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Weak Enforcement, Strong Deterrence: Dialogues with Chinese Lawyers About Tax Evasion and Compliance

Benjamin van Rooij

This article analyzes why Chinese lawyers report a high level of perceived deterrence in relation to tax evasion even though enforcement is weak. It finds that deterrence here originates from multiple sources, most directly through clients and more distantly through the firm and the state. Lawyers have highly contextual notions of detection probability and a vague understanding of sanction severity unfitting of the high deterrence found here. In the cases studied, deterrence arises out of a general fear lawyers have of state authorities and clients, as well as through personal morals and social norms in their firms. This shows a broader and deeper approach to deterrence, beyond certainty and severity of punishment for the violation studied, one in which the general perceived risk of such violation is central, whatever its source.

INTRODUCTION

China's legal system has a major implementation challenge. Many of its laws, while seemingly of good legal quality, often fail to achieve the desired effect. Over the last two decades, many studies of Chinese law have looked in one way or the other at the gap between law on the books and law in action, in particular with a focus on problems of state-led law enforcement (cf. van Rooij 2012). Scholars often point to persistent problems of limited enforcement capacity, especially capacity to carry out sufficient inspections, and limited enforcement autonomy, most often blaming local protectionist influences of local governments undermining enforcement of national laws that go against local interests (e.g., Manion 2004; van Rooij 2006; Cooney 2007; Dimitrov 2009). Others have tried to look in more detail at how state-led enforcement is organized, how it has changed, and what has influenced such changes (e.g., Mertha 2005; Lo, Fryxell, and van Rooij 2009). Most studies have focused their analysis on the enforcement authorities themselves, but some have looked in some detail at how enforcement authorities have interacted with courts (e.g., Zhang 2008) or the general population (e.g., Lo and Leung 2000; van Rooij 2012) that might aid their work.

The most important perspective on implementation of law and law enforcement problems in China is largely missing, however. This is the perspective of the

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regulated actor whose behavior the law seeks to change and who is the object of enforcement action (cf. Gray and Silbey 2012). This article follows this perspective and seeks to explain deterrence perceptions of regulated actors in China. In simpler terms, the article seeks to explain how these actors perceive the risk of violating the law (cf. Grasmick and Green 1980; Paternoster et al. 1983; Williams and Hawkins 1986; Braithwaite and Makkai 1991; Decker, Wright, and Logie 1993; Paternoster and Simpson 1993, 1996; Thornton, Gunningham, and Kagan 2005), rather than studying law enforcement itself. This article does not predefine where risks of violating the law come from but, rather, in an open and qualitative tradition, leaves this to the interviewed actors, thus allowing for a plurality of sources of risks of violation and thus sources of deterrence (cf. Black 2001; Grabosky 2012).

Through this approach, this article analyzes deterrence perceptions of Chinese lawyers working in firms with a good reputation in X city, the provincial capital of one of China's inland provinces. It studies how they perceive the risk of a simple individual and quite common form of tax evasion, by taking cash money from clients privately without reporting the cases to their law firm (a banned practice: see 1996 PRC Lawyers Law [as amended in 2007], Article 40) and without providing such clients a formal tax receipt (also a banned practice: see 2011 State Tax Administration Measures on Tax Receipt Management, Articles 19–20). It uses a pluralistic subjective approach to study the deterrence that may keep lawyers from engaging in these practices, understanding what deterrence means from the perspective of the regulated actors and not limiting this to deterrence coming solely from the state. To do so, it uses a unique dialogue interview technique, detailed in the next section, that allows regulated actors to fill in what deterrence there is from whom. The qualitative approach followed here is necessary, as on the one hand it enables the kind of trust that results in reliable answers to sensitive questions, and on the other it allows for the richness of data necessary to understand the perspectives of the lawyers interviewed in the most open and truthful way.

The article finds that there is a plural subjective deterrence that originates from multiple state and nonstate sources. Such deterrence exists, even though state law enforcement is weak to nonexistent. It is contextual and varies by type of lawyer, law firm, client, and type of legal practice. Deterrence here cannot be understood merely by studying detection probability and sanction severity for the violations studied. Deterrence here also stems from a combination of ultra-general deterrence from the state punishing lawyers for unrelated violations, pervasive and general fear of clients, and risks emanating from incentives and duty and shame perceptions through social norms within the law firm. These findings offer hope for alternative ways to deal with weak implementation, including the introduction of networked/shared compliance incentives in law, the broadened function of signal cases, and the operation of social norms and firm institutions. Also, the study of the risk perceptions of Chinese lawyers has broader implications for the study of the Chinese legal profession (see Lo and Snape 2005; Fu 2006; Michelson 2006, 2007; Fu and Cullen 2008; Liu 2008, 2011, 2012; Liu and Halliday 2008, 2009, 2011), especially about the relation between lawyers and regulatory institutions, their own firm, and their own clients.

The remainder of this article is structured as follows. First follows a section on the approach and methods. Second is a section outlining the compliance frames and role of risk therein as well as general risk perception of lawyers. Third is a section discussing how lawyers perceive the risk of being found out violating the law. Fourth is a section about how lawyers perceive possible sanctions for violations studied here. Fifth is a section detailing findings about how lawyers perceive fear of the state and of clients, and sixth is a section detailing the role of law firm social norms and institutionalized practices in risk perceptions.

APPROACH AND METHODS

This study uses a subjective and pluralist approach to deterrence. This has two aspects. First, by analyzing the perspective of the regulated actor (cf. Gray and Silbey 2012), it follows a tradition of subjective deterrence studies by analyzing how the deterrent effect of enforcement is perceived by the regulated actor (e.g., most notably in general criminology, see Grasmick and Green 1980; Williams and Hawkins 1986; Decker, Wright, and Logie 1993; in regulatory compliance and corporate crime studies, see Paternoster et al. 1983; Paternoster and Simpson 1993, 1996; May 2004, 2005; Thornton, Gunningham, and Kagan 2005; van Wingerde 2012), and thus not by studying the enforcement itself. In this subjective approach, perception is key, as “[t]here can be no direct relationship between sanctions and criminal action; the two must be linked through the intervening variable of subjective perceptions of the risks and rewards of committing a crime” (Decker, Wright, and Logie 1993, 135). Second, it expands on this tradition not merely by seeking to understand the deterrent effect of state-organized enforcement, but also by studying more broadly what constitute the perceived risks of violations, be they from state or private forms of enforcement. Here it follows a strand of study in regulatory theory that sees regulation no longer as the sole affair of the state, but as a “de-centered” or pluralist matter in which multiple state and nonstate actors play regulatory roles, including those of implementing the law (cf. Grasmick and Bursik 1990; Black 2002; Hutter 2006; Grabosky 2012; van Rooij et al. 2013; van Rooij, Stern, and Fürst 2014).

The article thus develops a novel way to study what we shall call “subjective plural deterrence.” Methodologically, it uses data gathered through in-depth qualitative interview dialogues. The short, open-ended questions used in these dialogues funnel the discussion from general personal professional history to client acquisition and payment practices that flow naturally to a discussion of illegal forms of privately retaining clients and payments without receipts. Once such illegal forms are discussed, respondents are asked whether such behavior is risky (*you fengxian ma?*). They are then asked to describe the nature of such risk. Follow-up questions then ask respondents to explain in more detail where they think a possible risk could come from and how such risk operates, especially in terms of detecting possible violations and responding to them. Using these qualitative in-depth interview dialogues allows for a much more detailed and subjective understanding of deterrence from a wide range of sources. It also allows for a broader understanding of

deterrence as risk and not just narrowly as the perception of detection probability and sanction severity of traditional deterrence approaches. It thus uses a method that better captures subjective plural deterrence than much of the existing body of literature, which has questioned regulated actors mostly about deterrence from the state and most often has done so by asking about probability of detection and severity of sanctions (see Paternoster et al. 1983; Paternoster and Simpson 1993, 1996; May 2004, 2005; Thornton, Gunningham, and Kagan 2005; van Wingerde 2012) rather than asking in an open manner whether there is risk of breaking legal rules, where such risk comes from, and how and why such risk does or does not materialize, as is done here. Moreover, these dialogues were designed to mix nonsensitive issues with more sensitive issues, and to use a language and space for discussion that was comfortable for the respondent, thus creating an atmosphere that was as natural as possible and in which as much trust could be established as is possible in a middle-range sample of interviewees.

The study uses material gathered through about a hundred semistructured interviews with lawyers, enforcement officials, and legal experts. Of these interviews, sixty-two were conducted with lawyers through a set dialogue structure, enabling comparison across the interviews. Interviewed lawyers were selected from ten large and medium-sized law firms, as well as from three small law firms with a good reputation in one of China's provincial capitals (called X city). As such, the study uses a sampling strategy of selecting lawyers who are most likely to have a higher perception of deterrence and who are also more likely to comply than lawyers working in small or micro-type law firms with limited reputations. The sampling is thus focused only on a subset of all lawyers working in the city of study. In each firm, a stratified sample was drawn of a number of lawyers, depending on the size of the firm, ranging from three to ten lawyers, with a mixture of managing and senior partners, ordinary partners, associates, and lawyer trainees, and a mixture of gender. The study does not claim any representativeness for lawyers in China or even in X city.

The data of the interviews have been coded using Microsoft Excel, Microsoft Word, and iAnnotate. First, an analysis was made of the raw interviews, developing a raw table in which for each important aspect, a summary was made of the interviewee's answer. Second, a score (1 or 0) was assigned for each interview for several key aspects of the answers to our questions, such as the response to risk and, in particular, the response to risk from the state, clients, and the firm. These were used to calculate percentages of answers across the population. Third, for each important aspect of the study, the most illustrative quotes were organized and coded. Because of the open-ended nature of the questions, comparison of the answers is only possible on those aspects that all discussed. There are, however, many aspects that only a few lawyers discussed. At times, these provided highly illuminating insights, which, as such, have been reproduced, as they informed the understanding of risk perceptions here. Such citations, of course, cannot be proven to represent the overall population of lawyers interviewed, nor is it possible to see exactly what percentage they represent.

An important limit of the study is that it does not analyze how risk perceptions relate to the lawyers' own behavior. The interview data show that out of the

ten firms studied there were four firms in which lawyers indicated that they themselves or others in their firm had violated the rules studied here. I cannot, however, be fully sure which lawyers in our sample had actually engaged in illegal behavior and which had not. So it is impossible to analyze the effects of deterrence on compliance at the individual level. In a future paper I hope to analyze compliance behavior at the firm level, where triangulation of multiple interviews enables a more confident understanding of compliance and violation.

This study takes the legal services sector as a case in which to study deterrence perceptions. As such, the rich literature on the Chinese legal profession is, of course, tremendously important to understand the particulars of the case at hand. However, the goal of this article is not chiefly to use this case to engage with that literature. As such, this body of work is used where relevant and necessary in the main analysis of the text, and implications of this article for the study of legal profession in China are discussed only briefly in the final conclusion.

PLURAL SOURCES OF DETERRENCE

A key finding in this study is that while there is very weak actual enforcement, most lawyers (92 percent, $n = 57$) still report a perceived risk of breaking the law. The study thus shows not only that subjective deterrence is different from objective deterrence (cf. Paternoster et al. 1983; Paternoster and Simpson 1993, 1996; May 2004, 2005; Thornton, Gunningham, and Kagan 2005; van Wingerde 2012), but that subjective deterrence can exist without enforcement and objective deterrence. A first explanation for this is that deterrence is a plural affair and deterrence has multiple sources beyond the administrative enforcement authorities alone.

Our interviews with enforcement officials and experts reveal that in our location of study, administrative enforcement against lawyers for illegally taking fees personally and without issuing a tax receipt is weak to nonexistent (PJ.2.12.11.2013, PJ.1.27.10.2011). The tax authorities simply do not see lawyers as a priority (PT.1.16.11.2011, ZZ.19.10.2011), while the justice authorities indicated that locally there were hardly ever any cases where they had received complaints or issued sanctions against lawyers solely for illegally privately receiving payment from clients or not issuing tax receipts (PJ.2.12.11.2013). Moreover, the justice authorities also indicated that tax violations by lawyers were not their priority (PJ.2.12.11.2013).

Given how weak local-level enforcement is, one would expect that most lawyers would indicate a low risk of violating these two norms, and thus indicate a low subjective deterrence (cf. Becker 1968; Ehrlich 1972). However, what we found was quite the opposite. Of all lawyers interviewed, 92 percent ($n = 57$) indicated that there is a risk, 6 percent ($n = 4$) indicated that there was no risk, and 2 percent ($n = 1$) did not indicate a clear answer. When discussing risk, of the lawyers that indicated there is risk when violating the rules studied, nearly all (93 percent, $n = 53$) pointed at governmental enforcement institutions in one way or another. Most mentioned the local justice offices and their departments of lawyer management, while two also mentioned tax authorities (TW.6.30.12.2011, FL.2.29.12.2011)

and one lawyer mentioned the lawyers' association (YT.2.28.12.2011). Thus even though enforcement is weak, lawyers still feel that there is a risk and that the risk comes (at least in part) from enforcement authorities.

Our interviews reveal, however, that the risk perception of lawyers about violating the rules studied here is not limited to the state (cf. Hutter 2011). First, of all lawyers interviewed about their risk perception of violations of the law studied here, 63 percent ($n = 39$) indicated that the risk of violations came from clients, while 18 percent ($n = 11$)¹ indicated that clients do not pose much risk. Clients are directly involved in the violations studied here, as they are the ones paying lawyers and are to be given a tax receipt. Clients have a stake in compliance most directly, because Chinese tax law requires formal receipts for guarantees on products or services bought (2011 State Tax Administration Measures on Tax Receipt Management, Article 20), for their own tax deductions, and so as to be reimbursed for costs incurred on their employer's behalf. Second, 42 percent ($n = 26$) of lawyers interviewed indicated in one way or another that risk was related to their own law firm. Firms have a stake in compliance with the rules studied here, as many lawyers (both associates and partners) have to pay a significant amount (up to 50 percent) of what they earn to the law firm. By violating the two norms here, not only do lawyers save the 12.6 percent tax rate that applied at the time of study, they can also save nearly four times that amount by not reporting the income to their firm. In addition, firms indirectly can bear reputational costs if their lawyers are found to break the rules studied here.

A first finding from this study is thus that there can be deterrence (in the sense of a perception of risk of violating the law) even when there is limited state law enforcement. Second, in this situation of subjective deterrence without much state enforcement, multiple sources of risk are at play, including both state and nonstate actors. Let us now look in more depth at how these different sources of risk shape deterrence perceptions.

CONTEXTUAL DETECTION PROBABILITY

A first key element in most existing studies of deterrence is detection probability, meaning the perceived chances that one will be caught violating the law. Many authors agree that detection probability is the key driver of compliance, more so than sanction severity (see Grasmick and Bryjak 1980; Grasmick and Green 1980; Braithwaite and Makkai 1991; Cohen 2000). Even though we know that in our case study state authorities carry out hardly any enforcement activities targeted at the fee collection and tax receipt activities of lawyers, nearly all lawyers we interviewed (93 percent, $n = 53$) reported that the chances of being caught for these violations by state institutions are high. Our data reveal that the prevalent perception of detection probability by state authorities of lawyers is premised on several preconditions. Detection risk is higher when there are complaints from clients and,

1. Nineteen percent of interviewed lawyers were not clear about this.

in certain kinds of cases, frequencies and amounts, and with particular types of clients. Also, lawyers have ways of managing the risk of being caught by the state, clients, and their own firms. All of this shows a much more nuanced and complex understanding of detection probability by the state than has been measured in the existing literature, which focuses largely on how regulated actors estimate the overall chances of being caught (see Paternoster et al. 1983, Paternoster and Simpson 1993, 1996; May 2004, 2005; Thornton, Gunningham, and Kagan 2005) rather than in what manner they can get caught, who is most likely to get caught, and how one can decrease getting caught. Let us look at this more closely now.

Mixed Sources of Detection

A first finding is that most lawyers do not believe that the state has a strong proactive enforcement capacity, but that it can rely on a reactive enforcement strategy (cf. Reiss 1984; Kagan 1994) that depends on complaints by clients. Most lawyers (89 percent, $n = 47$) thus state that enforcement authorities can only find out about violations of the law through complaints made by clients. Clients, of course, have inside information, most often about how lawyers have received money and whether they have issued proper documents and receipts. As such, even for cases that are very difficult to detect, clients can, through their complaints, directly help uncover violations.

When discussing the risk of being caught by the state, some lawyers (11 percent, $n = 6$) *do* think enforcement authorities can find out without complaints from clients. Some of these think that the state can detect violations by looking at the difference between the officially reported income and the actual income of lawyers. Consider for instance the following:

L: This [illegal practices studied here] is widespread. Who can deal with it? The other day I bumped into a lawyer from ZX [a large firm]. He said that on their official accounts the highest income is 1 million [RMB]. And lawyer Ma [the senior partner at ZX] is reported as several tens of thousands [RMB]. Do you believe that? Can I believe it? ... From the official accounts we can thus see that people like lawyer Ma, such big-shot lawyers, also do this [not report their full income to the tax authorities]. (GY.2.10.11.2011)

However, these lawyers are very vague about whether the authorities actually use the difference between reported and real income in their enforcement work.

The explanation for this, as offered by some of the lawyers, is that the tax authorities simply put too limited priority on lawyers.

Some lawyers also think that the law firm itself can enhance the risk of lawyers being caught violating the law. Some lawyers (e.g., PI.5.27.9.2011, BQ.5.8.12.2011, LY.2.17.11.2011, LG.5.27.12.2011), for instance, indicate that for litigation work, lawyers have difficulty accepting cases and thus money from clients without the firm knowing, as they need the firm stamp for the legal representation

contract litigators must have. Lawyers also explain that the paper trail the legal representation contract leaves in the law firm also enables the firm (as well as the judicial and tax authorities) to detect these types of violations better (BQ.5.8.12.2011, LY.2.17.11.2011, LG.5.27.12.2011), simply by checking reported income against the amount indicated on the legal representation contract. In one of the firms studied, the law firm checks with all clients whether the amount paid by the client was fully reported to the firm, following a case where a founding partner of the firm was caught reporting only part of what the client had paid to him to the firm and thus to the tax authorities (TW.5.30.12.2011).

All this shows that in perceptions of detection probability, not just the action of the state, on which most existing deterrence studies focus (Paternoster et al. 1983; Paternoster and Simpson 1993, 1996; May 2004, 2005; Thornton, Gunningham, and Kagan 2005), but also that of other actors matters.

Detection Probability Variation

Instead of just looking at how high the perceived risk of detection is for set cases (as most of the existing literature does; see Grasmick and Bryjak 1980, Grasmick and Green 1980; Paternoster et al. 1983; Braithwaite and Makkai 1991; Paternoster and Simpson 1993, 1996; Cohen 2000; May 2004, 2005; Thornton, Gunningham, and Kagan 2005), our data allow us to understand what illegal cases or situations are seen to be more likely to be caught compared to others. Lawyers in our sample clearly differentiate between activities that are more likely to be caught and those that are not. First, some lawyers indicate that the chances of being caught increase with the frequency and amount of taxes evaded. Lawyers think lower sums of money cannot be detected, even when they are not paid in cash but through bank transfers (GY.2.10.11.2011, LY.6.17.11.2011). The authorities are not perceived to have a sound bank account oversight system in place yet (GY.1.22.9.2011), but when sums and frequencies increase, authorities will start to notice, lawyers think, even though they do not indicate much detail as to how.

Lawyers also point out that some types of cases are riskier in terms of detection than others. Many think that tax evasion is much harder to detect in legal-consultancy-type work than it is in litigation (e.g., BQ.5.8.12.2011, LY.2.17.11.2011, LG.5.27.12.2011). In litigation cases, lawyers generally leave paper trails that enable the authorities to find out about possible transgressions. In litigation work, lawyers normally must have a legal representation document, attesting that they represent their clients, signed by the lawyer and client, as well as stamped by the firm.

There are several other qualifications lawyers make when discussing the chances of being caught by the state other than through client complaints. Some lawyers think that partners have a higher risk of being caught than ordinary lawyers, as high-income earners are officially made a tax enforcement priority, according to a 2000 policy document (e.g., LG.2.27.12.2011). They also think that the chances of being caught become higher when tax violations are no longer individual, but are organized directly by the whole firm, as it leaves a longer paper trail (e.g.,

LG.2.27.12.2011). Also, one lawyer explains that detection probability is related to the sensitivity of the case:

L: This question [whether the authorities can detect transgressions without complaints] how much you can be involved, is a political question. I see it as follows. China is at a time of reform and a competition of powers. Lawyers and those like lawyers, find themselves with some wealth and great knowledge, especially legal knowledge, and also a liberal mindset. At some point this means that they may start to defend the rights of the weaker masses and oppose the government. And at some point get into a confrontation with such government. In these conditions, if you yourself have not acted well, and if you for instance have evaded taxes, there is a big chance that the government will investigate you and find out. Vice versa, if you do not choose to do such cases and stay on the side of government, there is virtually no chance that the authorities will come to inspect and manage you. (ZX.5.22.12.2011)

A number of lawyers think that risks vary depending on the role that clients can play. First, these lawyers hold that risks are higher in litigation than in nonlitigation cases. Litigation is about winning or losing, and the chances of trouble due to clients reporting illegal practices of their lawyers are higher with lost cases. As one lawyer puts it clearly:

You cannot win all your cases, and if your clients are not happy they will file a complaint. (BQ.2.8.12.2011)

A second core aspect is whether the clients can be trusted and whether there is a strong relationship between the lawyers and the clients (e.g., GY.1.22.9.2011, ZX.6.22.12.2011, PI.5.27.9.2011, YT.3.28.12.2011). As one lawyer explains in more detail:

L: If we have frequent dealings, I have less fear [of clients complaining about personal fee collection and not giving tax receipts]. There is also less cause for fear when the client that seeks a lawyer is introduced by someone the lawyer trusts. For instance if you have very good relations with Wang, and Wang introduces a client to you, although you do not know the client, you do know Wang, and if Wang tells you not to worry about this person. Then you do not need to give him a receipt, or a contract and you just take his money.

BvR: Do you trust such a person? If I was not a foreigner and from X city, and if you had a good relation with Wang, and he would introduce me to you, would you think that the risk is low? Is that correct?

L: Very low. If we wanted we could just do it. In China we say that China is a society of acquaintances. If you know someone, you can start doing many things. But if you do not know someone, you have to worry. As I understand Wang, and I do not fear people he introduces, and he

thinks the same, if there is an argument later I will just call Wang to sort such client out. (PI.5.27.9.2011)

So one way that trust can be developed is through mutual acquaintances who can vouch for a client. Another way is simply through time, as the lawyer and the client develop a relationship and know what to expect from one another (GY.1.22.9.2011).

In sum, there is a rich diversity in detection probability perceptions. The existing subjective deterrence literature has not captured this well (Paternoster et al. 1983; Paternoster and Simpson 1993, 1996; May 2004, 2005; Thornton, Gunningham, and Kagan 2005) because it has focused on general estimates of risk of detection, rather than on seeking to understand the contexts in which such detection takes place. This also demonstrates that insights about deterrability of offenders and offenses (Paternoster and Simpson 1993; Pogarsky 2002; Jacobs 2010; Simpson and Rorie 2011) also apply to detection probability.

Managing Detection Risks

A second finding is that lawyers have a detailed understanding of the ways to decrease the chances of being caught, even when evading taxes in litigation work. First, lawyers can make fake formal legal service and representation contracts with their clients in which only part of the fully agreed sum is included (PI.5.27.9.2011). Or, as happened in one case, take on the case from the client and receive money personally without a tax receipt, and then file the case in the name of another lawyer for a much lower amount (PI.5.27.9.2011). While the state and the firm can learn about lawyers representing clients without a proper formal representation contract, they have much more difficulty discovering lawyers who use these incomplete contracts, some lawyers explain. Authorities and firms can find out when clients of such lawyers are not happy and report the lawyer's cheating practices. Lawyers did not provide much detail that this happens, however. We were able to trace only one case that occurred in one firm:

L: If there hadn't been complaints, it would have been hard to find out [about a lawyer illegally collecting client fees personally without fully paying commission to the firm or taxes]. But now [we find out] more and more, because this problem existed in the past: You entrust someone to legally represent you, you pay him the fees, he goes back to the firm and with the 30,000 [RMB] you gave him, but he takes back 10,000 or 20,000 and he puts 10,000 in his pocket: This you can hardly find out, so we try as much as possible to get the clients to pay [fees] in the office. (TW.1.14.11.2011)

Second, in some instances, lawyers work in loosely managed firms and have easy access to the firm stamps and papers. They can thus make their own documents without informing the firm (PI.5.27.9.2011). A third form of reducing the chances of

detection is when lawyers act as civil representatives. This means that lawyers represent their clients in court, chiefly in civil litigation, not as formal lawyers but as ordinary citizens aiding the litigants (PI.5.27.9.2011, LG.3.27.12.2011, LY.5.17.11.2013). Lawyers thus do not need to have a formal legal representation contract from the firm, and are more difficult to detect by the firm when taking fees from clients without reporting this to the firm. Some think that this is risky, as the lawyers for the opposing party in the litigation can inform judges when they suspect the other party is represented by a lawyer illegally acting as a fake civil representative (TW.7.30.12.2011). Fourth, even in criminal cases, sometimes, one lawyer told us, they can do work for their clients without a representation contract if they are closely connected to the court, police, or procuratorate (PI.5.27.9.2011). This finding is similar to Michelson's (2007) findings about how lawyers generally manage their everyday challenges through developing a broader political embeddedness.

In the various discussions about how to manage the risk of being caught, clients are crucial. In many of the options discussed above, clients still know about the illegal practices of their lawyers. As such, it is crucially important to manage the risk of the client going to the authorities or the firm to report on the lawyer. In our interviews, we found different perceptions about the possibilities to manage clients and reduce the risk of being caught that way. A first approach, which especially applies to nonlitigation and noncriminal litigation, is that lawyers can, should things go wrong and they lose a case or leave the client dissatisfied in any other way, simply solve things by returning (part of) the fee paid by the client (e.g., BQ.3.17.11.2011). A second way to reduce client-related risk is by making sure that the client does not have proof of the lawyer's illegal acts, by not giving any written document to the client, not even an informal receipt of payment (LY.6.17.11.2011). A third aspect is that there is less risk when clients do not know the law very well and thus simply do not know that their lawyer is violating it (PI.5.27.9.2011). Lawyers even explain that there are ways to convince their clients not to accept a formal receipt. One way is that lawyers tell their clients that they will not receive a receipt because the money is needed for bribery purposes (BQ.P.20.9.2011). Another lawyer explains that if a big-shot lawyer tells his client that he will not give a receipt, "no one will dare to then still ask for a receipt" (GY.2.10.11.2011).

In contrast with lawyers who see reduced risks from trustworthy and manageable clients, other lawyers indicate that clients always pose a risk, independent of circumstances. While many lawyers state that if clients are unhappy with the outcome of a case, the risk is higher, several lawyers expand on that. They find that even when the relationship is good and there is mutual trust, such relationships can still change and clients can still have leverage over lawyers when no clear contract is made and when the lawyers engage in illegal behavior (FL.1.29.12.2011, ZX.6.22.12.2011, ZX.7.22.12.2011, ZX.8.22.12.2011). Consider the following quote, for instance:

L: This [that clients do not need a tax receipt or legal service contract] happens, but in my opinion, China has a saying: "Even brothers keep accounts, let alone friends." No matter how good your relation with me, I

always want to prevent things [from] turning for the worse one day. Having a black and white contract is then good. When relationships are good, we are all friends, but as soon as there is a problem, things will get difficult. (ZX.6.22.12.2011)

In sum, instead of just finding a general estimate of chances of being caught to indicate detection probability, our method of study offers us a much richer insight not just into the variation in such probabilities, but also into ways through which such risk can be managed. Overall, what emerges is a picture of contextual detection probability in which the probability hinges on the particular context of the lawyer, law firm, clients, and case. The variation in all of this contrasts somewhat from the high overall risk perception lawyers report. To understand this better, we now look at how lawyers perceive the severity of sanctions.

VAGUE NOTIONS OF SEVERITY OF SANCTIONS

In our sample, lawyers were not very clear about the severity of sanctions for those caught. Our study thus shows that there can be a high risk perception for violating the law, without a clear indication of what punishment is meted out. This is very much in line with the existing literature, which shows that clear notions of sanction severity are not the chief aspect of deterrence, but that detection probability is the key deterrence element that drives compliance (see Grasmick and Bryjak 1980; Grasmick and Green 1980; Gray and Scholz 1991; Cohen 2000).

In our dialogues about risk in relation to violations of the law studied here, many lawyers are rather vague about what will happen should they be caught evading taxes. Few question whether, once caught, the authorities will take action. As such, most implicitly assume that some form of action will be taken. Some lawyers generally point at the risk of administrative sanctions, largely those of the justice authorities that regulate the legal profession. Many are extremely vague about this and, in many instances, neither specific punishment nor specific cases where such punishment was meted out were discussed.

Lawyers who did bring up specific punishment by state authorities point mostly at lawyers losing their practice licenses (TW.2.30.12.2011, TW.3.30.12.2011, FL.2.29.12.2011, OP.1.28.12.2011), a sanction issued by the justice authorities. Most lawyers do not discuss punishment by tax authorities (exceptions include TW.6.30.12.2011, FL.2.29.12.2011, and BQ.5.17.11.2011). One lawyer explains that tax evasion can result in criminal prosecution, and states that this can result in a lawyer losing his or her license, and thus frames it again in terms of punishment by the justice and not just the tax authorities (BQ.5.17.11.2011).

Some lawyers also discussed sanctions by law firms. A first sanction firms can use, and one that is discussed by some of the lawyers, is to turn to the justice or tax authorities. Under Chinese law, law firms have an obligation to report misconduct to the justice authorities (Notice of the National Development and Reform Commission and the Ministry of Justice on Issuing the Measures for the Administration of Lawyers' Fees [eff. Dec. 1, 2006]). Should they do so, they thus support the

detection capacity of the state and use the state's power to deter other possible violators in their own firm. Very few lawyers mentioned that this actually ever happens. As one lawyer explains, firms will differentiate between minor and major matters and only report major matters to the authorities (OP.2.28.12.2011). One such major matter, this same lawyer explains, is taking cases privately without reporting them to the firm or without paying commission (OP.2.28.12.2011). A second type of sanction is to fire lawyers caught violating rules on private taking of cases and on tax receipt issuing, but this was mentioned by lawyers in only two firms, TW and LH. Only lawyers at the TW firm mentioned that one of their lawyers, actually a founding partner, was fired for such misconduct. (TW.5.30.12.2011). The TW firm still uses this case to educate its new lawyers and thus to enhance both awareness and deterrence (TW.1.14.11.2011).

In the study of subjective general deterrence, so-called signal cases are highly important. These are major cases that regulated actors know about, that influence their risk perception of violating the law, and that ultimately can shape their behavior (Thornton, Gunningham, and Kagan 2005; van Wingerde 2012). In our discussions with lawyers, only a handful of such signal cases were mentioned. One lawyer points at a case in Jiangsu where the local lawyers' association had handled a case through mediation; however, the lawyer did not offer much detail about whether it involved sanctions and what the impact had been (BQ.9.8.12.2011). Several lawyers point at cases that the justice department has used for education and propaganda purposes and that have been published online and also have been disseminated through the law firms (TW.7.30.12.2011). Only one lawyer discussed any details of these cases or expressed having detailed knowledge about them. The only real signal case we could find in all sixty-two interviews was the following, which, because of its interesting details, we reproduce at length:

L: There was a lawyer who was my former student and in his case he had taken 100,000 USD for a death penalty case. Very expensive. He had expressed that he for sure would prevent his client getting killed. It was a narcotics trafficking case, where a relative of a returned American overseas Chinese had been caught. The amount of drugs involved was very large. And the lawyer collected 100,000 USD. At the time that was about 800,000 RMB. He said if you give me this money I will not act myself or appear in court, but let a different lawyer handle it. So we do not need to arrange formal procedures. I will just give you this informal receipt [so not a tax receipt] to attest that I took your money. You just pay me and I guarantee you that the death penalty will not applied, but rather that he will get life imprisonment or a death penalty with two years reprieve,^[2] as is possible under Chinese law. After he was paid and let the other lawyer handle things, the result was bad. They did not succeed and the suspect got the death penalty and was to be shot. What to do now? Your normal

2. According to the PRC Criminal Code (Articles 48, 50, and 51), courts can sentence suspects to a so-called death penalty with reprieve. This is death penalty with a two-year suspended sentence of the execution. Unless the convict is found to intentionally commit further crimes during this two-year period, the sentence is automatically commuted to life imprisonment. In the case the convict has performed deeds of merit in this period, it can even be commuted to a shorter fixed-term imprisonment.

reasoning as a lawyer is to return the money, let them search another [lawyer], as this was first instance and there is always appeal. Let them quickly find another lawyer to take the case. The problem was that the lawyer had already spent the money. He had bought a car and could not return it.

BvR: Had he not reported this money at all to his law firm?

L: He had not, he had collected it personally.

BvR: And he also had not issued a tax receipt?

L: Only an informal receipt, handwritten attesting that he had received a sum of money. The result was that the client was not happy, and issued a complaint to the law firm and to the local lawyer management authorities. And they then revoked his lawyer's license.

BvR: Do most lawyers know this case?

L: They know, but it has not been reported. But we tell one another. You tell me and I tell you. In this case the risk was large. If they had made a formal contract at the law firm and issued a tax receipt, even if the result had been bad and they could not return the money, the lawyer would still not lose his license, the key issue here was personally taking fees from clients. (PI.5.27.9.2011)

Even if such a signal case is well known, it is not yet sure what effect it has on lawyers. In Thornton, Gunningham, and Kagan's (2005) study about general deterrence in the United States, a reminder and reassurance function was found, indicating that regulated actors are reminded of and reassured in their own compliance when they learn someone else is caught and punished. As the lawyer above interprets this case (PI.5.27.9.2011), it provides a warning not to violate legal procedures in these types of high-risk death penalty cases, and perhaps implicitly that if you do so, to save the money you earned, just in case you need to return it to the client to reduce the risk. In another interview a somewhat different view was evident, not so much one where a punishment case signals that other lawyers should comply, but one where the meaning of punishment is disconnected from the severity of the violation or the moral interpretation of such violation, and thus a mixed and weakened deterrent signal is transmitted. Here, a lawyer, after having been asked about what he thinks about cases in which lawyers are caught illegally not issuing a tax receipt, states:

L: Perhaps others are much worse than the person that got caught. In China that makes sense and many people think in this way. If you pay your taxes [nearly] in full or pay 80 percent and you get caught, then you are finished. But if someone only pays 20 percent taxes and is not caught, he is a good man. (GY.2.10.11.2011)

One reason that so few signal cases came up may be due to our inductive method, in which we did not directly test their knowledge or even generally ask for such cases (in contrast to Thornton, Gunningham, and Kagan 2005). Another reason may, of course, be that there are few relevant cases about which lawyers can directly talk.

All in all, we find that lawyers are highly vague about sanctions for violating the two rules studied here. This is in line with what Thornton, Gunningham, and Kagan (2005) found, namely, that regulated actors do not have much knowledge about signal cases. What is new is that despite such vague notions about punishment, as well as a contextual understanding of detection probability, overall risk perceptions of violations are high. In simpler words, the two key notions of deterrence most scholars study, detection probability and sanction severity, cannot fully explain the high risk perception we find here.

DETERRENCE BEYOND DETECTION AND SANCTIONS

In much of the deterrence literature, deterrence is chiefly seen as the fear of being caught and punished for violating the law (see Grasmick and Bryjak 1980; Grasmick and Green 1980; Paternoster et al. 1983; Braithwaite and Makkai 1991; Paternoster and Simpson 1993, 1996; Cohen 2000; May 2004, 2005; Thornton, Gunningham, and Kagan 2005). In the present study, however, we analyzed deterrence in more general terms by asking respondents about whether it is risky to engage in certain types of illegal behavior. This yielded a broader understanding of what shapes the perception of risk of violating the law, which is crucial to understand how there can be high risk perception even when perceptions of detection probability vary and those about sanction severity are vague.

Ultra-General Deterrence by the State

First, we see that there is what we shall call ultra-general deterrence. Lawyers are afraid of signal cases in which major sanctions were meted out to other lawyers, but for actions that are completely unrelated to the violations studied here. The few lawyers who did bring up cases of lawyers being punished did so for cases unrelated to the risks that we were discussing in the interview—namely, risks arising out of illegally collecting fees from clients personally and doing so without issuing a tax receipt. Instead, some lawyers brought up very famous recent cases where lawyers had been prosecuted and even jailed (under Article 306 of the PRC Criminal Law) (Fu 2006; Liu and Halliday 2008) for allegedly tampering with evidence or influencing client testimonies during major criminal trials, often those involving the death penalty (LG.7.27.12.2011, BQ.9.8.12.2011, LY.3, LG.1, GY.3.16.12.2011, GY.4.16.12.2011, GY.3.16.12.2011). One lawyer explains that although these Article 306 cases are unrelated to the fee collection and tax evasion practices discussed here, they demonstrate a general risk lawyers run and evidence their weak position (LG.7.27.12.2011). The highbrow prosecution of lawyers under Article 306 of the Chinese Criminal Law for fabrication of evidence (Fu 2006; Liu and Halliday 2008) seems to have an impact on lawyers, making them more risk averse. As another lawyer explains:

Since the Li Zhuang case [which involved a widely reported and debated case of prosecution and conviction under Article 306 of a lawyer for

fabricating evidence], lawyers are more aware that they have to protect their interests and that the risk is now higher. (GY.4.16.12.2011)

It seems thus that there is a much broader general deterrence here at play than is usually studied. It is a general deterrence not so much of a lawyer receiving a signal not to engage in activities that are similar to the ones punished elsewhere (cf. Thornton, Gunningham, and Kagan 2005) but, rather, a signal not to engage in any illegal activities, even ones that are different from the ones punished elsewhere by completely different enforcement authorities. This ultra-general deterrence and the resultant risk aversion (also mentioned explicitly by LH.1.27.10.2011) among lawyers that it may have created may be a first clear explanation for the mismatch between high subjective deterrence and low objective deterrence this article seeks to explain.

There is thus a mixed deterrence emanating from the state. Even though most lawyers do not really think state authorities can discover violations on their own, and nor do they mention clear instances of where lawyers have been punished for such offenses, a pervasive sense of risk from the state exists. This, we understand, arises out of a combination of the weak position lawyers feel themselves in and the threat from the government for issues not directly related to the fee and tax violations studied here (Fu 2006; Liu and Halliday 2008). Lawyers who feel such risk seem to be risk averse. For them, even though the chances of being caught or being directly punished for violations of the norms is low, the small chance of that happening still influences them to report a general risk and a risk that emanates from the state. Following Liu and Halliday's (2011) insights about how lawyers manage and cope with risk, we can hypothesize that the more lawyers are generally in a zone of risk in terms of the sensitivity of the cases they handle or the difficulty of achieving the desired result in the cases, and the less protection they have through connections with the state, the more risky illegal fee collection and tax evasion will be perceived.

General Fear of Clients and Liability for Breach of Legal Service Duties

The overall risk perception is further enhanced by a general fear some lawyers have of their clients. These lawyers portray their clients as fickle and thus hazardous. Some do so by saying that you never know in the long run whether the client stays happy (BQ.8.8.12.2011, LY.5, TW.4.30.12.2011). Lawyers also explain that clients have two mindsets, one when they need your help when they come to you with a case at first, and a second once a case is finished (GY.4.16.12.2011, ZX.2.22.12.2011, TW.5.30.12.2011). One of these lawyers further explains that clients can even turn against you when you win a case (ZX.2.22.12.2011). Some lawyers go a step further and explain that they see clients as their enemies, and perhaps even their biggest enemies (BQ.5.8.12.2011, ZX.6.22.12.2011, GY.3.16.12.2011). They learn so from their supervising lawyers (ZX.6.22.12.2011) or even from the lawyers' association (GY.3.16.12.2011). And the negative attitude

toward clients is not restricted to clients alone, but even to their family members (ZX.2.22.12.2011).

The general negative attitude of distrust or outright adversarial or even hostile relations toward clients creates a risk-prone frame of mind. In such a frame, more general notions of risk, rather than direct sanctions, can come to play a role. One lawyer, for instance, frames such risk in broad terms as clients gaining leverage over him:

L: I am very close to my clients, for instance as their consultant. It is like family. There are clients that if I ask them money that is enough, they do not need to go through complex procedures of the firm [including a tax receipt, case filing and representation contract] . . . Although my relations with clients are good, if I do not give them a formal receipt after payment, honestly, I will lose my standing in front of them, as I have not been upright. At all times such clients can gain leverage over me. (ZX.8.22.12.2011)

Lawyers also indicate the risk of losing a certain image with their client. As one lawyer explains:

L: There will be [a risk coming from your client]. I think that this is first a matter of being a lawyer. If you do much as you like, no matter what friendship relation you have with your client, if one day there is a problem, you will show people how you are not meticulous. I think that a lawyer's work is meticulous work. Under normal circumstances we can all be relaxed and happy, but in real formal legal work, you must let all your clients see an upright and regular procedure. . . . I think that this is a matter of your image towards your clients. (LG.3.27.12.2011)

Or, as another lawyer frames it even more strongly, breaking the law can lead to clients undermining your reputation:

L: I think now, lawyers that collect fees personally [and thus illegally], is a big risk. If you do not handle the case well, then your client will tell other people and spread the news, this lawyer does not handle his affairs properly. Where is your reputation then? Not just for you but the whole legal profession can get a negative image. (LG.4.27.12.2011; see also TW.2.30.12.2011)

Other lawyers indicate that dissatisfied clients can hold them liable for not fulfilling their legal service obligations. This is especially so if lawyers engage in the illegal practices studied here, and do so by not making a formal legal service agreement in which all rights and duties of the lawyer and the client are clearly outlined. In answering our question of the risk of illegally taking money personally from clients without issuing a formal tax receipt, some lawyers thus point to the risk of liability for legal services not clearly agreed upon, rather than the risk of breaking the law (cf. ZX.7.22.12.2011, LH.1.27.10.2011):

L: Lawyers should prevent and mitigate risk . . . If a lawyer does not sign a contract [as happens often when lawyers illegally collect fees and evade taxes] and the rights and duties are not clear, and if the case has a result unfavorable to the client, this may turn to the worse and the client may seek to trouble the lawyer's life. If there is no clarity about what has been agreed and what the limits are of the service, all can result in trouble. For instance if I arrange to represent the client only for a first instance trial and not yet for an appeal, if you do not have a contract, then you must do all. So I think all of this is risky and when not signing a contract you bring yourself into risk. (LH.1.27.10.2011)

Thus, we see that clients shape risk perception not solely through their role in helping state authorities and firms detect violations or through direct sanctions themselves, clients also play a role in the overall risk perception because some lawyers generally fear them and want to prevent clients having leverage over them. Moreover, breaking the law coincides with not having clear contractual agreements on the legal services, which enhances liabilities for the lawyer in terms of legal service duties. All this shows that the broader notion of deterrence as the perceived risk that emanates from violating the law has many and sometimes unthought-of origins beyond a simple focus on detection and punishment.

Fear of Breaking Firm Norms

In their responses to questions about the risk of violations, some lawyers did not discuss fear of detection or direct sanctions, but started to discuss more subtle forms of responses to violations closely connected to the social norms within the firm. Lawyers, for instance, risk breaking firm fee earning standards when they illegally take money from clients directly without reporting it to the firm. Doing so, they risk reduced career opportunities within the firm (LY.1.17.11.2011). Some also discuss that by not reporting income to the firm, lawyers risk undermining their firm's reputation or even that of the broader legal profession (BQ.P.20.9.2011). Risks can also be of a more moral and personal nature. By failing to report income to the firm, lawyers risk breaking a moral obligation they have to support and develop the firm. As one lawyer explains:

L: I can't dismiss that it [illegally taking fees from clients and not issuing a receipt] may happen. But our law firm doesn't encourage it nor allow us to do so. . . . Suppose if all people do it this way, [then] the firm will be unable to stay in business, all of our costs, [in] the office [building] no one can bear the [full] responsibility, everyone has the obligation or the responsibility to assume this responsibility. (BQ.7.8.12.2011)

Moreover, social norms can activate personal norms and trigger feelings of shame, known to act as broader forms of deterrence (cf. Grasmick, Bursik, and Kinsey 1991). As one lawyer explains:

L: If I do not pay taxes, I will feel that I broke the law, and if my boss then comes to me, I will feel sad inside. (BQ.2.8.12.2011)

Of course, breaking moral commitment and duty-type norms only produces a sense of risk and deterrence when the lawyer feels an actual commitment to the firm. In our sample there was variation in such commitment. While many had a direct personal relationship with firm leaders, there was quite some variation in how they connected with the firm as a whole. In some firms (e.g. GY, PI), lawyers did not have much connection with the firm at all. In others, the firm was internally divided and split among different teams or groups, sometimes also with individual lawyers not being part of such subgroups and being relatively unlinked to the firm. Also, there were differences in the extent to which lawyers indicated that they owed their caseload development and personal learning to the firm, with lawyers in some firms being highly positive and thus committed (LH, TW) and in others negative or disappointed (LY, BQ). A stronger commitment to the firm, as well as the internal cohesion of the firm, is crucial for the operation of firm social norms that help decrease private fee collection without issuing a tax receipt. Moreover, weak firm commitment and cohesion existed in all cases where lawyers openly admitted that at times fees were illegally collected in private without issuing a tax receipt.

All this highlights that subjective deterrence cannot be seen chiefly in terms of detection probability and sanctions, and also requires insights into how risk of violating the law relates to social and personal norms (cf. Paternoster and Simpson 1993, 1996; Kuperan and Sutinen 1999). And it shows that social structures in which regulated actors work are key arenas in which social norms that shape deterrence perceptions are activated and developed.

CONCLUSION

Deterrence is more than the sum of detection probability and sanction severity. It should be understood as the perception regulated actors have of the eventual risk of violating the law. Such risk perception can even exist, as it did in the case studied here, when there is little to no state law enforcement. This is because such risk does not just emanate from the state and its sanctions, but arises out of multiple sources—state, market, and society (cf. Gunningham, Kagan, and Thornton 2003). The study shows that when regulated actors have vague notions not just of what sanctions can be expected (cf. Thornton, Gunningham, and Kagan 2005), but even of the probability that they will be caught, a high perception of risk for violating the law can still exist. The study shows that such risk can originate from a broader environment of fear, in which regulated actors fear the state or their clients, based on experiences or perceptions that are not directly related to the violations at hand. It further shows that such risk exists and is the product of the organizational environment in which the regulated actor operates, and that it is shaped by the social norms that operate there.

All this offers some hope, perhaps, for implementation of law challenges in countries such as China. Of course, we should realize that deterrence, as studied

here, is not yet compliance. And, of course, that there was variation in the amount of deterrence we found in this study. What we can at least say is that there seem to be alternatives for state-based enforcement as the sole or key driver of deterrence. One insight is that the law itself can incentivize state and nonstate actors to become involved in assuring compliance, and thus start to play a role in constituting a risk environment for those considering breaking the law. In the case studied here, Chinese tax law and the laws regulating lawyers provide incentives to both firms and clients to make sure that lawyers report their income to the firm and that the firm issues a tax receipt, and thus enhance tax compliance. A second insight is that organizational environments in which rule violations can occur can be adapted to enhance the perceived risk of such violations. In this case, firm financial incentives, combined with a moral commitment to the firm, played a role in the overall risk perceptions lawyers reported. A third insight is about the prioritization of law enforcement. In many enforcement practices, scarce enforcement resources are used most efficiently by prioritizing them on what are potentially the most risky violations. This often means that larger firms receive more inspections than smaller firms, or that firms known to have violated the law in the past receive extra inspections. This study shows that such prioritization can be further optimized based on an understanding of the existing risk perceptions in each firm. Only those firms that have a low risk perception require extra enforcement, whereas firms that have a high risk perception, especially if it does not originate from state enforcement but from other sources, need less.

This study of risk perceptions of Chinese lawyers has broader implications for the study of the Chinese legal profession (Lo and Snape 2005; Fu 2006; Michelson 2006, 2007; Fu and Cullen 2008; Liu 2012, 2011, 2012; Liu and Halliday 2008, 2009, 2011). It presents one of the few studies that looks at the ethics of lawyers in China and relates that to risk perceptions not just from the state, but also from the firm and clients. The lawyers interviewed show that the risk of particular unethical behavior is prevalent, but that it is not premised on direct state regulation of such behavior. It also shows that lawyers view ethical behavior in a broader environment of perceived risk that emanates from clients and the firm, as well as a general fear of being prosecuted by the state for other affairs. While one could argue that this general fear is good for deterrence and, possibly, compliance with the legal rules studied here, it is a completely different question how this affects the legal profession in its work, especially work that pits it against the interest of the state it so clearly fears.

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