

Rule of Law in China: Chinese Law and Business

Popular Attitudes towards Dispute Processing in Urban and Rural China

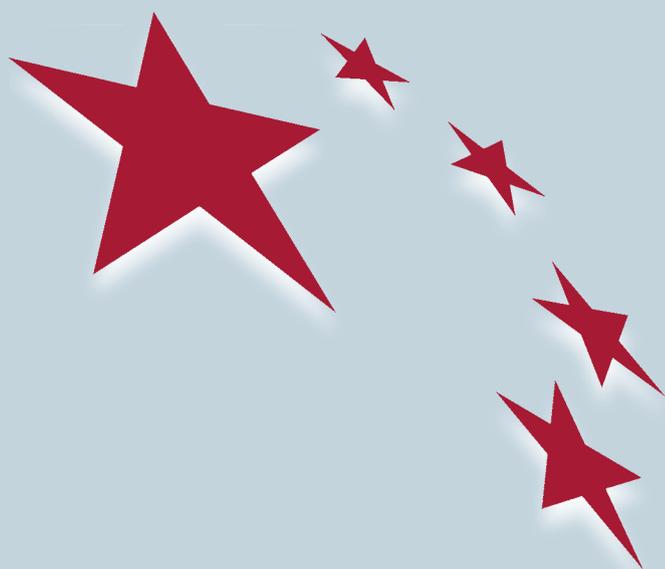
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Executive Summary

- The legal system, defined as lawyers, police, and the courts, is only a very small part of the larger justice system in China. People with grievances rarely turn to lawyers and courts for help. Instead, they exhibit an extraordinary tendency toward 'self-help', including dispute avoidance and bilateral negotiation. When they do seek help from third parties, they are far more likely to approach local community leaders and government agencies than lawyers and courts.
- Not only is the utilization of the legal system limited relative to other popular responses to grievances, people also evaluate their experiences of it unfavourably, relative to other sources of help in the justice system. Aggrieved individuals reported higher levels of satisfaction with local sources of help outside the legal system, including workplace, village, and community leaders, and other government agencies.
- Despite relatively negative popular assessments of real-life encounters with the legal system, people reported remarkably high levels of general confidence in and support for the legal system.
- These findings suggest that the solution to the problems of limited access and the poor performance of the legal system in the countryside, in which the majority of Chinese people live, lies at least as much in promoting and supporting informal and local solutions with proven records of success, as with promoting expanded access and the improved performance of the legal system.
- The data also suggest that these problems will diminish as China continues to develop economically. Indeed, if Beijing and the prosperous parts of rural Jiangsu Province represent the future of dispute resolution in China, improved accessibility and performance of the legal system will be a natural by-product of economic development.
- Whilst economic development exerts a profound influence on the landscape of disputing, by reducing the overall volume of grievances and increasing the general confidence in and support for the legal system, it is unrelated to the problem of unequal access to the legal system. Survey data show that people with personal connections to political officeholders and state cadres not only have fewer grievances but are also more likely to resolve them through the courts. This pattern remains constant across regions varying greatly in levels of economic development.

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The justice system in China

Decades of research in the field of law and society reveals the fallacy of conflating the 'legal' and the 'justice' systems. Law is but one means, far from the most important means, of resolving disputes and obtaining justice. Moreover, law is far more than official state law, including also unofficial customary law. The simultaneous existence of multiple, overlapping, and competing legal and law-like systems is known as 'legal pluralism'. All over the world, courts, police, and lawyers, a convenient definition of the legal system I adopt for purposes here, represent merely the tip of the proverbial iceberg, an important but relatively small part of the larger justice system: the full landscape of dispute processing. Because not all disputes find resolution, much less, satisfactory resolution, many scholars use the term 'dispute processing' instead of the more commonly used 'dispute resolution'.

In this policy brief I assess the relative popularity and performance of different means of dispute processing in different parts of the justice system in China. By identifying what does and does not work under what circumstances, my goal is to inform the development of policies for improving access to and the delivery of justice for some of China's most needy citizens.

Together with sociologists at Renmin University of China, with funding from the Ford Foundation, I helped design and organize the first large-scale surveys in China on real-life grievances and disputing behaviour. In 2001, the first survey was carried out in Beijing. In 2002, the rural counterpart was carried out in six provinces. We have analyzed the data in an effort to answer the following questions. How many grievances (or 'legal needs') do people have? Where do they seek help? How prominent is the legal system in the larger justice system? How do people with grievances rate their experiences of different parts of the justice system?

Because only a small sub-set of any population anywhere has 'justiciable problems' amenable to legal solutions, the surveys also measured popular perceptions of the performance of the legal system among all respondents, even those lacking concrete experience with the legal system. How much confidence in and support of the legal system do people express? I summarize key findings from the surveys in an effort to answer these questions.

The surveys

In 2001 our survey team completed usable interviews of 1124 households in twenty-six residents' committees in seven urban districts. The following year, in early 2002, our survey team completed usable interviews of 2902 rural households in one county in each of five provinces, Shaanxi, Henan, Jiangsu, Hunan, and Shandong, and in one centrally-administered city, Chongqing. The six counties in which the survey was carried out capture enormous socio-economic and regional diversity. They include relatively prosperous coastal areas. Indeed, one survey site is in the heart of the spectacularly developed Sunan region of southern Jiangsu Province, not far from Shanghai, in which average household income approaches that of Beijing. At the other end of the spectrum are the relatively poor, interior areas in Henan and Hunan.

Consistent with several well-known surveys on 'legal needs' and 'access to justice' conducted in the US and Europe, our Chinese survey respondents were presented with lists of problem types, though these varied according to the context. For example, only the Beijing survey questionnaire asked about housing rental problems, traffic citations, and home renovation disputes; while only the rural survey questionnaire asked about agricultural tax problems and family planning disputes. Similarly, while the Beijing questionnaire asked about inheritance

disputes specifically, the rural questionnaire asked about family disputes more generally, such as elderly care and property division.

The information collected from the questionnaires has permitted us to estimate the incidence of grievances, or potentially 'justiciable events', and to estimate the relative popularity of different parts of the justice system. If a survey respondent reported having experienced a problem, the respondent was then asked for two additional pieces of information: where, or with whom, help was sought, including failure to seek help; and whether the source(s) of help reported exceeded, met, or failed to meet initial expectations. These last questions allowed us to estimate and compare satisfaction across different parts of the justice system.

In addition to the questions on real-life encounters, the questionnaires also asked all respondents to evaluate the performance of the police and the courts, even if they lacked real experience of those institutions.

Owing to a dearth of comparative data from other low-income countries, the ability to generalize from the Chinese experience, or to compare it with experiences elsewhere in the developing world, is highly circumscribed. While a few comparisons are made with a 2003 survey of 1000 respondents in urban and rural Vietnam (UNDP 2004), this has been done with caution, owing to differences in the research design and question-wording.

Everyday problems: how many and what kind?

Utilization of the legal system presupposes a grievance. Before considering the question of who seeks legal help, and under what conditions, I first consider the question of who experiences grievances, and of what kind.

Beijing findings

In the Beijing survey, 35 per cent of respondents reported at least one problem. Labour problems, such as unpaid wages or hiring discrimination,

accounted for a quarter of problems. The second largest problem category was 'property damage or loss', accounting for 15 per cent of all reported problems. Following in popularity were traffic citations (13 per cent), housing property rights disputes (8 per cent), neighbour disputes (8 per cent), and consumer disputes (7 per cent).

Rural findings

Rural respondents were considerably more aggrieved than Beijing respondents. Fifty-seven per cent of respondents reported at least one problem, with neighbour disputes being the most popular, accounting for 18 per cent of all reported problems. Following in popularity were water use disputes (10 per cent), agricultural tax burdens (10 per cent), domestic family disputes (9 per cent), and consumer disputes (9 per cent).

Political connections

In both surveys, connections to political officeholders reduced the probability of grievances. In the Beijing survey, respondents who were either cadres in a state organization, or who lived together in the same household as a cadre in a state organization, averaged 25 per cent fewer grievances than other respondents. Likewise, in the rural survey, respondents who were either village leaders or who lived in the same household as a village leader averaged almost 20 per cent fewer grievances than other respondents.

Regional variation

Differences in the volume and character of disputes between the Beijing and the rural survey suggest that economic development and urbanization reduce popular grievances. Grievances were fewest in Beijing and the economically developed parts of rural China, namely, southern Jiangsu Province. By contrast, grievances were the most numerous in the poorer inland survey sites, particularly in Henan and Hunan. Not only were housing property rights disputes more salient in the Beijing survey than in the rural survey; but, among rural survey sites, housing disputes were more salient in the more prosperous coastal survey

sites than in the poorer inland survey sites, where agricultural tax disputes were of far greater salience (Michelson 2007: 476). As shown below, variation in the character of disputes helps explain the variation in where people turn for help.

Popular responses: where do people seek justice?

Turning to the heart of the legal pluralism, I consider popular utilization of the legal system. Economic development and urbanization not only reduced grievances, but also increased the probability that the help of lawyers and courts was sought when grievances were experienced.

Beijing findings

Overall, only 8 per cent of all reported grievances were brought to either lawyers or courts, with only 2 per cent of the total sample taking grievances to either lawyers or courts in the past five years. Almost three-quarters of all instances of seeking formal legal help were accounted for by disputes over wills or inheritance, housing property rights (titles/deeds), and housing rentals. The most common reasons for going to court were disputes over labour matters (back-wages or hiring discrimination), housing property rights, and wills or inheritance. Although they account for a large proportion of all disputes brought to the legal system, disputes over wills and inheritance represent a relatively small proportion of all reported disputes.

If aggrieved people so rarely approach the legal system, where do they go for help? In common with aggrieved people elsewhere in the world, people in Beijing tended to 'lump' their disputes (do nothing about them) or resolve them bilaterally. Beijing respondents reported responding to over 60 per cent of their disputes in either of these two ways. The next most common response was to seek police help. While property damage or loss accounted for two-thirds of all instances of seeking police help, 17 per cent were accounted for by neighbour disputes. Aggrieved households also pursued bureaucratic solutions (in the workplace and government agencies) and neighbourhood mediation (at

residents' committees). Accounting for only 5 and 3 per cent of all disputes respectively, lawyers and courts were the least popular sources of help.

Rural findings

Unsurprisingly, utilization of the legal system is even rarer in the countryside. Of all grievances in the rural survey, only 2 per cent were brought to the legal system. The overall incidence of encounters with the legal system is similarly limited: fewer than 3 per cent of the respondents reported taking grievances either to lawyers or to other parts of the legal system in the past five years. 'Lumping' and bilateral negotiation were even more popular in the countryside than in Beijing, accounting for 80 per cent of all disputes. Among the remaining 20 per cent of disputes brought to third parties, just over a third were brought to informal relations such as relatives, friends, neighbours, and acquaintances; just over 30 per cent were brought to village leaders; almost 20 per cent were brought to higher government authorities; 5 per cent were brought to the police; and the remaining 9 per cent, 2 per cent of all disputes, were brought to the legal system.

Consistent with survey research conducted elsewhere in the world, the likelihood of going to court varied according to the nature of the problem at hand. Personal injuries and criminal matters, such as assault and property theft, were more likely than other kinds of problems to be referred to the police. Likewise, property rights disputes and divorces were more likely than other kinds of disputes to go to court. Surprisingly, the five divorces captured by the Beijing survey were not taken to court. Overall, half of all instances of seeking formal legal help were accounted for by divorce, personal injury, debt collection, and property damage or loss.

Political connections

Political connections not only reduced the probability of experiencing grievances, but also increased the probability of seeking formal legal help when grievances could not be avoided. In the Beijing survey, respondents who were either cadres in a state organization or who lived in the same

households as cadres in a state organization were more than twice as likely than other respondents to seek the help of lawyers or to go to court. Likewise, in the rural survey, aggrieved respondents who were either village leaders or who lived in the same household as a village leader were three times more likely than other respondents to report going to the lawyers or courts. Such benefits resulting from political connections do not vary by region or level of economic development. These advantages of being politically connected may be, at least to some degree, a function of less tangible forms of knowledge about public bureaucracies, including court systems.

Regional variation

The Beijing survey respondents were more likely than the rural survey respondents to bring their problems to the legal system. This difference is part of a more general pattern of economic development: legal utilization rates are strongly and positively related to level of economic development. Part of the reason for this difference surely lies in differences in the nature of disputes. Firstly, in Beijing, higher economic stakes may push more disputes into court. Secondly, as criminal matters and other problems that activate top-down state intervention and demand court adjudication are relatively common in urban areas, there is a greater probability of litigation in Beijing than in rural China. However, two additional reasons unrelated to the nature of disputes help explain regional variation in the utilization of courts and lawyers. Firstly, wealthier areas enjoy greater geographical proximity to the courts, which are concentrated in cities. Secondly, court fees and other related expenses represent financial barriers to the legal system. In short, all else being equal, including the nature of the dispute, wealth facilitates access to the legal system.

International variation

Survey evidence suggests that in Vietnam, lawyers and courts are utilized at comparable levels, and that there are similar differences between urban and rural areas. Whereas in Beijing and rural China, 6 and 4 per cent of respondents respectively reported ever

having consulted a lawyer for any reason; in urban, rural, and mountainous Vietnam 12 per cent, 2 per cent, and 1 per cent respectively of respondents reported having accessed lawyers. Whereas in Beijing and rural China 3 and 5 per cent of respondents respectively reported experience with courts of any kind, in urban, rural, and mountainous Vietnam 9 per cent, 8 per cent, and 1 per cent of respondents reported to have accessed courts (UNDP 2004:11–12).

Popular evaluations based on real encounters: where do people get justice?

Generally speaking, the closer to the legal system people brought their disputes, the more negatively they assessed their experiences. Bilateral negotiation and informal relations were the most positively rated sources of help. The next most popularly rated sources of help were local community leaders: neighbourhood and workplace leaders in Beijing, and village leaders in the rural areas. Higher-level government agencies followed next in the satisfaction ratings. Significantly, at the bottom of the rankings were the police, lawyers, and courts.

In both surveys, lawyers were rated more negatively than any other source of help. Certainly, to some degree, differences in satisfaction reflect differences in problems. Less serious and more easily resolvable problems were over-represented at local levels. More intractable and difficult problems were over-represented at higher levels. However, the pattern persists even when the nature of the problem is held constant (Michelson 2008).

Assessments of the performance of courts exhibited enormous regional variation. Beijing residents rated the performance of courts quite favourably (even though they rated the performance of lawyers very negatively). In fact, Beijing merely represents the more general effect of economic development: the probability of a negative experience in court diminished with economic development.

Popular perceptions: where do people believe they should and can get justice?

Thus far I have summarized findings on real-life disputing behaviour. In both the Beijing and rural surveys, when asked to assess institutions with which they had no direct experience, respondents tended to rate them favourably. Widespread popular perceptions of a fair and effective legal system is somewhat surprising given the regular flow of media reports from both China and abroad painting gruesome portraits of the Chinese legal system, perhaps best exemplified by the 2006 Pulitzer Prize winning series on 'ragged justice' published by *The New York Times*. The survey data suggest that even if the legal system is 'ragged', many people are either unaware of it, or unwilling to acknowledge it.

Beijing findings

Overall, evaluations of the police and courts are surprisingly sanguine. In Beijing, respondents with no prior court experience supplied a greater proportion of positive than negative assessments of the court system. This pattern persists with popular perceptions of the police.

Although, on the whole, respondents in Beijing tended to express tremendous confidence in and support for the courts and the police, the data also show that negative experiences took a serious toll on confidence and support. Respondents who reported a disappointing experience with a court supplied negative assessments of the courts at a rate four times greater than other respondents. However, positive experiences did not increase the likelihood of positive assessments. On the contrary, respondents who reported positive experiences of the courts expressed slightly more negative perceptions of court performance than those respondents who lacked any experience of the courts. Respondents reporting disappointing experiences with the police were still, on balance, more positive than negative about the police. However, any experience of the police, positive or negative, tended to erode confidence and support.

Rural findings

Compared to Beijing respondents, rural respondents reported far fewer positive perceptions of the legal system. Nonetheless, like their Beijing counterparts, rural respondents with no prior real-life encounters on which to base their opinions supplied more positive than negative assessments of the courts. As in Beijing, in the countryside this pattern persists with popular perceptions of the police.

As with the Beijing respondents, rural respondents who reported a disappointing experience with the courts or the police also reported lower levels of confidence and support. At the same time, however, respondents who reported positive experiences with the courts expressed slightly less confidence in courts than respondents who lacked any experience of the courts. Moreover, in rural China, as in Beijing, any encounter with the police, regardless of whether it disappointed or satisfied the respondent, reduced confidence and support.

Regional variation

The large gap between the Beijing and rural respondents in popular perceptions of the performance of courts and the police reflects a more general relationship between economic development and popular confidence in and support for the legal system. The wealthiest survey sites (Beijing and Jiangsu) expressed the fewest negative assessments, while the poorest survey sites (Hunan and Henan) expressed the most.

International variation

Although a large proportion of 'don't know' responses in the Vietnam survey (UNDP 2004: 15) problematizes comparisons with the Chinese data, the comparison of valid information supplied by respondents is nonetheless suggestive of interesting differences and similarities. While rural Vietnamese were more positive than their Chinese counterparts, urban Vietnamese were more negative than their Chinese counterparts. In urban, rural, and mountainous Vietnam, 55, 51, and 87 per cent of respondents respectively reported that 'court judgments are just and fair', 'always' or 'regularly' (UNDP 2004). Meanwhile, in China, 66 per

cent of Beijing respondents and 43 per cent of rural respondents 'agreed' or 'strongly agreed' with the statement that 'court decisions are almost always fair.'

From an international perspective, the finding that experience of the legal system erodes confidence and support is not unique. A 1984 survey of 1575 Chicago residents (Tyler 2006) reveals the same pattern. However, whereas in the Chicago survey positive experiences generally improved perceptions of the legal system, in the Chinese surveys, even positive experiences tarnished general perceptions.

Conclusions

According to the survey data collected in urban and rural China in 2001 and 2002, the role of the legal system in the justice system is, as a whole, relatively marginal, although not exceptionally marginal relative to Vietnam. Not only are utilization rates low, but performance of the legal system is rated relatively negatively by those who have utilized it. Relative to how they assessed their experiences elsewhere in the justice system, people rated their experiences of the legal system reasonably unfavourably. Aggrieved individuals not only sought local help from informal relations and community and workplace leaders more frequently, but they evaluated their experiences with these sources of help more favourably than their experiences with formal legal institutions.

Although the survey data reflect a remarkably high degree of public confidence in and support for the legal system, such positive popular sentiment is limited to people with either no or only positive experiences of the legal system. At the same time, the survey data suggest that familiarity breeds contempt. Any encounter, positive or negative, eroded confidence and support. Other research has termed this phenomenon 'informed disenchantment' (Gallagher 2006). While it applies both to courts and to the police, this phenomenon is particularly pronounced with respect to police. Popular perceptions of the legal system are shaped by information asymmetry. To the extent that people with first-hand experience have more accurate

information on which to base their perceptions, greater aggregate utilization of the legal system should, all things being equal, compromise popular support for and confidence in the legal system.

Additional problems revealed by the survey data are unequal exposure to grievances and unequal access to legal solutions. Politically connected households containing state cadres (in the Beijing survey) or village leaders (in the rural survey) reported significantly fewer grievances and a greater likelihood to mobilize the legal system when they did experience grievances.

Perhaps the most significant finding, however, is that economic development exerts an enormously powerful positive influence on the legal system. Among similarly aggrieved households, economic development positively promoted the utilization, the performance, and popular assessments of the legal system. Moreover, because it reduced the overall volume of grievances, economic development also reduced reasons for resorting to the legal system in the first place. Survey findings suggest therefore that economic development will help the current Chinese political administration realize its policy goal of building a 'harmonious society'.

Policy implications and recommendations

Should we consider it a problem that so few people approach the Chinese legal system for help? Does this state of affairs call for policy efforts to expand popular access to courts by increasing capacity and lowering barriers? The survey findings summarized here support a more cautious approach to exporting the 'international legal orthodoxy'. Because courts were rated relatively favourably only in the most developed parts of China, because they were rated relatively negatively in the poorer parts of rural China where the majority of the population lives, and because village leaders and local government agencies appear to handle disputes relatively effectively, policy efforts might be better focused on enhancing what works, at least as much as attempting to fix what does not work. Efforts should not be solely concentrated on opening up the courts;

rather, this should be a complimentary measure, alongside continued learning from and promotion of the successful interventions of village leaders and local government agencies.

Certainly, the survey evidence suggests that the best medicine for treating China's ailing legal system is economic development. Economic development may help to solve the problem of limited access to and the unsatisfactory performance of the court system. In the meantime, however, as we wait for the benefits of economic development to spread to the poor and remote parts of rural China, aggrieved villagers should enjoy access to local, informal solutions that are shown to work relatively effectively. Concrete policy measures for supporting such local dispute processing must be predicated on more thorough research that identifies the circumstances under which specific dispute processing methods deliver justice, fair procedures, and desirable outcomes to some of China's poorest citizens.

Until the performance of the court system improves in rural China, policy measures that increase popular utilization may have the paradoxically dangerous effect of compromising the popular confidence and support it currently enjoys. Popular perceptions of the legal system are, on the whole, very favourable; in important measure, because so few people utilize it. Courts deliver the most satisfaction in the most developed parts of China. To the extent that real-life experiences in the legal system are the least favourable in the least developed parts of rural China, and because real-life encounters with the legal system tend to reduce confidence in and support for the legal system, policies that encourage popular mobilization of law could backfire by fostering 'informed disenchantment' on a massive scale. It follows, therefore, that policy efforts to leverage local solutions with proven records of

success outside the legal system should be complemented by policy efforts to improve the performance of the court system. All else being equal, better experiences in the legal system should improve public perceptions of its performance.

Finally, part of the problem of limited access to the legal system is unequal access. Survey findings suggest that unchecked or poorly checked favouritism and other forms of corruption in the court system may give advantages to politically connected households with legal needs. These advantages do not erode with economic development. Policy measures aimed at combating such privileged access should promote the performance and improve popular perceptions of the court system.

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