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Introduction

“It is in its legal institutions that the characteristics of a civilized country are most clearly revealed, not only and not so much in its substantive law as in the practice and procedure of its courts. Legal procedure is a … ritual of extreme social significance.”1

If how a society decides its disputes is “a ritual of extreme social significance,” then China's thirty years of legal reform can inform our understanding of how the Chinese state relates to its society and how Chinese citizens relate to each other. Since 1978 China has embarked on legal reforms to promote law as a main mode of dispute resolution. But critics argue that China is establishing legal institutions more to promote economic development and to coalesce state powers and less for the empowerment of ordinary citizens.2 Ordinary citizens shy away from formal legal mechanisms to resolve disputes, because of an historical distrust of the law that are reinforced by recent experiences with the Chinese courts. At the same time, the state’s distrust of civil society institutions renders bottom up initiatives unpromising.

This volume takes an on-the ground look at how civil disputes of ordinary citizens are being


resolved in China today. In identifying what is going on at the ground level, this volume
“disaggregates the Chinese state and society,” to focus on the hows and whys – that is, the
process of “law in action.” This approach includes analysis of the process of ideas transmission
and the dissemination of law in the Chinese context, as well as discussions of legal institutional
dynamics as they affect Chinese legal development, and description of the contours of legal
mobilization by different social actors. It is a collection of chapters that focuses on “law in
action,” rather than “law on the books,” and on legal institutions from the “bottom-up,” that is,
those at the grass-roots level who are using and working in the legal system.

This volume takes advantage of the growing body of “law and society” literature as well as
the body of work on comparative judicial politics. In Engaging the Law in China, Neil Diamant,
Stanley Lubman, and Kevin O’Brien challenged scholars to recognize the relevance of
interdisciplinary research on legal developments in China. 3 In recent years, the growth of
scholarship on law and society has also meant an increased number of Sinologists exploring the
terrains of Chinese law. At the same time, those in the legal academy have steadily incorporated
social science scholarship and methodology into their pedagogy and scholarship. Legal scholars
and social scientists are no longer constrained by the belief that law and adjudication are sui
generis subjects that can only be understood through the specialized training of the lawyer.

Yet, there are still far too few collaborations and engagement between law scholars and
social scientists in the area of Chinese law. This volume evolved from a workshop that we held
at the Fairbank Center for East Asian Research at Harvard University in the fall of 2007. It is a

3 Neil J. Diamant, Stanley B. Lubman, & Kevin J. O’Brien, eds. Engaging the Law in China: State, Society &
Possibilities for Justice (Stanford University Press, 2005).
conversation between those traditionally recognized as legal scholars with social scientists on the
growth of law and legality in China, and the challenge of rule of law reforms. It also brought
together leading legal scholars from China, Taiwan and the U.S. who have gained unusual access
to Mainland Chinese courts and other legal institutions. Rather than talking across disciplines,
this volume encourages conversation between disciplines to add to the current understanding of
Chinese legal reforms.

This inquiry is particularly timely as China marks its thirty-year anniversary of legal
reforms in 2008. By sharing existing findings about Chinese legal reforms across disciplines (law
and social sciences) and across nations (U.S., Taiwan and China), we hope to explore
contemporary Chinese notions of justice that seek to balance Chinese tradition, socialist legacies,
foreign adaptations, social realities, and the needs of the global market. By providing a state of
the field report through empirical data, we hope to provide some preliminary assessment of thirty
years of legal reforms and identify connections that may not have been obvious in the past.

The focus of this volume is on civil dispute resolution and in particular, on how disputes,
once defined as legal, are resolved in China. We focus on civil dispute resolution because civil
and commercial disputes are those disputes that ordinary citizens are most involved with. In
particular, this volume focuses on what social scientists called "third party (triad) dispute
resolution" -- that is, when parties delegate a dispute to a third party for resolution. As Alec
Stone Sweet has pointed out, triad dispute resolution -- two contracting parties and a dispute
“decider” -- constitutes a primal social institution, a microcosm of governance.4 By organizing

4 Martin Shapiro & Alec Sweet Stone, On Law, Politics and Judicialization 15, 57-60 (Oxford University Press,
disputes about a community's normative structure, triad dispute resolution performs an important governance function in adapting general rules to the specific experiences and exigencies of those who live under them. In turn, those who initiated the triad learn something about the rules governing their exchange and the normative structure that sustains it. This dynamic of change is observable at both the micro-level, the behavior of individual actors, and at the macro-level, the institutional environment or social structure in which the dispute is situated. In other words, the individual dispute in China and the manner of its resolution can be reflective of individual identities and motivations as well as a statement of the macro-level interactions.

More importantly, under certain circumstances, triad dispute resolutions can be a powerful engine for social change, as the dispute resolution can either reinforce existing structures or adapt or reinterpret existing rules. In the latter scenario, if the agent of dispute resolution has authoritative value and is taken as the legitimate restructuring of social norms for future cases, then, triadic decision resolution will be a powerful mechanism of social cohesion and political change. Disputants, in turn, will adapt their own behavior to increasingly differentiated sets of rules, thus (re)making themselves and their community. Systemic change, then, implies the transformation of collective and individual entity, and can be observed at the micro level, that is, at the level of individual disputants in seeking resolution.

Civil dispute resolution methods in China are multiple – ranging from formal court adjudication, to arbitration (as in labor disputes), mediation, petitions (or “letters and visits”),

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5 Ibid.

2002).
and even protesting in the streets. While recognizing that a vast majority of disputes are resolved
before their recognition as formal “lawsuits,” this volume nevertheless takes as a starting point
that increasingly the “rules of the game” are in fact legal rules. We ask how legal doctrine is
shaping the strategies of those who pursue their interests within or without the courts, and focus
on how law has or has not infiltrated and shaped the triad dispute resolution in China. We
recognize that law is only one set of normative structure in dispute resolution, but we are
interested in how law intersects, integrates, and competes with the variety of triadic dispute
resolution methods from adjudication to non-adjudicatory methods of dispute resolution such as
petitions, mediation and arbitration. In each method, parties fight by raising alternative views of
facts and of relevant legal norms, with the outcome determining entitlements, governing the
power to own and control property, and conferring the right to marry, to divorce, and to live in
various places. Even in recent protest movements in China, we see how concepts of legal rights
and entitlements can inform and shape contentious behavior, as legal language leaves the
courtroom and appears on the streets and in the media.

We apply what Martin Shapiro calls, “political jurisprudence” or “sociological
jurisprudence” – that is, recognizing that those working in law are political actors and apply the
same modes of analysis as applied to other political actors and institutions.6 We ask the same
questions as asked of other political actors: how do these legal institutions make policy
decisions, how do they relate to other institutional actors, how do their work styles and
organizations affect their efficacy? We know that legal institutions, once created, often take on

6 Ibid.
independent dynamics of their own, including political self-preservation as well as institutional competition for expansion.

In the Chinese context, then, we explore the Chinese legal institutions for public redress – how have they developed and evolved? What are the dynamics between legal institutional players and how do the organization and work style affect their efficacy? How are Chinese citizens using these legal institutions? Why do the effects of legal experience vary across different generations? The focus is on how Chinese citizens are accessing “justice” mechanisms and how the changes and dynamics in legal institutions impact the daily lives of ordinary Chinese citizen. How do legal rights and duties condition the way the roles and identities of actors and groups are defined?7

In the last twenty years, law and markets are the mantras of development proposed by the World Bank, the Asian Development Bank and even the Chinese state as the keys to economic development and improved governance. As observers of China's legal reform, we have long noted that Chinese leaders embrace the growth-enhancing effects of "rule by law" rather than "rule of law" reforms that can challenge Communist Party power and authority. As Sally Merry pointed out in her opening remarks to our workshop, law is connected to relations of power. It allocates power through the construction of identities that have consequences such as citizens/aliens, criminal, urban dwellers/rural migrants, licensed/non-licensed. In its ability to distribute power, law can be a double-edged sword (used for or against the people). When

7 The identity of citizen has been defined as “a personal status consisting of a body of universal rights and duties held equally by all legal members of a nation state.” T. H. Marshall, Class, Citizenship, and Social Development (New York: Anchor, 1965).
combined with state and economic power, law can concentrate oppression as law is used by the state to govern the people (rule by law) rather than used by the people to check the state (rule of law).

“Rule of law” means that law distributes power to ordinary citizens as against the state. The state must be subject to legal rules and norms as any other subject. In practice, a system of rule of law must feature independent and impartial decision makers, transparent and open rules that apply uniformly to all (including governmental powers), and a process that ensures the protection of fundamental rights and interests. As such, rule of law requires transparency and participation in the law-making and law applying process, and predictability and consistency in the enforcement of legal norms. This means attention must be paid not only to bolster institutions such as the legislature, the judiciary, the legal profession but also, to promote legal consciousness and acceptance of law on the part of ordinary citizens and non-governmental organizations to whom these laws apply. In other words, “rule of law” requires the use of legal triad dispute resolution by ordinary citizens in ways that would directly or even indirectly challenge state authority.

We know from law and society scholars that at minimum, the power of law lies in its discourse and in serving to provide a narrative frame. In other words, law’s power lies not only in its ability to settle disputes or in establishing social norms, but also, in giving a name to moral and ethical claims. The law label “legitimizes” an otherwise contentious claim and imbues it with greater social significance and lessens its political dimension. In other words, law gives a framework within which a victim can connect an injury with a normative violation, blame a
violator, and claim relief. Legal process, meanwhile, provides a platform on through which substantive issues can be contested and debated. A “rule of law” state develops when the law gives context, legitimacy, a name, and a framework to disputes even when the dispute involves powerful state actors.

As scholars researching Chinese law, how do we identify when the law works as a narrative frame rather than an oppressive command, as a platform for debate rather than a hurdle to overcome? In the on-going conversation about the nature of the Chinese legal system, we have given much attention to the intentions and desires of leaders with a utilitarian approach to "rule of law", who take law to be a new tool for social control and effective governance. But in order to more fully understand the societal effects of legal development, we also need to investigate the unintended consequences on actors below. This requires analysis of the historic cultural attitudes towards legal phenomena in China. Rules are not self-enforcing, but rather, require internalization of the norms by those to whom the rules are directed as well as sanctioning mechanisms for noncompliance. And so, an integral aspect of understanding the effectiveness of legal systems requires an investigation into the similarities between rules and norms and the knowledge (misinformation) that laypeople and (lawyers) possess about rules. This would mean a better understanding of the popular attitudes ordinary Chinese citizens have toward legal institutions and legal norms, the origins of such attitudes and their variation across time, geography and individual attributes.

We separate the chapters in this volume into three themes. Yet, reflective of how integrally tied these questions are and how important it is to bridge disciplines, one of more these themes flow in and out of every chapter. First, we focus on the dynamics and tensions between the institutions in the legal triad dispute resolution. We examine the adjudicatory and mediation systems, with a focus on the judiciary, in some detail, and their development and their interactions with other institutions. We also focus on the intermediaries of the law such as lawyers and other quasi-legal professionals – what they do, how they developed, and how they compete, interact, and otherwise undermine or sustain the legal system.

Second, we focus on *pufa* (the dissemination of law) -- that is, how legal culture and legal consciousness are developed in contemporary China among Chinese citizens. What are the popular attitudes towards contemporary legal process and institutions? How do historical traditions and individual attributes affect popular attitudes towards legal institutions? How are Chinese citizens faring in the courts? How is the legal consciousness of ordinary citizens changing and coalescing as the use of law to settle disputes increases? How do informal laws and norms co-exist with formal law in the contemporary Chinese system?

Third, how has law been used to provide a narrative frame for ordinary citizens? If law is invoked by private citizens, does it have the power to challenge the state? Is there an evolving concept of the “private attorney general,” that is, enforcement of legal norms through private litigation, to bolster the application of the administrative state? Are courts being used as a “democratic” vehicle for ordinary citizens to shape and challenge imposed state norms?

*Legal Development and Institutional Tensions*

Legal institutions serve as the mediators of law and as the site for the “performances of
law.” Yet, as social scientists have long pointed out, once legal institutions are put in place, forces of institutional dynamics follow adding texture to the picture. In several chapters, our authors explore legal institutions not only as how they are designed, but on how they have meaningfully evolved through use in ways that were unintended and the institutional dynamics, competition, and/or relationships that have added to or detracted from the development of law. In recent years, the Chinese state has implemented and/or encouraged the development of a wide array of competing legal institutions ranging from the judiciary, the justice offices, the legal affairs bureau, to legal journals and periodicals as well as a wide array of legal actors from judges, private lawyers, legal service workers, to legal affairs workers. Do these institutions enforce rights, or simply diffuse the bubbling dissatisfaction of public discord or both? Are these institutions working at cross-purposes or are they reaffirming each other’s legitimacy? Are different civil disputes being steered to different institutions and why? How do these legal institutions adjust state and society relations?

In their chapter, Fu Hualing and Richard Cullen trace the course of legal reforms from mediatory to adjudicatory justice and back to what they term “neo-mediation.” Through this development, Fu and Cullen also point out the growing strength of the Supreme People’s Court (SPC) in determining how civil disputes are to be handled when brought before the courts. Because civil matters historically have not risen to central government attention, the Supreme People’s Court has had unusual liberty in interpreting civil legislation and controlling the form and method of civil litigation in the courts. It is here, according to Fu and Cullen, that a limited form of “civil society” could operate within the parameters of China’s current one party state. (p. )
With this limited autonomy, through a series of Five Year Plans, the SPC had moved the civil courts away from “coercive” mediation to adjudication, from Communist Party-centric justice to judge-centric justice. By 1997, mediated cases dropped in both real numbers and percentage terms. Under adjudication, the burden is placed on parties to find and present evidence and judges, now relieved from time-consuming fact investigation and mediation, can simply decide the facts according to the law. Yet, as Fu and Cullen point out, more formality has not led to greater satisfaction. Higher expectations and more formal but complex procedures meant that litigants are less apt to accept the legitimacy of court decisions. As a result, public discontent led to a dramatic increase in petitions to central authorities by the early 2000s.

In response, the CCP turned its attention to the courts to demand that they fulfill the essential political duty to prevent disputes from occurring or ending them where they occur – in other words, demanding that the courts refocus attention from the legal aspect to the political and social context of disputes, and “mediate” towards a “harmonious society.” Judges are pushed back from a “public and general role of norm finding and norm application to settling private disputes.”

But the more interesting question is the SPC’s measured and slow response to this new dictate. As Fu and Cullen point out, because judicial reform has taken place only within the judiciary with little impact on the political system, the judiciary is vulnerable to changing party policies. That does suggest the need to coordinate judicial reforms with other political reform agendas. But today’s more professionalized Chinese judiciary may be more defiant towards political incursions. Hence, to date, the SPC has limited this enhanced mediation to specified categories of cases and reemphasized the importance of court processes and voluntariness of
parties. How this tension plays out may foretell important directions of Chinese judicial reforms, and lends insight on how an institution, once established, may create dynamics of its own.

While Fu and Cullen focus on the interplay between mediation and adjudication, Benjamin Liebman examines the work of the lower civil courts and how the system of letters and petitions serve as competing sites for dispute resolution. Petitioning even as it threatens unrest is consistent with China’s embrace of institutional competition and the reliance on multiple Party-state entities to serve as checks on malfeasance. In China, according to Liebman, populist justice means that a single individual, standing with a sign stating “grievance” outside a local court has the ability to sway a court’s decision. But rather than an adjudication of right from wrong, and developing a normative prescription for the future, courts are used to “assuage petitioners.”

In his chapter, Benjamin Liebman examines the influence of populist pressures on court decision-making. According to Liebman, populist pressures on the courts may be even greater in non-democratic systems, such as China, where there are few other outlets for expressing popular views. China’s letters and visits system, or xinfang, refers to offices that exist at most levels of the Party-State and handle both written and in-person complaints. The actual numbers of petitions remains to be quite high and their effects on courts, accordingly to Liebman’s interviews of judges, are still substantial.

Most complaints are from litigants who lack legal expertise or cases in which litigants may have valid grievances but lack legal recourse for such complaints, often these are “problems in society,” and not issues that courts can resolve on their own. Court responses can range from changing the decision, reopening decisions, and compensating complainants. Some courts have
even established “assistance funds,” specifically for such purposes. Courts and judges are
evaluated and rewarded by their success in reducing petitions, and punished for failing to do so.
Certainly, the emphasis on addressing petitioners’ complaints reflects the Party-State emphasis
on stability. And significantly, courts are concerned with individual petitioners not only
collective grievances, and are swayed even when chances of unrest are remote. In many
instances, a petitioner’s ability to persuade or pressure courts is in some cases tied to their ability
to attract the attention of senior party officials or the media. Judges acknowledge ignoring laws
on the books or reaching strained interpretations in order to assuage petitions. Interestingly,
while petitioning presents pressures on courts, petitioning may sometimes relieve courts by
providing them with an argument to resist pressure from powerful interests.

While petitioning the courts may reflect the perseverance of problems that undermine court
authority, petitioning also speaks to the range of roles courts are expected to perform. Courts
play a range of roles in addition to deciding cases, and do not appear to be distinguishing
themselves from other state institutions in the minds of those who use the courts. The increase of
letters and petitions to the courts reflect an increasing turn to the courts for social problems.
Courts as a locus of protest reflects the fact that the courts are increasingly an important space
for the resolution of social disputes but it is also a sign that courts remain political institutions
closely tied to the local Party-State. Ultimately, Liebman’s chapter on petitions demonstrates
that law may serve as the frame for rights assertion not only in formal litigation but also in the
less formal process of writing letters and petitions. Letters and petitions also demonstrate that the
Chinese legal system is one in which formal legal rules are increasingly diverging from popular
views of justice and in which regime legitimacy continues to be based more on the ability to
maintain social stability than on the fairness of the legal system.

Douglas Grob's chapter returns to the theme of bureaucratic competition noted above in Liebman's analysis of petitioning institutions. Grob moves to a study of the dynamics between China's law-making institutions that preside at the provincial level and above with China's localized local states below, which do not have any legislative capabilities of their own but instead draw their power and influence from their role in implementing central laws and hearing grievances against local administrative offices. Grob focuses in particular on the legal affairs offices of local governments, a non-judicial institution that plays a growing role in the legalization of local policy-making and in mediation between state officials and local citizens. As Grob finds, bureaucratic competition between legal affairs offices and judicial offices, such as the sifa ting, can be beneficial to the rule of law project as both institutions strategically emphasize the importance of legal procedures to enhance their standing and local reputation.

Given that lawyers are often the first intermediaries between rules and norm, a number of chapters in this volume focus on the legal profession, its development and growth over time, and the changing relationship between lawyers and their clients. Law enforcement requires empowered legal professionals who are accessible to ordinary citizens. Historically, lawyers were viewed with distrust as “litigation tricksters,” as Chinese citizens resolve their disputes without any professional assistance. But even as the numbers of lawyers have grown in recent years as well as the use of lawyers, the question remains whether and how the legal profession can empower ordinary citizens.

Randall Peerenboom's chapter provides a useful and timely overview of the legal profession in China as it has developed for the past thirty years. Rejecting idealized portrayal of lawyers as
noble statesmen or vilified as "self-interested actors" or "deeply embedded politically or dependent on social networks," Peerenboom disaggregates the Chinese legal profession from the professional and newly privatized lawyer in elite law firms to the nonelite, legal service workers in rural areas to the "barefoot lawyer" activist who have no formal legal training whatsoever. He is sanguinely optimistic as he traces the development of the legal profession to economic growth patterns, noting that the development of China's legal profession has been by and large similar to the development in many other countries. Hence, Peerenboom predicts that increased competition is leading towards greater professionalism at every level, that a more robust economy will support more lawyers, and that as the market for legal services matures, individual consumers will become more sophisticated, leading to greater checks on lawyer misconduct. Ultimately, the general modernization story of economic growth, according to Peerenboom, is and will continue to fuel legal reforms for a long time.

"Pu fa" and The Dissemination of Law in the Chinese Context

Institutions (even competing ones) are meaningless without legal consciousness on the part of ordinary citizens and those to whom these institutions address. How are ideas of law translated to ordinary citizens? What are the experiences of ordinary citizens with the legal system? In what ways is law synchronized with local dynamics, culture and history? Is the legal system, including the procedures underlying it, deemed to be legitimate by society? More importantly, is there a "gap" between the experiences of ordinary Chinese citizens and their legal institutions?

Social scientists examine how knowledge is disseminated and thus how it is distributed. Raising legal consciousness and getting people to trust in the legal system and respect the law is
no easy task. In the context of China, there is an historic distrust of the courts as punitive and a place of last resort. As such, rather than focusing on building a body of legal professionals, some law reformers have focused on developing legal culture and consciousness on the part of ordinary citizens and supporting the establishment of civil society groups. The following four chapters explore popular attitudes of Chinese citizens towards the legal system with surprising results.

Pierre Landry’s important work examines popular attitudes of Chinese citizens towards legal institutions as they change over time. Landry compares survey data (Institutionalization of Legal Reforms in China – ILCR) collected by Peking University in 2003/2004 of the attitudes and behavior of over 7000 respondents located in 100 county units with data on the comparable historical provincial gazetteers. Landry's proposition is that historical development of legal institutions at the county level since the Mao era still impacts how legal institutions are perceived today, and in fact, their past performance has a detectable impact of the trust that ordinary citizens are willing to put in them.

9 China’s latest economic development is enviable in its tremendous growth but it has also created a rural/urban divide with the rural areas having limited access to justice. Civil society groups, meanwhile, are still carefully regulated in China. National regulations issued in 1998 require that civil society organizations have a government approved sponsor organization to register and obtain legal status. The government limits sponsor organizations to designated government and Party bureaus.
Given the role that People’s Courts had played in the repression of various groups during the 1950’s and the presumed paralysis during the Cultural Revolution, one would expect the contemporary Chinese citizen to place greater trust in more recent and presumably better performing institutions. Yet, Landry concludes the contrary.

Interestingly, ILCR survey data reveal that trust is institution specific: organizations that are frequently involved in dispute resolution (such as village committees) received the lowest rankings, while the courts and the procuracy are held in relatively high regard. Surprisingly, most respondents trust institutions that are closely associated with the state to a far greater extent than non-bureaucratic actors. And so, legal professionals are less trusted than courts or public security organs.

Of course, there is also a great deal of geographic heterogeneity. By matching “trust” results with the timing of the original establishment of legal institutions such as courts, procuracy, and legal affairs offices, Landry traces the impact of an institution’s longevity on popular attitudes. From his data, Landry notes that the longer the presence of an institution in a county, the more likely it is that its past performance still shapes its trustworthiness in the eyes of county residences. The fact that these institutions often bear the same name as they did under Mao suggests that the degree of popular trust or distrust in these institutions accumulated before the reforms and continues to affect how citizens evaluate them today. Thus, in counties that introduced courts early in the Mao regime, the level of trust in the People’s Courts itself as well as in lawyers and the xinfang system is higher than in localities where courts were introduced more recently.

If these institutions associated with the Maoist state do not have a negative impact on
popular trust, then the strength of Chinese attitudes to endure even in the face of radical reforms cannot be underestimated. In China, the experience of law is not one of discovery but rather, one of resurrection and regeneration of legality.

Ethan Michelson and Benjamin Read, meanwhile, present results from their two surveys in 2001-2002 (adapting the famous 1984 Chicago survey on legal attitudes) on 1,124 households in seven urban districts in Beijing and 2,902 rural households in five provinces (Shaanxi, Henan, Jiangsu, Hunan, and Shandong) and one centrally administered city (Chongqing). Unsurprisingly perhaps, their survey results indicate that in both rural and urban areas, disputes taken to the courts are rare (8% of all reported grievances were brought to either lawyers or courts) and only 2% in the rural survey were brought to the legal system. Beijing residents tend to “lump” their disputes or resolve them bilaterally, with the next most common response being to seek the help of the police, followed by administrative solutions (at workplace and government agencies) as well as neighborhood mediation. The likelihood of going to court varied according to the nature of the problem with personal injuries and criminal matters and property rights and divorces more likely than other kinds of disputes to go to court. According to Michelson and Read, legal utilization rates were strongly and positively related to the level of economic development, where economic development facilitates access to legal system.

More interestingly, those with experiences with the courts assessed the legal system far more negatively than those without, and rural residents were far more negative than Beijing residents. Generally speaking, then, the closer to the legal system people brought their disputes, the less positive and the more negative they assessed their experiences. Popular assessment of distributive justice (satisfaction with outcome) and procedural justice (fairness of the process)
were the same, indicating that traditional Chinese cultural values that privilege substantive justice over procedural justice still dominate. Rural Chinese still prefer bilateral negotiation and informal relations for dispute resolution, followed by community leaders, higher level government agencies, with courts, lawyers, and police last.

But this negative perception contrasts starkly with general positive impressions of the legal system, and this widespread popular perception of a fair and effective legal system registers more with Beijing far ahead of rural surveys. Unrealistic positive perceptions or “uninformed enchantment” may be the basis for the general positive confidence in legal system. If so, then legal popularization must serve to enhance public awareness of the fallibility of legal system and lower expectations. More importantly, while popular confidence in the legal system in the most developed parts of China seems to be the norm, reformers need to be concerned about fostering “informed disenchantment” in the countryside.

Mary Gallagher and Yuhua Wang also explore the dimensions of legal consciousness and the dynamics of legal mobilization across the population. They argue that the effects of legal experiences are mediated by an individual’s political identity as defined by generation and education. Through a four-city household survey on employment and labor law issues, as well as in-depth return interviews, Gallagher and Wang found that legal experience leads to higher levels of disillusionment and more negative perceptions of the legal system’s effectiveness and fairness. However, disillusionment is mitigated by increased feelings of personal efficacy and a sense that one has become educated about the law. These feelings are most evident among legal aid plaintiffs whose legal experiences were improved by constant contact with legal aid staff and
a supportive social network built around legal aid centers.

However, different political generations have varied responses to the legal process. Older urban disputants employed in the state sector are more prone to feelings of disillusionment, feelings of powerlessness, and inefficacy. Younger, rural disputants employed in the non-state sectors are more likely to have positive evaluations of their legal experience and to embrace the legal system as a potential space for rights protection. The construction of “rule of law” in China has attenuated the previously strong bonds between Party-State and urban workers in the public sectors, but has also created new constituents from groups that were previously ignored or actively discriminated against in the old socialist order.

Sida Liu, meanwhile, in his chapter traces the development of twenty-five years of ordinary legal work in China by analyzing 2,077 cases from a legal advice column in the Democracy and Legal system magazine from 1979 to 2003. The evolution of the DALS legal advice column over twenty five years, “not only witnesses the formal rationalization of Chinese law and its gradual detachment from society...but also the interaction between legal professionals and ordinary citizens and the changing meeting of law constructed through this public correspondence.”

Liu analyzes these 2,077 cases through the lens of Weberian school (the macro-level analysis of the formal rationalization of modern legal system), and the Amherst School (the micro-level interactions in which the meaning of law is constructed through social interactions in everyday life). According to Liu, lawyers’ prescriptions for the readers’ problems become increasingly rational, rendering the meaning of ordinary legal work from an organic part of social life to a logical, authoritative yet sometimes incoherent system. Like other authors in this
volume, Liu concludes that the progression of advice given through these columns demonstrates the gap between readers' expectations and lawyers' interpretations of the law, often leaving the substantive problem unresolved.

In these twenty-five years, the advice column was initially dominated with questions dealing with more criminal, family and inheritance cases. In the 1980s, cases related to contract labor and administrative law emerged and became important categories, and the 1990s saw the increase of debt and loan and consumer rights cases, and more cases on criminal procedure in 1994-1998 (related to the 1996 revision of criminal procedure law.) The advice itself initially began with greater reference to moral and social norms, but with each successive year, increasingly became more formalistic and “legal.”

In examining three kinds of cases – family and inheritance, debt and contract, and labor disputes, Liu traces the advice column’s trajectory from espousing moral norms and social customs and conciliation to legal formality. Ultimately, Liu expresses concerns that the legal system has become overly technocratic, losing sight of the “spirit of the law” in promoting justice. Read in conjunction with the other chapters in this volume, it is clear that greater formality does not necessarily mean greater acceptance of law in China. Legitimacy of the legal system would require a delicate balance in which law is publicized but not idealized, imposed from above but diffused from below. There is a need for more areas of dispute resolution in which ordinary citizens can participate and have a say in defining the meaning of the law that is used to resolve the dispute.

*Democracy and Law from the Bottom-Up*

The chapters above raise the question of whether the experiences of everyday Chinese life are
linked to the larger social and political forces by law. How is the current law frame being changed by “civil society” and by those who utilize the system? Does the system work well in enhancing the values of the society? How are issues “framed” in the legal context to render its dissemination and ultimate adoption? How are the ideas of “rights” and “law” mediated to the local level? Specifically, has law merely preserved existing power structures or has it enlarged rights and provided the seeds of democratic governance?

Thomas Kellog’s piece on “judicialization of the constitution” (xianfa sifahua) both explores the extent of Chinese citizen’s ability to use constitutional litigation to hold the Chinese state accountable and the extent to which the litigation (as a group) adds to the growing group identity of individuals as Chinese citizens. This chapter focuses on attempts by actors outside and to a lesser extent, inside the government to make the constitution a legally operative document both as a basis for constitutional rights protection and as a check on legislation.

From an examination of hepatitis B discrimination litigation, Kellogg explores the cautious forays by Chinese courts as interpreters of the Constitution. While Chinese courts have been conservative in their approach, Kellogg nevertheless points out how litigation served to galvanize social movements, stirring public debate and increasing public consciousness and understanding of constitutional values.

While recognizing that Article 67 of the constitution vests the National People's Congress Standing Committee (NPCSC) with the power to “interpret” and to “supervise the enforcement” of the constitution, reformers pushing for judicialization are careful, treading around Article 67 and rendering sufficiently narrow arguments so as to be at the “very edge of political feasibility”. They do not question Party authority or the overall structure of the one Party-State. Instead, they
argue for the court’s sharing, rather than displacement, of the Standing Committee’s authority to interpret the constitution and limit their argument to the Supreme People’s Court rather than lower level courts.

In a series of seemingly garden-variety civil cases, Kellogg points out the implicit attempts of litigants, activist lawyers, and courts to refer to constitutional norms as a basis for resolving disputes. According to Kellogg, courts act when two private parties, when absence of specific legal norms that would justify such an outcome, implicitly importing constitutional norms such as the right to free expression, right to reputation, right to education, and most recently, in a series of cases challenging hepatitis B discrimination, the right of equal protection.

Since 2002, more than 40 hepatitis B discrimination cases have been brought challenging provincial health test standards as well as under the right to equal protection as guaranteed by the constitution. While the courts have by and large been conservative in not ruling on the constitutional claims, these courts did note the arguments. More important than case outcomes, according to Kellogg, the litigation galvanized a nascent social movement. By “framing” the plight as a constitutional anti-discrimination issue, advocates were able to capture the attention of the media, mobilize the public, and force central government attention to the issue. The “legal” frame gave reformers legitimacy and political cover, as reformers argue that the constitution is a source of law that courts can draw upon in adjudicating cases, and that courts, as adjudicators, should hear these claims. Needless to say, judicialization of the constitution has enormous democratic benefits. By giving voice to constitutional interpretations in the context of individuals raising legal claims (rather than on the initiative of the National People’s Congress), the process potentially gives enormous power to the judiciary as well as to those ordinary citizens seeking
Of course, "rule of law" and democracy in the courts require an independent and competent judiciary. Yet, the Chinese judge is often criticized for her lack of judicial independence and the flip side, lack of judicial accountability. In his chapter, Carl Minzner examines the constraints around the individual judge in China today. Going beyond the accepted assumptions of the Chinese judiciary as under the political control of the Chinese state, Minzner examines how the internal institutional structure of incentives and promotions can work to inhibit the everyday workings of individual judges. His chapter points out how the layered hierarchy of judicial discipline can work at cross purposes with judicial independence, and how historical legacies compete with foreign ideas of legality.

Carl Minzner’s chapter focuses on the Chinese court responsibility system, one that promotes and disciplines judges based on a range of factors, including reversals by higher court for legal errors. Meticulously researched, Minzner surveys various provincial regulations to reveal an elaborate point system that is used both to hold judges individually and collectively responsible. This also has led to lower courts seeking informal advisory opinions from higher courts prior to decision-making to avoid reversals. Importantly, Minzner traces this system to the imperial court system, once again demonstrating that Chinese legal norms are not divorced from its historical past. Chinese judges are more part of a bureaucracy, like imperial times, than independent professional actors, apart from the state.

In her chapter, Professor Fu Yulin continues our focus on the legalized local states by examining the provision of legal services at the grassroots level. In providing basic legal services, the legal service offices and the local justice offices promote legal consciousness in the
rural areas and serve as a critical point where the state meets society. Fu examines the role of these offices in disseminating law, and how the rural residents view law and its ambassadors. In her study of the legal services and its latter successor, the local justice offices, and mediation in four counties, she concludes that these offices ascend and decline depending on central policy dictates, rather than reflecting populists needs and demands. Hence, when central policy emphasized adjudication, legal services offices were promoted, and most recently, when central policy retracted adjudication, mediation committees were reinstated.

However, Fu points out that the reality of economic and political constraints have led to the phenomena of “one group of personnel with three names,” with one director simultaneously and alternately performing the functions as the director of the local justice office, legal services office, and mediation committees, depending on the sway and turn of official policy. Such adaptation has not led to confusion of the grassroots population. In their minds, there is no difference between lawyers and non-lawyers, legal services or justice offices, adjudication or mediation. What is important is less the expertise or the official name, but more that they are familiar with those in the office and that these personnel are from the same home village. In such a way, use and trust in the legal system rely as much on “personalities” of the individuals and their ability to instill trust in the office as on historical memories and experiences with legal institutions, as Landry’s chapter argues.

"private attorney general," that is, opening the realm of enforcement of law to private individuals. Securities litigation is a significant area for reform because of the intersection between an honest market with values of freedom of information and disclosure. Yet, as Wang and Wang demonstrate, even in this area of market development where the Chinese state may be most amenable to liberalization, the Chinese state has opted for administrative and criminal, rather than, private enforcement of law, and for bolstering state authority rather than remedying private rights violation.

By carefully examining Supreme Judicial Court notices and the civil procedure code, Wang and Wang traced the reluctance of Chinese courts to take on securities fraud cases and ease enforcement of securities fraud laws through private right of action. And so, for example, the present securities legislation has only vague provisions on civil liability. While the Supreme People's Court, through a series of judicial notices, opened the possibility of securities fraud cases in the courts, it couched such opening with a bow to administrative authorities by requiring that parties must first present an administrative and/or criminal decision before filing such actions in the courts. And civil procedure is not of assistance as it limits joint actions to cases with defined numbers, but market fraud is perpetrated on the market as a whole with the numbers of affected parties often undefined and diffuse. Wang and Wang thus concluded that the administrative law and agencies, and not the courts, remain the dominant force of the securities market.

Margaret Woo's contribution to the volume, meanwhile, is a chapter on the interrelationship between courts, democracy and the pressures of market economy. Conflicting goals of justice and efficiency, while maintaining sociopolitical stability and rapid economic growth, has meant
that the Chinese government continuously experiments with new mechanisms, the reform of existing mechanisms, and return to older mechanisms. She explores why the government has opted for a particular mix of mechanisms to handle a certain type of dispute at any given time and why this mix then changes over time.

In part, Woo argues that civil litigation brought by ordinary citizens, while serving the goal of dispute resolution, can also be an important component of democracy. Even as it funnels social discontent back to the state, civil litigation, if structured liberally, can provide the opportunity for participation by ordinary citizens in both norm setting and norm application. In a society where policy and norms come primarily from the central government, litigation may be one vehicle in which citizens can voice their views and assist in norm setting and application by adapting general norms to their specific situations. Litigation, and in particular, group litigation can lead to identities of citizenship and empowerment, an identity that makes a difference to broader political outcomes. This has rendered civil litigation both attractive as well as a source of concern to the Chinese government, resulting in policy ebbs and flows that fluctuate between emphasizing and deemphasizing litigation and the courts.

Further, Woo concludes that while the use of the Chinese courts by ordinary citizens are on the rise, such use is only promising as a component to democracy if there are "democratic professionals" to serve as mediators to translate, assist, and otherwise, educate citizens on the technicalities and decisions of the legal system. "Democratic professionals" do not allow expertise to push out local knowledge of disputants, but rather, share their authority, to delineate tasks and to share in the construction of norm that constrain and direct professional action. Absent such mediators of justice, it is not surprising that heightened legal consciousness and
increased use of the courts have only led to greater disillusionment.

In the Chinese context, legal consciousness is growing as well as expectations for the law and legal process. But, as has been pointed out by other contributors of the volume, "discontent" and “disenchantment” are also increasingly voiced by those with experience in the litigating process. When Chinese legal professionals waver between serving as technocrats or bureaucrats rather than as "democratic professionals," even objectively fair procedures can be alienating and disempowering. As such, ordinary citizens revert back to para-legal professionals, informal dispute mechanisms, and those moving through the legal process are left with a negative sense of the legal system. And so, rising legal consciousness has led instead to wide disenchantment, undue pressure on courts has led judges to adhere technically to black-letter law, and top-down judicial discipline has led to greater corruption rather than greater accountability.

China’s thirty years of legal reform have reached a critical juncture. In these thirty years, the Chinese legal system has served China’s economic transition to a booming market economy, but for reformers, the question is whether law can further political reforms as well. Given China’s size, geographic variation, and investment in legal change, whether legal reforms are achieving political changes can present lessons for other transitional and developing countries. Clearly, one lesson is the persistence of legal continuity and legal change, that is, reformers must recognize how underlying existing law, legal institutions and legal traditions affect the pattern of reception and change. This means that equal attention must be paid to promoting change in legal culture and legal consciousness as in restructuring legal institutions. Additionally, given the tremendous inertia of institutional change and the unpredictable tensions that can develop between institutions, change may not necessarily occur from top down reforms as in the
restructuring of institutions, but rather, from bottom up “bubblings” of local experimentations of how law is implemented and utilized by ordinary citizens. It is in how individual citizens creatively use the courts, or how local legislative affairs office implement the rules, or how individual judges get sanctions that are most illuminating and promising for the development of “rule of law” in China.