

Mobilizing the Law in China: “Informed Disenchantment” and the Development of Legal Consciousness

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This article critically examines the development of legal consciousness among legal aid plaintiffs in Shanghai. It is based on 16 months of research at a large legal aid center and in-depth interviews with 50 plaintiffs. Chinese legal aid plaintiffs come to the legal process with high expectations about the possibility of protecting their rights; however, they also have only a vague and imprecise knowledge of legal procedure and their actual codified rights. Through this process of legal mobilization, plaintiffs’ legal consciousness changes in two separate dimensions: changes in one’s feelings of efficacy and competency vis-à-vis the law, and changes in one’s perception/evaluation of the legal system. Put another way, the first dimension is “How well can I work the law?” and the second is “How well does the law work?” In this study I observe positive changes in feelings of individual efficacy and competency that are combined with more negative evaluations/perceptions of the legal system in terms of its fairness and effectiveness. The positive feelings of efficacy and voice provided by the legal process encourage labor dispute plaintiffs in the post-dispute period to plan new lawsuits and to help friends and relatives with their legal problems. Disenchantment with the promises of the legal system does not lead to despondency, but to more critical, informed action. This study provides new evidence on the nature of China’s developing legal system with a focus on the social response to the state-led “rule of law” project.

Readings about China in the media one finds a remarkable number of articles attesting to the fact that “rights consciousness” or “legal consciousness” is rising among Chinese citizens of all types, urban and rural, male and female, rich and poor (Pan 2002a, b; Lam 2000; Restall 2000). In China as well, in government

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documents, in newspaper reports, and in official interviews with Communist Party officials, one hears and sees a familiar refrain: “the people’s legal consciousness” (*falü yishi*) is growing stronger by the day and is partly responsible for the sharp rise in litigation, petitioning, and protests and demonstrations (Chen 2004).¹ Given that increased social attention and reliance on the law was at least one of the intended goals of the Chinese government’s “rule of law” project, this change is usually heralded as a positive one. Some observers and activists even label the changes occurring in China today as the “legal system’s quiet revolution” (Tse 2005:n.p.).

The consensus regarding China’s transformation from a state of “low” legal consciousness to a country in which legal and rights consciousness is expanding rapidly extends beyond the necessary simplifications and superficial East-West comparisons sometimes found in media reports and in advocacy descriptions of a changing China. A linear (low to high) conception of legal consciousness has become the shorthand by which scholars and observers interpret and evaluate the new emphasis on rule of law in Chinese society. There is a tendency to conflate the separate but related measures of legal knowledge/awareness and tendency to use the courts with legal consciousness. If use of the courts or awareness of the law is deemed insufficient, Chinese citizens are deemed to have “low” or “weak” legal consciousness. In Peerenboom’s in-depth study of the contemporary Chinese legal system, “low legal consciousness” of the citizenry is mentioned five times in the introduction alone as a major barrier to an effective and robust rule of law (Peerenboom 2002). He writes,

he effectiveness of administrative litigation and other means of reining in the bureaucracy is diminished by a low level of legal consciousness among citizens who are unaware of their rights, and the persistent influence of a paternalistic tradition in which the ruled are expected to defer to mother and father officials (*fumu guan*) much as children defer to their parents (Peerenboom 2002:9).

If, on the other hand, the phenomenon is that of increased use of the courts and more frequent invocation of rights, legal consciousness is on an upward trend (see, for example, Pei 1997). Cohen uses this prism to describe the current contradictions of the Chinese legal system when he writes, “[i]f they continue to be political puppets, courts are unlikely to satisfy the rising rights-consciousness of

¹ Rising legal consciousness (or the need to raise legal consciousness further) is mentioned constantly by Chinese leaders as an integral part of the Chinese state’s new emphasis on rule of law. See “Luo Gan: Making Juristic Studies Thrive, Promoting the Practice of Running the Country According to the Law . . .” Xinhua Domestic Service, 5 Nov. 2003; “Huang Ju Addresses PRC State Council Production Safety Committee Plenum,” Xinhua Domestic Service, 13 Nov. 2003; “China to Strengthen Research on Prison Legal System,” Beijing Xinhua in English, 15 June 2001.

China's dynamic society" (Cohen 2006:27). This shorthand use of legal consciousness or the related term *rights consciousness* is a natural simplification of a complex process as China moves from a political system that put great emphasis on the rule of single leaders combined with a Marxist rejection of law as a tool of the ruling class to a system that aspires to the transparency, predictability, and stability of a rule-of-law, albeit undemocratic, state.

I do not contest that the legal system is more important in China today than it was 25 years ago, at the outset of the reform period. Nor do I contest the phenomenon of a growing tendency to frame demands and grievances in rights-claiming, legalistic language. Increased reliance on the legal system and a concerted attempt to replace mass campaigns and administrative rule with some kind of "rule of law" has been a hallmark of China's reforms since the early 1980s. The authors cited above are in fact capturing an important social response to the state's rule-of-law project: the increasing tendency for Chinese citizens to frame their grievances in terms of legal rights and to attempt to realize or protect these rights through various modes of mobilization that invoke legality (O'Brien 1996; O'Brien & Li 2005; Yu 2003).

The analysis presented here is not in a contrarian spirit but rather is an attempt to delve more deeply into this idea of "rising legal consciousness," with critical emphasis both on the term itself and the notion of a linear "rise." I argue that changes in legal consciousness occur in two separate dimensions: changes in one's feelings of efficacy and competency vis-à-vis the law, and changes in one's perception/evaluation of the legal system. Put another way, the first dimension is "How well can I work the law?" and the second is "How well does the law work?" Although these two dimensions of legal consciousness are related and mutually constitutive, they should be analytically separate because they do not necessarily change in concert. Rather, in the population examined here, the process of legal mobilization (that is, actual engagement with the legal system) changes an individual's legal consciousness in complicated ways. In this study I observe positive changes in feelings of individual efficacy and competency that are combined with more negative evaluations/perceptions of the legal system in terms of its fairness and effectiveness. Many plaintiffs spoke of deep disappointment; the law did not work in the ways they had expected and hoped. The complicated end result of legal mobilization, what I call here *informed disenchantment*,² contains elements of raised legal consciousness in terms of knowledge about the law and feelings of

² *Disenchant* is defined as "the freeing from illusion or false belief" (American Heritage Dictionary, online edition [2005]). It captures well the process described here as citizens lose their high and often unrealistic expectations about law.

greater efficacy and understanding of legal strategy with a concomitant sense of disappointment and frustration about inequities and dysfunctional aspects of China's developing legal system. While it is common to talk of the "rise" in legal consciousness in China over the past 20-some years, the notion of an ever-increasing movement from low to high consciousness misrepresents the actual experience of coming into contact with, learning about, and using the law.

The focus that informed disenchantment brings to the "contradictory and contingent nature of legal consciousness" (Nielsen 2004:9) also helps us make sense of the large differences between attitudes and behavior exhibited by the plaintiffs in this study. While plaintiffs' attitudes and evaluations of the legal system were almost always uniformly negative and critical after the dispute had ended, they were surprisingly resilient when it came to actual and expected future behavior. The vast majority of the plaintiffs pledged that they would sue again for a similar problem; indeed, a small but not insignificant number of disputants had already moved on from their first dispute to other legal battles. A sense of disenchantment did not lead to despondency or resignation; plaintiffs put more emphasis on the educative aspects of legal mobilization, vowing to return to the law again, better prepared and less naïve, and also prepared to transmit their lessons to friends, relatives, and coworkers with similar grievances.

This important gap between attitudes and behavior has been noted by other scholars examining post-transition legal systems (Hendley 2004) and is an important corrective to a tendency to frame legal consciousness unidimensionally either through the observable data of increased use of the courts or survey-based attitudinal research. As with Russia, greater "demand" for law (as seen through increased use of the courts) is commonly interpreted in the Chinese context as more evidence for "rising legal consciousness." Its limitation is that it only tells us what people do, not necessarily how they think about or evaluate the legal system with which they are increasingly engaged. As Hendley finds, "[a]ttitudes and behaviors vis-à-vis the law are sometimes wildly inconsistent . . . While some indicators of demand can be catalogued, such as the number of petitions filed in a particular issue area, this sort of evidence is incapable of revealing how Russians think and feel about law more generally" (Hendley 2001:2).

This investigation of the legal consciousness of Chinese legal aid plaintiffs contributes in three ways to our understanding of Chinese legal development in particular and to the theoretical understandings of legal consciousness in the law and society field. First, the data presented here on legal aid plaintiffs is one of the first studies on how Chinese citizens are responding to the development of rule of law. While research and studies of contemporary

Chinese law have expanded enormously during China's reform era, empirical studies of Chinese law have only recently become more common (for example, Lubman 1999; Peerenboom 2001; Woo 1999; Clarke 1996; Michelson 2006; Liu 2006a, b; Diamant 2000; O'Brien & Li 2004; Diamant et al. 2005). My analysis here of legal aid plaintiffs from a Shanghai legal aid center specializing in employment and labor law offers a rare glimpse of how disadvantaged workers come to legal aid, their experience and evaluation of the legal system, and the aftereffects of this legal mobilization. The focus on the "demand-side" of the rule of law is a much-needed complement to research on China's institutionalization of key legal structures and ideas as it shows how people make sense of this process and how their engagement with the state's rule-of-law project changes their own attitudes vis-à-vis the law. The production of more knowledgeable yet disenchanting citizens is not a goal of the Chinese state's rule-of-law project. Rule of law as implemented in China is a political reform project that offers some of the promise of political liberalization without the loss of political power by the ruling party. The effects of China's adoption of a rule of law are touted to be improved governance, access to justice for weak groups, transparency, restraint on the arbitrary use of state power, and due process. In practice, these goals are often not met; but it is *the practice* of rule of law, as people make use of the law, to which we must also pay attention. Practice reveals other effects, not the ones that the state intended, but significant nevertheless.

Second, my understanding of legal consciousness as two-dimensional, containing ideas about individual efficacy/competency with evaluation/perception of the legal system, is an attempt to further define and hone the term. By showing through the data that legal consciousness changes and evolves but rarely "rises" unidirectionally, I advance the understanding of how legal consciousness develops when the legal system remains underdeveloped and pressured by authoritarian politics. The contradictory nature of legal consciousness among these Chinese plaintiffs accords with much of the research on legal consciousness in other contexts (Merry 1990; Ewick & Silbey 1998; McCann 1994; Nielsen 2000, 2004). It may be the case that disadvantaged members of any society have a similar reaction to the legal process because their expectations of equality before the law are dampened by the structural inequalities built into a system that values professionalism, education, connections, and the ability to master complicated rules and procedures.³ Employment disputes that pit skilled "repeat players" (large corporations)

³ For example, Merry's working-class New Englanders, Sarat's welfare recipients, and many of the studies testing Galanter's thesis on repeat players (Merry 1990; Sarat 1990; Galanter 1974; Kritzer & Silbey 2003).

against “one-shotters” (individual employees) were one of Galanter’s original examples in his argument of why the haves come out ahead in the legal process (Galanter 1974). On the other hand, the positive emphasis that plaintiffs place on learning how to work the law better is further evidence that legality is sustained in part by the internal contradictions of how those who use the law make sense of their victories and their defeats.⁴

Finally, research on the Chinese case offers important insights into the nature of rule-of-law development in transitional/developing states. The growth in rule-of-law projects and international aid donated with the goal of further legal institutionalization is one indication of what Carothers (1998) calls the “rule of law revival.” This renewed faith in the transplantation of legal institutions follows the failed attempts at systemic transformation of societies either through shock therapy (in the case of transitional countries) or through neoliberal reform (in the case of the developing world). Instituting rule of law is cast as an improvement to these more superficial attempts to remake societies with much greater attention to the institutional landscape underpinning their opening to the global capitalist economy. The evidence presented here shows that these institutional reforms are having important effects on how citizens make claims on the state and on their employers. Through the process of legal mobilization, self-professed “common people” (*laobaixing*) evolve into critical citizens, taking the state to task for failures or problems with the legal system. The vast majority of plaintiffs, both winners and losers, vow to return to the law again, if needed, but to be better prepared and less naïve the second time around. Despite the top-down nature of the rule-of-law project and its close ties to both regime legitimacy and as an international donor “cause célèbre,” rule-of-law reforms also create new venues for political participation and social activism (Zemans 1983).

The analysis presented here is based on 16 months of field research in Shanghai, at the largest legal aid center for employment law in the country. This legal aid center was under the jurisdiction of a well-known Shanghai law school, and as a visiting scholar at the university I was given full access to the center. As a frequent visitor to the center and as a sometime translator, interpreter, and English teacher to the student volunteers and full-time staff, I was able to observe how legal aid functioned on a daily basis, how people came to the center in search of help, and how the volunteers and staff interacted with those who came in search of

⁴ Ewick and Silbey argue this point in their 2003 analysis of Galanter’s seminal essay: “It is precisely because people believe that there is equality under law but also understand that sometimes the “haves” come out ahead that legality is sustained as a powerful structure of social action” (2003:288). Even Foucault has argued for a more tempered view of the power of law as solely an instrument of repression (1977).

legal assistance.⁵ I also observed several court trials involving legal aid plaintiffs and interviewed the volunteers and staff dozens of times. This “participant-observation” method was combined with in-depth interviewing of 50 randomly selected plaintiffs from the center’s first two years of operation.⁶ These plaintiffs were interviewed jointly by me and a student research assistant who was also a volunteer at the center. We also compiled and analyzed the written case materials, including arbitration decisions, court decisions, and other relevant evidence and testimony about each case. The interviews focused on three different themes: how the dispute began and transpired (in short, the plaintiff told his/her story of the dispute); how the plaintiff experienced and evaluated the process of dispute resolution, including mediation, arbitration, litigation, and the actors involved, including trade union officers, enterprise managers, arbitrators, lawyers, court officials, and judges. Finally, we asked about the plaintiff’s post-dispute situation. We explored how the process of legal mobilization changed his or her post-dispute attitudes and behavior in regards to the legal system generally and to employment relations more specifically.⁷ I discuss the limitations of the data in the conclusion.

Labor Dispute Resolution in China

China’s process of dispute resolution for labor conflict has evolved over the reform period from an almost total reliance on mediation and administrative measures to an increasing legalization and formalization of the dispute process (Ho 2003). Following the 1995 Labor Law, dispute resolution is a three-step process that

⁵ A separate paper deals with the legal aid center as a locus for interaction between legal professionals and indigent workers. See Gallagher n.d.

⁶ Case documents were pulled and the plaintiffs contacted in a random fashion. Three plaintiffs declined to be interviewed. A small number of plaintiffs were not reachable with the information listed in their case histories. Unfortunately, these were often non-Shanghai residents who had either relocated within Shanghai or returned to their native regions. Therefore the number of nonresident plaintiffs was smaller than we had hoped.

⁷ This section of the interview focused on whether plaintiffs had become involved in other disputes; how they viewed work and their relationship to their employer after the dispute; and whether they regularly gave out legal advice or assistance to friends or family based on their experience. We also asked a hypothetical question about whether the plaintiff would ever again use the legal system to resolve an employment dispute. These interviews ranged from 90 minutes to more than four hours; they averaged more than two hours. We asked that the plaintiff suggest a place to meet to minimize any feelings of discomfort or fear about talking about a sensitive topic with a foreign researcher. The interviews were conducted in people’s homes, in the apartment of my research assistant, and in coffee shops and teahouses all over Shanghai. Although we used a semi-structured interview style, we began all the interviews the same way, by asking the plaintiff to tell us what happened. The interviews cited here are followed by an interview number. The names used are pseudonyms.

begins at the workplace and ends in court. Mediation at the workplace through a trade union-directed mediation committee is the first stage, but this stage is not compulsory and rates of mediation at the workplace have fallen sharply since 1995 (Gallagher 2005). This is for many reasons: first, workers routinely refuse mediation at the workplace because they do not trust that they will get a fair hearing under the jurisdiction of the firm's trade union. At the central and local levels, the branches of the All-China Federation of Trade Unions (ACFTU) are not independent and are controlled by the Chinese Communist Party at that level. At the firm level, trade union officials are often managerial-level double-posted employees (serving in a management capacity and as trade union chair). Second, a growing number of firms do not have functioning trade unions and therefore do not have the institutional capacity to form mediation committees. Third, in an era of massive layoffs and transitions from a lifetime socialist employment system to a market system, many disputes occur when an employee has been terminated. Therefore, the dispute cannot be settled internally if the employee has already left the company.

The failure of mediation has made the other two modes of resolution, arbitration and litigation, more important.⁸ Arbitration is a compulsory step and is an administrative process handled by labor arbitration committees set up and administered by the local labor bureau. However, arbitration is not binding; both sides have the right to contest the arbitral judgment in Chinese civil court. In most cases, they have the right to two appeals. In the past several years, the rate of appeal to court has skyrocketed, surpassing 50–70% of all arbitral judgments in China's major cities.⁹

This three-step process—mediation, arbitration, and litigation—is a process that tends to fragment and individualize the conflict. Disputes arise mainly around issues related to individual employment relations (embodied by the individual labor contract). The role of any collective organization of workers, especially the trade union, is quite minimal. This is of course partly the result of the institutional weaknesses of the ACFTU and its contradictory role as a representative of workers and protector of national and party interests. But the marginalization of the trade union is also the result of legislative tendencies over the past 10 years to

⁸ Diamant's work on mediation also shows a similar decline in mediation once other more adversarial options are opened (Diamant 2000). Some of Woo's recent work also shows a preference for adversarial methods of resolution among Chinese legal aid recipients in Beijing (Woo 2003).

⁹ This rough estimate is based on the author's interviews with Labor Bureau officials in major Chinese cities, including Shanghai, Beijing, Tianjin, Chongqing, Chengdu, Shenzhen, and Guangzhou.

emphasize individual labor relations at the expense of the collective interests of the workforce.¹⁰

Despite the various problems and frustrations of this process, including the compulsory but not binding arbitration that must precede the litigation stage, labor disputes in China have risen every year since 1995, at an average rate of more than 30%. In 1995, there were 33,030 disputes involving 122,512 people. In 2004, there were 260,000 disputes involving more than 760,000 people.

These changes in the dispute resolution realm are directly related to the fundamental shifts in the Chinese economy since the onset of market reforms in the 1980s. The rising number of employment disputes reflects the increased flexibility and insecurity of work in China, the creation of a dynamic and rapidly expanding nonstate sector, and the restructuring, reform, and privatization schemes that have transformed the once-dominant public sector (Lee 2002, 2003; Chen 2000, 2004).

The Development of Legal Consciousness: Where Do High Expectations Come From?

Employing the notion of “disenchantment” implies a prior state of enchantment with or high confidence in the legal system. In one important sense, all the plaintiffs captured in this study had by definition some degree of confidence in the legal process. They are among the small but growing number of aggrieved workers who decide to use the legal system to address workplace grievances. We cannot draw general conclusions about the degree of confidence, nor can we use this data to compare between those who seek other methods of redress (or no method) and those who invoke the law.¹¹ High lay expectations of the law and the courts are by no means a phenomenon unique to China. In fact, it is somewhat surprising to find that these Chinese plaintiffs share these characteristics with citizens who enjoy more developed and more independent judicial institutions. We need to have a better understanding of how these

¹⁰ The 1995 Labor Law and the 2001 revisions to the Trade Union Law do include provisions for collective contracts and collective negotiations between enterprises and trade unions. Some regions in China have launched pilot programs, and the official number of enterprises and workers covered by collective contracts is growing. However, most researchers have found that these negotiations and contracts are usually staged events, orchestrated by the local government and Communist Party, that have little impact on labor relations in practice (author’s interviews; see also Taylor et al. 2004). It was reported by one researcher that not a single dispute over a collective contract had occurred, attesting perhaps to the limited impact of these provisions on the ground. This article focuses on actual disputes, none of which involved collective contracts or bargaining rights.

¹¹ This is a typical problem of research on disputes. The evidence here is from those at the top of the dispute “pyramid”: from those who have chosen to pursue legal resolution (Felstiner et al. 1980–81). See Landry and Tong 2005 and Michelson 2002 on related issues in the Chinese context.

expectations are formed, where information is acquired, and how the state deploys rule-of-law ideology in such a way as to give citizens a sense of new opportunities and rights through the legal system.

Law and society scholars have long noted that lay expectations of the legal system can be distorted and incorrect, subject to many influences outside the court such as the media or popular culture more generally. Sarat and Felstiner explore the ways in which lawyer-client interactions reshape clients' expectations about the legal system and process during divorce proceedings. These interactions often entail lowering the client's expectations of the predictability and rationality of legal institutions (Sarat & Felstiner 1986) and pointing out the limits of "legal justice" (Sarat & Felstiner 1989). O'Barr and Conley find in their study of small claims court that plaintiffs consistently overestimate the power of the courts and the role of the courts in dispute resolution (O'Barr & Conley 1988). In Merry's study of plaintiffs in New England's lower courts, there is a familiar gap between expectations and actual experience. She notes the effect that legal experience has on changes to legal consciousness: "[t]hese encounters with the legal system shift plaintiffs' consciousness of law. The people involved come to think of the courts as ineffective, unwilling to help in these personal crises, and indifferent to the ordinary person's problem" (Merry 1990:171). Merry's working-class Americans experience a shift in perspective, a downgrading of expectations, often leaving the encounter with a "curious combination of cynicism, triumph, and a desire to try again." Merry attributes this disappointment and resiliency to Americans' sense of legal entitlement; there is a strong prior sense of law as a tool available by virtue of citizenship and expanded over time by an activist state.

Pushing the Rule of Law

The Chinese story is surely different despite the similarities in response—a tendency to downgrade expectations even while planning the next legal assault. However, as with Merry's New Englanders, an activist state also figures in the explanation. The legal consciousness of Chinese citizens is profoundly shaped by the heavy hand of the state in the creation of new legal institutions that are at least partially intended to buttress the state's legitimacy. The invocation of high expectations and the use of state-sanctioned slogans to justify their behavior on the part of these plaintiffs is more than naïveté or ignorance regarding how the system actually works. These expectations are also invoked strategically as part of a legitimating discourse for daring behavior.

While the actual implementation of rule of law in the Chinese context encompasses the familiar aspects of institutional reforms,

legislative activism, professionalization of the judiciary, and heightened attention to the importance of procedure and due process, the state continues to resort to institutions of the socialist era to inculcate citizens with the spirit of “rule of law.” The most important methods of policy change in this regard are the political campaign and the dissemination of state-sanctioned legal news and information through the official media. As with Won’s study of “thought work” used to prepare laid-off workers for the shock of labor markets and long-term unemployment, we find radical ideas about one’s newfound “rights and responsibilities” transmitted by old modes of socialist control (Won 2004:84). In addition to these tried-and-true methods of political education, the Chinese state has also pushed rule of law by cutting back and shrinking the role of more traditional methods of appeal and grievance resolution. This is particularly the case for petitioning, in which an aggrieved citizen presents his or her case directly to the relevant government offices or, if these offices are unresponsive, to higher offices in government, up to and including the petitioning of top leaders in Beijing. In the case of labor disputes, aggrieved citizens in Shanghai are regularly redirected from the petitioning route to the legal route with admonishments to “settle things through the law.”¹²

Campaigns and Slogans

In November 1985, the Standing Committee of the National People’s Congress passed a resolution to initiate a new stage of rule-of-law development, that of “acquainting citizens with basic knowledge of the law.” This resolution marked the beginning of the “law dissemination campaign” (*pufa yundong*), the goals of which were set out in the opening lines of the resolution:

In the interest of developing socialist democracy and improving the socialist legal system, it is necessary to place the law in the hands of the masses of people so that they will know what the law is, abide by the law, acquire a sense of legality and learn to use the law as a weapon against all acts committed in violation of the Constitution and the law (Thirteenth Meeting of the Standing Committee of the Sixth National People’s Congress, November 22, 1985).

Using political campaigns to herald new policies and to activate “the masses” for participation in policy implementation is an integral part of Chinese political life. Throughout the post-1949

¹² All of the plaintiffs in this study who used petitioning were redirected from petitioning offices to the legal system. In some cases, petitioning officials would not accept cases if the aggrieved person had not already tried legal channels. In the author’s interviews, Shanghai government and party officials also stated that this practice of redirection from petitioning to the legal system was part of a general policy to reduce the role of petitioning in dispute resolution.

periods, campaigns have been initiated by leaders, most notably by Mao Zedong, to shake up the bureaucratic system, to incorporate the masses into politics, and to highlight the importance of a policy. In the reform era, political campaigns have declined in number and significance but are still used for certain types of social problems, including crime, pornography, population control, and crackdowns on banned religious groups such as the Falun Gong. The campaign to propagate laws and legal knowledge has mainly relied on the spread of information about laws, regulations, and legal procedures to the public through the mass media, workplaces, and schools (Exner 1995).

Campaign-like dissemination of laws and rights has effects on the development of legal consciousness. It can supply a shallow but useful resource of expectations about law and the legal system. The slogan used in the National People's Congress (NPC) resolution and in much of the media's coverage, "to use law as a weapon," even invites action and participation. The law is something that can be used; it is not only a thing to be followed or feared. Many legal aid plaintiffs, when asked why they decided to sue their employers, even quoted back this slogan to justify their daring behavior: "The law is supposed to be my weapon, that's why I sued," shrugged one older worker (12). Another framed it as part of her own responsibility and civic duty: "We are supposed to believe in the law, and so I went through the legal channels" (24). Campaigns and their simplistic slogans provide a strategic justification for legal action without much substantive legal knowledge or experience. The campaign to disseminate legal knowledge has created more legally demanding citizens who are armed with the assurance that their recourse to the law has been approved and sanctioned by the state.

Media: Good News and the Story of Du Linxiang

Media coverage of legal news, legal information, and specific lawsuits has been an important facet of the "law dissemination campaign."¹³ An overwhelming number of the plaintiffs reported hearing about the legal aid center studied here from the media, in particular from one newspaper, the *New People Evening News*, one of the most popular evening dailies in Shanghai. Out of the 69% of the plaintiffs who reported first hearing about legal aid from the media, 82% heard about it from a column in the *New People Evening News* (see Table 1 below). Articles on legal aid and labor disputes run regularly in Shanghai newspapers, including the *New People Evening News*, *Labor Daily* (the newspaper run by the Shanghai

¹³ On the complex role of the media in public supervision and oversight of the legal system, see Liebman 2005.

Table 1. Sources of Information about Legal Aid for Labor Disputes

Source	Percent
Media (including newspapers, TV and radio programs)	82%
<i>New People Evening News</i>	(69%)
Introduction through friends/relatives	17%
Introduction through the Shanghai Municipal Trade Union	10%

Municipal Trade Union), and the *New Morning Daily*. These columns, usually featured weekly, present an actual case with commentary supplied by lawyers or legal aid activists involved in the case. In complicated cases there may also be separate explanations of key laws and regulations or advice on how to calculate related compensation, social insurance benefits, or overtime wages. In the case of the legal aid center, when it was featured in the column it also gave out information on its location and hours of operation. It was through this channel that most of the plaintiffs made their way to legal aid.

Chinese media outlets have responded to market reforms by becoming more commercialized and focused on attracting new readers and advertisers. Political control over the media is still exercised by the Communist Party through various measures and organizations. Much of the control is realized simply through self-censorship, with newspapers avoiding topics that are sensitive or openly banned. In coverage of labor disputes and grievances, therefore, the media takes a “glass half full” approach by writing about disputes that are usually resolved (or seem to be resolved) in the workers’ favor and by couching the dispute in terms that clearly are sympathetic to the worker, who as the “weaker” side (*ruozhe*) in the dispute deserves the reader’s sympathy and the state’s attention.¹⁴ This approach is politically acceptable because it does not raise the ire of readers by reporting on problems such as corruption, judicial malfeasance or ineptness, or government protection of employers. If these problems are alluded to, they are often resolved and blamed on individual problems or “bad apples” rather than on any systematic flaw. As one plaintiff reported about his case, which he had pursued to the highest level of appeal, “I just haven’t found my Judge Bao yet” (24).¹⁵ He believed that his case required a just official for proper resolution; the problem lay with individuals. Unfortunately, the way in which the media presents

¹⁴ The columns on labor disputes published in the *New People Evening News* always took this character, influencing the expectations of those who then searched out legal aid after reading the column (more than half of the plaintiffs studied here came to legal aid through this column). The columns in the trade union–run paper were even more tilted toward a sympathetic view of the worker’s case and optimistic about the chance for a just resolution.

¹⁵ Judge Bao is a famous character in Chinese history and literature, known for his attention to justice and upholding the law.

cases not only creates high expectations among readers, but it also does not accurately describe reality.

Some cases that receive significant attention, for example when featured on a television program, can then go on to influence and mobilize many other workers who face the same or similar problems with their employer. The full-time staff at the legal aid center prepared itself for the heavy flow of visitors who usually appeared on Monday, the day after the column ran in the *New People Evening News*. After reading of people in similar plights, workers would be hopeful that they too could receive help and a resolution. The style of the articles and the appearance of a just resolution would often create unrealistic expectations. Du Linxiang, an older worker whose case was featured on a popular Shanghai legal exposé program, reported that his phone rang off the hook for weeks after the broadcast; he even had a line of older workers at his door when the television station gave out his home address. In unrelated cases that followed at the legal aid center, other plaintiffs mentioned this case by name as giving them great encouragement and confidence in pursuing their case.

Unfortunately, the Du Linxiang case did not end with the television program, which featured the appeal court finally ruling in Du's favor, awarding him a large sum of severance pay. When Du was interviewed nearly a year later, he had yet to receive any money from the suit. His family had slowly slid into poverty, and he lived off the meager pensions of his elderly parents. The privatized company that owed him the money had become embroiled in its own fiasco of financial irregularities and managerial malfeasance. Du's award went unpaid, but his victory on television lived on and created new expectations and hopes for aggrieved state-owned enterprise (SOE) workers across Shanghai. As Du himself noted, he had become on account of his lawsuit a "celebrity" whose legal victory, however Pyrrhic for him, mobilized many others.

Legal Consciousness and Petitioning

The influence of other social institutions on the development of legal consciousness in China is directly related to the aforementioned rule of law campaign initiated by the Chinese government during the reform era. Given the long stretch of time since 1949, when law was not a legitimate tool to invoke to resolve disputes or to protect entitlements or rights, many aggrieved workers, in particular older workers accustomed to the old system, do not immediately or naturally turn to the law to resolve their work-related problems. In fact many older plaintiffs employed in the state sector eschewed the law at the outset of the dispute because they believed that the legal system would not honor or respect their long tenure as employees of the state. This suspicion of the law led older

Table 2. Legal Mobilization, Petitioning, and Ownership Effects

	Lawsuit with Petitioning	Lawsuit without Petitioning	Number of Lawsuits
Plaintiff from SOE ^a	69%	31%	32
Plaintiff not from SOE	15%	85%	13
All Plaintiffs	53%	47%	45

^aState Owned Enterprise.

workers to more traditional institutions for dispute resolution, including the petitioning office of the local government and the government office in charge of (or even owner of) their public-sector employer.¹⁶ As seen in Table 2, plaintiffs employed in SOEs were significantly more likely to pursue petitioning prior to or in tandem with their lawsuit. Their recourse to legal aid and to the legal system was in large part a result of the government's attempts to reorient aggrieved citizens from the petitioning route to the legal one. This redirection to the legal system is one part of the state's strategy to build the rule of law and insert space between the government and social actors, particularly social actors such as state-enterprise workers who have historically been quite close to the government and treated, according to socialist ideology, as the "ruling class." The shifting needs and goals of the state in pushing legalization stand in contrast to these older workers who resist legalization and the narrowing of their moral and historical claims on their state employers to contractual claims and exchange-oriented tenure buyouts (Gallagher 2005). But once redirected to the legal system, these older workers place high hopes on a process sanctioned and approved by the state itself.

Why does the Chinese state prefer to create more legally demanding citizens through campaigns and media propaganda that build up the rule of law? Why are legal options more attractive to the state than the traditional methods of direct intervention of cases brought by petitioners? There is the need for legitimacy and the building of the rule of law generally as a way to enhance the Chinese state's domestic and international status. But it goes further than this. The redirection of petitioners and the legal education campaigns unleashed in the media are both part of a radical transformation of the Chinese state and how it relates to its citizens. The state's rule-of-law project reworks ideological discourse away from emphasis on socialist equality and collectivism and toward ideals more suited to capitalist accumulation, including individual contract and exchange, efficiency, and limited government responsibility for social welfare. Directing labor disputes to the legal system

¹⁶ For an overview of petitioning as a grievance-processing institution, see Minzberg forthcoming.

emphasizes this shift to contract and exchange, giving the appearance of a dispute between two parties, a worker and a firm. This often obfuscates the history of many disputes that stem from the privatization of state firms and usually involve not only the firm itself but also local government bureaus and officials. This effect of legalization was noted by Scheingold more than 30 years ago: “[l]egal approaches and the rules under which courts operate tend to reduce political conflicts to disputes between parties at a given time” (Scheingold 2004:5–6.). Both Weberian and Marxist critiques of legal rationality have also noted this disempowering effect in the context of private contracts, especially the employment contract (Hunt 1993:198; Boucock 2000:67). As the new foundation for employment relations in China (as opposed to the socialist system of state allocation of labor), labor contracts can serve to reduce claims rather than grant rights.

There are also procedural effects of switching to the legal process. Movement through the legal system sets the worker further from the state as protector and closer to the ideal of state as unbiased arbitrator/judge. The dispute is processed in such a way as to further distance the individual case from the local government, and it will close off many possible openings of entreaty available to the worker in a petitioning claim. Finally, the law’s emphasis on evidence is in contrast to petitioning claims, which do not rise and fall on proof but on the moral claims and charges invoked and the intensity with which they are expressed.¹⁷ Labor disputes, in particular, with their very short statute of limitations (60 days from date of dispute or violation of rights) also set strict limits on legal claims. Petitioning, on the other hand, has no such limitations. Pushing the rule of law shapes the way claims are made—more emphasis on contracts, less on moral obligations of firms—and also opens up the distance between the government and workers. In these ways, rule of law fits nicely with some of the goals of the Chinese government, including the remaking of citizens to fit the market economy and reduced expectations on the government and workplaces for social welfare.

Official encouragement to use the law is presented in the state’s rhetoric and in the media much in the same way that Chinese citizens have been told to “talk politics,” combat “spiritual pollution,” or build a “civilized society” in other post-Mao campaigns aimed at molding society in the state’s image at a time of rapid and destabilizing change.¹⁸ This official encouragement to use the rule

¹⁷ One recent popular saying sums up the strategy of petitioners: “Make a big stink, get a big compensation, make a little stink, get a little, make no stink, get nothing.”

¹⁸ All of these slogans are from campaigns during the post-Mao period that exhorted citizens to participate in various modernizing efforts, often focusing on social practices such as civility and hygiene.

of law is working—people are in fact using the law in increasing numbers—but it also tends to produce high expectations, providing a new “strategic resource” (McCann 1994) in battles to protect privileges and positions earned under socialism or to make claims to new rights enshrined in China’s developing body of labor and employment law.¹⁹

Analyzing rule of law as a campaign or an exercise in propaganda dissemination helps us explain why people in increasing numbers use the law and why they often have high, even unrealistic, expectations of the legal system and the legal process. The state is supplying legal institutions, and it is creating demand for them. However, the state’s heavy-handed push toward the law, through campaign rhetoric and propaganda, has created rising expectations among Chinese citizens regarding the efficacy of the rule of law. These plaintiffs came to the law because they took the rule-of-law campaign seriously, because even these relatively disadvantaged people had become imbued with a strong sense of entitlement and certain “folk ideas” about the fairness, effectiveness, and authority of the legal system.²⁰

By focusing on the state’s role in creating high expectations through campaigns, media propaganda, and redirection of petitioners, we cannot ignore the possibility that some of these folk ideas about justice and litigation are more deeply rooted in Chinese history, literature, and cultural practice. Research on Qing- and Republican-era civil law practice has already demonstrated a surprising amount of litigiousness among the general population (Bernhardt & Huang 1994; Huang 2001). The current role of the state in pushing the law is important, but it may be reactivating discourses of justice and legality that were not privileged during the Communist era rather than creating them anew. These legal aid plaintiffs justified their actions by recalling the most proximate causes of their expectations: media information, official instructions to “settle things by law,” and the pithy campaign slogans of entitlement to “legal weapons.”

Producing Informed Disenchantment

Informed disenchantment of these legal aid plaintiffs is captured in three separate realms of the legal mobilization process: the acquisition of strategic knowledge, feelings of inclusion into a social network, and the post-dispute impulse to become a “little expert”—to transmit one’s knowledge and experiences to friends and

¹⁹ In this way, new employment rights are serving as a “cultural discourse” that can be used to invoke new protections. See Albiston 2005.

²⁰ This does not mean that these plaintiffs were naïve or unknowing about the possible flaws of the legal system. The state’s proclamations about what *rule of law* should mean (equality, protection of rights, a right to be heard, etc.) widened the realm of the possible by legitimating a rights-claiming discourse.

family. While many plaintiffs were frustrated and angry, disappointed with many aspects of the process, nearly all respondents emerged from the process with a much stronger sense of their legal rights and a more strategic and realistic view of the legal process. They had, in effect, learned how to play the state's new game (Scheingold 2004:49). What is perhaps most surprising is that despite the heightened feelings of disappointment and cynicism, the vast majority of the plaintiffs were willing to play the game again should they experience another employment dispute.

Acquiring Strategic Knowledge

Most legal aid plaintiffs came to the process with a strong but vague sense that their rights had been violated. Exposed to the campaign slogans of labor law dissemination and media coverage that tended to highlight successful cases, they came to the process with a strong sense of their rights but little exact knowledge about how those rights would be protected or reclaimed in the legal process. In the cases of many older workers from the state sector, they even believed (erroneously) that the law would prevent their termination or layoff from the company that had employed them for several decades. While some of the high expectations of workers are caused by the way in which rule of law is transmitted in China, in some cases, as with these workers from the state sector, high expectations are related to a sense of confusion over what the legal responsibilities of employers are. In a time of transition from an "iron rice bowl" system of employment, it is not surprising that many older workers tended to believe that they would be grandfathered into the old system. But this was not the case; China's labor laws do not guarantee anyone permanent employment, and China has significantly rolled back the legal responsibilities of employers.

The acquisition of new and deeper knowledge is a key aspect of the legal mobilization process, building increased feelings of efficacy, competency, and disappointment that the law does not always work as it should. In one plaintiff's interpretation, legal aid provided the "words" that the plaintiff needed to know in order to speak in a legal venue. It provided a new vocabulary. For most respondents, the most important aspects of their newly attained knowledge were in the realm of understanding laws and regulations, understanding legal procedure, and understanding how to attain and use evidence (see Table 3).

Understanding what constitutes evidence and how to collect it are some of the thorniest problems for an employee, since the employer often controls access to nearly all the relevant evidence.²¹

²¹ On the importance of evidence and knowledge of what counts as admissible evidence, see Kritzer 1998:39–40.

Table 3. Legal Aid Effects: Plaintiffs Reporting the Nature of Assistance Supplied by Legal Aid

Expertise in labor law	62%
Help with articulation, how to “talk”	26%
Mental/psychological support	26%
Unbiased assistance (not corruptible)	21%
Alleviated financial burden	10%
Other	7%

Note: Percentages based on 46 cases. Respondents were allowed to name more than one; therefore total of percentages exceeds 100%.

Yao, a machine operator from an old sewing machine factory, with a folder of petitioning letters six inches thick, reported that he would not sue again. It just took too much time and energy, with no successful implementation after two years. However, he also said that he now regularly gives advice to his friends and fellow colleagues. “I put a lot of emphasis on making sure that they know how to get the necessary proof and evidence” (3). Like many plaintiffs, he also continued to have hope that something will influence his suit, now at the Shanghai High Court, for a final appeal, including the recent addition of a human rights protection clause in the Chinese Constitution.

A young manager in a large multinational supermarket in Shanghai who sued unsuccessfully for overtime also reported that he would not sue again; it was too much time and not worth it. But then he paused and said, “[but] if I had enough evidence, I might try again. I’m more careful about that sort of stuff now. [At his new employer] I’m always looking for things that I might need, just in case [of another lawsuit]” (14). Li, an engineer whose arm was severed in an industrial accident, was also preparing for another suit because he knew that his company would soon be privatized or closed. “I’m collecting evidence now on the illegal sale of assets and as soon as they announce the restructuring, I am going to be ready to sue” (18).

Plaintiffs also gained other kinds of necessary knowledge that lie outside the immediate realm of the law but are equally important. This includes understanding the strategies that judges employ to encourage mediation and the strategies that employers will use to pressure workers to give up or accept less. This knowledge extends to the ability to know when they are being fairly treated, when they are being coerced or deliberately intimidated, and when the process is thwarted by corruption and close connections between officials and employers. This knowledge is extremely important during the settlement phase, when arbitrators and judges have strong incentives to push for a mediated settlement that avoids a ruling. A mediated settlement boosts the mediation rate of the judge/arbitrator, resulting in career bonuses and the possibility of promotion. Companies often also have a strong incentive to mediate to avoid copycat suits with other employees. Li, the injured

engineer, reported that when he gave the figure of his economic compensation suit to the court recorder, the man mocked him, told him he was crazy and would never get so much money for his injury. Li knew that it was inappropriate for the court recorder to comment on his case like that. He also suspected that the court recorder was intentionally trying to get him to reduce his demands, to be more willing to mediate and accept less. Li said, "If I hadn't already gone this far and learned so much I would have been frightened out of my mind. But I wasn't" (18).

Through the process of legal mobilization, plaintiffs also learned about how legal institutions interact with and can be affected by other institutions, including the media and the petitioning offices of government bureaus. Plaintiffs were better able to evaluate the ability of different institutions to issue fair decisions. For example, most plaintiffs reported a better experience in the courts compared to arbitration proceedings, linking the greater autonomy of the court to its separate identity (while Labor Arbitration Committees are considered dependent appendages of the local labor bureaus). Many older state sector workers skilled in the traditional mode of petitioning for claims and grievances became equally skilled at combining an active petitioning schedule with legal challenges.²² Finally, many plaintiffs also developed an approach to the media and winning over public opinion as part of a broader strategy to influence their court cases. Winning the battle outside of the courtroom became part and parcel of an overall successful strategy to win a case. Chai, a private school kindergarten teacher who was fired when she became pregnant, used petitioning and media throughout her lawsuit in order to win over "public opinion" and attract sympathy for her plight. When the television station that aired her case was then involved with a separate lawsuit with the defendant over a scuffle at the court's gates, Chai and her co-plaintiff served as witnesses for the media. Depressed that the court order for compensation was never implemented, Chai called the entire process "like taking a class." But she also cautioned, "It's not that we don't believe in law, when I was little, I did. But [now] the law is not worth believing" (27).

Legal mobilization and the knowledge and strategy it can impart can also contribute to a new sense of disillusionment and disappointment, a realization that the law is not all it is cracked up to be. To express these feelings, plaintiffs often turned the state's

²² Huang's work on the "third realm" between community-based settlement and formal adjudication in the pre-1949 period shows that these alternative methods of resolution (petitioning, court-directed mediation, etc.) have long been important in Chinese dispute resolution. Both the plaintiffs and the defendants in the cases studied here attempted to use these alternative realms of resolution to achieve better outcomes (Huang 1993, 1994).

slogans around; most notably, the vibrant slogan “to use the law as your weapon” was reworked into a condemnation of the law’s inability to protect their rights. Chai, the pregnant teacher above, found it hard to find a new job in education because media coverage had exposed her as a troublesome employee. She noted, “I thought I could take this weapon and use it to protect myself, but in the end not only did it not protect me, it injured me” (27). Zhang, an old worker who unsuccessfully fought his company’s decision to lay him off, reported becoming completely hopeless. “They say we have a weapon! What weapon? I pulled out this weapon and found it has no use!” (3). Even workers who won or reached a negotiated settlement with their employers reported a new sense of disappointment. Xu, an accountant who felt her economic security slipping with each job change, noted, “At the very beginning of the case I really believed in the law, but now I’m more realistic. They [the company] will not implement [the decision] or they will delay and try to make you miserable so at the end you might not get anything, my friend’s case is like this. It’s still not a good thing to sue . . . we really are exploited slaves” (24).

Chen, an older worker who was sent down to the countryside in the 1970s and left unemployed when his SOE was sold off to a Korean investor, found both disillusionment and excitement from his legal battle. Although he reported that it is very difficult for “the common people” to win a lawsuit, he threw the problems with the legal system back into the faces of government officials. Chen traveled twice to Beijing to petition at the State Council (China’s cabinet). He was detained the first time and sent back to Shanghai by three Shanghai security officers. The second time he disguised himself as a migrant laborer and presented himself to the petitioning office with his arms full of legal books and regulations. He exclaimed, “I take them all out to let them see. I say, ‘These are all our country’s law; their behavior [the company’s] is clearly illegal. I didn’t make these laws up, so why aren’t they being implemented???’ Why is the labor law being used to trick workers?” (49) Chen’s struggle left him more energized and involved than ever before. He embraced the experience of legal mobilization and petitioning, despite the detentions and the coercion from government officials. He noted how it had all been one big “exercise” (*duanlian*) (49). An older worker of similar age and experience with a large, restructuring SOE noted as well that “labor law has become my hobby” (36).

The discourse employed by these energized workers shares many similarities with the “with-the-law” discourse of New Jersey citizens recounted by Ewick and Silbey in which disputants described their engagement with the law as “fun” and “a pleasant experience” (Ewick & Silbey 1998:134–5). This discourse among legally mobilized Chinese plaintiffs helps account for their mixed

Table 4. Labor Dispute Outcomes and the Propensity to Sue Again

	Would Sue Again	Post-Dispute "Little Expert"	Number of Cases
Won	100%	100%	8
Partial Win	75%	63%	24
Lost	88%	88%	8
Not implemented	40%	80%	5
Not finished	100%	100%	1
All	80%	76%	46

reaction of disgust and excitement and the noticeable gap between negative attitudes with law-affirming behavior. A healthy sense of cynicism and disappointment with the law was common among the plaintiffs as they went through the legal process and discovered it to be more complicated than they expected and more advantageous to employers with their wealth of legal experience, their ability to hire skilled lawyers, and their importance as employers and investors in the local economy. The vast majority of plaintiffs reported, however, that they would sue again if they encountered another employment dispute, and for many this extended to other types of disputes as well. Eighty percent of all plaintiffs reported that they would sue again if they encountered another employment dispute. This tendency was not significantly affected by the outcome of the case—those who lost were almost as likely to want to sue again as those who won (88% versus 100%).²³ However, in the cases in which the judgment had not been implemented, only 40% of the plaintiffs reported that they would sue again. This lower figure for cases with unimplemented judgments shows that the plaintiff's rejection of the legal system is far more likely when the process fails than when it produces a judgment that is not in the plaintiff's favor (see Table 4).

This ability to distinguish between the legal process and outcome accords with an instrumental approach to the law as a game in which the plaintiff understands that the outcome depends on how the battle is waged, not on the moral positions of the two sides. As with Ewick and Silbey's "with-the-law" discourse, this kind of legal consciousness also privileges the educative aspects of legal mobilization. Respondents' law-affirming behavior ("I'd do it again") was not based solely on the outcome but also on an appreciation for

²³ One interesting result in Table 4 is that those with partial wins seemed to be more disenchanted than those who lost outright. A "partial win" is in most cases a mediated solution, with the arbitrator or judge playing an active role in persuading both sides to accept a compromise. One judge called this "coercive mediation" because a judge will tell both sides separately that they have no chance of winning and must accept less. Plaintiffs who accepted a compromise because of this type of pressure may have been particularly dissatisfied with the resolution process and the heavy state emphasis on mediation and compromise.

how much they had learned and how much better they individually had become at the “law game” (Ewick & Silbey 1998:150–1; Scheingold 2004:49). For example, even Chai, the aggrieved teacher whose winning judgment was never implemented, when asked about future disputes responded equivocally, focusing on the imbalance of skill and knowledge: “If I had another dispute?? Well, I’d have to see. Seeing is believing. I’d have to see if it is worth it. . . . The legal consultant of the boss really understood the law, all the loopholes, and how to beat us. We didn’t understand, so we lost” (27).²⁴

The high rate of positive response regarding future disputes was unexpected and did not match the tenor of the interviews, in which the plaintiff tended to dwell on the difficulties of and barriers to attaining just outcomes. But this gap between attitudes and response rates regarding present and future behavior is not unusual in a context where legal options are pushed by the state while alternative paths, such as petitioning, are narrowing. As Hendley notes in the Russia case, “[a] sense of resignation about the legal system consistently infused my interviews with managers. This hopelessness did not correlate with litigation behavior. In other words, apathy regarding law and high levels of litigation can co-exist” (Hendley 1999:n.p.).

Finding Social Networks of Support

Workers who sue remain concerned about their social status and their public reputation and often will try to hide the fact of their lawsuit from their neighbors, friends, and even close relatives. This reticence speaks to the continuing belief as reported by Du, an old worker who was left with nothing when his state-owned enterprise was acquired, that “only bad people file suits” (9). Others are embarrassed that they were fired or laid off, believing that it will seem to everyone else that they must have done something wrong. The frequency with which these sentiments are expressed indicates the level of social and psychological barriers to legal mobilization. Most people decide to sue because they have no other choice, having exhausted the other options of negotiation or because their employer has rejected outright any chance at negotiation or reconsideration.

Legal mobilization through legal aid can mitigate plaintiffs’ feelings of isolation and embarrassment by providing a social network and a fixed space through which plaintiffs can interact with each other, student volunteers, and legal aid staff. Many plaintiffs reported hearing about a new strategy or a relevant regulation while waiting in line at the legal aid center. Some workers find that

²⁴ Chai’s response was coded as a refusal to use the law again. Only unequivocal responses were counted as affirmative responses to the “would you do it again” question.

their cases are similar, form a relationship, and help each other with their suits. Others realize by listening to the complaints and problems of those around them that their own grievance is part of a broader systematic trend. This reduces feelings of self-blame and embarrassment and can embolden plaintiffs to link their problems to broader political challenges, such as the lack of an effective organization to represent workers and the emphasis that local governments place on the “investment climate,” which often trumps the protection of workers’ rights. A young worker was struck at how serious the problems were of the older people crowded around him. “I thought if [the director of the center] can help these people, then surely he should be able to win my case” (23).

Inclusion into a space and network such as legal aid can be an empowering experience for people who are otherwise discouraged, angry, and often deeply depressed. Li, the injured engineer, believed he “went from being someone with a future to something that wasn’t even human” (18). For people who have been laid off, summarily dismissed, or otherwise pushed out of their workplace, legal aid becomes the “turning point” from an experience in passive humiliation to an aggressive battle for rights and economic security. Ying, a young woman from rural Jiangxi Province who had to sue her employer twice (the second time on her own), reported,

[a]s an outsider, who didn’t know anyone in Shanghai, law was my only choice. I never thought about “letters and visits.”²⁵ Of course no one would have paid the slightest attention to me . . . this strengthened my personality; nobody can just take away what is mine. I used to just give up. I sued the second time because I had the time and the experience(13).

Wu, an older female worker, was fired by her privatizing textile company and replaced with rural migrants who could live at the factory and would “never need a rest” (35). She led eight fellow workers in a partially successful collective dispute for severance pay. At first a long process of petitioning left them disheartened as they were redirected time and time again to the legal system. She noted,

[w]e went to the Shanghai Municipal Trade Union and to the industrial level trade union, to the women’s federation, to the labor bureau, to the city government, and to the district government. No one gave us help—they all just said you must go and sue. They all were biased in favor of the company. Of course the trade union favored the company—it’s the Communist Party’s trade union (35).

²⁵ “Letters and visits” is a shorthand reference to the petitioning system discussed above.

Their experience with legal aid, however, was a transformative experience, making them less fatalistic and less likely to accept their unemployment without a struggle. "It was the first time that we went to a place where we felt like we might win; at every other place we felt we had no chance: everyone has been 'restructured' and you just had to accept being unemployed" (35). This inclusive effect of legal aid is also revealed in the ways plaintiffs valued legal aid assistance. As seen in Table 3, after "expertise in labor law" the three most commonly reported contributions of legal aid are related not to financial help but to the ability of legal aid to provide "mental support," "help with talking," and unbiased and incorruptible assistance. In the words of Zhang, who was forced to give up her suit when local officials threatened her husband's job, legal aid helped her form the words needed to appear in court. "[i]t wasn't until we went to the legal aid center that we really began to have confidence. Legal aid really should be expanded so that every worker can get it. Right now the law doesn't help us weak groups . . . we went to the first arbitration alone with our relatives. We didn't know how to speak; we had things to say and couldn't say them" (4). In the words of another plaintiff who vowed to pursue his case all the way to the United Nations, "[l]egal aid helped me express my views even when I was very frustrated. It's a place where we can speak the truth" (11).

It was this transformative experience of entering into a network that encouraged plaintiffs to shake off some of the traditionally negative ideas about lawsuits. Inclusion combined with increased competency vis-à-vis the law inspired most plaintiffs to turn their lawsuit into a learning experience that not only helped them and their case but could also be transmitted to others, including family members, friends, and fellow workers.

Post-Dispute Activism: Becoming a Little Expert

This new sense of empowerment among plaintiffs (even while remaining deeply angry with the results of the process) leads many into post-dispute roles as "little experts." Their newfound expertise in labor law leads many to give advice, copy materials, introduce friends to legal aid, and even serve as witnesses or citizen representatives in the cases of other aggrieved workers. As with the propensity to sue again, post-dispute little experts are the norm, not the exception. more than three-quarters of the plaintiffs reported that in the post-dispute period they advised friends and family, introduced others to legal aid, and in some cases served as witnesses for other aggrieved workers. (See Table 4 above.) A female forklift operator who reported crying all the time during her lawsuit now assists with her relative's own worker compensation case and coined the phrase I use in this article: "My husband's

brother-in-law now has a worker compensation case, I helped him with the case at first and then introduced him to the center . . . Now everyone comes to consult me, I've become a little expert" (19).

Yang, the former taxi driver, said,

Now I give a lot of advice to my friends and other drivers. We drivers, we're exhausted; we have no time to read newspapers or books. I've read and re-read the 200 Questions for Older Workers [a book given out by the center] and photocopied it to give to other drivers with problems. We want to restore our rights but we need to know what procedures, who to look for (15).

Zhang and her husband, who gave up her suit after local officials threatened to dismiss him, were extremely angry, even linking the failed suit to the theory of the "three represents."²⁶ Zhang said, "Many friends and former colleagues call us and ask us. We've become the experts now. Through the experience I've really learned a lot—how to fight the government and the higher levels (4)." But her husband exclaimed angrily, "why do they think so many people are going to Beijing to appeal? Because the law has no use. Those three represents are wrong. What about the interests of the workers?" (4).

Old Du, whose case remained up in the air without final implementation, summed up his experience in a way that captures the common path of a plaintiff from passivity, to knowledge, to strategy, and to anger:

I didn't know a single thing about the labor law [before this]. During Mao's time, everything was handled for us, like children. I used to think that only bad people file suit, now I know everything . . . arbitration, first appeal, second appeal. I'm famous. People ask me for interviews. [After the TV program] my phone started ringing off the hook, didn't stop ringing for a week, all these old workers wanting to know about my case and to resolve their own problems. An old worker from Bayer waited outside my door to talk to me. I gave him some advice and then later served as his witness in court on the question of job transfers in SOEs. I am so angry and frustrated. I didn't use to be like this. My poor parents at home. They are over 80 years old!! I'll do anything to help these kinds of cases (9).

Zhao, an older worker in an SOE that was bought out by a foreign investor, regularly sits in on court proceedings to learn more about

²⁶ The theory of the three represents is a new ideological position staked out by former President and General Secretary of the Chinese Communist Party (CCP) Jiang Zemin. It states that the CCP is an inclusive party of the Chinese people, not only a party of workers and peasants, representing the "advanced forces of production" in Chinese society. The theory was presented as a rationale for allowing capitalists and entrepreneurs into the Communist Party.

labor disputes and has united with a fellow laid-off friend to begin “citizen representation” of workers in labor disputes. He reported winning three cases in 2004 and in one case winning such a large award (18,000 RMB [U.S. \$2,195]) that the opposing lawyer later asked him for advice because his law firm had never been able to win such an amount in a labor dispute. Zhao also gives free advice to retired workers and pensioners in his neighborhood on pension disputes. He related his newfound profession to the help he received at the legal aid center. “Teacher Lu helped me with my suit and now I can do the same for others” (36).

Some workers advertise their suit to colleagues and gleefully report that their suit has gone on to mobilize others. When an older worker, Pei, had his job reinstated by the arbitration decision, he struggled with the management over his new job assignment. He reported, “I went into the office and started reading out loud my arbitral award in standard Chinese. I wanted all the other workers to hear the explanation. They [the company] said that I had to leave for influencing the work environment. I said they should call the police and just have me arrested. They wanted to punish me but they had no way to punish me” (12). Pei reported that he now serves as the informal consultant for all of the workers in his company, which employs more than 20,000 people. He also helped his son get social insurance from his employer. He noted, “I like labor law . . . I look for new regulations and laws all the time. I call the labor bureau’s hotline if I don’t understand . . . I search the Web with my son for new information” (12).

Guo, an older employee of a large state-owned grocery store, was humiliated by her employer when he posted her termination notice in the office for all to see. After a long suit that ended in victory for her, she sailed into the store singing the opening line from China’s national anthem, “Chinese, rise up, you no longer have to be slaves.” She noted, “I gave my co-workers advice and help. I told them to take up law as their weapon and use it to protect themselves. Now all my good friends and co-workers know that it is possible to win” (50).

Conclusion: Legal Consciousness in the Chinese Context

Informed disenchantment as a by-product of legal mobilization conveys the sense of empowerment coupled with increased skepticism that many plaintiffs described after their cases had ended. Its emphasis on plaintiffs’ negative evaluation of the legal system is a corrective to a tendency to cast the development of legal consciousness in China as a unidirectional process of moving from low to high consciousness. Engagement with the law may leave one

with a better sense of one's rights but with reduced belief in the law as a capable protector of those rights. The emphasis on disenchantment does not, however, indicate that the Chinese state's attempt to direct people toward the law is failing. Even older state sector workers who enter the process with their problems framed as a moral battle against unfair reforms leave the process intending to sue again, but to do it better by adopting the new rules of the game with a new emphasis on contracts, evidence, and the like. Legal mobilization by Chinese workers is an ongoing act of engagement with and resistance to the law.

The Chinese workers captured in this study, however, are distinct from the general population. Unlike research that explores legal consciousness outside the realm of legal institutions (Ewick & Silbey 1998; Nielsen 2004) and can capture a more diverse sample, the group of plaintiffs examined here are part of the small, but increasing, number of Chinese workers who invoke the law. These plaintiffs were also given free legal assistance from skilled professionals with deep knowledge of labor law and Shanghai's legal and administrative institutions.²⁷ It is, therefore, not surprising that the discourse most commonly invoked by these plaintiffs hews closely to the "with-the-law" motif described by Ewick and Silbey (1998) in which individuals often invoke the symbol of law as an instrument (defined in Chinese state propaganda as a "weapon") and as something to be learned and, in effect, to be gamed.²⁸ Their decision to self-select into the legal process reflects their initial sense of self-confidence that the law game can be won. Their sense of disenchantment as they learn how the process might be biased against them often spurs new strategic behavior to counteract these disadvantages: for example, courting public opinion through the media or looking for a sympathetic government official at the petitioning offices. And finally, as shown earlier, their persistence and self-confidence is usually not shaken by defeat; most intend to sue again if necessary, and many feel well-prepared for future legal battles.

²⁷ Another part of my research explores the attitudes and behavior of the general population as opposed to those who have received legal aid. As Michelson has argued, it is extremely difficult for workers to find affordable legal representation for employment disputes in the private legal market (2006). Thus the educative and positive effects of legal mobilization may be limited to those who receive legal aid.

²⁸ Ewick and Silbey argue that these three discourses (before, with, and against the law) are invoked repeatedly even within one individual narrative, pointing to the contradictory nature of legal consciousness. The ability of individuals to hold contradictory beliefs about legality is, in part, what sustains it as a durable social institution (2003). My argument, which is based on a much less diverse sample of individuals, finds that one discourse ("with the law") is dominant, but similarly contributes to a tendency to continue to believe in the law as long as one gets better at playing the game through the educative effects of legal mobilization.

The linear, modernization theory-like definition of legal consciousness critically explored in this article is mostly found in contexts where the legal system itself is still under construction in fundamental ways.²⁹ The newness of the law and the staying power of alternate discourses including religious, socialist, or family-based discourses of justice create situations where low levels of legal knowledge, weak or co-opted legal institutions, and low levels of legal mobilization become the starting point for an analysis of changing legal consciousness. How can one go anywhere but up?³⁰ The point of this article is to show that legal consciousness can go in a number of directions even in a situation where state-led rule-of-law campaigns and a rapidly developing market economy increasingly push citizens toward law and legal remedies for their problems.

In the law and society literature on developed legal systems, legal consciousness is defined non-linearly and subjectively as the way in which people make sense of the law. This contextual definition allows for exploration of the nuances of how people envision the role of law in their lives and their own standing as a citizen vis-à-vis the legal system and systems of authority more generally (Merry 1990; Ewick & Silbey 1998; Nielsen 2004). Unlike assumptions in the Chinese context that an increase in court cases equates with a rise in legal consciousness, this literature does not track legal consciousness with the propensity to sue. Nielsen's study of harassment, for example, shows that legal consciousness can operate in complicated ways to reduce an individual's propensity to make rights-involving legal claims. Non-use of the law does not, however, in her analysis translate into low legal consciousness; reluctance to use the law is often based on other concerns related to the power of the state or a disinclination to be cast as a victim in a legal drama (2004).

There continues to be disagreement within this literature about what shapes legal consciousness. Engel (1998) laments that a definition remains "surprisingly elusive," with some writers lumping

²⁹ Upham (1998) offers a critique of this linear conception of legal consciousness in his essay on Japan. This is part of a long-standing debate among scholars of the Japanese legal system regarding the low level of litigation in modern Japan. Some counterexplanations of Japanese litigation behavior have focused on institutional barriers to the courts rather than on cultural or historical reasons for weak legal consciousness (Haley 1978). These institutional explanations are also effective in demonstrating the importance of treating behavior (going to court) and attitudes (notions of legality) separately. Japanese citizens may have highly developed, critical thoughts on their legal system, but choose not to invoke it to claim rights for rational, self-interested reasons (Ramseyer & Nakazato 1989).

³⁰ Engel's recent work on Thailand (2005) is an important correction to a linear conception of legal consciousness in a developing world context. Engel finds that the effects of globalization and economic integration on the legal consciousness of Thai citizens have been the opposite of what globalization theories predict. He found that victims of traffic-related injuries are less likely than before to invoke the legal system or legal rights for compensation; instead, they often turn to religious explanations for both the initial harm and their approach to resolution (2005).

legal consciousness with legal ideology, implying that legal consciousness is something that actors absorb from the culture and institutions around them.³¹ In the case of historically weak groups, such as welfare recipients and minorities, the absorption of this legal culture limits and restricts the realm of the possible (Sarat 1990). Weak citizens are co-opted and controlled by the hegemony of the legal system. Other analysts portray legal consciousness with a much greater sense of people's activism and engagement with, and even resistance to, the legal system, which functions as a "double-edged sword" (Lazarus-Black & Hirsch 1994)—opening up new political space and opportunities for action while constraining how aggrieved citizens shape their demands and imagine alternative possibilities for just outcomes.

McCann, writing on the pay-equity movement in the United States, envisions legal consciousness as "the dynamic process of constructing one's understanding of, and relationship to, the social world through use of legal conventions and discourses" (1994). McCann's focus in his study on legal mobilization explains his emphasis not on ideology or co-optation, but on dynamism and the mutually constitutive elements of individual action and legal/political institutions on the development of legal consciousness. McCann's definition shares some important similarities with Matsuda's development of the concept as "dual"—encompassing elements of both empowerment and co-optation (1988). Matsuda finds this historically in how native Hawaiians responded to the imposition of Western legal culture in the nineteenth century and during the Civil Rights era, when groups that previously were legally discriminated against begin to use laws to gain rights that were until then unattained (1988).

This focus on the duality of legal consciousness, even the contradictory nature of beliefs and attitudes held simultaneously, is equally useful in the Chinese case where both the linear—modernization theory-like—notion of "rising" legal consciousness common in the legal development literature as well as the critical, often Marxist-influenced notion of law as ideology and a restraint on individual and collective action are misplaced and overly simplistic. The contradictory nature of ordinary citizens' legal consciousness also improves our understanding of how legality itself is shaped from above by a state-led rule-of-law project and from below by citizens who make use of these new institutions (Marshall & Barclay 2003). This movement from high expectations to more realistic disappointment is in large part produced by the state's own

³¹ It may be that popular belief in "rising legal consciousness" in China functions as an ideological push toward the law. There is widespread debate in China on the suitability of a new "rights fundamentalism" (Keith & Lin 2001). Zhu Suli, the Dean of Beijing University Law School, argues, "[t]he rule of law has replaced Maoist revolution as the blind faith of the Chinese masses" (quoted in Upham 2005:1).

attempts to push the rule of law and to disseminate legal knowledge to citizens. Citizens' expectations about the law and the legal process are shaped by a public campaign to propagate law and rights and state-controlled media coverage of legal disputes that favors good news and happy endings over more realistic treatment of a difficult and challenging process. As one plaintiff noted, "[o]ur hopes are higher, so our disappointment is all the deeper" (43).

So far this disappointment has not resulted in despondency or even rejection of the legal system for other modes of resolution; these plaintiffs persevere. This bottom-up pressure to build the rule of law and to improve it is one more indication that legal consciousness in China is developing, moving not from low to high but from naïve to critical, from a vague sense of rights to a detailed list of grievances. By promising to use the law again, they contribute to the "durability" of an evolving social institution (Ewick & Silbey 2003:285). By remaining attentive to the flaws of the legal system, these newly minted little experts challenge the law to live up to the state's own professed standards of fairness and justice.

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