - 山东大学医科	Provincial	1915	1928	
37	Chihli Provincial Medical College – Hopei University Medical College	直隶公立医学专门学校 - 河北大学医科 - 河北省立医学院	Provincial	1915		
38	Shantung Women's Medical College	山东女子医学校	Private	1918	1927	
39	Tung Teh Medical School	同德医学专门学校 - 同德医学院	Private	1918		
40	Shansi Provincial Medical College – Shansi Chuan-chih Medial School	山西医学传习所 - 山西医学专门学校 - 山西川至医学专科学校 - 山西大学医科	Provincial /Private	1919		
41	Kiangsi Provincial Medical College	江西公立医学专门学校	Provincial	1921		
42	Sino-French University College of Medicine	中法大学医学院	Private	1921		
43	N/A	同善医学专门学校	Private	1922	1932	
44	N/A	达生女医学校	Private	1923	1929	
45	Tung Nan Medical School	东亚医科大学 - 东南医科大学 - 东南医学院	Private	1924		
46	Harbin Medical College	哈尔滨医学专门学校 - 哈尔滨医科大学	Private	1926		
47	Honan University College of Medicine	河南省立中山大学医学院 - 河南大学医学院	Provincial	1928		
48	Chilin Hospital Medical School – Hsin-King Medical College – National Changchun University College of Medicine	吉林省立医院附属医学校 - 新京医科大学 - 国立长春大学医学院	Provincial /Japanese /National	1928		

**Table 4** (Continued)

No.	English Name(s)	Chinese Name(s)	Type	Year Opened	Year Closed	Note
49	Yunnan Army Medical School	云南军医学校	Military	1931		
50	Shantung Provincial Medical College	山东省立医学专科学校	Provincial	1932		
51	Gansu College Medical Department	甘肃学院医科	Provincial	1932		
52	Tung Lu Medical School	东陆大学医学院 - 云南大学医学院	Provincial /National	1933		
53	Kwangsi Provincial Medical College	广西医学院	Provincial	1934		
54	Kiangsu Provincial Institute For Medical Administration – National Kiangsu Medical College	江苏医政学院 - 国立江苏医学院	Provincial /National	1934		
55	National Central University College of Medicine	国立中央大学医学院	National	1935		
56	National School of Dentistry	国立牙医专科学校	National	1935		
57	National School of Pharmacy	国立药学专科学校	National	1936		
58	Fookien Provincial Medical College	福建省立医学专科学校 - 福建省立医学院	Provincial	1937		
59	National Chungcheng Medical College	国立中正医学院	National	1937		

SOURCE: China Medical Commission (1914); Stauffer (1922); NMA (1928); NMA (1930); Wu (1936); Choa (1990); Xia (2014).

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