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Review Essay— Access to Justice in Post-Mao China: Assessing the Politics of Criminal and Administrative Law

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Since the upheaval of the Cultural Revolution decade (1966–1976), post-Mao China has witnessed a sustained period of unprecedented legal reform. Criminal prosecutions and citizen lawsuits against the government, because they pit individual litigants against the authoritarian Chinese state, are two politically significant areas of law. We examine and critically assess the sociolegal scholarship on criminal and administrative legal reform as it has developed over the past few decades, with special attention to shifts in the conventional wisdom regarding legal reform and political liberalism in China and elsewhere. Additionally, we offer both theoretical and empirical suggestions for enhancing the explanatory power of sociolegal research in China. **KEYWORDS:** China, law, politics, sociolegal studies, rule of law, courts, criminal law, administrative law

IN 1967, THE SOCIAL SCIENCE RESEARCH COUNCIL (SSRC) AND THE American Council of Learned Societies (ACLS) convened a series of conferences to advance cooperation and collaboration among top Western researchers of Chinese law. These conferences were a response to the underdevelopment of English-language scholarship on the Communist legal system of the People's Republic of China (PRC). While grants were available for research on PRC legal institutions, criminal law, civil law, and international law, many in the field felt an urgent need for clearer understandings of how to evaluate systematically both the history and the current practice of PRC law (Cohen 1970a, 6–7, 10–11). One of the organizers, Jerome Cohen, optimistically opined that the conference would constitute merely the first word in advancing Chinese legal studies (Cohen 1970a, 4, 19). Having established the basic contours of the pre–Cultural Revolution PRC legal system in the 1950s and 1960s, sev-

eral scholars at the 1967 conference focused on "tools for research," indicating the field's fitness for advancing a methodological agenda (see Cohen 1970a; Li 1970; Lubman 1970; Pfeffer 1970).

Not yet clear to the conference participants was the extent to which legal institutions would suffer during the Cultural Revolution (see Chen 2008, 147–148; Lubman 1999, 139, 251; Leng and Chiu 1985; Liu and Halliday 2009, 922). In contrast to the decade preceding the 1967 conference, which saw substantial development of the English-language scholarship on Chinese law, progress in sociolegal research on China nearly ground to a halt, with the court system mostly in disarray during the Cultural Revolution decade (1966–1977). Political and ideological barriers to access left little for legal scholars to analyze. Even for students of other aspects of politics, reliable data were hard to come by (Lieberthal 2010, 271).

The disruption of the Cultural Revolution is an apt point of departure for examining scholarship on contemporary Chinese law. The study of Chinese law has recovered and flourished since the advent of reform in 1978, aided substantially by rapid legislating and the increasing use of law and courts as political forums. But some still express dissatisfaction that narrow, legalist approaches frequently characterize Western writing about Chinese law (e.g., Lubman 1994, 5; Peerenboom 2010b, 12). Indeed, there have been prominent recent calls for the next generation of researchers on Chinese law to integrate more deeply into the "law-and-society" field (Diamant, Lubman, and O'Brien 2005, 4–5). Despite the best intentions among scholars at the 1967 SSRC-ACLS conference to lay the methodological groundwork for the future of Chinese legal studies, today there remains "a need for a more empirical, less ideological approach to assessing legal reforms in general and issues such as judicial independence or the role of the party in the judiciary in particular" (Peerenboom 2010b, 12).

While we are sensitive to the many practical obstacles to conducting empirical work in China, research on China's courts and legal system can move in a "more empirical" direction through subnational comparative analysis. While this often means studying law across different subnational jurisdictions, "subnational political units do not always make the best subnational cases" (Hurst 2010, 169). Researchers thus ought to consider comparisons of different legal institutions or substantive areas of law, because "the specific definition of subpopulations, along with the degree of disaggregation, must be driven by the research question and justified a priori by the scholar" (Hurst 2010, 169). By gradually accumulating data on China's legal system, in parts and as a whole, this ap-

proach could eventually facilitate greater engagement between scholarship on the Chinese legal system and the study of legal politics in other contexts (Carlson, Gallagher, and Manion 2010; Reny 2011). Though it emphasizes cross-national comparative analysis, the broader comparative public law field in the West is motivated by similar methodological concerns. Indeed, some have lamented that the sharp comparative turn in public law has yet to yield "genuinely comparative, problem driven, and inference-oriented scholarship" on a consistent basis (Hirschl 2008, 26).

First, we agree that "positive"[1] analyses of China's legal system that seek general explanation, whether case-oriented or variable-oriented, should be appraised based on whether they support conclusions that travel beyond the immediate cases studied (see Hirschl 2008, 31). Second, while "interpretive," thickly descriptive work need not aspire to discerning broad patterns or producing lawlike statements, accurate elucidation of processes and mechanisms requires heightened methodological rigor, and rationales for case selection must be specified clearly (Scheppelle 2004, 392). As Hirschl adds, historical and anthropological work, which often relies on thorough investigation of a single case study, does not prevent such work from attempting to advance knowledge in a way that ultimately surpasses a specific case study (Hirschl 2008, 28). Finally, we find that historical legal analysis in China has much to gain by integrating with the historical institutional approach in the social sciences. Legal scholars should place more emphasis on how the unintended consequences of earlier changes affect subsequent versions of reform, by which existing institutions are redirected to new purposes (Thelen 2003, 227).

We limit our direct examination to areas of the legal system we believe particularly relevant to political analysis: the penal and criminal law system and administrative lawsuits against the state. Insofar as these issue areas represent areas of the Chinese legal system that imply direct confrontation with state authority, they prove useful indicators of political pluralism, reform within the party-state, and developments in civil society groups such as the legal profession. Thus, the organizing concept we adopt is "access to justice," by which we mean the degree to which and manner by which ordinary individuals with valid claims interact with legal institutions and their empowered actors (such as judges, police, and lawyers). We are therefore able to zero in on issues in the development of empirically driven scholarship that addresses the complex interactions between law, politics, and society in China. This approach also helps refine our thinking about the much-mooted relationship between legal reform and political liberalization in contemporary China.

"Access to Justice" and China's Criminal and Penal System

Criminal law is the necessary legal background to understanding Chinese courts as a whole, especially considering that it has largely defined the parameters within which other legal processes occur in post-Mao China (Lubman 1999, 139). Additionally, China's criminal legal system serves as the primary vehicle for implementing China's penal code. Most early work on Mao-era criminal law was primarily descriptive, providing detailed accounts of basic structures and processes. More recent works continue this tradition, while accounting for dynamic changes in the Chinese criminal legal system. Several specific elements of reform in the criminal legal system have gained increasing attention: police reform, "strike hard" (*yanda*) anticrime campaigns, "reeducation through labor" (*laojiao*), "reform through labor" (*laogai*), and the politics of the criminal defense bar.

Descriptive Accounts of the PRC Criminal Legal System

In perhaps the most influential early study on criminal law in the PRC (Cohen 1968), Jerome Cohen, convener of the 1967 SSRC-ACLS conference, used imperfect materials such as émigré interviews in Hong Kong, case summaries, and the public statements of party officials to detail the workings of pre–Cultural Revolution PRC criminal law. With the Cultural Revolution under way, Cohen noted that virtually no interview data had been published (Cohen 1968, 59) and that much prior Western research on criminal law emphasized law during the Imperial or Republican eras, not the post-1949 legal system.[2] Cohen's analysis was thus groundbreaking in both its subject matter and in its use of alternative data sources, like interviews, to validate empirical claims (see Cohen 1970b).

Cohen's work on the pre–Cultural Revolution period remains influential because criminal law in particular continues to resemble prereform era sanctioning practices in many key respects (Lubman 1999, 139). On December 22, 1978, however, the Third Plenum of the 11th Central Committee of the Communist Party of China (CPC) declared that strengthening "the socialist legal system" would be a touchstone of the reform era, and indeed a safeguard of party-led democracy (Leng and Chiu 1985, 3; see also Liu and Halliday 2009, 922). During the period of "reform and opening" (*gaige kaifang*) that followed this announcement, China's more open-minded stance toward research by foreign scholars led to a flourishing of qualitative studies based primarily on interviews (Lieberthal 2010, 268–273).

Leng and Chiu benefited from the reform era's relative openness, as the authors' interactions with Chinese lawyers provided a crucial supplement to their early reform-era survey of the PRC criminal justice system. Besides interviews, they relied on published Chinese materials and Western sources (Leng and Chiu 1985, 4). More recent descriptive work has built upon this tradition by interviewing more subjects from a wider range of backgrounds and adding a comparative angle. Ira Belkin, for instance, discusses noteworthy aspects of the PRC criminal process from an American perspective (Belkin 2000, 2007). Among the important aspects of Chinese criminal law that Belkin clarifies is jurisdiction over the investigation of ordinary crime, which is held by the local Public Security Bureau (*gong'an ju*), and the routine stages of the PRC criminal process.[3] He also emphasizes significant differences from American criminal law practice, including the state's extensive authority to detain suspects without charge, the limited use of clandestine police investigation, the relative lack of plea bargaining, and the expansive use of the death penalty (Belkin 2000, 7, 13–23).

Other descriptive works discuss formal changes to the criminal legal system, especially the many amendments to the Criminal Procedure Law (CPL) since 1979 (Luo 2000; Hecht 1996). These studies provide an important historical overview of the legislative drafting process, the policy changes effected by the amendments, and the amendments' desired practical consequences. As we argue later, however, traditional historical research like this might benefit from integration with the historical institutionalist approach widely employed in the social sciences.[4]

While we do not yet have a general theory of the political or social influences on the Chinese criminal law system, there have been some small steps in that direction. Belkin's recent contribution (2007) places China in a comparative criminal procedure context, moving us beyond the traditional inquisitorial/accusatorial dichotomy, and Jianfu Chen (2008, 262) takes a doctrinal approach by looking at the drafting history of criminal legislation. Flora Sapio (2010) takes instrumentalism to new conceptual territory in finding lawlessness an indispensable characteristic of China's rule-by-law system, providing new analytic templates that offer sharper resolution of many key areas than traditional frameworks rooted in Anglo-American common law. Still, these authors have so far merely gestured at subnational variation (whether regional or between segments of the criminal code) or national uniformity in the development of Chinese criminal law. Largely for this reason, Stanley Lubman's much earlier instrumentalist/functionalist explanation of PRC legal development (1969, 1999) still generally represents the conventional wisdom of the field (Diamant, Lubman, and O'Brien 2005, 6).

Public Security Bureaus: "Ordinary" Crime and Punishment

Generally, empirical claims regarding China's public security organs should specify more clearly than has been the norm in the literature whether they apply only to distinct localities or issue areas or to the whole of the criminal apparatus across all of China.[5] Importantly, criminal offenses committed by government officials, employees, and agencies are investigated directly by the People's Procuratorate (*renmin jiancha yuan*) (Belkin 2000, 4, 7) or through the CPC's formally extralegal Discipline and Inspection Commissions (*jilü jiancha weiyuanhui*) at the appropriate level. Hence, for clarity of focus, we restrict our analysis to Public Security Bureaus (PSBs) and the interaction between ordinary citizens and the formal legal system.

Murray Scot Tanner suggests that China's PSBs are not monolithic and that repressive state institutions can adapt to changing circumstances. Specifically, Tanner traces shifting police attitudes toward public security, and especially toward public protests, since the 1989 Tiananmen incident. He focuses on a key midlevel stratum of police officials "who feel uncomfortably sandwiched between the Party leadership and an increasingly restive society" and who avoid "purely repressive" forms of social control (Tanner 2005a, 194). For Tanner, flexibility (and even some measure of tolerance) within the repressive apparatus is key to China's authoritarian resilience. But, as he relies on national-level statistics provided by the Ministry of Public Security (MPS), his research here emphasizes the central government's security perspective on mass incidents (Tanner 2004, 2005a). We thus cannot determine whether these claims are valid across all of China or if there are marked subnational patterns of (probably regional) variation.

By comparison, Tanner's later work with Eric Green (Tanner and Green 2008) marks a significant improvement because it directly examines ties between central and local police (PSB and Ministry of Public Security) institutions. In concluding that a variety of local patterns continue to emerge in China's coercive law enforcement apparatus, Tanner and Green rely on various textual and interview sources at the county, province, and national levels. First, this exemplary approach yields more specific conclusions about particular patterns of power in China's varying regions, which, by directly acknowledging that local agents always know more about policy compliance and implementation than the central-level superiors who monitor them, allows more systematic understanding of China's legal development. Second, Tanner and Green examine center-

local relations of China's diverse public security bureaus as political institutions, setting up potentially fruitful interaction with scholars who study other center-local political issues (Tanner and Green 2008, 92–93). Finally, Tanner and Green's illumination of local issues allows deeper exchange with other public security researchers regarding, for example, the "community policing" reforms and local-level pluralization of law enforcement institutions throughout China in the last decade (Sun and Wu 2010).

Nationally organized Strike Hard anticrime campaigns are another important element of Chinese social control. These campaigns spur the prosecution of ordinary crime by extraordinary means, and their initiation during Deng Xiaoping's tenure was a crucial turning point in reform-era criminal justice. The first Strike Hard campaign began in 1983–1984 with mass arrests in Tangshan, Hebei province, later spread to several other cities, and was characterized by abrupt adjudication and severe punishment (Tanner 1999, 87–88; see also Trevaskes 2010, 17). Relying primarily on interviews, media reports, and government statistics, Harold Tanner's (1999) Weberian perspective characterizes Strike Hard campaigns as attempts to counteract the social ills of economic development in the 1980s.

It is easy to point to legacies of Maoist mass campaigns in this 1980s reintroduction of anticrime mobilizations, but the harder and more interesting task is to pinpoint the cause of this institutional change in reform-era law and order politics. We have learned that in many instances, Strike Hard campaigns have actually been more popular among the masses than among the police (Tanner 2005b). In an awkward position when administering heavy penalties in cases that might have otherwise gone unpunished, police have pushed back against stringent rules and draconian social control (Tanner 2005b; Trevaskes 2010, 21). But for many members of the public, "Striking Hard" has become routine, even tiresome.

Counting generic, specialized, provincial, and local campaigns, China's masses have been "struck hard" every year since 1983. This has produced a "brutalizing effect" on society that has exacerbated, not reduced, criminal violence (Trevaskes 2007, 2010, 18; Bakken 2000, 394, cited in Trevaskes 2010). So as not to ignore this other part of the cycle, purely state-centered explanations of the recent "regularization" (*jingchanghua*) of campaign-style policing ought to incorporate more mass-level influences on changes to the legal system to document any regional differences in their implementation and reception (see Trevaskes 2010, 18, 20, 118–120). In general though, the "shock and awe" of Strike Hard campaigns seems to have been ineffective, at least in apprehending

more sophisticated leaders of organized crime and curtailing drug trafficking rings (Trevaskes 2007, 2010, 21–22).

The best empirical research on Strike Hard campaigns, especially Trevaskes's, has been based on court gazetteers (*fayuan zhi*). These are either open or restricted-circulation publications intended primarily to aid the state's understanding of the judiciary. Such special publications can provide highly detailed evidence of how and why courts function, despite their status as official histories written by actors with an obvious self-interest (Hurst 2011, 78–79). Again, it is disappointing that little work has been done with these sources across regions and localities. A broader sampling of courts across different regions and at different levels within China's judicial hierarchy would greatly sharpen the analysis and allow us to assess more accurately the generalizability of specific findings (Trevaskes 2007, 5).

Laojiao vs. Laogai

Among the essential features of the state's penal system are two variants of administrative detention: labor education (*laojiao*) and labor reform (*laogai*). For foreign scholars, the distinction between *laojiao* and *laogai* is particularly confusing (Belkin 2000, 9). Both have attracted substantial scholarly attention, but their respective strands of literature have taken distinctly different paths. In general, *laojiao* studies have focused on political economic analysis, while the shroud of secrecy and international criticism surrounding *laogai* has motivated more historical, descriptive work.

Laojiao is an administrative sanction imposed at the discretion of the police, whereas *laogai* is a form of criminal punishment that may be imposed only after a criminal conviction (Belkin 2000, 9; Fu 2005, 213). The Chinese government defends *laojiao* as an appropriate tool to tackle petty crime, prostitution, and drug addiction without damaging defendants' "criminal records,"[6] despite international condemnation of the expansive state discretion entailed in the process (Belkin 2000, 9–10). Sarah Biddulph tracks how *laojiao* (or RETL, "reeducation through labor") institutions have morphed since the Mao era. The Maoist purpose of *laojiao* was to transform citizens who had engaged in nonthreatening antisocial behavior into "useful timber for socialist construction"; in its contemporary form, however, *laojiao* is designed primarily to preserve social order and maintain political control (Biddulph 2007, 193, 195).Whereas Biddulph's analysis takes a broader approach by examining national legislation, judicial interpretations, administrative regulations, and provincial regulations to draw measured conclusions across

time and space, the analysis of single localities has become particularly prominent in other research on *laojiao* camps. In addition to Belkin's study, Hua Ling Fu's "penal economy" analysis of an anonymous southern *laojiao* camp examines how budgeting policies and the reform project transformed the camp's overriding goal from rehabilitation to commercial production (Fu 2005). Perhaps counterintuitively, the camp's new focus improved living conditions for *laojiao* inmates by rendering their employer-employee relationship with prison staff more transparent. Though the party-state seems likely to rely on a constant supply of new inmates (rather than material or technical upgrades) to increase each prison's total production (Fu 2005, 225), there may be variation across China's many *laojiao* institutions—especially in camps where commercial production is substandard.

Though Fu recognizes that his single case study of a *laojiao* institution in southern China is not generally representative of *laojiao* camps in China, he nonetheless draws the national-level conclusion that economic production has become a goal of China's penal institutions as a whole (Fu 2005, 214, 225). We suggest that studies in a single locality should advance more modest local or regionally based explanations for the outcomes they observe. In Fu's single-case study, for example, we might wonder how southern Chinese politics and economics might have influenced outcomes at the *laojiao* facility that he studied,[7] rather than speculate about which national-level features explain the same phenomena. Ideally, by starting with local context, this alternative approach would gradually build a more accurate reserve of national-level knowledge of the Chinese legal and penal system, eventually combining the knowledge derived from numerous descriptive case studies[8] to explain more general change at the county, province, and national levels.

Much less is known about criminal punishment in "reform through labor" (*laogai*) facilities relative to their *laojiao* counterparts. Klaus Mühlhahn has emphasized the conceptual importance of *laogai* to Maoist criminal justice (Mühlhahn 2009). A dearth of more contemporary data has limited research on *laogai* (Sapio 2010, 11). Despite this limited access, James Seymour and Richard Anderson provide perhaps a prototypical example of the sort of modestly comparative, empirically driven, subnationally focused research that we suggest the China empirical legal field should embrace (Seymour and Anderson 1998). Seymour and Anderson steadfastly heed Kim Scheppelle's admonition that even "descriptive" or "interpretive" social researchers must clearly specify their rationales for case selection (Scheppelle 2004, 392).

The authors managed to collect enough internal documents and interviews with ex-prisoners to craft a detailed picture of the *laogai* system, prison sentencing, and *laogai* economic output in Gansu, Xinjiang, and Qinghai. Even studying *laogai*, an institution on which data are exceedingly rare, Seymour and Anderson explain their rationale for focusing on *laogai* in China's northwest. Additionally, they note the specific value added from comparing the Gansu, Xinjiang, and Qinghai *laogai* camps (Seymour and Anderson 1998, 9). Finally, they offer perspective on the larger reality of *laogai* in China (Seymour and Anderson 1998, 8–9). The contribution of Seymour and Anderson appears in even sharper relief when compared with more polemical work on *laogai*, based on first-hand anecdotal data (Wu 1992). While more systematic study of this repressive institution awaits better access to data, we see Seymour and Anderson's subnational comparison of one type of institution across several places as paving a path forward, gradually advancing our understanding of *laogai*.

The Legal Profession, Criminal Defense, and Political Change

Despite reforms in protest policing, *yanda*, *laojiao*, and *laogai*, liberal-minded societal groups, such as the criminal defense bar, still do not enjoy significant institutional autonomy. Terence Halliday and Sida Liu claim that professional lawyers[9] and the emergence of a legitimate legal culture are strongly associated with the broader spread of political liberalism (Halliday and Liu 2007). But for the legal profession to meaningfully affect politics,[10] lawyers must establish a formidable base of knowledge and status. Law student and lawyer numbers have spiked since law schools reopened in 1979. But the inability of the bar to maintain professional autonomy and continuing problems with minimum qualifications and standards for professional legal workers have limited the profession's social status (Lubman 1999, 153–159).

Recent research suggests that Chinese legal education remains deficient in preparing students for the *practice* of law. Even at some of the top law schools, classes are so large that productive teacher-student interaction is unlikely (Komaiko and Que 2009, 102–103). While an American observer might point out that first-year law school classes in the United States are also often very large, an important development in American legal education over the past few decades has been the emergence of clinical legal education, by which students have the opportunity to work closely with law school faculty on actual litigation. Recently, scholars have documented the transplantation of clinical legal education

to China and its as-yet halting progress (*Harvard Law Review* 2007, 2155; Liebman 1999; Phan 2005).

In terms of the legal profession's relationship to the state, the differences between the US and Chinese contexts are stark. Whereas many elected American politicians are lawyers, engineering is the professional background of choice in China because of its perceived links to state priorities like national defense and economic development (Kirby 2010, 283). Peerenboom traces lawyers' limited role in governance and the overall low public regard for the legal profession in China to its cultural antecedents in the antilitigious strains of Confucian thought (Peerenboom 2002, 345).

Ethan Michelson notes that lawyers were only reconstituted as a professional class in 1979, and they were soon after showcased at the 1980 Gang of Four trials speaking on behalf of the alleged perpetrators of the most traumatic excesses during the Cultural Revolution. These historical circumstances have likely also contributed to the legal profession's low political status in today's China (Michelson 2003, 16). Regarding legal practice, Michelson concludes from his rigorous field research on Chinese lawyers' client selection that lawyers' motives are shaped substantially by economic incentives, in dialectical relation with cultural factors (Michelson 2007, 181).

Mechanisms of client selection, which allow lawyers to use legal knowledge and linguistic gymnastics to refuse the representation of certain undesirable clients, undermine ordinary citizens' access to justice (Michelson 2003, 2007, 171–172). Lawyers' economic concerns are rooted in the difficulty of collecting attorneys' fees, either through contingency arrangements that can be hard to enforce or through hourly or fixed-fee agreements that clients frequently fail to uphold. Chinese lawyers face significant financial stress and consequently are unlikely to represent indigent potential clients (Michelson 2007, 175). For the average Chinese citizen, this presents an unsympathetic image of lawyers and the law.

Taking a historical perspective of lawyers' position in Chinese society, William Alford notes that the legal profession was marginalized as law became an explicit tool of class struggle after the 1949 revolution. During the period 1957–1980, the population of lawyers remained constant at a mere 3,000, while the population of China increased by 235 million (Alford 1996, 27).[11] The licensing of 40,000 more lawyers, the establishment of 4,000 more law offices, and enrollment in law schools surpassing 30,000 was thus staggering in the early 1990s (Alford 1996, 30). One daunting problem in supplementing such quantitative advances with qualitative change is the lack of precise, systematically enforced,

ethical guidelines—as evinced by the Ministry of Justice's commitment to produce a set number of lawyers, absent any parallel commitment to improving the competence and quality of the bar (Alford 1996, 31, 37). Alford also detects normative bias favoring constitutional, common law legal frameworks in the work of Western legal analysts and thus emphasizes the often ignored "double edged" effect of legal professionalization in authoritarian contexts (Alford 2003, 194).

Another China-specific element of the legal profession is that nonlawyers often provide professional legal services. What Alford calls "rice roots legal workers" (*jiceng falü gongzuozhe*) have historically outnumbered lawyers in China, but they tend to be overlooked in an "international"—and particularly American—vision of legal professionalism that focuses on "rule of law" supported by a world-class legal services market (Alford 2010, 48–49). Though the Chinese legal profession may harbor some affinity for progressive reform, limits in legal education, low socioeconomic status, and conflict with other established legal service groups hinder the capacity of the bar to push for political liberalization.

Regarding criminal defense lawyers, who are committed to advocating greater legal protections for those suspected of a crime, harsh political strictures—potentially including personal criminal liability—continue to limit their institutional autonomy. Beyond blocking access to information needed to mount a defense, the state can also charge defense attorneys with amorphous, retaliatory counts like "encouraging perjury" (Halliday and Liu 2007, 73). Reviewing posts to the All China Lawyers Association (ACLA) internet forum in 2003–2004, Halliday and Liu extensively document that under these conditions, criminal defense lawyers experienced an acute sense of institutional inferiority relative to the judiciary, procuracy, and police (Halliday and Liu 2007, 79–83, 92).

Given the plight of criminal defendants and their attorneys, the international community often points to China's own formal commitments to international human rights compacts[12] to pressure the Chinese state to expand legal rights for criminal defendants and their attorneys. Inquisitorial judges and public security organs continue to wield primary authority to investigate crime, however, and prefer to preserve the status quo (Clarke and Feinerman 2005; Liu and Halliday 2009).[13] Additionally, the overriding priority for Chinese lawyers appears to be to protect and enhance their livelihood, not advance an ideology (Michelson and Liu 2010, 311). To sum up a broader point, much of what we know about Chinese lawyers' political consciousness has been discovered through systematically disaggregating the profession and gradually building knowledge about institutional goals, tactics, and capacities.

Access to Justice: Administrative Lawsuits

Basic Debates

Throughout the 1980s, in contrast to criminal legal studies, few researchers analyzed administrative law, few schools taught it as a subject, and few books were published on it. However, since the National People's Congress (NPC) comprehensively formalized the legislative basis for suing government agencies and officials by passing the Administrative Litigation Law (ALL) in 1989, administrative law scholarship has exploded (Chen 2008, 207). "One of the most controversial pieces of legislation ever enacted in post-Mao China," (Chen 2008, 247)[14] the theoretical significance of the ALL can hardly be exaggerated. If fully enforced, it would afford Chinese citizens an important legal instrument with which to defend themselves against the abuse of state power by government agencies and officials (Pei 1997, 832). In the wake of the ALL, the NPC has continued to expand citizens' formal ability to file legal claims against government officials, passing the Administrative Reconsideration Regulations (ARR) in 1990 and the Administrative Reconsideration Law (ARL) in 1999.[15]

The ALL represented the first formal extension to ordinary citizens of the right to sue the government, though administrative lawsuits technically had been authorized in 1980 (Chen 2008). Western and Chinese legal experts alike hailed its passage. Some legal scholars even felt that the ALL could potentially lay the foundations for a "rule of law" in China (Pei 1997, 835; Finder 1989; Potter 1994; O'Brien and Li 2005, 31). Eventually, though, many scholars acknowledged that by enhancing the state's "legitimacy"[16] with the public, the ALL has contributed primarily to one-party authoritarian resilience—China's version of a "rule by law."

Looking at administrative lawsuits is particularly useful for studying access to justice in China.[17] While important historical research has been done, we suggest that deeper and more systematic engagement with "historical institutionalism" approaches in comparative politics would be mutually beneficial.

Contours of the Administrative Litigation System

First, we specify a definition of "administrative litigation" that applies to China. In conceptualizing such a definition, there is a critical distinction between protecting one's "legitimate rights" (ALL, art. 2) by challenging an administrative decision "internally" (through reconsideration), versus contesting it "externally" (through litigation). Reconsideration is a process internal to the bureaucratic organ within which the original decisions are made (Chen 2008, 237; Lubman 1999, 205–206), whereas

litigation brought through the court system is an external challenge to the administrative decisionmaking organ (Chen 2008, 250).

An additional distinction is that between administrative litigation and "administrative procedure." Litigation may challenge "concrete," not "abstract," administrative decisions. Concrete administrative decisions refer to exercises of discretion regarding a particular person, organization, or social event (Chen 2008, 224). Put simply, litigation of concrete decisions refers to lawsuits filed by citizen plaintiffs against government entities that allege specific wrongs and request some remedy or repayment. Abstract administrative decisions, by contrast, refer to the promulgation of rules and regulations that apply to the general population, which, in Western terms, is generally called "administrative procedure" (Chen 2008, 224; Lubman 1999, 205–206).

These distinctions may appear to be purely technical, but they carry significant political consequences. Administrative reconsideration as a means of internal supervision has long been used in China to monitor public officials. Such internal supervision may be less likely to produce meaningful review, relative to court supervision, because reviewers are bureaucratic actors who owe allegiance to their own organization, not to the formal legal process (Potter 1994, 272).[18] Pitman Potter thus emphasizes administrative litigation's potential to enhance administrative accountability because it places review authority in the hands of courts, which do not always have the same institutional goals and obligations as bureaucratic actors (Potter 1994, 273–274).

Conversely, Randall Peerenboom notes that claimants pursuing external litigation must consider courts' limited scope of review, due to their weak institutional position and lower level of professionalization relative to the bureaucracy (Peerenboom 2002, 420–422). Alternatively, plaintiffs seeking administrative reconsideration can benefit from the superior institutional strength, financial resources, and expertise that bureaucratic units (as opposed to courts) enjoy. A plaintiff can even compel review of "abstract" administrative rules under the ARL. The expansive rights and remedies attainable through reconsideration are possible because the process involves only an executive agency handling its own internal affairs, without the complexity of interinstitutional jurisdictional conflicts that external court review implies (Peerenboom 2002, 417).[19]

Integrating Legal Doctrinalism and Historical Institutionalism to Analyze Chinese Administrative Law Reform

Jianfu Chen employs a promising legal doctrinal approach that relies primarily on textual development and drafting history to explain change in

China's administrative legal institutions. Chen's approach, like historical institutionalism in political science, is designed to place institutional reform in historical context (Chen 2008, 2; Steinmo 2008; Tsai 2007, 32–43; Thelen 2003).[20] Historical institutionalism, however, often emphasizes unintended consequences of earlier changes in subsequent versions of reform, by which existing institutions are redirected to new purposes (Thelen 2003, 227). Legal scholars like Chen have mostly ignored unintended consequences and focused instead on the stated policy goals of legislators and academics as set out in the formal historical record. We take the adoption of the ALL in 1989 as one example. Despite his thick documentation of China's administrative legal development throughout the 1980s, Chen identifies a commission of experts convened at the behest of the central government as the primary force behind enactment of the ALL in 1989–1990, concluding that the ALL was "essentially the product of academic efforts" and bureaucratic power struggles that occurred during formal drafting (Chen 2008, 247). Overlooked, however, is the very institutional history in the decade preceding the ALL that Chen himself documents and that appears to have provided the impetus for the whole drafting process.

Recasting the legal and historical findings of Chen and others using a historical institutionalist approach reveals a compelling explanation for the ALL's adoption as an unintended consequence of earlier reforms that opened the state to administrative lawsuits from business plaintiffs. The authorization of administrative lawsuits in the 1980 Sino-Foreign Joint Venture Income Tax Law, the 1982 Civil Procedure Law, and the 1987 PRC Code on Penalties Imposed in the Course of Maintaining Public Order provided an unintended avenue that presaged the more comprehensive right to sue that was formalized with the ALL's passage in 1989. First, it is important to remember that these new administrative legal institutions did not appear from whole cloth or out of thin air.[21] As Chen notes, the Chinese bureaucracy is among the oldest in the world (Chen 2008, 209). Despite substantial restrictions on its development and its limited role at the time, the scholarly consensus is that China's administrative procedure regulations were at least formally established in the period immediately after 1949, with administrative lawsuits permitted under circumscribed authorization by the 1951 law on patents (Chen 2008, 227). Although the early Mao era was actually quite legalistic, especially between 1954 and 1957, this legal infrastructure was at least partially dismantled during the 1957 Anti-Rightist Movement (Peerenboom 2002, 397).

In the post-Mao era, the 1980 Sino-Foreign Joint Venture Income Tax Law (JV Law) was the first law to permit lawsuits against the state's

administrative decisions (Chen 2008, 208). After passage of the JV Law, but before the ALL was enacted in 1989, local courts began establishing special divisions for administrative litigation. Although administrative lawsuits were sanctioned under the 1982 Civil Procedure Law (CPL), which stated simply, "this law applies to administrative litigation cases which are legally stipulated to be tried in the People's Court," the CPL did not specify comprehensive procedural rules (Civil Procedure Law of 1982, art. 3; Pei 1997, 834). Despite the absence of comprehensive procedural rules and institutions, the handling of administrative cases in Chinese courts, according to Supreme People's Court (SPC) statistics, was already under way during the early 1980s: from 1983 to 1988, courts at all levels had accepted 12,914 administrative cases (Finder 1989, 11).

Thus, before the SPC gave formal sanction to administrative lawsuits in 1987–1988 (Chen 2008, 208; Finder 1989, 5–11) and before the NPC's 1986 commissioning of a research group to prepare a preliminary draft of an administrative litigation law for experimentation in Chinese local courts, institutions supporting administrative lawsuits had already been created. Even during the drafting of the ALL, the expansion of law enforcement authority to administratively detain citizens under the 1987 PRC Code on Penalties Imposed in the Course of Maintaining Public Order "made the passage of the ALL both more necessary and desirable" (Pei 1997, 834–835). After the Code on Penalties went into effect in January 1987, the judicial branch of the Chinese government was reportedly forced to establish special tribunals that provided an institutional arena in which citizens could seek judicial relief from official abuse of this law enforcement power (Pei 1997, 834–835). It was not until after all these developments that the NPC, on April 4, 1989, formally passed the ALL.

Thus, using the primarily historical, textual data we have cited, an alternative narrative of the passage of the ALL emerges, consistent with other accounts of the generally piecemeal evolution of administrative law in China (Peerenboom 2002, 424). These data suggest that administrative legislation in the 1980s addressed formal lacunae by officially sanctioning prevalent informal practices. More recent reforms, such as the move to legalize informal practices of mediation in administrative lawsuits that are officially prohibited under Article 50 of the ALL, reflect a similar pattern (see Palmer 2010, 258–263). Because legal scholars and historical institutionalists can rely on similar materials and employ similar methods in explaining change, these two approaches can engage each other at little cost but potentially great explanatory benefit, significantly addressing many of the gaps in current scholarship (Reny 2011).

Toward Empiricism: Administrative Litigation's Relationship to Pluralism, Governmental Accountability, and Regime Stability

Other debates have been shaped by the use of different and sometimes novel sorts of data. Social scientists in recent years have favored quantitative analysis of polling data, government statistics, and large case law samples. Whereas early sociolegal research on the ALL focused the potential for administrative lawsuits to contribute to democratic reforms and accountability, a more recent consensus holds that the ALL has done little to advance the rule of law and has perhaps even aided authoritarian resilience. This has come on the heels of the one-party regime's observance of the sixtieth anniversary of the revolution, an ongoing crackdown on dissent,[22] and NPC Standing Committee chair Wu Bangguo's announcement that a socialist system of laws with Chinese characteristics has been established "on schedule" in China.[23]

As noted, most early research on the ALL did not include empirical data beyond identifying historical developments of administrative litigation in China or detailing the ALL's textual provisions (Finder 1989; Potter 1994).[24] Minxin Pei's 1997 study broke from this mold, presenting multifaceted, regionally specific interpretations of Chinese government statistics regarding suits under the ALL between 1986 and 1996 (Pei 1997, 832–833). Pei spotlighted the influences of cross-province variation, the identity of the parties, and access to legal counsel on administrative litigation (Pei 1997, 836–858). While judicial review was gradually expanding as a result of the ALL, actual results tended to favor more powerful, more active litigants such as state-owned enterprises (SOEs) and private sector firms (Pei 1997, 859). Still, Pei stressed that the ALL nonetheless provided some relief for ordinary citizens facing unjust treatment by government officials (Pei 1997, 860).

Later research confirmed Pei's basic findings (Landry 2008, 234), while extending his inquiry into the ALL's effect in different geographical spaces. Xin He's recent work (2010) on administrative litigation in Shanghai demonstrates the overwhelming advantage that governmental defendants possess when facing administrative lawsuits from parties affected by government behavior. Governmental defendants in Shanghai's courts won 92.9 percent of administrative lawsuits between 2004 and 2009 (He 2010, Table 5). In earlier work, Kevin O'Brien and Lianjiang Li relied on individual case studies, case acceptance statistics, and multiprovince survey responses to capture instead the perspective of the rural Chinese administrative plaintiff. Regarding access to courts, the toughest battle most rural litigants face is persuading a court to accept a case,

as courts often refuse cases deemed too "sensitive" and local officials have proven adept at avoiding liability (O'Brien and Li 2005, 35–36).

Other research has confirmed that access to administrative courts is limited. Restrictions against suing party leaders, bringing collective lawsuits, and litigating "sensitive matters" are selectively but robustly enforced (He 2007; 2009a, 144–145, 155; 2009b, 476–477; see also Peerenboom 2002). Sida Liu's ethnographic case study of Qinghe County Court, in rural Hebei province, offers rich empirical data on the issue of court access, finding that the number of administrative cases on the court's docket is paltry in comparison with the caseload in other (criminal, civil, economic) divisions. These data reflect "the tremendous difficulty of administrative litigation" (Liu 2006, 90). Further, citizens' scant access to legal information hinders their access to courts, as provincial and local leaders (likely losers from increased administrative liability under the ALL) successfully prevent dissemination of legal knowledge about village fees and elections (O'Brien and Li 2005, 34).

Even when administrative plaintiffs are successful, the government agencies involved can retaliate, against either the plaintiffs or the court that awarded the verdict (Lubman 1999, 210). Additionally, local officials use police powers to intervene directly in legal proceedings and to detain, harass, or physically abuse their accusers. Plaintiffs who have successfully navigated the procedural gauntlet and managed to obtain favorable decisions often encounter problems enforcing judgments and preventing cadre retaliation (O'Brien and Li 2005, 33–38, 41). Still, O'Brien and Li see increasing liberalism in the way that the ALL spurs collective action, especially when villagers assemble to persuade courts and cadres to accept their grievances: "collective action, or the threat of it, can also increase the likelihood of winning, so long as litigants frame their demands and act in a way that does not alienate potential allies" (O'Brien and Li 2005, 36, 43).

A few scholars have painted the ALL as almost a sham. For them, the Chinese regime's legal institutionalization reflects little more than the proactive role of the state observed in other late developing countries (Diamant, Lubman, and O'Brien 2005, 6). Andrew Nathan is perhaps the most outspoken critic in this vein, finding that through "institutionalization," the ALL and other legislative instruments ultimately strengthen the CCP's legitimacy among the public at large (Nathan 2003, 6–7). Even without participatory procedures to cultivate ongoing consent, the party-state apparently continues to enjoy robust public favor: 1993 and 2002 national surveys found overwhelming support for both the national and local governments (Nathan 2003). For Nathan, the debate over the ALL's

effect is a zero-sum game between public participation and pure propaganda designed to prevent mass social upheaval.

Some comparativists who study administrative litigation agree that the ALL serves regime interests but emphasize the ALL's primary function of helping the central government maintain control over local agents.[25] Authoritarian regimes in other contexts pursue bureaucratic rationalization not only to enhance the central government's legitimacy through administrative law mechanisms, but also to limit local corruption and strengthen central principals' control over unruly agents (Ginsburg 2008).

In the Chinese case, Xin He describes the phenomenon of top down regulatory discipline as "political control" (He 2009a, 145). In He's analysis, the central state's focus on maintaining control over local agents has made Beijing more responsive in curbing local governments' attempts to circumvent legal liability. This explains why the central state is now willing to expand administrative procedure reform, though this could significantly inject public input into the rulemaking process and limit local bureaucratic discretion. As He relies primarily on a single case study of China's urban development law, it may or may not be representative of other large, urban settings in China.

Finally, Ethan Michelson recently captured a subtler dynamic. For Michelson, administrative litigation of village disputes is "justice from above" because administrative plaintiffs request officials with higher status in the hierarchy to rein in local officials. Relying on multiprovince survey data, Michelson finds that villagers who seek such justice from above largely toil in vain, as lawsuits under the ALL are much more likely to produce disappointment than favorable outcomes (Michelson 2008, 57). Villagers thus have increasingly shunned administrative lawsuits as a means of obtaining relief; for the overwhelming majority of Chinese citizens, administrative litigation is neither a feasible nor a desirable means of resolving disputes (Michelson 2008, 58; Landry 2008, 209–214).

Administrative Lawsuits and the "Judicialization" of Politics

A parallel literature assessing the broader relevance of the "judicialization" of politics to Chinese administrative law has arisen alongside the research spawned by passage of the ALL in 1989. The rise of this literature is premised on the observation that judges worldwide have become much more powerful political actors, especially since World War II. Martin Shapiro has urged Western political scientists to adopt a more comparative approach and was an early student of "judicialization" (Ginsburg and Moustafa 2008; Stone Sweet 2002; Shapiro and Stone Sweet 2002;

Shapiro 1989; Tate and Vallinder 1995). Broadly speaking, "judicialization" refers to the expansion of judicial authority into previously executive or legislative spheres (Ginsburg and Moustafa 2008, 2). Some have suggested that the "judicialization of governance" more accurately summarizes the increasing role of judges in developing East Asian countries (Ginsburg and Chen 2009, 3).

Peerenboom, with gestures at comparative context, argues that China's administrative legal reforms spur broader political participation. This is not because they foster democratic pluralism, but rather because they will ultimately weaken the bonds between the party and the state (Peerenboom 2006). Still, administrative law reform can be politically meaningful only if the Chinese judiciary gains substantial strength (Peerenboom 2002, 69–70).

Challenging Peerenboom's association between judicial strength and increasing pluralism, Stephanie Balme claims provocatively that a partial transfer of political power to the judicial sphere and increasing "judicial activism" are actually pushed forward by the low prestige of Chinese judges (Balme 2009, 180). She bases this claim on the comparative analysis of basic-level people's courts (*renmin fayuan*) and tribunals (*renmin fating*) in Gansu and Qinghai. In people's tribunals, Balme finds that mediation hearings are governed by a much smaller pool of judges than in courts and are not subject to oversight by an Adjudication Committee. They are, therefore, especially receptive to populist, constitutionalist legal arguments (Balme 2009, 180, 196–197). While Balme notes that Shaanxi province is an important experimental site for Hu Jintao's "new socialist countryside" program, she does not advance a systematic comparison with courts in Gansu province, which might have illuminated our understanding of intrarural variation. Thus, while her work on Shaanxi is deeply informative, Balme may have missed an opportunity to explain the extent to which her cases were representative of "bottom up judicialization" in rural China more broadly (Balme 2009, 181, 197; Scheppelle 2004; Hurst 2010).

These same authors, joined by others, have also engaged in a lively debate about judicial independence in China. Peerenboom's recent work clarifies this issue by questioning the conventional wisdom (especially in commercial cases) that Chinese judges writ large lack independence and that the party is the main source of interference in judicial decisions (Peerenboom 2010b). He finds that several factors should favorably affect judicial autonomy, competence, and capacity—for example, China's large talent pool of educated professionals. There are, conversely, more significant limits to judicial independence embedded in the ALL itself.

Courts have therefore mostly strategically avoided confrontations with other institutions of the regime, a form of judicial self-restraint (Peerenboom 2010a, 15, 16, 18).

Given its importance to courts' capacity and autonomy, the centralization of funding for local courts demands further study. Traditionally, local courts have been funded by the local government, and many scholars have often pointed to this as a key factor explaining the low level of judicial independence and the substantial influence of local politics in court cases, especially administrative lawsuits (Peerenboom 2002, 298–299, 310–311; Lubman 1999, 263–269; He 2009b). The central government has recently acted to curtail this aspect of local state power. In 2006, the central government allocated 5.93 billion RMB to help lower-level procuratorial, judicial, and public security departments improve conditions for processing cases.

These changes presumably reduced these units' dependence on local fiscal bureaus (Balme 2010, 178). Further, the State Council announced in 2008 that funding was to be centralized (Peerenboom 2010a, 8, 83). Centralizing funding could also potentially reduce the significant disparities that have long persisted between urban and rural courts in terms of judges' salaries and training, as well as basic resources for operations (Hurst 2011, 76–81). With court funding reforms in their early stages, empirical legal scholars of Chinese law will no doubt keenly follow developments in this area for future research possibilities.

The increasing use and formal recognition of mediation in administrative litigation indicate that "judicialization" is not proceeding as rapidly in China as some observers suggest. Pei concluded from his 1997 study that the liberal implementation of mediation-style "settlements" to resolve administrative disputes provided effective judicial relief to plaintiffs (Pei 1997, 859), but Peerenboom later emphasized the limits of these findings. The undeniable recent shift toward giving Chinese courts more prominent roles in handing socially, politically, and economically contentious issues arising from China's rapid reform (Peerenboom 2008, 176) has led to retrenchment in the judicial sphere, or what Peerenboom calls "dejudicialization." When highly controversial cases regarding issues of high public visibility come before lower-level courts, fears of social instability can undermine the judiciary's authority to adjudicate the dispute. Mediation, recently backed by the Supreme People's Court (despite the ALL's explicit ban on administrative mediation), can help parties reach a mutually acceptable solution and permit the courts to avoid politically sensitive, marginally enforceable decisions (Peerenboom 2008, 182, 192–193).

Further, the prohibition of administrative mediation—contained in Article 50 of the ALL—is politically and legally problematic (Palmer 2010, 251). In a tacit acknowledgment that mediation (*tiaojie*) processes resolve many administrative lawsuits in China, the Supreme People's Court officially sanctioned the informal practice of "settlement" (*hejie*) in 2008 (Palmer 2010, 262–263, 268). Citing several case law samples, Palmer argues—contra Pei's more sanguine interpretation more than a decade earlier—that defendants prefer administrative mediation because remedies are often limited to voluntary injunction. The mediation process also allows easier application of political coercion, relative to other processes like adversarial adjudication. Palmer thus predicts that the ALL's ban on mediation will eventually be lifted (Palmer 2010, 265–268).

In light of the above, we suggest a more ambitious research design to better understand the increasing role of mediation in China's administrative law courts. Sociolegal research has demonstrated that data in this area are available to support conclusions across the urban-rural divide. For example, in Benjamin Read and Ethan Michelson's work on the use of mediation in diverse contexts within China, the authors relied on surveys that were conducted in both Beijing and rural China. Thus, they were able to capture subtle variations, including that mediation is relatively rare in large urban centers like Beijing, but common in the countryside (Read and Michelson 2008, 757–758). Similar approaches not only could yield more generalizable findings but could also explain how and to what extent conclusions drawn from empirical data are bounded.

Conclusion

The 2003 Berkeley conference "Law and Society in China" and the volume that grew out of it (Diamant, Lubman, and O'Brien 2005), like the 1967 SSRC-ACLS conference, aimed to advance empirical scholarship on the Chinese legal system. Participants observed that few studies deeply questioned mass attitudes about the legal system or the extent to which ordinary Chinese citizens internalize a respect for or consciousness of the law. In other words, "There is nothing comparable yet to . . . Tom Tyler's *Why People Obey the Law*" (Diamant, Lubman, and O'Brien 2005, 16, citing Tyler 1990). Clearly, research that explores mass perceptions of the legal system in diverse localities would be useful, though scholars may want to move further ahead with differentiating society and comparing social groups and regional and local contexts (Gallagher 2006; Landry 2008) before pressing ahead too rashly.

The Berkeley conference also concluded that disaggregating the state, "looking both at interactions between governmental authorities at multiple levels and at how they interact with assorted social groups," (Diamant, Lubman, and O'Brien 2005, 19) could substantially advance our ability to gauge whether ordinary Chinese citizens are practically experiencing greater access to justice as reform proceeds. Such research would help integrate the study of the legal system with broader topics in Chinese politics (Dittmer and Hurst 2002–2003, 24–37). More importantly, such studies could more directly assess the social and political implications of China's moves to build a "rule by law" in its context of economic transformation and authoritarian stability.

In a recent article, Beatriz Magaloni and Ruth Kricheli argue that one-party authoritarian regimes—like the PRC—have been remarkably successful at remaining in power in many countries over the past several decades (Magaloni and Kricheli 2010). A prominent strategy employed by such regimes is the simultaneous appeasement of dissatisfied elite and mass groups (Magaloni and Kricheli 2010, 126–130). This resonates well with Ginsburg and Mustafa's discussion of the political utility of rule by law systems for authoritarian stability (Ginsburg and Moustafa 2008). China, it would seem, is no exception to these trends.

In fact, there is a growing body of research and evidence that points to precisely such a mechanism in China today. Keith Hand finds, for example, that despite the strictures of CCP rule, the Chinese legal system remains flexible enough to accommodate demands for change when formulated by academic and intellectual elites and presented in relatively institutionalized terms (Hand 2007). This proved true even when, as in the wake of the Sun Zhigang case, such claims are articulated with the sharp rhetoric of social injustice and equity. Ben Liebman, meanwhile, has explained how the Chinese mass media—which, despite commercialization, are still very much subject to state control—play the dual role of raising legal consciousness and propagandizing the masses to boost regime legitimacy (Liebman 2007). After all, if the CCP can keep aggrieved citizens coming to court (and leaving court without a complete loss of faith in the system) rather than marching in the street, this is a significant victory for the cause of authoritarian stability.

So long as the political and legal system is able to accommodate elite-articulated demands, while also making the masses aware of their rights of legal recourse and raising their confidence in the basic effectiveness and equity of the courts, China's authoritarian order looks likely to remain relatively unchallenged and may even grow stronger. What is harder to get at, however, is the degree to which any of these observed

patterns are generalizable. To what extent, for instance, is the legislative and regulatory flexibility displayed after the Sun Zhigang case similar to moves in the early 1990s by Indonesia's New Order government to allow voice to "friendly" regime critics? Why can China accommodate such critics when a state like Pakistan recently could not? Just how similar is China's use of the media simultaneously to educate and propagandize the masses to at least superficially analogous campaigns in countries like Singapore and Malaysia? Such questions are key if concepts and conclusions generated from the study of Chinese law are to travel beyond the borders of the Middle Kingdom.

We hope that scholars of Chinese law might pursue more ambitiously comparative research, but we do not suggest that Chinese legal studies make a premature jump to cross-national comparison. We acknowledge that limited access to data and other difficulties continue to obstruct the study of the Chinese legal system (Clarke 2003). Thus, we advocate subnational comparisons designed to establish a better understanding of the substantial disparities in legal, political, and social outcomes between geographical regions, between urban and rural areas, and up and down political hierarchies within China. Using subnational comparison as a stepping-stone, scholars could begin to gradually identify issues and units suitable for useful comparisons in cross-national or cross-system research designs.

Indeed, cross-national comparative research on Chinese law remains in its infancy. We are only beginning to chart differences in how societal groups like the legal profession compare in their strides toward autonomy with politically liberal-minded lawyers in other countries, such as Malaysia or Pakistan. Likewise, studies on administrative law and judicialization are still awaiting a better understanding of judicial behavior in China as a whole to understand how to compare the wildly fluctuating degree of Chinese judges' political power with that of their counterparts in other legal systems. Once scholars can pin down more clearly the varying microlevel dynamics and contours of the Chinese legal system, sharper comparative analysis can be undertaken of China in relation to other countries. Ultimately, it is such cross-national comparative research that will lead the way forward toward integrating the study of Chinese law into broader fields of enquiry, such as law and society, judicial politics, and beyond.

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Notes

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1. For a more developed outline of the distinction between positive and interpretive approaches to legal research, see Lin (1998).

2. Examples include Bodde and Morris (1967) and Qu (1988).

3. These stages normally include preliminary investigation, official filing of the case, investigatory detention, formal arrest, trial, and verdict with sentencing (Belkin 2000, 13–23).

4. For recent work that has researched several areas of China's repressive apparatus using a more Foucaultian approach, see Sapio (2010).

5. For a historical and theoretical overview that explores the political significance of China's police, see the work of Michael Dutton (Dutton 1992, 2007).

6. Additionally, in the *laojiao* camp Belkin describes, inmates are referred to as "students," most inmates were serving only one year, and if an inmate had a legitimate employment before incarceration, the employer is required to accept the worker again after completion of the sentence (Belkin 2000, 9–10).

7. We acknowledge that more detailed and local contextual analysis might have compromised the anonymity of Fu's subjects.

8. Sapio cites several case studies of *laojiao* institutions that serve as potential examples (Sapio 2010, 11).

9. Of course, a specific conceptual definition of "profession" is essential to understanding how these groups affect society and politics. For useful criteria of what constitutes a "profession" and how this category can be used in social analysis, see Alford and Winston (2010).

10. Others have expressly deemphasized the role of lawyers in advocating for political change, claiming conversely that the development of the Chinese legal profession "is a consequence rather than a cause of political competition and societal openness" (Komaiko and Que 2009, 6).

11. For a more detailed analysis of this period of development in the Chinese legal profession, see Zheng (1988, 488–493). Zheng traces the history of the legal profession from its initial development in criminal law during the 1950s through its branching into business-oriented practice in the 1970s and 1980s.

12. Among other international pressures, China's commitments to international human rights agreements such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights work toward expanding the individual freedoms of criminal defendants (Clarke and Feinerman 2005).

13. The US Congressional-Executive Commission on China also publishes a report each year specifically addressing "the rights of criminal suspects and defendants," using the Chinese constitution and the UN Declaration on Human Rights as barometers of such rights (see, e.g., US Congressional-Executive Commission 2010). While the report is certainly intended to criticize the Chinese version of criminal "due process," it provides direct and thorough treatment of several important issues, including arbitrary arrest and detention, the use of torture to extract confessions, the fairness of trials, other aspects of "access to justice," and capital punishment.

14. As the committee tasked with drafting the ALL remarked, the notion that "common people can sue officials" was an issue that is conceptually rather new, for which there was no custom, and to which the Chinese had not adapted (Chen 2008, 247–248).

15. Administrative challenges can also arise under other provisions, including the Administrative Supervision Regulations (1990), the Provisions Regulations for Public Servants (1993), the State Compensation Law (1994), the Administrative Penalties Law (1996), and the Administrative Licensing Law (2003). We take the passage of the ALL as the most useful point of departure for discussing administrative law in the reform era, as it represents a comprehensive attempt to address piecemeal provisions on litigation and has had a substantial social impact.

16. While we use the term *legitimacy* here, we hope to set aside the complex question of the meaning of this term in relation to the legal system. We primarily use the term as Nathan (2003) employs it—a somewhat shorthand term for "public support."

17. For a comprehensive analysis of the potential gains from a broader interaction between neoinstitutionalist political science and administrative law, see Shapiro (1988).

18. As Potter notes, "Where supervision is internal, the rights and duties of administrative decision makers and the subjects of their administration become subordinated to the priorities of the organization to which the reviewing body and the decision maker belong" (Potter 1994, 272).

19. Additionally, Chinese administrative law usually requires what in the West is often called the "exhaustion of administrative remedies"—that is, the administrative reconsideration proceedings must be completed before litigation may be pursued (Chen 2008, 250). To provide just one example, in the United States, a claimant challenging an administrative decision made by the Department of Energy has recourse to a civil action only after "exhausting administrative remedies" by first challenging the decision pursuant to internal Department of Energy administrative procedures. See 10 CFR 1040.89-13 (US). As a practical matter, the foregoing suggests that when both administrative reconsideration and litigation channels are available in the Chinese context, the potential plaintiff should tread carefully: in certain circumstances, pursuing external litigation waives the right to internal reconsideration under the ARL. Thus, litigants hoping to maximize their opportunities to legally challenge administrative acts might prefer to pursue administrative reconsideration before administrative litigation (see Peerenboom 2002).

20. Indeed, this approach has been used to great persuasive effect in Kellie Tsai's recent (2007) explanation of changes in party norms and the formal constitution based on the layering and conversion of various "adaptive informal institutions."

21. For an opposing view, see Palmer's (2010) discussion of the post-Mao administrative law reforms.

22. Stanley Lubman has been following the recent crackdown on dissidents on his *Wall Street Journal* blog. See, for example, http://blogs.wsj.com/china realtime/2011/04/04/chinese-rule-of-law-the-rhetoric-and-the-reality.

23. An English-language report on Wu Bangguo's statement can be found at www.china.org.cn/china/NPC_CPPCC_2011/2011-03/10/content_22099470 .htm_ (accessed April 29, 2011).

24. More recent work on administrative law reform still reflects this broad aversion to empiricism, drawing overly broad conclusions that China is experiencing a "dawn of the due process principle" based mainly on a small sample of high-profile cases (Haibo He 2010, 401).

25. We acknowledge that history of courts serving the function of central control of local agents stretches back long before the adoption of the ALL, as the traditional Chinese administrative law system was similarly designed to keep government accountable not to the people, but to the emperor (Chen 2008, 209).

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