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Rule of Law and Dispute Resolution in China: Evidence from Survey Data

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Abstract

China has come a long way in political reform since the Mao era, yet the Communist Party remains in firm control of political power and the tension between the state and society is high. Economic reform in the past 30 years has led to drastic redistribution of social interests and a further increase in social conflict. This study examines dispute resolution in post-Mao China. Using a 2004 national survey, I demonstrate the nature and intensity of social and political conflict in Chinese society by analysing the occurrence of disputes, the channels and outcome of dispute resolution. In addition to the impact of the single party political system, I also consider the roles of cultural values and market transition in conflict resolution. The findings show that while the political system and cultural values discourage dispute initiation, China's legal system is improving in facilitating dispute resolution and in promoting regime legitimacy.

One difference in governance in China from the Mao era is the current practice of dealing with political issues by increasing the rule of law and reducing the role of ideology. Examples include the improved status of the National People's Congress in law making, and the passage of the numerous new laws and regulations concerning many aspects of political life, such as individual rights, media, elections, corruption and

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government accountability. These new laws indicate that the Communist Party is coating with a legal flavour issues that were previously dealt with purely on political and ideological grounds. The goal of legal reform is to increase the Communist Party's ability to govern by promoting regularity, predictability, formalism, transparency, and fairness for all, while improving its political legitimacy to rule.¹

Can China Develop the Rule of Law?

The question is whether the rule of law is feasible in a single-party authoritarian state like China. Philip Chen characterized Chinese political culture under Mao as a government of men and not of institutions, a politics of ethics and not of law, with a fusion of the legislative, executive, and judicial powers, and implicit emphasis on the ideological power of government.² Others, while recognizing the progress of legal reform in post-Mao China, express serious doubts about the possibility of the rule of law in China given the Communist Party's dominance. One problem they cite is the parallel emphasis both on the rule of law and on the leadership of the party. This leads to interference by the party and the government in adjudication, the politicization of the criminal process, severe constraints on judicial autonomy, and bureaucratic discretion.³ Further, the lack of human rights protection in the Chinese political system removes the very foundation of the rule of law. Mediation as an important component of conflict resolution in China actually blurs, not clarifies, individual rights.⁴ Finally, the lack of competitive elections means the public is less likely to accept the rule of law. Without a commonly accepted electoral process, laws have no ultimate legitimacy even if they make perfect sense.

Using the above-mentioned standards, one can easily conclude that the rule of law would not develop in China. Without a legal culture, legal institutions transplanted from the West will not function effectively.⁵ Others, however, argue that the Chinese legal system should be evaluated not by whether it resembles the American legal system, but by whether it serves similar functions in resolving conflict and maintaining social stability.⁶ Some American legal scholars see the Chinese method of mediation as a healthy alternative in dispute resolution because it replaces the legal battles that are often costly, time-consuming and contentious.⁷

Another extension of the above-mentioned functionalist view of the

rule of law is that China's economic transformation would bring about the rule of law regardless of its unfavourable political environment. One such transformation which has already occurred is from a Stalinist centrally-planned economy to a market economy.⁸ This transformation has legitimized individual interests over collective interest. The legal system, previously designed to protect the group interest at the expense of individual interests, now has to reorient itself to protect individual rights. The Chinese leaders are aware that a market economy will not function well without a legal framework that regulates contractual obligations and protects individual rights⁹ and labour rights.¹⁰ Market reform is also accompanied by political decentralization and the retreat of the Communist Party from many areas of economic decision making, providing more space for judicial autonomy.¹¹

Following the functionalist view, one may expect that the improvement of living standards during economic transformation would lead to greater demand for individual political rights and for a legal system that could protect such rights. It would reduce corruption in legal practices, as high-income countries in general have less corruption.¹² Improved education would further solve the issue of low qualifications and the lack of training among judges, a problem frequently mentioned by legal scholars.¹³ Improved income and education would increase the need for and awareness of one's rights and provide necessary individual resources to take legal action. Finally, economic modernization requires the development of a rule-oriented rational bureaucracy¹⁴ which would in turn, alleviate the problem of inconsistency and fragmentation as well as provide a unified standard for implementing laws — another problem frequently mentioned by critics of the Chinese legal system.¹⁵

In sum, the pessimistic view sees legal reform as merely a show by the party to create the appearance of regularity, predictability, formalism, transparency and fairness, while reproducing authoritarian rule. Without fundamental political reform, no meaningful rule of law can develop. The optimistic view, on the other hand, sees the practical function and necessity of the rule of law. Continued economic development and market reform require a well-developed legal framework which, even under the single-party political system, can lead to meaningful rule of law.

Using the empirical evidence from the 2004 Institutionalization of Legal Reform in China (ILRC) survey, I will examine the current situation of the rule of law through people's dispute resolution behaviour.

Specifically, I will look at three areas: 1) the number and type of disputes; 2) the channels for dispute resolution; and 3) the outcome of dispute resolution and its impact on individual political attitudes. To be sure, dispute resolution is not synonymous with the rule of law. But when people begin to have legal disputes with the state, when they can deal with their disputes through legal channels and when it is possible for them to win their cases in courts, these are certainly indications that the rule of law is increasing.

Number and Type of Disputes

If the pessimistic view is correct, the *number of disputes* in China should be low, since avoiding conflict is the norm in an authoritarian state. It is not clear, however, how the political system would interact with the effects of economic transition. Political control would be a stronger factor than economic transition if it could keep the number of disputes at a low level and unchanged over time. Alternatively, economic transition would be more important than political control if the level of disputes increased under economic growth and marketization. Regarding the *type of dispute*, one would expect fewer administrative disputes with the government if political control results in docility. Economic factors, such as the transition from central planning and the restructuring of social interests, would lead to more economic disputes and civic disputes within the family and the community. This section will examine the number and the type of disputes in China.

Overall, about 17% (1,369) of the 7,714 respondents reported having had disputes in the past 20 years. The total number of disputes reported by these disputants was 2,671, averaging about .35 disputes per respondent in the sample (2,671/7,714). It is not easy to judge whether these numbers are high or low, compared to other countries. One study lists the numbers of court-filed disputes per 100,000 population in 12 countries in 1995,¹⁶ including Austria (29,294), Ecuador (10,467), England and Wales (4,718), Portugal (3,719), Brazil (2,739), Germany (2,655), Peru (2,261), France (2,242), the Netherlands (2,031), Spain (1,898), Panama (1,656), Italy (1,227). In the same year, the courts in China filed 4.55 million disputes, resulting in only 371 disputes per 100,000 population.¹⁷ Obviously, China's low numbers may not represent the total number of disputes because not all disputes ended up in court. In fact, only 17% of the 2,671 disputes in the 2004 survey went to court.

The actual number for China in the above country comparisons should be $371/.17=2184$ in 1995. Yet we cannot assume that all disputes went to court in these other countries. The actual total numbers for the 12 countries should also be somewhat higher than the numbers listed above. If half of all disputes in each of the 12 countries ended up in court, China's 2,184 disputes per 100,000 population in 1995 would still be at the bottom of the list. So, China's actual dispute figures could be higher than the figures calculated based on the court-accepted cases but still quite low compared with other countries. These low numbers may suggest that political control possibly reduces public dispute.

Other findings in the 2004 survey further indicate the lack of a legal culture in Chinese society. For example, when asked if becoming involved in a lawsuit with a family member amounted to "losing face," and whether a child should be responsible for a parent's debt, as many as 48% and 69% agreed. Another 53% of the respondents agreed that one should not obey an unreasonable law.¹⁸ These high percentages seem to further suggest a lack of respect for the rule of law. Yet a multivariate analysis of a combined measure of legality using the three questions shows a strong "modernizing" effect with the young, educated, Communist Party members, and urban residents in high-income regions showing more respect for the rule of law (OLS results not shown). These findings indicate that the values shaped under China's socialist past are not constant and are slowly adapting to economic development.

The 2004 survey also contains information regarding the number of disputes each respondent had in the past 20 years. I examined each respondent's reported number of disputes against their social and demographic characteristics,¹⁹ and found that older male respondents had more disputes than others (OLS results not shown). This is not surprising, since older men arguably tend to be politically more assertive. In the same multivariate analysis, non-party members also had more disputes, perhaps having less to lose.²⁰ On the other hand, party members had fewer disputes, perhaps because they were relatively happy with their social and economic environments. Migrant workers were an interesting case. Contrary to the common impression that they were urban outcasts who were bullied by officials, private employers and urbanites, migrant workers had more disputes than both rural and urban residents did, suggesting that they were more aware of their rights than commonly expected.²¹

National statistics show the courts accepted nearly 16 times more

civil cases in 2003 than they did in 1978, nearly 60 times more economic cases in 2001 than in 1981, and almost 170 times more administrative cases in 2003 than in 1983 (Figure 1). The rapid increases in court-accepted cases in general and in administrative cases in particular suggest an increasing importance of the legal institutions in mediating disputes and in reducing the tension between the state and society.

A further examination of the 2,671 disputes reported by the respondents in the 2004 survey shows that the top four dispute types concerned debt, family planning, administrative fees and disputes with neighbours (Figure 2). Again, these findings suggest that economic transition in China has not only created disputes between the state and society, it has also intensified the problems in people's economic lives as well in the community. Political control seemed to have been temporarily reduced by economic transition.

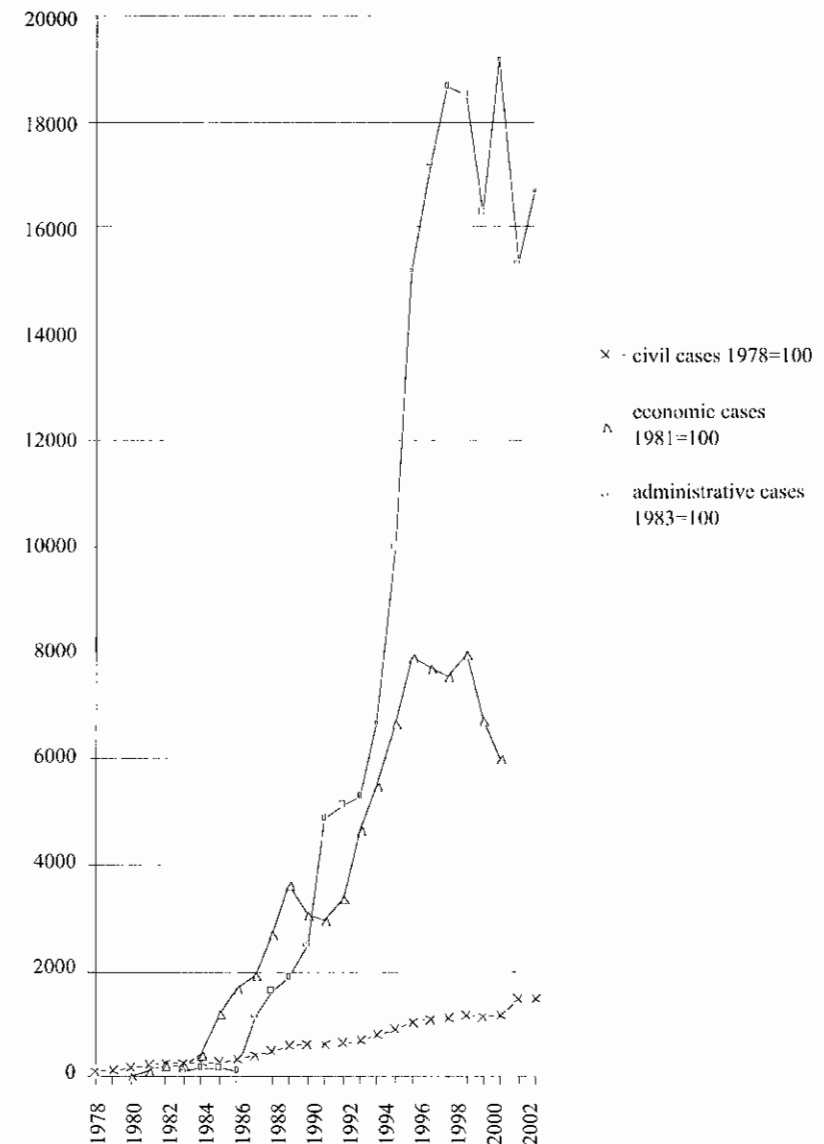
In short, the overall number of disputes and the acceptance of the rule of law were both low in China. These findings show some support for the critics of problems related to China's political system. Yet market reform has created more court-accepted legal cases than before. The fact that the figures for civil, economic and administrative disputes are all high suggests that marketization and economic growth can result in more disputes regardless of authoritarianism and its dispute-averse political culture. These findings seem to support the optimistic view of the rule of law even in China's current political environment.

Channels of Dispute Settlement

Most channels of dispute settlement are controlled by the Communist Party. These channels can be further divided into two categories, the ones that were established and used regularly prior to market reform, such as mediation and Ombudsman, and others that have been gaining importance in dispute settlement since the 1980s, including the courts, the media and the People's Congresses.²² In addition to these two categories, one has the option of relying on extra-system means such as protest, or taking no action. Therefore, once in dispute, one has four options: established institutional channels, newly emerging institutional channels, extra-system means, or no action.

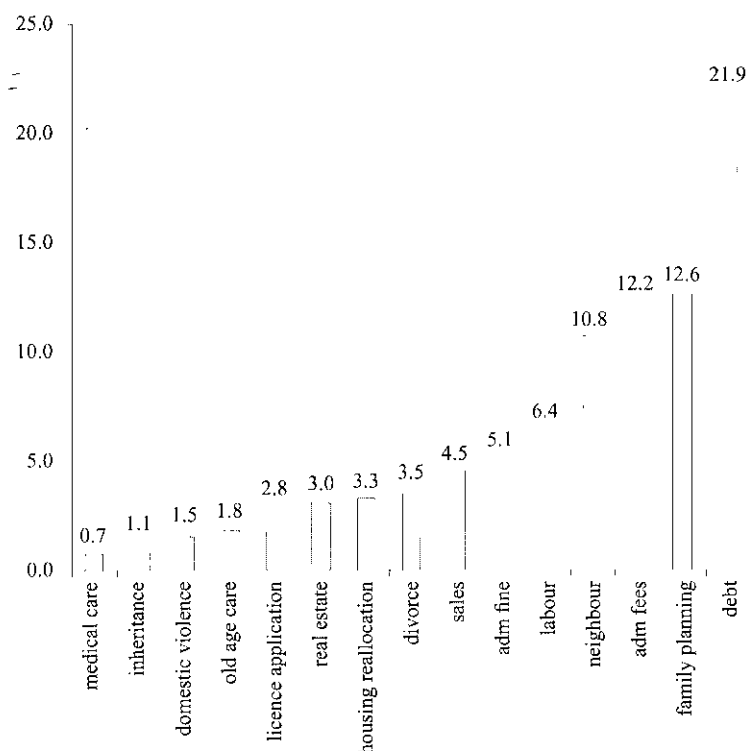
Perhaps the most popular is through established official channels, including mediation and administrative channels. Mediation is an

Figure 1. Increase in Court-Accepted Disputes 1978–2003



Source: *China Statistical Yearbook 2004*, table 23-19 (Beijing: China Statistics Press); *Renmin fayuuan nianjian 1988* (Yearbook of People's Court 1988), 1981–82 economic disputes (Beijing: Renmin fayuuan chubanshe, 1992), p. 965.

Figure 2. Percentage of Each Dispute Type in the Sample



Note: All percentages add up to 100% including other economic (2.51%), other civil (2.60%) and other administrative (3.60%) disputes.

Source: 2004 Institutionalization of Legal Reform in China survey.

established channel for dispute resolution.²³ Traditionally, mediation was preferred over litigation. The 1982 Constitution further institutionalized this system by requiring residential and village committees to create People's Mediation Committees. Unlike court rulings that tend to follow the law, mediation is more ad hoc in nature and requires different solutions for different cases. It often involves criticism and self-criticism, persuasion and education, and imposed solutions.²⁴ In 2003, China had

870,000 People's Mediation Committees and 6.8 million mediators who dealt with 5.7 million disputes.²⁵ Critics of mediation argue that Chinese mediators often force the disputant to accept a solution and that this process therefore blurs individual rights.²⁶ Others suggest that mediation is simply a mechanism for the state to enforce political control and promote official norms.²⁷ As market reform increasingly legitimizes individual interests, it is unclear whether mediation can adequately address individual needs and will continue to be a preferred mechanism for dispute resolution.

The other important institutional mechanism for conflict resolution is through government channels, including Letters and Visits (*xinfang*) and administrative reviews. According to the 1996 State Council Regulations on Letters and Visits, all citizens have the right to voice their criticism, suggestions and requests to administrative, legislative and judicial organizations at all levels, to reveal the wrong-doings of officials and to protest against any violation of their legal rights.²⁸ The 1999 Administrative Review Act passed by the Standing Committee of the National People's Congress states that all citizens can request administrative reviews concerning administrative rulings against them.²⁹ In 2003, nearly four million letters and visits were accepted by the courts alone and there were 76,000 administrative review cases.³⁰ Clearly, these channels are widely used for dispute resolution. One study on *xinfang* found that even though this system was widely used by the public, it is fundamentally an instrument of rule by the party, rather than a legal institution that protects individual rights.³¹

The second group of channels for dispute settlement includes the courts, the media and the legislature (national and local People's Congresses). Although these are still under the monolithic control of the Communist Party, they may attract public attention due to their increasingly active role in government supervision and legal reform since the 1980s. Courts are the ideal channel for dispute resolution if the rule of law is in effect. Although nearly 5.13 million cases were accepted in courts nationwide in 2003,³² the courts may not be the preferred channel for dispute resolution if the pessimistic view of Chinese courts as corrupt, under-trained, and ineffective is true. The Chinese media are filled with discussions of controversial legal cases, corruption, abuses of power, and legal education programmes. People's Congresses at different levels are asserting their constitutional responsibilities of supervising the administrative and judicial branches of government.³³ Compared to the

established channels, these are relatively new institutional channels of dispute resolution.

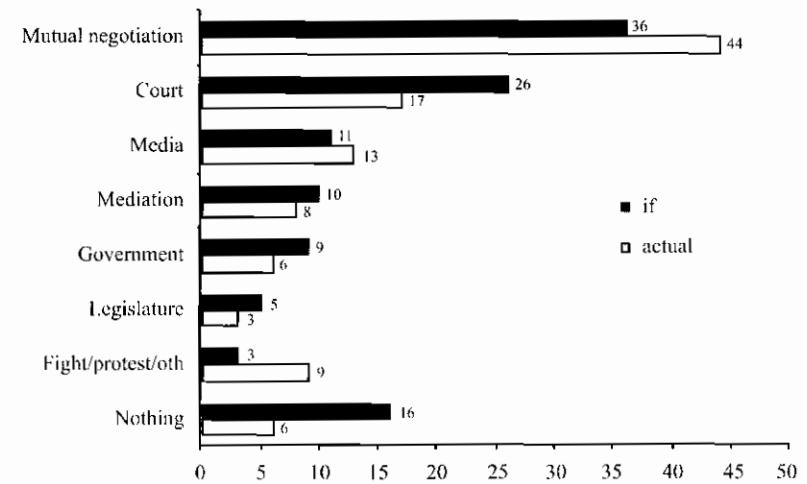
The third category consists of non-institutional channels, including mutual negotiation, protest and violence fight. Disputants may use these channels when the institutional channels are ineffective or inaccessible. The final category is no action, reflecting the most pessimistic assessment of the effectiveness of all existing channels, or a feeling of apathy.

Admittedly, the items in each category are different from each other. For example, one could argue that mutual negotiation is different from protest. The distinction here is based on institutions. Mutual negotiation and protest may be different but they are both extra-system means.

Hypothetical and actual channels. The 2004 survey asked the respondents what channels they used to solve their disputes. If the respondents had never had any disputes, they were asked to pick a channel they would use in the case of a dispute. In a hypothetical dispute, the top three channels to solve it were mutual negotiation (36%), going to court (26%) and doing nothing (16%). This mixture of channels seems to point to the consequences of the lack of a legal-institutional culture, the impact of market reform on emphasizing the role of the courts, and apathy under authoritarian control.

The differences between hypothetical and actual channels are also worth noting (Figure 3). First, fewer respondents said that they would use mutual negotiation or force/protest/oth in a hypothetical dispute, but they were more likely to use these channels if they were in a real dispute. There seems to be a contrast between government encouragement to use institutional channels and public suspicion of the effectiveness of those channels. Consistent with this suspicion, the respondents seemed to prefer the court in a hypothetical dispute but were less likely to take an actual dispute to court. These findings are not in favour of the rule of law. They suggest that once in trouble, people could easily resort to non-institutional channels, although few would openly admit it. Thus, it is still too early to say that conflict resolution is "institutionalized" in China. The final difference is that the respondents were more apathetic in theory than in reality. Some 16% said they would do nothing if they had a dispute, but a much smaller number (6%) of those who were actually involved in disputes would take no action. This gap is surprising if one believes that China's repressive political environment creates political apathy.

Figure 3. Hypothetical and Actual Channels of Dispute Settlement (%)



Notes: Both hypothetical and actual channels add to 100% (n=2,521 for actual and n=5,344 for hypothetical). For "nothing," n=2,671 (actual), n=6,349 (hypothetical).

Source: 2004 Institutionalization of Legal Reform in China survey.

First-used and most effective channels. Among the 2,671 disputes that resulted in taking action in the 2004 survey, we further asked the respondents about the initial channels they used and which channels they later thought were the most effective. In order to identify any discrepancies, it is necessary to examine the effects of different channels on the three separate categories of disputes: 1) civil (involving neighbours, divorce, old age care, domestic violence or family inheritance); 2) economic (debt, labour, sales, real estate or medical care); and 3) administrative (family planning, administrative fees, housing reallocation, administrative fines or licensing).

The results show some very interesting discrepancies between the first-used and the most effective channels (Table 1). For all types of dispute, the biggest loss was in mutual negotiation. Among the many respondents who used private mutual negotiation to solve their problems, few found it to be effective in the end. For civil and economic disputes, the biggest gain was in the courts. Though few used them as their first choice (civil=15% and economic=12%), many later realized that the

Table 1 First-Used and Most Effective Channels by Dispute Type (%)

	Civic disputes		Economic disputes		Administrative disputes		All disputes combined	
	1st used	Most effective	1st used	Most effective	1st used	Most effective	1st used	Most effective
Mediation	39	48	30	35	31	33	32	38
Government	14	11	11	9	16	31	14	17
Court	15	23	12	25	9	13	11	21
Mutual negotiation	26	10	34	21	30	10	31	14
Legislature	1	0	0	0	1	1	1	0
Media	5	3	7	2	8	2	7	2
Protest/fight/oth	0	5	6	8	5	10	4	7
Total	100	100	100	100	100	100	100	100
N	490	372	925	535	875	476	2290	1393

Notes: "First-used" are the channels that people first used in solving disputes. "Most effective" are the channels that are reported by the respondents as the most effective. Economic disputes are those related to debt, labour, sales, real estate and medical care. Administrative disputes concern family planning, administrative fees, housing reallocation, administrative fines and licence application. Civil disputes are those relating to neighbours, divorce, old age care, domestic violence and inheritance.

Source: 2004 Institutionalization of Legal Reform in China survey.

courts were the most effective channel for dispute settlement (civil=23% and economic=25%). Mediation also managed to achieve some moderate gain from the first-used to the most effective channel, particularly in solving civil disputes (from 39% to 48%). For administrative disputes, contacting the government turned out to be much more effective than initially thought (from 16% to 31%). Further, people seemed to realize that being confrontational (through protest, violence and other confrontational approaches) solved problems more effectively. For example, only 5% initially thought about forcefully confronting the government in administrative disputes, but 10% later found this approach to be the most effective. No wonder one Chinese government official in Lujiang county, Anhui province, admitted that the loud ones often got their problems resolved first (Tan, 2002).³⁴

Overall, with the three types of dispute combined (far right columns in Table 1), mediation was the dominant channel for dispute resolution. Assessed effectiveness and actual use of mediation (32% and 38%) and government (14% and 17%) more or less stayed at the same levels. Private mutual negotiation failed miserably to meet the disputants' expectations and lost the most points in its assessed effectiveness compared with initial ideas of effectiveness (from 31% to 14%). The biggest surprise to the disputants was how effective the courts turned out to be (from 11% to 21%). Across the board of different dispute types, the disputants found that it was more effective to be aggressive (from 4% to 7%). The other two new channels — the media and the people's congresses—were rarely used and even fewer considered them as effective than those who used these channels.

Socio-economic characteristics of dispute resolution. When examining the socio-economic background of the disputants who did not take any action, there was again a strong modernizing effect, namely, the more educated, party members, migrant workers and urban residents were more likely to take action than the less educated, non-party members, and rural residents (column A, Table 2).³⁵ The same modernizing effect also applies to using institutional channels. Education decreased the use of traditional official channels but encouraged the use of new institutional channels (columns B and C, Table 2). Similarly, legal knowledge reduced fight (i.e., the use of violence) and protest, while promoting the use of new institutional channels such as the courts, the media and the legislature (columns C and E, Table 2). The militant tendency among migrant workers continued. Not only did they have a high number of disputes, they were also less likely to engage in mutual negotiation but more likely to use violence (fight) and protest (columns D and E, Table 2).

In sum, one interesting finding in this section is the strong tendency for people to take action in dispute resolution in spite of China's repressive political environment. The second is the lasting legacy of Maoist populism in conflict resolution, as people still tended to take issues into their own hands rather than rely on institutional channels. The third unexpected finding is how effective the courts were in dispute resolution even though people still sought solutions through extra-institutional channels as well. The fourth unexpected finding is the militancy shown by the migrant workers who were traditionally a weak political group. Fifth, traditional channels of conflict resolution (mediation)

Table 2. Social and Economic Characteristics and Channels of Conflict Resolution (OLS)

	A. No action	B. Official	C. New official	D. Mutual negotiation	E. Fight/protest
Age/10	-0.007**	-0.004	0.007	-0.036***	0.004
Female	-0.005	-0.008	-0.010	0.028	-0.001
Education (Years)	-0.005***	-0.007***	0.010***	-0.003	0.000
Party member	-0.060***	-0.043	0.043	-0.012	0.026
Indinc 03/10k	0.002	0.008	-0.006	-0.001	0.010***
Legalinfo	-0.025	-0.076	0.326***	0.016	-0.079**
Migrant	-0.073**	0.081	-0.097	-0.152*	0.099***
Urbanite	0.026*	0.085***	0.087**	0.063	0.005
Rural (comparison)					
Constants	0.147	-0.036	-0.297	1.232***	0.033
Adj R2	0.224	0.093	0.263	0.224	0.155
N	2445	2445	2445	2445	2445

Notes: Each dependent variable is coded 0 and 1. Zero represents taking action and not using any of the other four channels, and 1 means not taking action or using any of the other four channels. Logistic regression results are consistent with the OLS results, which makes comparisons easier between findings in this table and elsewhere in the paper. Official channels are mediation and government (letters and visits and administrative review); new official channels are court, media and People's Congress delegates. Age 10 is age divided by 10, education is measured in years, indinc03/10k is the respondent's 2003 income in RMB divided by 10,000, *legalinfo* is an index of the respondent's correct answers to the legality of 12 items including co-residence before marriage, extra-marital affairs, land ownership, child labour, signed contracts, parental care by married daughter, suspect's right to be silent, inheritance by married daughter, court's law-making function, law suit by prosecutor's office, forced confinement of SARS patients, local government's right to interfere with court's decisions. Township is controlled for all equations. ***: $p < .01$, **: $p < .05$, *: $p < .1$. See appendix for further statistical details of these variables.

Source: 2004 Institutionalization of Legal Reform in China survey.

remained dominant even though the role of courts was growing rapidly under economic modernization. These findings may disappoint the reader who is looking for a simple answer. They suggest that China's political system and economic transformation both play a role in conflict resolution.

Outcome of Dispute Resolution

The next step is to examine the outcome of dispute resolution. We asked the disputants in the 2004 survey about the result of their disputes, including no results, compromise, win, lose and other. Among other things, no result and other results (i.e., pending) can mean confusion and the lack of clearly defined criteria in a rapidly changing society. Compromise may indicate the prevalence of the socialist legacy and the blurring of individual rights. A clear win or lose may suggest the effective functioning of the legal system.

Overall, the outcomes were fairly evenly distributed. Among all disputes, 24% had no result, 25% reported compromises, 16% won their cases, 18% lost and 17% reported "other" results (Table 3).

Some interesting differences emerged when I examined the three categories of disputes separately. For civil disputes, the dominant outcome was compromise (38%). This seems to be the natural result of mostly relying on mediation to solve civil disputes (shown in Table 1). For economic disputes, the dominant outcome was no result (35%). Again, this kind of outcome makes perfect sense in a society that is

Table 3. Outcome for Respondents in Each Dispute Type (%)

	Civil disputes	Economic disputes	Admin. disputes	All disputes
No result	20	35	14	24
Compromise	38	17	21	25
Win	19	32	19	16
Lose	8	5	21	18
Other outcome	15	11	25	17
Total %	100	100	100	100
N	975	904	420	2671

Source: 2004 Institutionalization of Legal Reform in China survey.

going through massive economic restructuring and dislocation. Compared to both civil and economic disputes, administrative disputes were much less likely to lead to a compromise or no result. In addition, those with administrative disputes were more likely to lose than with civil and economic disputes (Table 3). Clearly, it was no fun to confront the state.

In addition to examining the success rate of each dispute type, we also want to look at the success rate of each channel including protest, violence, People's Congresses, mutual negotiation, media, government, mediation and the courts. To simplify the presentation of findings, we only show the average number of losses for each channel (Figure 4).

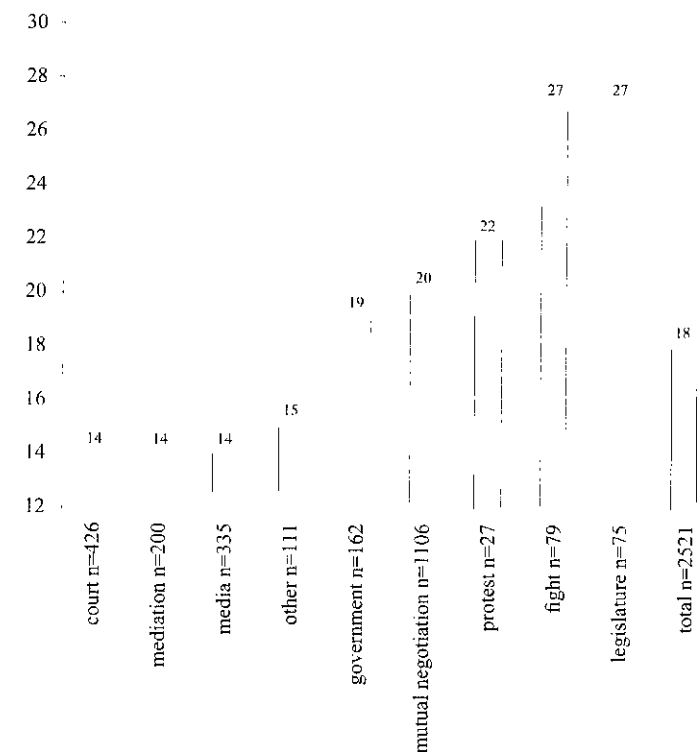
Comparing with non-institutional channels, both traditional official and new official channels such as the court, the media and mediation were the most effective channels that generated the fewest losers. Non-institutional channels, i.e., mutual negotiation, protest and resorting to violence resulted in higher failure rates than the institutional channels. The only institutional channel that generated a high number of losses was the legislature. Understandably, this is an organization with a different primary function.

Finally, it is also necessary to identify the political consequences of dispute outcomes. The 2004 survey contains information on the respondents' willingness to take risks, their sense of political efficacy, their faith in the state apparatus, and their attitudes toward paying taxes, which is an indication of their willingness to cooperate with the state. Needless to say, these items are related to political stability, regime legitimacy, and the effective functioning of the state. The question is whether dispute outcome will make a difference to these attitudes.

Losing a dispute or getting no result in a dispute both reduced the respondents' willingness to pay taxes but increased their willingness to take risks. A loss or no result also seemed to further reduce the individual's sense of political efficacy and faith in the system. The negative impact in reducing faith in the system is particularly noticeable if the dispute resulted in no solution (Figure 5). These findings suggest that effective and satisfying dispute resolution would help improve political stability and regime legitimacy, at least when political stability and regime legitimacy are measured by regime support, political efficacy, risk-averse mentality and willingness to pay taxes as in Figure 5.

This section has highlighted three findings. First, **dispute outcome**

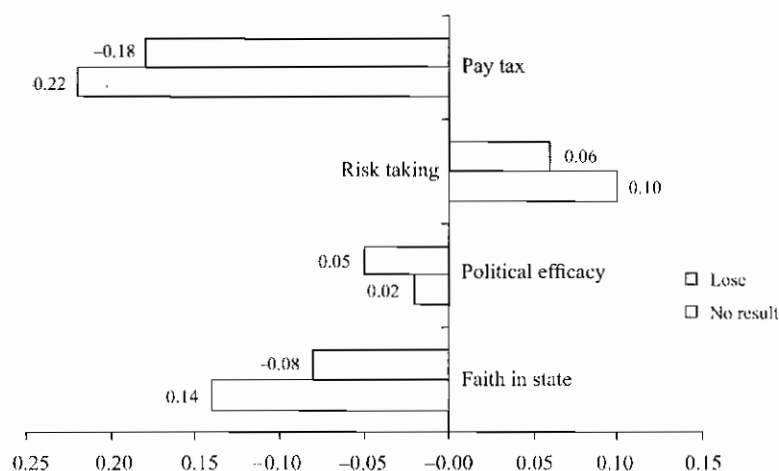
Figure 4. Percent Losses in Each Channel of Resolution



Note: not shown: older, high income, high education and migrant workers are less likely to lose (poisson regression).

Source: 2004 Institutionalization of Legal Reform in China survey.

Figure 5. Impact of Past Dispute Results on Present Attitudes toward Faith in State, Efficacy, Risk-taking and Willingness to Pay Tax (n=2,671)



Notes: All OLS coefficients are statistically significant at $p < .05$. Other variables controlled for: age, female, income, education, party membership, migrant, urban, rural and township. **Pay tax**: "one should pay tax regardless of government service delivery." **Risk taking** is a factor index of the respondent's agreement with taking a high-risk job (E4) and engaging in high-risk investment activities (E5). **Political efficacy** is a factor index of the following questions (F6a-F6i): a) I can win a case more easily if I hire a lawyer; b) people like myself can influence government decision making; c) the local people's congress will take my opinion into consideration; d) the public should be allowed to discuss more complicated issues even in a modern society; e) the government can solve my problems in most case; f) the government should not interfere with whether an opinion should be circulated in society; g) the police can solve my problems in most cases; h) the public should not unquestionably obey officials; i) people don't always have to obey the government. **Faith in state** is an factor index of the respondent's reported level of trust in the following organizations: consumers association, court, People's Congress, lawyers, letters and visits bureau, village council or work unit, the Communist Party, the prosecutor's office, government bureaus, trade unions, the media, women's federation, public security bureau (D6a-D6m). See appendix for further details.

Source: 2004 Institutionalization of Legal Reform in China survey.

depends on the nature of the dispute. Civil disputes lead to compromise, economic disputes produce no results, and administrative disputes are hard to win. These findings further indicate the impact of economic transition and state domination. Second, the fact that administrative disputes produced more losses did not mean that the state-controlled intermediate institutional channels were ineffective. In contrast, all these intermediate channels, mediation, the media and the courts were more successful than the state itself or other non-institutional channels in helping the disputants not to lose their cases. Third, the success of dispute resolution through these intermediate channels has helped the state improve its regime stability and legitimacy. This last point has perhaps provided the state with an incentive to facilitate dispute resolution through the rule of law.

Conclusions

This paper is a study of the development of the rule of law in China through dispute resolution. I began by describing the different possibilities for the rule of law in China's political and economic environments. These different possibilities reflect the current debate between two opposing views on whether the rule of law is possible in China's single-party system. On one side of this debate is the assumption that China cannot realize the rule of law unless it converts its political system to democracy and develops a legal culture.³⁶ On the other side of the debate is the view that the rule of law is indeed possible under the current political and cultural framework but only as long as economic transformation continues.³⁷

Several findings in this paper show certain political barriers to China's legal reform. For instance, in cross-country comparisons the overall number of disputes in China was low. The majority of the respondents in the 2004 survey favoured "substantive justice" (disobeying bad laws) over "legal justice." Many of them would prefer to take the matter into their own hands (mutual negotiation), rather than to resort to legal action. Mediation, which tended to blur rather than clarify individual rights according to the pessimist view discussed earlier, was still preferred over the courts as the dominant mechanism for dispute resolution, there was a strong public suspicion that the courts were not effective. The large number of compromises in civil dispute resolution and the high probability of losing an administrative dispute further

reflect the role of the socialist legacy of discouraging conflict and of state domination in the legal process.

Several other findings, however, suggest that political barriers were diminishing. There was an increase in the number of all types of dispute, whether civil, economic or administrative, as market reform and industrialization progressed. In resolving their disputes, most disputants took action despite the continuing single-party system. Among all the channels of dispute resolution, the courts were one of the top two most favoured channels. Although fewer disputants used the courts than one might have anticipated, the courts were considered more effective than expected among the disputants who went through them. Regarding the outcome of dispute resolution, intermediate institutional channels (courts, media and mediation) reduced the number of losses more than the state itself. Using institutional channels was also more effective than taking matters into one's own hands. The impact of economic transformation and modernization was seen in that education, urbanization, and improved legal knowledge in one way or another increased the number of disputes, the probability of taking action and of using institutional channels. The Communist Party showed its political activism, as party members were more likely to take action in dispute resolution. Perhaps more importantly, dispute resolution could improve regime legitimacy even under the current single-party system. These findings seem to show that the rule of law is possible and does not have to wait until China implements competitive elections.

Finally, mediation is one area where the socialist legacy seems to be resilient. It survived the radical years of socialism and has continued during marketization and industrialization since 1978. Even though some have criticized it for blurring individual rights, China still heavily depends on mediation in conflict resolution. It will be interesting to see how much longer mediation can function in an increasingly globalized economy and society like China's. It will be equally interesting to see how various European and North American legal concepts and institutions are selectively adapted and integrated into China's own legal tradition. Ultimately, the challenge of legal reform rests on how China's leaders decide to handle the relationship between individual rights and societal interests.

Appendix: Characteristics of Variables in Table 1 and Figure 5

Variable	Obs	Mean	Std. Dev.	Min	Max
Dispute #	7714	.3413275	1.31346	0	50
Age/10	7714	4.100104	1.182189	1.8	6.6
Female	7714	.5002593	.5000323	0	1
Educ. (Years)	7639	6.755858	3.996262	0	23
Migrant	7714	.044335	.2058516	0	1
Party member	7714	.0693544	.2540723	0	1
Urban	7714	.2071558	.4052944	0	1
Indinc03/10k	7083	.2529129	1.204226	0	68.5
Legalinfo	7714	.5346556	.1458606	.08	1
Do nothing	2671	.1382753	.1845435	0	1
Traditional official channels	2671	.1355298	.3423526	0	1
New official channels	2671	.3129914	.4637977	0	1
Private talk	2671	.4140771	.4926542	0	1
Fight/protest/oth	2671	.0396855	.1952558	0	1
Age/10	2671	4.228379	1.1563	1.8	6.6
Female	2671	.3867465	.487096	0	1
Educ. (Years)	2654	7.064054	3.658279	0	20
Party member	2671	.064021	.2448361	0	1
Indinc03/10k	2462	.2757778	1.05498	0	40
Migrant	2671	.087982	.2833218	0	1
Urban	2671	.2231374	.4164277	0	1
Rural	2671	.6888806	.4630382	0	1
Legalinfo	2671	.5382191	.1418949	.17	1
Faith in state	2636	.6912497	.1665048	0	1
Efficacy	2583	.5211326	.1537944	0	1
Risk taking	2671	.1843165	.327191	0	1
Pay tax	2465	.4273158	.3023363	0	1
No result	2671	.1176838	.1849602	0	1
Compromise	2671	.1091976	.1856657	0	1
Win	2671	.0776239	.1547088	0	1
Loss	2671	.0935979	.2044455	0	1

Notes

1. I originally prepared this paper for the Workshop on Law & Order and Survey Research in China, 9–10 April 2005, at the University of Pittsburgh. This version benefited from the helpful comments of the participants in the workshop, particularly those of William Parish, Kent Jennings, Stanley Rosen, Tianjian Shi, Pierre Landry, Melanic Manion, Yanqi Tong, Jie Chen, Yang Ming, Cheris Shun-ching Chan, Pat Chew, Margaret Woo and Yiyin Yang. The University of Pittsburgh provided generous financial support for the workshop.
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17. The population figure for China in 1995 was 12.24 billion (http://www.epirc.org.cn/tjsj/tjsj_cy_detail.asp?id=304, accessed March 25, 2006) and the 1995 total number of court-filed disputes in China was 4.55 million (National Bureau of Statistics of China, 2004). The method for calculating China's number of disputes per 100,000 population is total court-filed disputes divided by total population multiplied by 100,000 ($4.55/1224 \times 100,000 = 371$).
18. In contrast, one would expect that fewer people would disobey an "unreasonable law" in a democracy, as long as the lawmakers were elected by commonly accepted electoral procedures.
19. The OLS regression contains the respondent's total number of disputes in the past 20 years (0–50), age, gender, education, party membership, migrant worker, urban and rural residents, income and legal knowledge ($n=7,714$, see appendix for further details about these variables).
20. Similarly, in a 2002 survey of almost 3,000 households in rural China, Ethan Michelson found that grievances were more frequent and the law was more "mobilized" in less developed regions. This finding may suggest that those who have less to lose would engage in more conflict. Ethan Michelson, "Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China," *American Sociological Review*, Vol. 72, No. 2 (2007), pp. 459–85.
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 28. See State Council Decree #185 in *Zhongguo gaige, nongcunban* (Chinese reform, rural edition) (August 2003), p. 7.
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 35. One exception was the older respondents, who were more likely to take action than the younger ones, perhaps as a result of possessing more knowledge and social resources. Income is not significant.
 36. Lubman (Note 26).
 37. Peerenboom (Note 9).

Litigating Economic Disputes in Rural China

Shen Mingming and Wang Yuhua

Abstract

Development theory hypothesizes that the higher level of economic development a region has, the more likely that individuals prefer to use formal legal institutions in resolving their disputes. Drawn from a national survey conducted by the Research Center of Contemporary China at Peking University, this paper sets out to test this hypothesis in the context of China's countryside. The analysis shows first that cost concern, legal knowledge, and traditions are the main obstacles for people using the formal legal institutions. In an examination of rural residents' institutional preferences when they have economic disputes, statistical analysis reveals: 1) The speed of economic growth, rather than the level of economic prosperity, reinforces the consolidation of formal legal institutions; 2) Information and social resource factors, including media usage, legal knowledge, and social network, all have positive effects when people decide whether to go to court; 3) When economic prosperity crosses a certain threshold, its marginal effect on people's preferences decreases.

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