Legal Reform in China: A Role for Nongovernmental Organizations

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INTRODUCTION ........................................................................................................................................ 364
I. THE RULE OF LAW AND STATE-LED CIVIL SOCIETY .................................................................... 370
   A. The Features of a Stable Legal System ......................................................................................... 370
      1. Legislation ................................................................................................................................. 372
      2. Legal Institutions .................................................................................................................... 372
      3. Human Resources ................................................................................................................... 373
      4. Accessibility ............................................................................................................................. 374
      5. Legal Culture .......................................................................................................................... 374
   B. The Definition of the Term "NGO" ............................................................................................... 375
      1. The Context of NGO Activity in the PRC .................................................................................. 375
      2. A Structural-Operational Definition of the Term "NGO" .......................................................... 379
II. EIGHT EXAMPLES OF NGO PARTICIPATION IN LEGAL REFORM ................................................ 382
   A. Legal Services: The Wuhan University Center for the Protection of Rights of Disadvantaged Citizens .................................................................................................................. 383
      1. Legal Aid and the Wuhan Center ............................................................................................... 384
      2. Reasons Behind the Wuhan Center's Success .......................................................................... 385
   B. High Profile Litigation: The Beijing University Law Department's Centre for Women's Law Studies and Legal Services .................................................................................................. 386
      1. Summary of the BWC's Activities ............................................................................................ 387
      2. The Strategy of Using Litigation To Reshape Chinese Law ....................................................... 389
      3. Obstacles to the Use of Litigation as a Force for Legal Change .............................................. 390
      4. The Value of Activist NGOs in the PRC .................................................................................. 391
   C. Student Volunteerism: Fudan University Students' Legal Aid Clinic and the Huazheng Students' Legal Aid Clinic .............................................................................................................. 392
      1. Introduction to the FUSLAC ..................................................................................................... 393
      2. Introduction to the Huazheng Center ....................................................................................... 394
      3. The Efficacy of Student Legal Aid ......................................................................................... 396
      4. The Pedagogical Value of Student Legal Aid ......................................................................... 398
   D. Toward an Independent Bar: The Shanghai Bar Association ...................................................... 399
      1. The Formal Authority of Chinese Bar Associations ................................................................. 400
      2. The Context of Cooperation Between the SBA and the SBOJ .................................................. 401
      3. Conflict Between the SBA and the SBOJ .................................................................................. 403
      4. Other Obstacles to Independence ......................................................................................... 404
   E. Legal Advisor to the NPC: Law Institute of the Chinese Academy of Social Sciences .... 405
      1. Introduction to the Law Institute ............................................................................................. 406
      2. The Law Institute's Influence .................................................................................................. 407

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Because the Author has guaranteed anonymity to his interview sources, this Article uses an abbreviated interview citation form. For general information on the interviews, see Appendix A.

363
The People’s Republic of China (PRC) has been engaging in unprecedented levels of legal reform. In the past eight years alone, the National People’s Congress (NPC) and its Standing Committee, which together constitute the central government’s legislative arm, have passed over 150 laws, representing nearly one third of the national-level legislation ever enacted during the PRC’s fifty-year history. These new laws range from commercial legislation designed to facilitate economic development to laws that expand procedural protections for criminal defendants to laws that permit ordinary citizens to sue the government for redress of official misconduct. In some instances, new laws have fundamentally altered the nation’s legal rights and procedures, including the establishment of administrative law, the enhancement of citizens’ rights against government misconduct, and the protection of consumer rights. These changes reflect the growing emphasis on individual rights and the rule of law in China.

INTRODUCTION

The People’s Republic of China (PRC) has been engaging in unprecedented levels of legal reform. In the past eight years alone, the National People’s Congress (NPC) and its Standing Committee, which together constitute the central government’s legislative arm, have passed over 150 laws, representing nearly one third of the national-level legislation ever enacted during the PRC’s fifty-year history. These new laws range from commercial legislation designed to facilitate economic development to laws that expand procedural protections for criminal defendants to laws that permit ordinary citizens to sue the government for redress of official misconduct. In some instances, new laws have fundamentally altered the nation’s legal rights and procedures, including the establishment of administrative law, the enhancement of citizens’ rights against government misconduct, and the protection of consumer rights. These changes reflect the growing emphasis on individual rights and the rule of law in China.


2. Important pieces of commercial legislation passed during the past several years include the Arbitration Law (1995), the Company Law (1995), the Securities Law (1998), the Trademark Law (1999), and the Unified Contract Law (1999).


landscape, creating bodies of rights that did not exist before the PRC began its transformation from a command economy toward a market-oriented system. Today, the legislative flurry continues as important pieces of legislation continue to work their way through the legislative process.

Paralleling this explosion in legislation are efforts to elevate the quality of the legal profession, to curb corruption within legal institutions, to improve legal education, to raise public knowledge of legal affairs, and to improve the quality of the government’s prosecutorial staff.

One notable example is the birth of property rights. Whereas prior to recent reforms, the PRC followed communist doctrine forbidding private ownership of land, more recent laws permit private parties to hold interests in real property. These interests take the form of freely transferable, long-term, land-use rights, which render the holder the de facto equivalent to the owner of the land, even though ownership in fee simple is itself still prohibited. See Patrick Randolph, Chinese Real Property Law (visited Dec. 17, 1998) <http://www.qis.net/chinalaw/otherlaw1.htm> (arguing that land-use rights in the PRC should be considered to be property rights).


increase public participation in legislative drafting.\textsuperscript{11} Between 1990 and 1998, the number of licensed attorneys in the PRC more than doubled from 40,000 lawyers to over 100,000 lawyers.\textsuperscript{12} Civil litigation between private citizens has grown steadily since the mid-1980s,\textsuperscript{13} indicating greater public confidence in court adjudication and greater public awareness of rights in general. Citizens are also increasingly turning to the courts to fight official misfeasance.\textsuperscript{14} As part of its program to curb abuse by law-enforcement personnel, Chinese officials have encouraged limited though unprecedented press coverage of police misconduct.\textsuperscript{15} The NPC, formerly considered to be a rubber-stamp legislature, has emerged as an independent political force and has actively sought to make the Chinese legislative process more representative.\textsuperscript{16} Local legislatures have followed suit.\textsuperscript{17} In its most recent

\begin{footnotes}


16. See Michael W. Dowdle, The Constitutional Development and Operations of the National People’s Congress, 11 COLUM. J. ASIAN L. 1, 1 (1997); Murray Scot Tanner, Organizations and Politics in China’s Post-Mao Law-Making System, in DOMESTIC LAW REFORMS IN POST-MAO CHINA 56, 64 (Pitman B. Potter ed., 1994); see also Murray Scot Tanner, How a Bill Becomes a Law in China, 1995 CHINA Q. 39, 57 ("The most significant change in the lawmaking process since 1979 is unquestionably that the stage of NPC debate and review is no longer a perfunctory look or a simple public show of ‘socialist democracy.’ Now . . . few if any laws pass through NPC review without substantive amendment . . . .").

17. See Kathy Chen, China’s Press and Politics Show a Little Gumption as Reforms Speed
party congress, the Chinese Communist Party (CCP) officially embraced the development of the rule of law as a national priority, committing the Chinese leadership to building strong legal institutions, to cultivating a legal culture within all levels of society, and to instilling administrative regularity within the government bureaucracy. Soon thereafter, in March 1999, the NPC amended the Chinese Constitution to state expressly that the Constitution is the supreme law of the land and that the PRC shall be ruled in accordance with the law. Many outside observers believe this commitment to the establishment of the rule of law to be genuine, even though they expect the CCP itself to remain above the law for the near future.

Notwithstanding these achievements, the Chinese legal system remains severely underdeveloped in many respects and will encounter further problems as it faces new demands from a rapidly growing economy. Currently, nebulous laws, confusion over regulatory jurisdiction, and a lack of transparency detract from legal certainty.

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Legal Reform in China

367

Up, WALL ST. J., Jan. 22, 1998, at A16; Academic Interview A.


19. See Session Votes Amendments, CHINA DAILY, Mar. 16, 1999, available in 1999 WL 5968309; see also Justice Minister Pledge To Safeguard Amended Constitution, CHINA BUS. INFO. NETWORK, Mar. 24, 1999, available in 1999 WL 5618573 (quoting Justice Minister Gao Changli as saying that the incorporation of the principle of rule of law into the PRC Constitution "indicates a major change in the form of government and leadership").

20. See Kathy Chen, China Studies Moving Closer to Democracy, ASIAN WALL ST. J., July 23, 1998, at 1 ("Besides encouraging China's legislature and media to play a greater watchdog role to ensure effective law enforcement, [Chinese] leaders have sought to increase their understanding of the importance of establishing a sound legal system."); Academic Interview A.

21. See, e.g., China Reforming Political System, JAPAN POL'Y & POL., Dec. 1, 1997, available in 1997 WL 8244220 (quoting the PRC Minister of Justice as saying that implementation of the rule of law should not "weaken the leadership of the [CCP]" nor "negate the leadership of the [CCP]"); Erik Eckholm, China To Try Two Dissidents But Denies Them Lawyers, N.Y. TIMES, Dec. 15, 1998, at A13 ("Through arrests and other actions, the authorities have made clear that the leadership's constant talk of 'political reform' and 'rule of law' does not mean competing political groups will be allowed."); Is China Democratizing?, supra note 13 (asserting that legal reform will not "threaten the CCP's nle"); Rosenthal, Police Abuses, supra note 14 ("[T]he desire to provide more even-handed justice does not extend to those who threaten Communist Party rule."); Academic Interview A.

nearly ten thousand cases were incorrectly prosecuted or wrongly decided in the first eight months of 1998 alone.\textsuperscript{23} Administrative agencies, especially at the local level, often ignore the bounds of their delegated authority.\textsuperscript{24} Local protectionism prejudices court adjudication and obstructs the enforcement of judgments.\textsuperscript{25} The judiciary suffers from inadequate training, with the majority of judges having been appointed to the bench without prior legal experience.\textsuperscript{26} Similar problems plague the procuracy and the nation’s administrative organs.\textsuperscript{27} The demand for legal services has skyrocketed as the legal system has become more complex, reaching beyond the point at which ordinary citizens can understand the system on their own.\textsuperscript{28} At the same time, the privatization of law firms has given attorneys the freedom to shun low-profit cases for the more lucrative practice of corporate law.\textsuperscript{29} Among the concerns raised by this shift is the fear that the common Chinese citizen will be unable to afford adequate representation and that Chinese lawyers will begin to see the practice of law in purely financial terms rather than as a profession with social obligations.\textsuperscript{30}

In short, a holistic view of the current state of the Chinese legal system shows a country committed to legal reform but confronted with a daunting task. The questions that remain most difficult to answer are those concerning the methods for accomplishing legal reform: What efforts can the government undertake? What role can nongovernmental actors play? How can official efforts and private efforts be coordinated? These questions, in turn, implicate


\textsuperscript{26} See Alford, supra note 12, at 31; Joseph W. Della Penna, \textit{The Lesson of the Triple Twisted Pine: Plum Blossoms on Mountain Peaks and the Future of the Rule of Law in Hong Kong}, 30 VAND. J. TRANSNAT’L L. 637, 653 (1997); see also Ignorance of Rule of Law Hampers Work of Chinese Courts, CHINA BUS. INFO. NETWORK, Nov. 5, 1998, available in 1998 WL 13495339 (“Ignorance about the rule of law and a lack of transparency in corporate affairs have hampered the work of Chinese courts . . . .”).

\textsuperscript{27} See Academic Interview A; see also Ching, supra note 25 (criticizing the appointment of Han Zhubin, a man with no judicial experience, as the PRC’s top prosecutor). One law professor estimates that fewer than 10% of the personnel in the nation’s administrative agencies have had legal training. See Academic Interview A.

\textsuperscript{28} See LUO, supra note 10, at 12.

\textsuperscript{29} See id. at 15–18.

broader policy questions: To what extent should constituencies outside the central government be allowed to influence legal reform? Should the reform movement be popularized? How can the reform process be structured in a way that will move the PRC toward a more democratic future, notwithstanding the CCP’s desire to remain firmly entrenched in power?

This Article seeks to answer these questions by examining the role of Chinese nongovernmental organizations (NGOs) in advancing the rule of law. It asserts that the development of a strong nonprofit sector can facilitate the development of the rule of law in the PRC, and as such, the activities of Chinese NGOs involved in legal reform should be supported and expanded. In support of this thesis, I argue primarily by way of inductive reasoning, using examples of current NGO activity to illustrate ways in which the PRC’s burgeoning nonprofit sector has advanced the rule of law. I also rely heavily on utilitarian arguments, focusing on the ability of NGOs to supplement the state and the private sector in creating, maintaining, and supporting the institutional structures necessary for an effective legal regime. The target audience is both American and Chinese, with the goals being (1) to illustrate to the former that there is a young but important nonprofit presence in the Chinese legal arena, and (2) to argue to the latter that the expansion of this presence is consistent with the Chinese government’s goals for legal reform.

Structurally, this Article is divided into three parts. Part I establishes the context for my argument. It defines five goals that Chinese legal reformers should strive to achieve and then tackles the sticky issue of defining the term “NGO” in a country where the state plays a pervasive role in all parts of society. Part II consists of case studies of eight Chinese NGOs that are active in the legal arena. Each case study examines the activities of a particular NGO, evaluating the extent to which the NGO has been successful in advancing a certain aspect of the rule of law. The objective of Part II is to provide examples of the different ways that Chinese NGOs have participated in legal reform and to highlight the strengths and weaknesses of each approach. Part III assesses whether Chinese NGOs can indeed play a substantial role in encouraging legal reform. Part III identifies common obstacles encountered by the NGOs profiled in Part II, with the aim being to delineate the parameters under which Chinese NGOs may operate and to identify problems that must be overcome if Chinese NGOs are to expand their role in shaping legal reform. Key issues discussed in Part III include (1) logistical obstacles to NGO activity, (2) political constraints on NGO autonomy, and (3) the impact the new Regulations on the Registration and Management of Social Organizations, which the State Council promulgated on November 6, 1998, will have on NGO autonomy.

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31. Regulations on the Registration and Management of Social Organizations (1998) (visited Apr. 21, 2000) <http:llwww.chinalawinfo.comlFreelaw/ShowFrame.cgi>. This regulation is the first significant regulation on NGO activity that the PRC has promulgated in nearly a decade. It supersedes the previous Regulations on the Registration and Management of Social Organizations, which had been
In examining the nonprofit sector's role in the development of the rule of law in the PRC, I acknowledge that the meaning of "rule of law" is itself a contested concept, with most views following either Lon Fuller's instrumentalist view or John Rawls's substantive view. Because the CCP regards law as a tool for advancing state policy—in essence an instrumentalist view—the view adopted in this Article is also largely instrumentalist, especially in its evaluation of the efficacy of NGOs in promoting legal reform. Such analysis remains focused on the extent to which NGO activity contributes to the development of a coherent, reliable legal regime, regardless of whether the underlying substantive law affirms liberal values. My slant is positivist, expressing a willingness to deem a nation to be under the rule of law once adherence to legal rules can be shown to be a defining feature of its political system, even if the opportunity for meaningful political opposition does not exist. Yet insofar as this Article appeals to democratic principles to support an expansion of NGO activity, I also incorporate substantive theories on the rule of law into my argument. In other words, although the question of whether a nation follows the rule of law is separate from the question of whether it is a democracy, the development of institutions that are conducive to the development of both rule of law and democracy should be preferred over the development of institutions that advance only the rule of law.

I. THE RULE OF LAW AND STATE-LED CIVIL SOCIETY

A. The Features of a Stable Legal System

Legal scholars disagree over the meaning of the rule of law, but certain attributes appear to be essential:

in effect since October 1989 and which had been adopted as part of the CCP's post-Tiananmen clampdown on politically oriented organizations. For a more detailed discussion, see infra Section III.B.

32. The instrumentalist view of the rule of law focuses on the use of legal rules to structure human behavior. This view de-emphasizes the use of law as an expression of substantive ideals, such as democracy, fairness, or individual dignity, because the law itself creates its own internal morality. The substantive view resembles the instrumentalist view in that it also regards a legal system as a coercive order of rules designed to regulate conduct. The substantive view, however, departs from the instrumentalist view in its belief that the goals the legal system seeks to accomplish must conform with liberal values. See generally Margaret Jane Radin, Reconsidering the Rule of Law, 69 B.U. L. Rev. 781, 783–92 (1989) (comparing Lon Fuller's instrumentalist view with John Rawls's substantive view). For more detail, compare Lon Fuller, The Morality of Law 33–38 (rev. ed. 1969), with John Rawls, A Theory of Justice 235–43 (1971).


34. See Richard H. Fallon, Jr., "The Rule of Law" as a Concept in Constitutional Discourse, 97 Colum. L. Rev. 1, 10–24 (1997) (describing four conceptions of the rule of law); Radin, supra note 32, at 783 ("The complex of ideas thought to comprise the Rule of Law is not completely canonical.").

Legal Reform in China

(1) The existence of stable, comprehensible rules, which have been publicized in advance to those who are responsible for obeying them.

(2) The existence of an effective state apparatus to enforce such rules uniformly, fairly, and consistently.

(3) The supremacy of law over power, with the law delineating the parameters for the legitimate use of state power and serving as a constraint on the ability of government officials to abuse the power or discretion delegated to them.

(4) The creation of a legal culture that affirms the role of law in maintaining social order; social acceptance of the methods by which legal rule shall be implemented.

These attributes define the rule of law as a sociopolitical ideal to be superimposed upon a network of institutions designed to bring its goals to fruition. Put in layman's terms, the rule of law requires (1) that there be legitimate law, (2) that there be a legal system to apply such law justly, and (3) that the citizenry and the government know and obey the law's precepts. As a theoretical matter, meeting these requirements involves articulating principles of legality by which the system will operate. As a technical matter, however, the challenge inures in creating, strengthening, and coordinating the institutions and processes through which the rule of law is to be realized.

A modern legal system contains a number of basic functional elements, which range from discrete bodies of law, to judicial organs, to the existence of a legal profession. Each of these elements presupposes the existence of other elements, and each is integrated with other elements to form a comprehensive, functioning system. For an instrumentalist, the focus of legal reform is to strengthen each constituent element of the legal system, while ensuring their harmonious integration into a unified structure. For the purposes of this Article, I do not seek to identify each component of a functioning legal system. Instead, I focus on five broad categories of reform, each of which seeks to strengthen one discrete aspect of the Chinese legal regime. These

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37. See id. at 1184.

38. For an alternate categorization of reform, see Thomas Carothers, The Rule of Law Revival, FOREIGN AFF., Mar.–Apr. 1998, at 95, 99–100 (categorizing reforms by depth and dividing reform into three categories).
five categories serve as the criteria against which I analyze an NGO's contribution to Chinese legal reform.

1. Legislation

The first category of reform centers around the laws themselves. Such reform involves enacting new legislation, revising existing laws, and repealing antiquated provisions so as to align the nation’s legal code with its needs and values. The focus of such reform is substantive, normative, and instrumental, with the challenge for the legislature being (1) to understand accurately the problems to be corrected through legislation, (2) to decide correctly the policy goals such legislation shall advance, and (3) to devise, ex ante, laws that can correct such problems or advance such goals effectively. The primary difficulties presented by this first category of reform concern the legislative process itself: How do we ensure that the legislature receives the information it needs to make sound decisions? How do we prevent powerful individuals or interest groups from capturing the legislative process for their own ends? How do we ensure that the legislature, when deciding on what best advances the national interest, has first heard from all relevant parties? How do we endow the legislature with the ability to craft laws that can accomplish their purpose? Resolution of these difficulties partially requires establishing mechanisms for legislators to acquire or access the substantive expertise that will enable them to make good law.

2. Legal Institutions

The second category of reform is institutional. This category of reform seeks to strengthen the legal institutions that administer, enforce, and implement a nation’s laws. Such institutions include formal government entities, such as the legislature, the courts, the procuracy, administrative agencies, and law-enforcement organs. They also include informal institutions involved in legal activity, such as an organized bar, centers for legal education, and private forums for dispute resolution. The issues implicated by the reform of legal institutions are highly complex because of the complex nature in which institutions interact. Some institutions, for example, supervise other institutions even though they individually perform separate functions; others offer essential peripheral support but play no leading role in legislation or adjudication; still others exist primarily as alternate or secondary methods for accessing the legal system. In addition, besides functioning side-by-side with other institutions, some institutions are integrated vertically, with different levels of the same institution performing the same general function but at different levels of jurisdiction or at different points in a process.

Accordingly, the reform of legal institutions involves the initial step of differentiating institutions according to function, specifying the role each institution shall play in the legal system, delineating the scope of authority to be wielded by the institution in fulfilling its role, and establishing a hierarchy
of authority to ensure that conflicts between institutions can be resolved through a predictable process. With this structure as a baseline, the operational task then becomes to design institutions in such a way and to equip them with sufficient resources so as to permit them to develop both the competency and the proper incentives for fulfilling their assigned task within the limits of their allocated authority. Equally necessary is the design of mechanisms to minimize divergence in the interpretation, enforcement, and application of the same substantive law by different institutions.

3. Human Resources

The third category of reform focuses on human resources. For legal institutions to function effectively, they need to be staffed by qualified personnel. Legal reform in this category focuses on developing four sets of qualities in legal personnel. The first of these qualities is substantive legal expertise, namely familiarity with rules, legal doctrines, and interpretative principles. The second deals with practical legal skills, such as legal reasoning, legal drafting, and advocacy. The third quality is ethical rectitude, with the most important expressions of this quality being the will to remain free from corruption and the commitment to adhere to relevant rules of conduct. The fourth quality is more vague and in some ways idealistic. Reform related to this quality involves cultivating a professional ethos in legal workers. The exact normative content of this ethos depends on the values underlying the society and its legal system, but the goal remains to internalize into legal workers a sense of moral responsibility to act in ways that affirm the rule of law. In other words, reform that is focused on human resources involves not only staffing legal institutions with qualified experts but also convincing these experts that they are officers of the law charged with upholding a legal regime rather than simply highly skilled laborers who sell their services for compensation. Some commentators also assert that the development of the rule of law necessitates the development of an independent bar.39

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4. **Accessibility**

The fourth category of reform focuses on improving public access to the legal system. Such reform acknowledges that economic principles of scarcity apply to legal resources yet interprets justice as requiring equality in the distribution of legal resources, even though such equality might not be required in other contexts. Put in layman’s terms, justice should not be only for the rich; legal protections on paper are meaningless if barriers impede a citizen’s ability to seek such protection. Consequently, issues implicated by this category of reform include (1) the availability of counsel, (2) the availability of legal knowledge for those who are unable to secure counsel, (3) the removal of impediments to the use of courts and other legal organs, and (4) the availability of informal, private, or alternate forums for resolving legal disputes. In addition, public accessibility also involves a cognitive dimension. Assuming that a citizen can fully access a legal system’s institutions, we also must concern ourselves with whether the system exhibits sufficient transparency for him to understand, prior to becoming entangled in a legal dispute, his rights, his duties, and the processes to which he will be subject if such rights or duties are violated. Such public awareness of the law permits the citizenry to police itself in two ways: It allows citizens to structure their behavior in advance to conform with the law, and it informs them when others have broken the law so that they can then seek proper redress.

5. **Legal Culture**

The last category of reform is the most nebulous because it deals with social phenomena. It focuses on cultivating a legal culture whereby obedience to the law becomes largely voluntary instead of coerced and whereby such obedience represents an affirmation of the legal regime. The questions presented by such reform are three: (1) How can we inculcate in the public mind an understanding of the function of law in ordering society? (2) How do we translate this understanding into a set of legal norms to be obeyed by the public? (3) How do we create a moral imperative to comply with legal norms voluntarily? The emphasis on voluntary compliance raises the issue of whether legal culture is to be found instead of created. For the public to feel morally obligated to support a legal regime, it must first deem the regime to be legitimate. Developing a legal culture thus involves not only convincing the public of the legitimacy of the legal regime but also perhaps the reverse—reforming the legal system so that it conforms with what the public perceives a priori to be necessary, acceptable, and just.

These five categories of legal reform are especially pertinent to the PRC because they address widespread deficiencies within the Chinese legal system.

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40. See Edward J. Epstein, supra note 33, at 20 (“Legal legitimization . . . only occurs where law operates as an ideology without the need for coercion.”); Stewart Macaulay, *Popular Legal Culture: An Introduction*, 98 Yale L.J. 1545, 1557 (1989) (“Legal culture also includes what people see as necessary, acceptable or just, and this may be the basis for their support of the legal system.”).
Reforms directed at legal institutions and human resources, for example, strike directly at the nation’s problems with corrupt and incompetent legal personnel. Similarly, legislative reforms can fill substantive gaps in Chinese law and democratize the legislative process, while reforms tailored at accessibility can prevent the effects of growing wealth disparity within the PRC from spilling over into the legal arena. Finally, reforms tailored toward developing a legal culture in the PRC are crucial given the Chinese public’s traditional aversion to defining socioeconomic relations in legal terms, the Cultural Revolution’s destruction of the legal system during the 1960s and 1970s, and a general crisis of values in Chinese society today. This cultural and historical backdrop means that the development of the rule of law in the PRC requires more than the establishment of an effective legal apparatus—it requires the widespread dissemination of legal values within the community.

B. The Definition of the Term “NGO”

To assert that NGOs can play a positive role in advancing legal reform requires, as a prerequisite matter, the resolution of three definitional questions: (1) For the purposes of this Article, what is an NGO? (2) What are the boundaries of the nonprofit sector whose intervention I posit to be necessary? (3) How should this sector be defined with respect to a communist country, like the PRC, where the state dominates much of the public sector?

1. The Context of NGO Activity in the PRC

Western definitions of the term “NGO” tend to emphasize the private roots of social organizations, juxtaposing them against official government agencies. The American definition, in particular, draws heavily on the image of American nonprofit organizations as privately constituted, privately funded, independently operated organizations established by individual citizens who are united by a common vision of the collective good. Such a definition
accords a grass-root connotation to the term and envisions a clear delineation between governmental actors and the nonprofit sector. It also parallels Western theories of civil society, which tend to portray social organizations as alternate centers of political power whose presence helps neutralize the danger of excessive state authority. 49

On a formal level, scholars of Chinese civil society classify Chinese organizations into one of four categories. The first category consists of CCP sponsored “mass organizations” (qunzhong zuzhi), such as the All-China Federation of Trade Unions and the Communist Youth League. Because these mass organizations often play an officially sanctioned political role, they enjoy a higher status within official circles than other organizations. 50 The second category consists of officially recognized “social organizations” (shehui tuanti), which are also referred to by the government as “popular organizations” (minjian tuanti) or “nongovernmental organizations” (feizhengfu zuzhi). 51 These social organizations exist at both national and local levels and include business groups, professional associations, cultural clubs, and academic societies. 52 They are subject to varying degrees of state control, and some have been described by scholars as “GONGOs”—government-organized nongovernmental organizations. 53 The third category consists of unofficial groups, including lineage associations, groups that do not qualify for government recognition, and informally organized individuals with similar social, religious, or intellectual interests. 54 Organizations in this category include what some scholars have termed to be “secondary” (erji) or “tertiary” (sanji) organizations—groups without independent legal status established as subdivisions of much larger institutions that do have independent legal status. 55 The fourth and last category consists of organizations that the CCP believes to pose a threat to its authority. These organizations are actively monitored by public security forces, and when necessary, suppressed. 56

“NGO” when referring to Chinese organizations because the term does not carry the same grass-roots connotations as “nonprofit organization.” 49 See Gordon A. Christenson, Federal Courts and World Civil Society, 6 J. TRANSNAT’L L. & POL’Y 405, 408 (1997) (describing the Lockean tradition of civil society, which held that civil society was “necessary to keep government accountable to the people”); see generally Andrew S. Levin, Civil Society & Democratization in Haiti, 9 EMORY INT’L L. REV. 389, 394–400 (1995) (describing the development of the notion of civil society in the United States and Europe from being synonymous with the state to being in contradistinction to the state).

The notion of “civil society” derives from Western political theories on the role of intermediary organizations in a modern state. Civil society theory posits a sphere of free social interaction and voluntary organization that is separate and independent from the state. The rise of this sphere shifts power from the state to the citizenry, and thus the sphere functions (1) to limit the power of the state to threaten the citizenry and (2) to shift it toward liberal democracy. See generally Gordon White et al., In Search of Civil Society: Market Reform and Social Change in Contemporary China 1–6 (1996) (summarizing the notion of civil society).

51. See id. at 31.
52. See id.
53. See id. at 31–33.
54. See id. at 33–35.
55. See Academic Interview D.
56. See White et al., supra note 49, at 35–37.
As a practical matter, however, these formal categories only classify organizations according to their legal status. They do not define the parameters of the term "NGO." With respect to the PRC, the term "NGO" is difficult to define because of the state's pervasive role in Chinese society. Scholars of Chinese civil society have described the PRC as a "state-led civil society" in which the government actively participates in the formation of social organizations for the purpose of co-opting activist segments of the population into supporting state policies. The Chinese leadership's view asserts that NGOs are to function as an "intermediary force" between the government and the public, working in conjunction with and under the indirect control of government actors, to accomplish goals determined by the state. This view expects NGO development to be led by the government and the CCP. It envisions NGOs as vehicles for the government to channel policy down to the local community and for the local community to channel feedback to the government. It neither posits NGOs as loci for opposition politics nor grants NGOs complete autonomy in their affairs.

Accordingly, independently formed social organizations that operate autonomously from state oversight—while prevalent in late imperial China—are relatively new in the PRC. Although recent statistics boast the existence of approximately 200,000 officially registered NGOs, the independence of

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57. See Timothy Brook & B. Michael Frolic, The Ambiguous Challenge of Civil Society, in CIVIL SOCIETY IN CHINA 3, 12 (Timothy Brook & B. Michael Frolic eds., 1997) ("The presence of the state in Chinese society, although reduced from what it was in the Maoist period, is still strong and has heavy cultural sanction.").


59. See Zhang Ye, Nongovernmental Organizations in China: Present and Future, in ASIAN PERSPECTIVES: FOCUS ON CHINA 14, 16 (1997); Questions and Answers, in ASIAN PERSPECTIVES: FOCUS ON CHINA, supra, 20, 24 (remarks of Zhang Ye) ("[NGOs] are expected to be supplementary or partners of government.").

60. See Questions and Answers, supra note 59, at 24.

61. See Academic Interview D.

62. Compare Timothy Brook, Auto-Organization in Chinese Society, in CIVIL SOCIETY IN CHINA, supra note 57, at 19, 22–30 (describing organizations formed during late imperial China), and WHITE ET AL., supra note 49, at 16 (same), with Brook, supra, at 36–37 ("Since taking state power in 1949, the Chinese Communist Party has been successful in stifling auto-organization in Chinese society . . . . Until recently, all organizations that existed did so under Party tutelage."). and WHITE ET AL., supra note 49, at 21 ("In the post-Liberation period, the CCP either disbanded or repressed pre-existing forms of social association and established a new institutional system which . . . . prevented the operation of social organizations . . . ."). For a brief history of social organizations in late imperial China and the early years of the PRC, see generally Xin & Zhang, supra note 58, at 85–88.

63. See Kathy Chen, Quiet Revolution? Limited Political Reform Is Spreading Across China, ASIAN WALL ST. J., Jan. 23, 1998, at 1. In addition to these officially registered NGOs, there are approximately 800,000 unofficial organizations. These unofficial organizations include a broad range of groups working outside the main structure of the government in social services, education, the arts, environmental protection, and other areas. See Zhang, supra note 59, at 16–17.
many of these organizations is questionable. Most were formed with the government’s imprimatur rather than through grass-roots mobilization or private initiative.\(^6\) Many NGO heads are former government officials, hold concurrent positions in affiliated government bodies, or are active members of the CCP.\(^6\) Many groups receive substantial funding from the state\(^6\) and some even report directly to government agencies.\(^6\) This close nexus between government actors and NGOs does not mean that Chinese NGOs are nothing more than unofficial extensions of the state, but it does raise the specter of considerable state control over NGO activity.

Conversely, as shown in Part II, some groups active in legal reform do not possess formal legal status as independent entities. They instead operate as relatively autonomous divisions of much larger, state-run institutions, of which public universities are the primary example. Ironically, it is often their ability to operate under the auspices of an official institution or their close relations with the government that make it feasible for these groups to undertake more progressive reforms. Such cover confers legitimacy upon an organization’s activities, both in the eyes of the public and in the eyes of the Chinese leadership, thereby allowing the organization to muster the financial and moral support it needs to operate.\(^6\) NGOs that carry a government mandate as part of their operations are deemed to be accountable both to the state and to the public at large,\(^6\) thereby drawing less suspicion from the CCP. Ties with the state also equate to access to important government figures who hold the power to implement the policies advocated by an NGO. Indeed, according to some scholars, private contact between respected outsiders and government officials remains one of the most important channels of injecting outside opinion into state policy.\(^7\)

Consequently, to consider NGOs as only those organizations that fit the classic profile of an American nonprofit organization or that have been recognized as having independent legal status under Chinese law would be to

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\(^6\)See White et al., supra note 49, at 32 (describing most PRC social organizations as having been “established under the sponsorship of state institutions”).

\(^6\)See, e.g., Alford, supra note 12, at 35 (stating that the leadership of the All China Lawyers Association are mostly “highly placed, recently retired officials”); SBA Interview A (stating that the chairman of the Shanghai Bar Association is usually a former Ministry of Justice official); see also White et al., supra note 49, at 32 (describing NGOs as “a convenient home” for the government to send surplus or older personnel); CJS Interview A (same).

\(^6\)See, e.g., Allen C. Choate, Local Governance in China (Part II): An Assessment of Urban Residents Committees and Municipal Community Development 32 (1998) (stating that municipal governments often subsidize municipal foundations by providing office space, staff, and overhead); Alford, supra note 12, at 35 (stating that funding for the All China Lawyers Association derives largely from a mandatory fee levied by the Ministry of Justice); CASS Law Institute Interview A (stating that all funding for the Law Institute of the Chinese Academy of Social Sciences comes from the central government); CCA Interview A (stating that most funding for the China Consumer Association comes from the central government).

\(^6\)See, e.g., CASS Law Institute Interview A (describing formal reports submitted by the Law Institute of the Chinese Academy of Social Sciences to the NPC); CCA Interview A (describing formal reports submitted by the China Consumer Association to relevant government agencies).

\(^6\)See Zhang, supra note 59, at 16; Academic Interview D.

\(^6\)See Zhang, supra note 59, at 16.

\(^7\)See Academic Interview A; CJS Interview A.
simultaneously overstate and understate the scope of NGO activity in the PRC. As some observers have commented, there is "virtually no such thing" as a completely nongovernmental institution in the PRC, "particularly in the legal field," though there are "numerous people" within Chinese law schools, judicial training institutes, bar associations, and other social organizations who are "deeply concerned about human rights and the rule of law." The traditional distinction between government and nongovernment is therefore not helpful. Accordingly, rather than examining the formal boundaries that separate an organization from the state apparatus, we should instead focus on the degree to which individuals within an organization can perform independently the legal reform activities in which they engage.

2. *A Structural-Operational Definition of the Term “NGO”*

For the purposes of this Article, I define the term “NGO” by adopting the definition of nonprofit organizations used in Lester A. Salamon’s and Helmut K. Anheier’s comparative study of the nonprofit sector in twelve countries. In articulating their criteria for nonprofit status, Salamon and Anheier relied on seven features that they found to be common in the organizations they studied—commonalties that surfaced notwithstanding differences in the regulatory framework, historical milieu, social structure, and demographic composition surrounding these organizations:

1. The organization must be formally constituted in some institutional sense instead of being an ad hoc gathering of people.

2. The organization must be private in the sense of being institutionally separate from the government, even though the organization might nevertheless remain subject to government oversight, be formally part of the state apparatus, or be governed by a board of directors dominated by government officials.

3. The organization must operate on a not-for-profit basis, meaning that the organization may engage in profit generating activities but may not distribute these profits to its directors or owners.

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(4) The organization must be able to control its own activities to some extent and should have internal procedures for governance.

(5) The organization must not be primarily involved in the promotion of religious worship or religious education.

(6) The organization must not be constituted primarily to promote certain candidates for elected office. The organization, however, may engage in advocacy activity to change government policy.

(7) Participation in the organization must be voluntary in some meaningful degree.

These seven criteria create a "structural-operational" definition of the term "NGO." Under their boundaries, and for the purposes of this Article, an NGO is any (1) formally organized group (2) operating for a purpose other than private profit, (3) whose activities are effectively controlled by independently minded parties, (4) regardless of whether the group functions under the umbrella of a state institution, receives funds from government sources, engages in projects on behalf of the government, or is in some other way connected with the state or the CCP. The advantages of this definition are that it accounts for the blurry line that ostensibly separates private actors from the Chinese government and that it reorients the inquiry around the crucial question of whether the organization possesses the potential to engage meaningfully in activity that is not directed by the government, even if the activity itself supports state policies.

It is important to note that the independence evaluated herein is independence of thought combined with the opportunity to influence rather than freedom from government supervision. As stated before, the state's role in the PRC is pervasive. The CCP dictates national policy and determines the purview of permissible sociopolitical activity. It imposes substantive limits on what an NGO may do. It co-opts organizations into supporting official state policies. It will not tolerate dissent. But the fact that NGOs may not

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73. See id. at 73. Other possible ways of defining the term NGO include the U.N. definition, which describes an NGO as a nonprofit entity whose activities are determined by the collective will of its members in response to the needs of the communities with which the NGO cooperates. See United Nations, Economic and Social Council, Open-Ended Working Group on the Review of Arrangements for Consultations with Non-Governmental Organizations; Report of the Secretary-General, U.N. Doc. E/AC.70/5 (1994). Some scholars have criticized broad definitions of the term NGO, saying that such a definition would embrace "just about every kind of group except for private businesses, revolutionary or terrorist groups, and political parties." P.J. Simmons, Learning To Live with NGOs, Foreign Pol., Fall 1998, at 82. Instead they believe NGOs should be characterized in accordance with their respective goals, membership, funding sources, and other factors. See id.

74. See supra note 57 and accompanying text.

75. For a discussion of the limits of NGO activity in the PRC, see infra Part IV.

76. See supra note 58 and accompanying text.
act in derogation of CCP policy does not necessarily reduce them to mere tools of the state.

The economic reforms undertaken by the PRC over the course of the past twenty years have decentralized the PRC’s sociopolitical structure, opening the way for increased NGO participation in social governance. Chinese NGO expert Zhang Ye points to three recent developments that have infused the nongovernmental sector with new dynamism. The first development began in the 1980s, when the central government, as part of its policy to move from direct to indirect control over many enterprises, began to delegate responsibility for certain state functions to quasi-private groups or to society as a whole. This development pluralized interests within society and led to the formation of numerous, relatively autonomous NGOs. The second development was the erosion of the central government’s ability to provide for certain social welfare needs. From the 1970s to the early 1990s, revenues allocated to social welfare programs dropped from thirty-one percent of national income to a mere thirteen percent. Increased activity from actors outside of the government, whether profit-seeking or nonprofit, thus became necessary to offset the state’s retreat from its role as social-service provider. The third development was the rise of a new generation of Chinese leaders who believed the rule of law to be a more effective method of governance than the cult of personality or the reliance on coercive measures that typified much of past Chinese politics.

This new emphasis on establishing a legal framework within which diffuse elements of society can function in an orderly fashion also embodies a more politically inclusive ideology than previous communist doctrine. Whereas past theories of socialist legality emphasized the need to suppress enemies of the proletarian dictatorship, more recent theories have reoriented the focus on the task of liberating productive forces within society, subject to the limit that such forces be employed in a manner consistent with socialist principles. These new theories implicitly acknowledge that private initiative

77. See infra notes 403–408 and accompanying text; see also Michael Laris, Chinese Resumes Arrests: 10 Detained a Week After Clinton Visit, WASH. POST, July 12, 1998, at A19 (describing the PRC as moving toward a “more open, law-based society,” but where challenges to CCP authority are handled harshly).
78. See Zhang, supra note 59, at 14.
79. See Kathy Chen, China’s Alternate Voices Grow Louder, WALL ST. J., Aug. 29, 1995, at A10 (“NGOs ... increasingly are tackling problems the government doesn’t have the resources to handle, and [are] drawing attention to new issues.”).
80. See Zhang, supra note 59, at 14.
81. See id.
82. See id.
83. See id. For further background on how recent reforms have contributed to the rise of the Chinese nonprofit sector, see generally Xin & Zhang, supra note 58, at 88–90.
should be encouraged because private initiative, if properly harnessed and controlled, can be used to strengthen a socialist state.

In the legal arena, these developments have opened doors for NGOs to operate in fields that were previously monopolized by state actors. Government officials also have begun to rely heavily on academic think tanks for substantive expertise in drafting and implementing new laws. Although political constraints still confine the scope of permissible NGO activity to a narrow range of projects, now more than before, individuals outside of government hold the opportunity to participate in, influence, and in some instances initiate legal reform. The questions now raised are "How meaningful is this opportunity?" and "Toward what end have reform minded individuals used it?"

II. EIGHT EXAMPLES OF NGO PARTICIPATION IN LEGAL REFORM

This Part presents case studies of eight Chinese organizations to illustrate ways that NGOs have contributed to the development of the rule of law in the PRC. Roughly speaking, Chinese NGOs that are active in the legal arena play four roles with respect to the creation of a stable, effective legal system. The first role is that of legal service provider, especially to disadvantaged segments of the population. The NGOs profiled in Sections II.A, II.B, and II.C illustrate this role. The second role is educative, primarily involving the transmission of legal knowledge to the public or the inculcation of legal values. Most of the NGOs discussed herein perform this role to some extent, though the organizations profiled in Sections II.B, II.C, and II.G provide the most direct examples. The third role is regulatory, whereby the NGO assists the government in regulating certain market activities or in enforcing the nation’s laws. The NGOs profiled in Sections II.D and II.G, and to an indirect extent the NGOs profiled in Sections II.A and II.B, serve as examples of NGOs performing this role. The last role is advisory and potentially activist, implicating the ability of NGOs to influence government policy. The NGOs profiled in Sections II.B., II.E, and II.F illustrate the different ways in which NGOs can exercise this role.

In evaluating these case studies, the reader should be aware of the methodological limitations of this Article. Most of the information presented in Part II came from interviews with individuals active in the profiled NGOs, whose views necessarily reflect their biases. Their comments also might reflect what they believe they are allowed to disclose to a foreign researcher, rather than their true views of the situation. Compounding these problems were difficulties with obtaining independent confirmation of the information.

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85. One example is the provision of legal services to the poor. See infra Sections II.A, II.B, II.C. Another more limited example is the delegation by some local justice bureaus of some of their regulatory duties to local bar associations. See infra Section II.D.

86. See Academic Interview A; Academic Interview B; see also infra Sections II.B, II.F (providing examples of cooperation between the government and legal scholars).

87. The four roles described here are not exclusive but are derived only from the eight NGOs profiled herein.
my sources provided. To the extent possible, I sought to interview multiple sources for each NGO, but the reluctance of potential interviewees to speak to me and the logistical difficulties I encountered when conducting my research also meant that in some cases, I was able to speak with only one person. Moreover, to the extent that I rely on written materials published by the NGO, the reader should be aware that the promotional nature of some of these materials again cast doubt on their objectivity. These caveats should not be construed as a disclaimer of the veracity of the information presented in Part II. I have included only information that appeared credible. But the reliability of this information is constrained by an unfortunate reality: It is hard to get good information on politically sensitive topics in the PRC.

A. Legal Services: The Wuhan University Center for the Protection of Rights of Disadvantaged Citizens

According to Western nonprofit theory, NGOs play an important role in the delivery of essential social services to the public. In particular, NGOs often serve segments of the population that for-profit actors refuse to serve for lack of sufficient financial incentives. In this sense, NGOs resemble public institutions—and in many cases supplement government efforts—in addressing a social need without regard to the profitability of the activity. So long as an NGO can secure sufficient funding for its operations, it can serve those who are unable to compensate it fully for the benefits they receive. From a macroeconomic perspective, NGOs in the role of service provider thus implicitly perform a distributive role, enhancing vertical equity by redistributing resources to segments of the population that otherwise would not been able to afford certain services on their own.

Among the legal problems confronting the PRC today is the need to improve ordinary citizens' access to legal resources. The proliferation of legislation in recent years, the institution of new protections for substantive rights, and the rise of new forms of economic interaction have expanded greatly the impact of law on the common Chinese citizen. Yet the vindication of rights through legal channels remains underdeveloped for much of the population because of the prohibitive cost of hiring private counsel. This first case study profiles Wuhan University's Center for the Protection of Rights of Disadvantaged Citizens (Shehui Ruozhe Quanli Baohu Zhongxin)


89. See id. at 139.

90. See supra notes 1–6 and accompanying text.

91. See supra note 4 and accompanying text.

92. See Luo, supra note 10, at 12; Lubman, supra note 46, at 3.

(Wuhan Center) to examine the role of Chinese NGOs in providing legal services to the public.

1. Legal Aid and the Wuhan Center

The Wuhan Center occupies a historic spot in the development of legal aid in the PRC. Established in May 1992 by a Yale-educated Wuhan University law professor, it was the nation's first non-government-organized legal aid center. Since its inception, the Wuhan Center has been the subject of much positive media coverage. In 1994, its activities inspired Xiao Yang, then Minister of Justice and now President of the Supreme People's Court, to propose that the government establish its own legal-aid system. The Wuhan Center also has been an inspirational model for other university-based legal aid centers in the PRC.

Staffed by attorneys, faculty members, and student volunteers, the Wuhan Center provides two types of legal services: It answers in-person, telephone, and written inquiries for legal advice, and it represents indigent clients in civil litigation. Internally, the Wuhan Center is organized according to practice area, with separate departments for juvenile law, women's rights, administrative litigation cases, disability law, and elderly rights. Each department is headed by a full-time attorney, and the vice directors of each department are drawn from Wuhan University's law faculty. Approximately thirty undergraduate students and fifteen graduate students volunteer their time at the Wuhan Center. Unlike legal aid centers that require clients to meet income-based eligibility requirements, the Wuhan Center accepts cases based on their merits. It does not see itself as a legal aid center for the poor but rather as a provider of legal services to disadvantaged citizens nationwide.

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95. See, e.g., Huang, supra note 30; Shi Lihong, Legal Aid Office Helps Needy, CHINA DAILY, Oct. 24, 1995, available in 1995 WL 11203896; see also Yang, supra note 94, at 191 (describing newspaper coverage of the Wuhan Center).

96. See Huang, supra note 30.

97. See Wuhan Center Interview A; infra note 188 and accompanying text (citing the Wuhan Center as an inspiration for the establishment of a student legal aid center at the East China University for Politics & Law).

98. See Mao Qingguo, Guofa Weish Zhong de Zhiyuanzhe [Volunteers Defending the Nation's Law], SHIDAI BAOGAO [TIMES REPORT], n.d., at 4.


100. See Wuhan Center Interview A.

101. See Wu Letter, supra note 99.

102. See id.

103. See Wuhan Center Interview A; Liebman, supra note 30, at 57-60.

104. See Wuhan Center Interview A.
In its first six years of operation, the Wuhan Center fielded over 8000 written inquiries, handled over 7700 in-person inquiries, and represented clients in 340 cases. Currently, it expects to litigate 120 cases per year. Although most clients seek the Wuhan Center’s assistance on their own, some are referred there by the local government-run legal aid clinic and by local courts. Among the most notable cases the Wuhan Center has litigated and won in recent years were a negligence suit on behalf of a four-year-old boy against local electrical power authorities for injuries sustained from an exposed electrical transformer; an administrative litigation suit on behalf of a factory worker against a Hangzhou area Public Security Bureau for illegal detention; and a civil suit on behalf of a sixteen-year-old boy against his physically abusive father.

2. Reasons Behind the Wuhan Center’s Success

On a general level, the value of the Wuhan Center as a service provider is obvious. Insofar as people in the Wuhan area need but are unable to afford legal services, and to the extent that the government itself is unable to fill this need, the Wuhan Center helps ensure that they have access to legal counsel. The Wuhan Center’s function, however, takes on added importance when evaluated in light of its independence from the state. According to one study of the Wuhan Center’s activities, this independence permits the Wuhan Center to tackle cases that state-run legal aid centers or private attorneys often avoid. Among these cases are administrative litigation cases against public security organs and government officials for rights violations. As a matter of policy, state-organized legal aid clinics do not handle administrative

105. See Liebman, supra note 30, at 40–41.
106. See Wu Letter, supra note 99.
107. See id.
108. See Mao Qingguo, Wei Ruozhe Qiu Gongdao [Seeking Justice for the Disadvantaged], in WRITINGS ON THE RIGHTS OF SOCIETY’S DISADVANTAGED, supra note 95, at 187, 189.
110. See id. at 184 (describing newspaper coverage of the Wuhan Center).
111. See Luo, supra note 10, at 32. While the number of Chinese attorneys has increased dramatically in recent years, the number of criminal cases and administrative cases they handle has decreased. See id. at 17. One survey also indicates that while “lawyers generally appreciate indigent criminal defendants’ need for defense counsel and for free legal consultation for other indigent clients, . . . they are less ardent in representing the indigent in civil and administrative cases.” Id. at 46–47; see also STATE DEPARTMENT HUMAN RIGHTS REPORT, supra note 3, at 10 (“Defendants have frequently found it difficult to find an attorney willing to handle sensitive political cases.”).
litigation cases. Private attorneys are reluctant to take administrative litigation cases because they are difficult to litigate, do not pay well, and involve conflict with state agencies. The Wuhan Center’s willingness to litigate against the government thus suggests that legal aid NGOs can play an important role in helping citizens obtain legal redress for official misconduct.

A more difficult question to answer is whether the Wuhan Center’s success can be replicated by other NGOs. In terms of cases handled, prominence, and organizational stability, the Wuhan Center is one of the most successful law-oriented NGOs in the PRC. Four reasons account for this success. First, the Wuhan Center enjoys the support of the local government. The close ties of its founder and former director, Professor Wan Exiang, with local government officials facilitates the Wuhan Center’s interactions with state organs. Second, the Wuhan Center enjoys the support of Wuhan University, whose faculty members are more intimately integrated into the Wuhan Center’s activities than the faculty members of other law schools are at their respective university-based legal aid centers. Such faculty involvement helps draw Wuhan University’s top law students into the Wuhan Center and ensures better supervision of student volunteers. Third, the Wuhan Center is relatively well-funded when compared to other NGOs. Although the Wuhan Center still relies on the Ford Foundation for approximately seventy percent of its funds, it has succeeded in finding new revenue sources—something that other Chinese NGOs often have trouble doing. Last, the Wuhan Center maintains good relations with the Chinese media, and positive press coverage has enhanced the Wuhan Center’s credibility nationwide.

B. High Profile Litigation: The Beijing University Law Department’s Centre for Women’s Law Studies and Legal Services

One defining feature of the U.S. nonprofit sector is the presence of activist organizations dedicated to advancing a particular agenda. Tactics used by such organizations to promote their agenda include sponsoring research on relevant issues, promoting public awareness through media campaigns, and mounting court challenges against laws with which they disagree. Famous examples from the United States of the use of litigation to shape the law include the National Association for the Advancement of Colored People victory in Brown v. Board of Education, Planned Parenthood’s victory in Roe v. Wade, and the American Civil Liberties Union’s victory in Texas v.

113. See Wuhan Center Interview A.
114. See id.
115. See Liebman, supra note 30, at 42.
116. See id.
117. See Academic Interview D; Wuhan Center Interview A.
118. See Wuhan Center Interview A.
119. See Academic Interview D.
120. See Wuhan Center Interview A.
121. 347 U.S. 483 (1954) (declaring segregation to be unconstitutional).
122. 410 U.S. 113 (1973) (declaring certain laws against abortion to be unconstitutional).
These examples show the power of NGOs to reshape substantive law—at least in a country such as the United States.

Although court challenges of the type mounted by U.S. organizations against U.S. laws are impossible under the Chinese legal regime, at least one Chinese NGO has adopted a strategy of engaging in high profile litigation to advance women’s rights. This second case study profiles the Beijing University Law Department’s Centre for Women’s Law Studies & Legal Services (Beijing Daxue Falü Xuexi Funü Falü Yanjiu yu Fuwu Zhongxin) (BWC) to examine the parameters of NGO legal activism in the PRC.

1. Summary of the BWC’s Activities

The BWC was founded in late 1995 under the auspices of Beijing University’s prestigious law department. The impetus for its creation arose from the extensive attention placed on women’s issues when the Fourth World Women’s Conference convened in Beijing in early 1995. Since 1997, the BWC has sought to define for itself a dual role in protecting women’s rights. On the one hand, it has operated as a traditional legal aid center, manning telephone hotlines, responding to written correspondence, and establishing a walk-in office where women in need of legal assistance can direct their inquiries. On the other hand, it has sought to establish itself as an advocate for women’s rights, using its research arm, the media, and the courts to target specific types of legal problems that commonly affect Chinese women.

In its role as legal aid clinic, the BWC has been widely consulted, and its activities resemble those of other legal aid organizations. Between January 1996 and October 1997, the BWC handled over 3000 inquiries from throughout the PRC. The subject matter of these inquiries covered a broad spectrum of legal problems, some of which had direct gender implications, including cases of sexual harassment, rape, domestic violence, and gender-

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123. 491 U.S. 397 (1989) (declaring a law against flag desecration to be unconstitutional).
124. Such challenges are impossible in the PRC because Chinese judges do not possess the authority to strike down laws or regulations as unconstitutional, in contravention of existing law, or against public policy. For a more thorough discussion on the limits of impact litigation in the PRC, see infra Subsections II.B.2 and II.B.3.
127. See Academic Interview D.
128. See BWC Interview A.
129. Compare Section II.B, with Section II.A, and Section II.C.
based employment discrimination.\textsuperscript{131} Other inquiries handled by the BWC concerned facially neutral problems that for various social reasons impact Chinese women disproportionately or place them at a disadvantage vis-à-vis men.\textsuperscript{132} Among these issues are certain types of labor disputes, divorce cases, child custody disputes, and the division of assets after divorce. Still other inquiries fielded by the BWC have no gender component beyond the fact that the client is female. These cases run the gamut from traffic accidents, to contract disputes, to medical malpractice, to landlord-tenant conflicts, to administrative litigation against the government.\textsuperscript{133} Of the inquiries received by the BWC, the majority involve marital disputes.\textsuperscript{134} All legal advice is provided free of charge.\textsuperscript{135} Inquiries are catalogued in order to ascertain which types of problems are most endemic.\textsuperscript{136}

In its role as advocate, the BWC engages in three types of activities besides litigation. First, it sponsors academic symposia on women’s issues, conducts relevant research, and submits its findings to the government through unofficial channels.\textsuperscript{137} The purpose of such academic efforts is to increase government sensitivity to women’s issues and to urge tacitly for legal reforms that better safeguard women’s rights.\textsuperscript{138} Internal sources indicate that the central government has warmly received a number of the BWC’s reports,\textsuperscript{139} although it is impossible to trace any report to any concrete instance of legal reform. Second, the BWC relies heavily on the media to publicize women’s issues.\textsuperscript{140} This use of media resources serves the dual purpose of attracting public attention to women’s issues—with the hope that such attention will lead to social pressure for reform—and educating women about their legal rights and about the avenues available for vindicating these rights when they are violated. Third, the BWC plays a role similar to that of academic research centers in advising the government on proposed legislation.\textsuperscript{141} Although opportunities to advise the government directly are infrequent, Beijing University professors affiliated with the BWC have assisted the government in drafting the proposed Marriage & Family Law and other legislation.\textsuperscript{142}

\textsuperscript{131} See id.
\textsuperscript{132} See BWC Interview A.
\textsuperscript{133} See Yang, supra note 130, at 29.
\textsuperscript{134} See id.; BWC Interview B.
\textsuperscript{135} See BWC Interview A.
\textsuperscript{136} See id.
\textsuperscript{137} See id. One such channel is the All China Women’s Association (ACWA), one of eight mass organizations established by the CCP soon after the founding of the PRC. Because the ACWA enjoys close ties with the central government and is charged by the government with representing the interests of women during the government’s political discussions, cooperation between the BWC and the ACWA grants the BWC indirect access to the ears of Chinese leaders. See id.
\textsuperscript{138} See id.
\textsuperscript{139} See id.; BWC Interview B.
\textsuperscript{140} See BWC Interview A.
\textsuperscript{141} For a discussion of the role of academic research centers in advising the government on legal issues, see infra Sections II.E, II.F.
\textsuperscript{142} See BWC Interview A.
2. The Strategy of Using Litigation To Reshape Chinese Law

The most prominent feature that distinguishes the BWC from other legal aid centers is its litigation policy. Whereas most other legal aid organizations function as general legal service providers, litigating cases as part of regular services, the BWC is much more selective. According to one BWC staff attorney, the BWC eschews “normal cases” for “complicated, representative cases” that are likely to produce an impact beyond the vindication of a particular client’s legal rights. The focus is as much on the potential for advancing an agenda as it is on assisting a particular client in resolving her legal problems. This selectivity also means that the BWC handles only a limited number of cases each year, with the target number being approximately forty.

The broader impact the BWC attempts to achieve varies depending on the case being litigated. Sometimes the goal is to encourage lower-level government organs to reform their methods for implementing national laws. Such cases usually involve instances in which the implementing organ failed to follow legally prescribed procedures for enforcing a specific law or otherwise acted in derogation of central government policy. Other types of cases involve multiple plaintiffs, where the aim is to obtain legal redress for multiple harms arising from a single defendant’s behavior. Still other types of cases involve litigating common but severe violations of law, with the hope that the threat of litigation itself or media attention drawn to the case will deter future violations. Many cases litigated by the BWC involve new types of legal claims, ask defendants to bear legal responsibility for infringements that in the past have been ignored, or seek to convince judges to interpret substantive protections broadly. Others simply seek to enforce existing regulations.

143. Id.; see also A CAUSE OF FAR REACHING SIGNIFICANCE—RETROSPECTS AND PROSPECTS OF THE WORK MADE BY THE CENTER FOR WOMEN’S LAW STUDIES AND LEGAL SERVICES OF PEKING UNIVERSITY 3 (1998) [hereinafter CAUSE OF FAR REACHING SIGNIFICANCE] (“[T]he prime task...[for the BWC] should be handling the cases representative of age-old flaws in the existing system or newly-rising social problems. By handling and studying these cases, the [BWC] may find solutions for the problems thus appealing to and lobbying government for a change.”).

BWC internal regulations establish three criteria for accepting cases: (1) The client must be financially needy. (2) The case must involve a legal problem commonly encountered by women. (3) The infringement of the client’s rights must be severe. See Shouli Falü Yuanzhu Anjian Guise [Regulations on Accepting Requests for Legal Services], in 1997 ANNUAL REPORT OF THE CENTRE FOR WOMEN’S LAW STUDIES & LEGAL SERVICES, supra note 126, at 9. In addition to these criteria, BWC attorneys evaluate (1) the sufficiency of evidence, (2) the probability of success, and (3) whether they are already overburdened by their existing caseload. See BWC Interview A.

144. See BWC Interview B.
145. See BWC Interview A.
146. See id.
147. See id.
148. See id.
149. See id.
150. See id.
of the issue, and the details of many cases are later compiled into reports for dissemination as examples of recurring legal problems to which the government should pay closer attention.\footnote{151}

Among the most notable cases litigated by the BWC were claims against a state-owned enterprise for terminating an employee in violation of labor regulations;\footnote{152} against local police officers for the false arrest of three women on trumped-up prostitution charges;\footnote{153} against a Beijing factory for failing to pay eighty of its employees;\footnote{154} against township government officials for incorrectly implementing the nation’s family planning policy;\footnote{155} against a high school principal for the rape of a female student;\footnote{156} and on behalf of a single mother over the right to occupy the family apartment after her divorce.\footnote{157}

3. \textit{Obstacles to the Use of Litigation as a Force for Legal Change}

To date, the BWC’s strategy of using high profile litigation to encourage legal reform has met with only limited success. Of the sixty cases accepted by the BWC in 1997, only seventeen were concluded by the end of the year.\footnote{158} Although the BWC prevailed in twelve of these seventeen cases,\footnote{159} the effectiveness of its litigation strategy cannot be measured by the number of times it wins in court. Court victories do not necessarily translate into broad legal change or even result in adequate legal redress for the client. Many verdicts are faulty or provide only token relief.\footnote{160} Defendants often ignore adverse verdicts, especially when the courts cannot monitor enforcement effectively.\footnote{161} Like all litigants, the BWC is often a victim of deficiencies endemic in the Chinese judicial system.\footnote{162} While the problems created by these deficiencies are not unique to the BWC’s cases, they often fuse with

\begin{itemize}
\item \footnote{151} See id.
\item \footnote{152} See \textit{STUDY REPORT ON THE CASES HANDLED BY THE CENTER FOR WOMEN’S LAW STUDIES AND LEGAL SERVICES OF PEKING UNIVERSITY} 5–6 (1997) [hereinafter BWC CASE REPORT].
\item \footnote{153} See BWC Interview B.
\item \footnote{154} See BWC CASE REPORT, supra note 152, at 6–8.
\item \footnote{155} See BWC Interview A.
\item \footnote{156} See id.
\item \footnote{158} See BWC CASE REPORT, supra note 152, at 14.
\item \footnote{159} See id.
\item \footnote{160} See id.
\item \footnote{161} See BWC Interview A. Ideologically speaking, the Chinese judiciary is reluctant to use coercive measures to enforce judgments because civil judgments are considered to be “contradictions among the people” instead of between “the enemy and the people.” See \textit{BUSINESS REGULATION}, supra note 22, at § 2-225. In addition, verdicts involving the award of monetary damages are often difficult to enforce because the defendant lacks assets with which to compensate the plaintiff. Still damage awards, as a practical matter, are easier to enforce than verdicts involving specific performance. See BWC Interview A.
\item \footnote{162} See BWC CASE REPORT, supra note 152, at 14 ("[T]he prime reason why most of the cases could not be correctly and fairly handled lies in the current judicial system itself, which is operating unchecked and sometimes staffed by irresponsible and corrupted judges."). For examples of such deficiencies, see supra notes 22–27 and accompanying text.
\end{itemize}
tradicional views on the role of women in Chinese society, leading some judges to interpret applicable regulations in ways that perpetuate discrimination.163

Compounding the difficulty in using impact litigation as a mechanism for legal change is the limited range of available remedies. Chinese judges enjoy little discretion in fashioning proactive remedies. They can only award damages, order specific enforcement of a contract, or reinstate wrongly terminated workers.164 In cases brought under the Administrative Litigation Act (1991), for example, the judge may only rule a specific action to be illegal.165 He lacks the authority to invalidate an administrative agency’s policies, to force the agency to rewrite its procedures, or to prevent the agency from continuing with the contested practices in other instances.166 The decision holds no precedential value, and as a matter of law, it is binding only on the case at hand.167 Consequently, the role of litigation in convincing defendants to reform their practices is largely indirect. Insofar as reform occurs, it does not arise from court decree; it arises instead as a response to pressures ancillary to the litigation.

4. The Value of Activist NGOs in the PRC

Although it is tempting to evaluate the BWC by comparing it to American NGOs that engage in impact litigation in the United States, such a comparison helps little in articulating a role for activist NGOs to play in the Chinese legal arena. If the criterion for success is the ability to instigate courts to issue broad reaching injunctions or announce landmark, precedential decisions, then the BWC is a failure. But such cannot be the criterion because the Chinese legal system is not designed to permit such a role. The value of the BWC and similar agenda-oriented NGOs instead derives from their ability to perform three functions.168

The first of these functions is the prosecution of official and private malfeasance. According to the BWC’s promotional materials, the BWC has earned a reputation as a “watchdog for social evils,”169 and regardless of its inability to generate far-reaching change through litigation, its policy of

163. See BWC Interview A.
164. See id.
167. See PEERENBOOM, supra note 12, at 8; Rosenthal, A Day in Court, supra note 14.
168. These three functions do not include the provision of legal services to disadvantaged segments of the community, a role performed by the BWC in its capacity as legal aid center.
169. CAUSE OF FAR REACHING SIGNIFICANCE, supra note 143, at 7.
targeting "representative cases" has drawn much attention to many of the most common and most severe legal problems facing Chinese women today. Western nonprofit theory posits some NGOs as the equivalent to quasi-private attorneys general, and the experiences of the BWC indicate that Chinese NGOs can play this role. Even if the impact of a court victory is limited to the case at hand, the verdict at minimum represents a moral victory for the aggrieved party and many times will provide that party with at least some level of enforceable redress.

The second function is that of a voice for substantive change in relevant law. Through its research and litigation activities, the BWC has developed substantive expertise in the legal issues germane to women's rights in the PRC. Such expertise, whether presented in the form of case reports to government authorities or in the form of advice during legislative drafting sessions, can assist the government greatly in reforming the legal system in ways that better protect women's rights. Although political constraints restrict criticism of government policy, advocacy through less public channels appears to be permissible. BWC's affiliation with Beijing University in particular gives the BWC a credible voice in official circles. This ability of NGOs to serve as a voice for their constituents helps ensure that the interests of such constituents are represented in the political process.

The third function is that of resource to the public. Among the functions Western NGOs perform is dissemination of information. The cases handled by the BWC have been covered extensively by the media, making the BWC one of the best known NGOs in the PRC. Regardless of the outcome of these cases, such coverage has increased public awareness of women's legal problems, of their legal rights, and of possible remedies.

The combination of these three functions gives the BWC an important role in generating pressure for reform related to women's issues. While it might not be able to force legal change, it can instruct, urge, and perhaps motivate those who do hold such power. In other words, despite questions about the direct impact of BWC litigation, its indirect impact can be important.

C. Student Volunteerism: Fudan University Students' Legal Aid Clinic and the Huazheng Students' Legal Aid Clinic

One trend that has developed within the past three years is the rise of student-initiated, student-run legal aid centers at a number of Chinese universities. These clinics differ from the Wuhan Center, the BWC, and other similar university-based legal aid centers in that these student legal aid clinics were established neither by faculty members nor pursuant to official

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170. See Academic Interview D.
172. Universities with student-run legal aid centers include Beijing University, East China University for Politics & Law, Fudan University, Shanghai University, and Zhongnan University.
efforts on the part of a university. Instead, they were founded by students as campus organizations and are run exclusively by student volunteers under minimal faculty supervision. This case study evaluates the experiences of the Fudan University Students’ Legal Aid Center (Fudan Daxue Xuesheng Falü Yuanzhu Zhongxin) (FUSLAC) and the Students’ Legal Aid Center at the East China University for Politics & Law (Huadong Zhengfa Xueyuan Falü Yuanzhu Zhongxin) (Huazheng Center)—two of the earliest student-run legal aid centers. Among the issues raised in this study are (1) the role of NGOs as vehicles for the self-organization of activist members of society, (2) the contribution of student-organized, law-oriented groups to legal education, (3) the autonomy enjoyed by such groups, and (4) obstacles that limit their efficacy.

1. Introduction to the FUSLAC

The FUSLAC traces its roots to early 1996, when a small group of students who had been assisting local citizens with their legal problems on an ad hoc basis decided to establish a formal structure for rendering legal advice to the Shanghai community. These students obtained permission from Fudan University and the Shanghai Bureau of Justice to establish a student-run legal aid center, Fudan University’s law department agreed to assign two faculty members to supervise the students, and the FUSLAC officially entered into existence. Since 1996, FUSLAC’s staff has grown to thirty-two students with aspirations to expand to about fifty to sixty students. Students work on a purely volunteer basis, receiving neither pay nor academic credit for their work.

Formally, the FUSLAC operates under the supervision of the Shanghai Yangpu District Bureau of Justice and relies on Fudan University’s law department for faculty assistance. In reality, however, the students work autonomously, with almost no oversight from either the government or school officials. The FUSLAC’s by-laws, operating procedures, and internal regulations were all drafted by students, and students continue to dictate FUSLAC policy. Similarly, students set the criteria for admission into the FUSLAC, and FUSLAC students themselves interview potential candidates before deciding on whether to admit them. Students make all decisions related to the handling of cases. Even the decision to accept a client’s case is made by students in consultation with one another. No faculty permission
is necessary, and neither the school nor the government has imposed any restrictions on the type of cases the FUSLAC may take—though practical constraints limit such cases to only civil matters. Although school officials have nominally assigned certain faculty members to assist the FUSLAC, in practice, faculty members participate in the FUSLAC’s operations only to the extent that students seek out their professors for advice on resolving particular legal issues.

The bulk of the FUSLAC’s work consists of answering inquiries from the Shanghai population. The FUSLAC operates three student-staffed information stations where local residents may walk in and seek legal advice. The FUSLAC also receives written inquiries from all over the PRC and operates a telephone hotline devoted to women’s rights. Between June 1997 and March 1998, the FUSLAC received over 1100 in-person and telephone inquiries and replied to 442 pieces of mail. In addition to giving legal advice, FUSLAC students sometimes play a more active role in resolving their client’s legal problems by representing them in negotiations with the opposing side, in mediation, and even in court. The FUSLAC also works with local elderly associations to provide legal assistance to senior citizens.

2. Introduction to the Huazheng Center

Students at the East China University for Politics & Law established the Huazheng Center in November 1997 after attending a conference at the Wuhan Center. Like the students who founded the FUSLAC, many of the Huazheng Center’s founders had previously engaged in ad hoc dissemination of legal advice to the local community and had wanted to establish a formal vehicle for the provision of legal services to Shanghai residents. Although founded one year after the FUSLAC, the Huazheng Center has grown more rapidly, partially because it draws upon a larger student body and partially because of the greater degree of support it enjoys from school officials. Currently, the Huazheng Center operates with a staff of 130, again all student volunteers who receive no financial remuneration or academic credit for their

181. See id.
182. See infra notes 218–221 and accompanying text.
183. See FUSLAC Interview A.
185. See id. at 11. No statistics were available for the in-person and telephone inquiries, but of the written inquiries, 15% concerned administrative litigation involving alleged government misconduct. See id. at 13.
186. See FUSLAC Interview A.
187. See Academic Interview C.
188. See Huazheng Interview A.
189. See id.
190. See id.
work.\textsuperscript{191} Its goal, according to one student, is to spread legal knowledge to the community and encourage dispute resolution through legal processes.\textsuperscript{192}

Like the FUSLAC, the Huazheng Center operates autonomously, with neither the school nor the government imposing any restrictions on the type of cases the students may accept and with the students themselves being responsible for all aspects of the Huazheng Center's operation.\textsuperscript{193} In contrast to the FUSLAC, school officials have not assigned any faculty members to work with the Huazheng Center's students. Faculty are involved in the Huazheng Center's activities only insofar as students can persuade faculty members to answer their questions on substantive legal matters.\textsuperscript{194} Huazheng Center students also rely on an informal network of local lawyers for help.\textsuperscript{195}

As with the FUSLAC, the bulk of the Huazheng Center's work consists of answering inquiries for legal advice, supplemented by representation of indigent clients in mediation, negotiations, and civil litigation. Inquiries come through letters and in-person visits to the office.\textsuperscript{196} The Huazheng Center also hosts a weekly radio show during which listeners can call in with their legal questions.\textsuperscript{197} In addition to these more traditional legal aid activities, the Huazheng Center also has a division dedicated to conducting surveys, which does, on average, one survey per semester to gauge the public's understanding of everyday legal issues.\textsuperscript{198} During its first year of operation, the Huazheng Center fielded over 2000 inquiries.\textsuperscript{199} In May 1998, for the first time since its inception, students from the Huazheng Center argued in court on behalf of a client, winning the case at the trial level; they argued again in November 1998 to win the appeal.\textsuperscript{200} Among the topics covered by the surveys that the Huazheng Center has conducted are family law, the rights of the elderly, and public reaction to certain pieces of proposed legislation.\textsuperscript{201} Like the FUSLAC, the Huazheng Center also works with local elderly associations to provide legal aid to senior citizens.\textsuperscript{202}

\begin{thebibliography}{99}
\bibitem{191} See id.
\bibitem{192} See Huazheng Interview D.
\bibitem{193} See Huazheng Interview A.
\bibitem{194} See id.
\bibitem{195} See Academic Interview C.
\bibitem{196} See \textit{Fayuan Zhi Chuang [Window into Legal Aid]} 3–5 (1998) [hereinafter \textit{Window into Legal Aid}]; Huazheng Interview B.
\bibitem{197} See \textit{Window into Legal Aid}, supra note 196, at 3–5; Huazheng Interview B.
\bibitem{198} See Huazheng Interview A.
\bibitem{199} See \textit{Window into Legal Aid}, supra note 196, at 6.
\bibitem{200} See Huazheng Interview A. For a summary of the case, see \textit{Window into Legal Aid}, \textit{ supra} note 196, at 10–12.
\bibitem{201} See Huazheng Interview A.
\bibitem{202} See Academic Interview C.
\end{thebibliography}
3. The Efficacy of Student Legal Aid

The contribution of student legal aid centers in improving public access to legal services is difficult to measure. Although it is easy to quantify the number of inquiries fielded, it is hard to gauge the quality of the service provided. Due to the volume of inquiries, follow-up contact with clients after their inquiries have been answered is virtually nonexistent, and thus the extent to which clients follow a center's advice, the extent to which opposing parties pay heed to its opinion, and the extent to which its involvement ultimately results in a satisfactory resolution for the client are unknown. According to one student's estimate, the FUSLAC is effective in only about thirty percent of the inquiries it receives. Fifty percent of inquiries are deemed to be inherently unsolvable because they present problems unsuitable for legal resolution, because the client has exhausted all appropriate legal avenues, or because the client simply has no valid case. FUSLAC is unable to render assistance in the remaining twenty percent because it lacks necessary expertise.

Despite student confidence in the accuracy of the advice given, the unsupervised nature of the students' provision of legal aid raises serious concerns about quality. The vast majority of FUSLAC and Huazheng Center students are undergraduate juniors who have neither interned at law firms nor received any formal training in either legal advocacy or the substantive legal issues on which they are advising. Older students train new students, and even then, most training occurs in the form of on-the-job training as opposed to a more structured program. Although faculty members assist both FUSLAC and Huazheng Center students with their cases, such assistance is far looser than the close supervision found in legal aid clinics at U.S. law schools. Students consult with faculty only when they encounter a legal problem that they believe they cannot resolve by themselves. Students respond to the vast majority of inquiries on their own, though both the FUSLAC and the Huazheng Center have instituted internal procedures under which students check each other's work before an answer is given to a client.

Beyond lack of oversight, two other handicaps hamper student-run legal aid centers. The first of these handicaps stems from inadequate financial resources. Of the two centers discussed herein, the Huazheng Center enjoys a far greater degree of financial support from school officials and the

203. See Huazheng Interview B.
204. See FUSLAC Interview A.
205. See id.
206. See id.
207. For example, none of the four Huazheng Center students I interviewed expressed any doubts about their ability to dispense legal advice. See Huazheng Interview A; Huazheng Interview B; Huazheng Interview C; Huazheng Interview D.
208. See FUSLAC Interview A; Huazheng Interview A; Academic Interview C.
209. See FUSLAC Interview A; Huazheng Interview B.
210. See Academic Interview C.
211. See FUSLAC Interview A; Huazheng Interview D.
community. Although the East China University of Politics & Law allocates only limited direct funds to the Huazheng Center, it provides free office space, telephone service, access to photocopying equipment, and other administrative necessities. The Huazheng Center also has been able to obtain limited funding from a local foundation and a one-time grant of RMB$20,000 from a university alumnus. Yet despite such support, students often subsidize their own work—for example, by paying for their own transportation expenses.

The FUSLAC, in contrast, is almost entirely self-funded. Although Fudan University provides the FUSLAC with office space, the students themselves bear all of the FUSLAC's operating expenses—including telephone, postage, and other administrative costs that the Huazheng Center relies on its sponsoring university to bear. The FUSLAC finances its operations by levying membership dues upon its student volunteers, but because these dues are far from sufficient to cover operating expenses, most students finance their own casework—often spending, over the course of one year, ten times the amount they pay in dues to the FUSLAC. The FUSLAC receives no outside support.

The second limitation arises from the capacity in which the students represent their clients. Because they have not passed the national bar exam, students may represent clients only in their capacity as private agents appointed by clients to speak on their behalf. They are not equivalent to legal counsel and accordingly may not act with the same authority as attorneys. Because PRC law permits only attorneys to compel discovery, the students' lack of attorney status means that they often encounter difficulties when they attempt to collect evidence to support their cases. For this reason, both the FUSLAC and the Huazheng Center limit their practice to civil cases, though Huazheng Center students have advised on criminal matters without formally representing the client.

212. See Huazheng Interview A.
213. See id.
214. See Huazheng Interview B.
215. See FUSLAC Interview A.
216. See id.
217. See id.
219. See FUSLAC Interview A; Huazheng Interview B.
220. See FUSLAC Interview A; Huazheng Interview B. The other reason is that the Criminal Procedure Law (1996) contains a right-to-counsel provision, which enables the court to supply an unrepresented criminal defendant with an attorney if he so requests. See China's Legal Assistance for the Weak, Xinhua Eng. Newswire, July 4, 1997, available in 1997 WL 11185330 [hereinafter Assistance for Weak].
221. See Huazheng Interview B.
4. *The Pedagogical Value of Student Legal Aid*

The pedagogical value of student-run legal aid centers is also difficult to measure. On the one hand, students report that their participation in either the FUSLAC or the Huazheng Center has improved their communication skills, has trained them to be more skillful in spotting legal issues, and has endowed them with practical lawyering skills.222 On the other hand, because of the dearth of faculty supervision, it is unclear whether the technical skills the students feel they have developed have in fact been developed correctly.223 As one professor fears, the absence of a formal clinical education structure to support the students’ handling of their cases means that students develop technical skills in a haphazard fashion, thereby raising serious questions as to whether they are picking up bad habits along the way.224

Notwithstanding doubts about skill development, the ideological impact of participation appears to be strong. When questioned about their reasons for volunteering to work in student-run legal aid centers, students articulated a variety of reasons, ranging from an idealistic desire to serve society,225 to an intellectual desire to bridge the gap between the academic world’s perspective of legal issues and the public’s perspective,226 to the self-serving desire for practical experience.227 But regardless of their reasons for joining, all of the students with whom I met said that their experience with their respective student legal aid centers has strengthened their commitment to pro bono work.228 In contrast to their classmates who are not involved with legal aid centers—whom the students criticize as understanding legal practice largely in financial terms229—both FUSLAC and Huazheng Center students describe themselves as more inclined to see lawyers as ethically obligated to serve society.230

Furthermore, both FUSLAC and Huazheng Center students credit their legal aid work with teaching them the need for taking a more comprehensive approach toward legal reform. According to these students, most Chinese law students believe that legal solutions exist for almost all of the PRC’s problems.231 If there is a problem, it is because the legislature has not yet enacted the right law—or so the common view holds. In contrast, both FUSLAC and Huazheng Center students assert that reform of legal institutions and improving the quality of legal personnel are equally paramount to legal

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222. *See, e.g.*, FUSLAC Interview A; Huazheng Interview A; Huazheng Interview C; Huazheng Interview D.

223. *See Academic Interview C.*

224. *See id.*

225. *See Huazheng Interview B; Huazheng Interview D.*

226. *See Huazheng Interview A.*

227. *See Huazheng Interview C; Huazheng Interview D.*

228. *See FUSLAC Interview A; Huazheng Interview A; Huazheng Interview B; Huazheng Interview C; Huazheng Interview D.*

229. *See FUSLAC Interview A; Huazheng Interview C.*

230. *See FUSLAC Interview A; Huazheng Interview A.*

231. *See FUSLAC Interview A; Huazheng Interview B; Huazheng Interview C.*
Legal Reform in China

From this perspective, the pedagogical value of student-run legal aid centers does not lie in their ability to teach technical skills. According to one student, students who have not worked in a legal aid center will develop with equal proficiency after they have entered the working world any technical competence that FUSLAC and Huazheng Center students acquire as a result of their legal aid work. But without legal aid experience, such students, he believes, might lack the opportunity to develop a professional ethos that includes a commitment to public interest work. Although no objective data exists to validate the student’s theory, studies conducted within the United States show that American students who participate in legal aid work during law school show a greater commitment to public interest work after graduation, even if such students take careers in private practice. If this trend also applies to the PRC, then despite questions about their efficacy and pedagogical value, student-run legal aid centers perhaps play an important role in internalizing within students a sense of the lawyer as a moral actor. The challenge becomes how to improve the centers’ pedagogical value—in essence, how to turn student legal aid from an unstructured extracurricular activity into a true clinical education program.

Student-run legal aid centers also serve two other values. To the extent that students are capable of disseminating accurate legal knowledge to the public or providing quality legal assistance to the poor, such centers harness the energy of students for a purpose consistent with the rule of law. Because they are student-run, these organizations give students the opportunity to practice a form of self-governance. If one of the hallmarks of civil society is the presence of political space for like-minded individuals to organize themselves to engage in sociopolitical activity, then both the FUSLAC and the Huazheng Center demonstrate that even the PRC has pockets of such space.

D. Toward an Independent Bar: The Shanghai Bar Association

Among the issues confronting Chinese NGOs is the tension between an organization’s aspiration for autonomy and its need to ally itself with the government in order to advance the interests of its constituents. The experiences of the Shanghai Bar Association (SBA) illustrate this tension. The

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232. See FUSLAC Interview A; Huazheng Interview B; Huazheng Interview C.
233. See FUSLAC Interview A.
234. See id.
236. See Academic Interview C.
issues presented in this case study include (1) competition between the SBA and the Shanghai Bureau of Justice (SBOJ) for regulatory authority over Shanghai lawyers, (2) the need for SBA-SBOJ cooperation to protect attorney rights from encroachment by other government actors, and (3) logistical obstacles to greater autonomy for the SBA. The broader question examined is the extent to which bar associations can help the PRC develop an independent, self-regulating bar.

1. *The Formal Authority of Chinese Bar Associations*

Unlike American bar associations, which serve as the institutions through which American lawyers exercise self-regulation, Chinese bar associations were organized to supplement government regulation of the legal profession. Under the Lawyers Law (1996), the responsibility of bar associations is limited to (1) organizing continuing legal education, (2) educating attorneys about their ethical obligations, (3) conducting exchanges with foreign bar associations, (4) mediating disputes arising from the practice of law, and (5) other responsibilities imposed by law. Actual regulatory power over the legal profession, such as the power to admit attorneys to the bar, to approve the formation of law firms, and to discipline wayward attorneys rests with the Ministry of Justice. Accordingly, regulatory authority over the attorneys of a given locality falls under the jurisdiction of the local Bureau of Justice, although local justice bureaus will often unofficially delegate some of its regulatory duties to the local bar association.

Like other Chinese bar associations, the SBA is a registered social organization operating under the umbrella of the All China Lawyers Association. SBA membership is mandatory for all attorneys in the Shanghai area, and current membership stands at approximately 4000 attorneys. Every two years, the SBA convenes a general meeting to discuss its operations, pass plans for the next two years, and nominate panels to handle important issues. During the general meeting, SBA members also elect a board of fifty directors to manage its affairs. The board, in turn, elects a standing committee to handle day-to-day affairs and a chairman to represent the SBA. On most matters, the SBA acts through panels, each of which is responsible for a certain issue. Among the most important panels are the disciplinary panel, which plays a key role in investigating and punishing ethics violations; the newly-formed law office reform panel, which encourages the development of private law firms in Shanghai; the external

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238. See Lawyers Law, art. 40 (1996) (last modified Apr. 7, 1998) <http://www.qis.net/chinalaw/prclaw58.htm>. Of these responsibilities, the first two are the most important. See ACLA Interview A.

239. See Lawyers Law, arts. 11, 19, 45; ACLA Interview B.

240. See ACLA Interview B.

241. See Lawyers Law, art. 39 ("Lawyers must join the local bar association in the locality in which their law offices are located. Lawyers who have joined a local bar association will automatically become ACLA members.").
communications panel, which coordinates exchange with outside bar associations; and the continuing education panel, which hosts training seminars as part of the SBA’s efforts to maintain high professional standards.\textsuperscript{242}

2. The Context of Cooperation Between the SBA and the SBOJ

Relations between the SBA and the SBOJ can be best characterized as half aligned and half in conflict. This awkward situation arises from the tension between the SBA’s and the SBOJ’s shared interest in protecting Shanghai attorneys from outside abuse and the desire of many Shanghai attorneys for the Shanghai bar to remove itself from SBOJ control and become largely self-regulating.

The SBA’s incentive to cooperate with the SBOJ arises from the SBOJ’s status as an official government agency.\textsuperscript{243} Such status permits the SBOJ to take actions which the SBA, as an NGO with limited powers, cannot take on its own. Equally important, such status permits the SBOJ to deal with government agencies on equal footing. Government actors who threaten attorney interests cannot overrule or ignore the SBOJ in the same way they can dismiss the SBA. Implicit in the SBA’s cooperation with the SBOJ is its recognition that it currently lacks the power to protect the interests of its constituents with the same efficacy as the SBOJ.\textsuperscript{244}

The SBOJ’s incentive to cooperate with the SBA, in contrast, arises from its need to redefine its role in light of recent changes to the legal landscape.\textsuperscript{245} Prior to recent reforms, a key source of SBOJ influence derived from its power to appoint the directors for state-owned law firms.\textsuperscript{246} This power accorded to the SBOJ a direct role in the management of the practice of law within the Shanghai region. As privatization shifted legal practice from state-owned law firms to private firms, the SBOJ’s ability to exercise direct control over the legal community diminished. This diminished authority, in turn, raised the specter that Shanghai attorneys would seek to further reduce the SBOJ’s role within the legal community, favoring instead self-regulation through the SBA. In response to these changes, the SBOJ recognized that its legitimacy in the eyes of Shanghai lawyers would depend heavily on its ability to advance their interests.\textsuperscript{247} To the extent that the SBOJ could protect attorneys in ways that the SBA could not, the SBOJ preserved a rationale for

\begin{itemize}
\item \textsuperscript{242} See generally SBA Interview A (discussing the SBA’s structure).
\item \textsuperscript{243} See id.
\item \textsuperscript{244} Cf. Richard Tomlinson, \textit{A Much Criticized Legal System Takes Tentative Steps Toward Reform}, INT’L HERALD TRIB., Nov. 25, 1996, at 6 (expressing the chairman of the Beijing Bar Association’s view that independence from the government would decrease the bar association’s influence).
\item \textsuperscript{245} See SBA Interview A.
\item \textsuperscript{246} See id.
\item \textsuperscript{247} See id.
\end{itemize}
its leadership of the Shanghai bar. The need to justify its importance to the legal community thus became the impetus for cooperation with the SBA.248

This marriage of convenience between the SBA and the SBOJ has resulted in increased freedom for local attorneys to defend their clients and has reduced the threat of retaliation from law-enforcement and prosecutorial organs. The most prominent recent example involved a 1997 case in which a Shanghai attorney tested the bounds of zealous advocacy during his defense of a criminal defendant.249 Upset with the attorney’s advocacy, local prosecutors arrested the attorney in derogation of official procedures, charging him with suborning perjury.250 The arrest provoked an outcry from the legal community, and under the leadership of Wang Wenzheng, then chairman of the SBA and reputedly an advocate of attorney rights, members of the SBA mobilized to defend their colleague.251 The SBA sent prominent lawyers to defend the attorney in court and threatened to sue the Shanghai procuracy for illegal conduct.252 Concurrently, the SBA’s leadership worked behind the scenes to protest the arrest to various government authorities, including the CCP’s internal committee on legal affairs.253

Although the SBOJ, interested in maintaining harmonious relations with the Shanghai procuracy, was hesitant at first to defend the arrested attorney, mounting pressure from the legal community led it to join the SBA’s efforts.254 The SBOJ’s involvement, in turn, led the procuracy to open its files to SBOJ and SBA investigators, who mutually concluded that the attorney’s arrest had been illegal and that the allegation of suborning perjury could not be substantiated.255 Six months after the arrest, the Shanghai procuracy, under pressure from the SBA, the SBOJ, and other government authorities that had been mobilized by the SBA, withdrew the case on grounds that it had failed to follow proper procedures when it arrested the attorney. Although many SBA members played important roles in securing the attorney’s release, insiders believe that they could not have prevailed without the SBOJ’s assistance.256

Of equal importance to the attorney’s release was the Shanghai procuracy’s agreement to new procedures to reduce the threat of prosecutorial retaliation against zealous attorneys.257 Under an informal understanding reached between the SBOJ and the Shanghai procuracy, the procuracy agreed to institute three safeguards.258 First, it promised to observe strict internal procedures for arresting and prosecuting attorneys, especially when the case

248. See id.
249. See id.
250. See id.
251. See id.
252. See id.
253. See id.
254. See id.
255. See id.
256. See id. Between 1996 and 1998, the All China Lawyers Association received 59 complaints of attorneys being threatened or harassed by law enforcement officials. See STATE DEPARTMENT HUMAN RIGHTS REPORT, supra note 3, at 10.
257. See id.
258. See SBA Interview A.
would involve the prosecution of an attorney for conduct related to his defense of a client. Second, it agreed to refer all cases against attorneys to the highest level of its office, thereby effectively removing prosecutorial authority over attorneys from low-level prosecutors who were believed to be more likely to abuse their authority, especially against attorneys they had faced in court. Third, it pledged to consult with the SBOJ before initiating any formal legal action against an attorney.

The release of the attorney and the protections accorded by the informal agreement to Shanghai attorneys illustrate that one role NGOs can play is to prompt certain government actors to intercede against other government actors to protect legal rights.

3. Conflict Between the SBA and the SBOJ

Beneath the cooperation between the SBA and the SBOJ, however, lurk slow but steady efforts on the part of the SBA to expand its independence. In the eyes of many lawyers, the SBA’s reliance on the SBOJ to protect attorney rights from government encroachment is a double-edged sword. It is effective, but it also reinforces SBOJ control over the Shanghai legal profession. SBA distrust of the SBOJ is further fueled by the fact that many of the SBOJ personnel charged to oversee the Shanghai bar are themselves not lawyers. Although the SBA’s push for greater independence is not equivalent to a demand for complete autonomy, it represents a gradual attempt to relocate some regulatory power from the government into the hands of the profession itself.

The primary turf battle between the SBA and the SBOJ centers around control over the attorney approval process and over disciplinary oversight. Under the current relationship between the SBA and the SBOJ, the power to approve a candidate’s admission to the bar and to discipline attorneys who violate legal ethics codes resides squarely within the hands of the SBOJ. For the SBOJ, such authority provides a powerful mechanism for maintaining indirect control over the Shanghai legal community. As part of its support for a more independent bar, the SBA has advocated transferring responsibility for attorney certification to the SBA. Similarly, the SBA also has pushed for a greater role in disciplining attorneys, although insiders believe that the SBOJ is most reluctant to relinquish this power. In the interest of maintaining collegiality, the SBOJ’s current policy is to enlist SBA input before deciding

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259. See id.
260. See id.
261. See id.
262. See id.
263. See id.
264. See id.
265. See id.
on whether to censure, suspend, or disbar a wayward attorney. Professional courtesy between the SBA and the SBOJ ensures that most disciplinary decisions are made collectively after much discussion and compromise between the SBOJ and the SBA’s disciplinary panel. Yet although there has been no recent instance of the SBOJ disciplining an attorney over the SBA’s objections, SBA-SBOJ consultations on disciplinary issues occur within a context in which the SBOJ wields greater influence than the SBA.

A second area of conflict involves the chairmanship of the SBA. Although the SBA board formally elects the SBA chairman, in reality, the person elected has always been the SBOJ’s nominee. SBOJ approval of the SBA chairman is crucial given the SBA’s reliance on the SBOJ to act on its behalf in many important matters. In order for him to be effective, the SBA chairman must be well connected to the political establishment and must have strong working ties with the SBOJ. Consequently, former SBOJ heads are often favored by both the SBOJ and the SBA to serve as chairman. For the most part, the SBA has expressed little disagreement with past SBOJ nominees, but occasional conflicts do arise. One such incident occurred in 1998, when the SBA disapproved of the nominee because a number of Shanghai attorneys believed that he was insufficiently sympathetic to attorney interests. What happened next is unclear, but some attorneys believe that behind-the-scenes lobbying by SBA directors led the SBOJ to reconsider its decision. The SBOJ withdrew the nominee from consideration and instead nominated Zhang Ling, whom the SBA elected to be its chairman. If true, this incident further supports the theory that the SBOJ is gradually losing power to the SBA.

4. Other Obstacles to Independence

As suggested above, the primary political obstacles to a truly independent bar in Shanghai are two: the CCP’s de facto prohibition against truly independent social organizations and the SBA’s current inability to protect attorneys against government misconduct without the aid of the SBOJ. These two obstacles arise from the inherent structure of the Chinese political system and will remain so long as NGOs stand at a significant disadvantage when challenging government authorities.

Other obstacles to a greater role for the SBA, however, are logistical and are thus more surmountable. The first such obstacle is insufficient manpower. The dynamic growth of the Shanghai legal practice has led local attorneys to focus on business development for their own firms, with few attorneys willing to volunteer time to run bar-initiated projects. Among the SBOJ’s strongest arguments against transferring attorney certification authority to the SBA is

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266. See id.
267. See id.
268. See id.
269. See id.
270. See id.
271. See id.
the fact that the SBA lacks the staff to handle this responsibility.\textsuperscript{272} The second logistical obstacle involves SBOJ influence over the existing SBA staff. Currently, the SBA's administrative staff consists solely of SBOJ employees who have been seconded to the SBA, thereby making staff members accountable to the SBOJ instead of to the SBA.\textsuperscript{273} Although the SBA has attempted to hire staff away from the SBOJ, staff members have rebuffed these attempts, partly due to their unwillingness to give up the status, benefits, and job security they enjoy as government employees.\textsuperscript{274}

Despite such obstacles, SBA members remain hopeful. According to one source, the SBA should be able to expand its influence gradually over the next three to five years, provided that the Chinese economy continues to grow.\textsuperscript{275} The prospect of a self-governing, relatively independent bar within Shanghai could be realized in as early as ten years.\textsuperscript{276} The SBOJ, recognizing that its influence will continue to wane as the Shanghai legal market is further privatized, appears amenable to a gradual shift of responsibilities to the SBA—much in the same way that the Beijing Bureau of Justice has delegated most of the responsibility for attorney certification to the Beijing Bar Association.\textsuperscript{277} As law firms expand and stabilize, private firms will have more resources to send to the SBA. Such an increase in resources should help alleviate the SBA's staffing problems, making it logistically possible for the SBA to take on more responsibility and to better defend attorney interests. In the words of one Shanghai attorney, reform will come, but it will come slowly.\textsuperscript{278}

E. Legal Advisor to the NPC: Law Institute of the Chinese Academy of Social Sciences

The enactment of the rule of law is as much a technical feat as it is a reflection of political will. A commitment to establish a stable legal system is realizable only insofar as a nation's leaders have access to the substantive legal expertise they need to make sound decisions concerning legal reform. In the PRC, the dearth of legislators with a legal education makes the need for outside advice especially pertinent.\textsuperscript{279} According to one scholar who has worked closely with the Shanghai People's Congress, the vast majority of Chinese legislators recognize the need for legal reform but have no conception

\textsuperscript{272} See id.
\textsuperscript{273} See id.
\textsuperscript{274} See id.
\textsuperscript{275} See id.
\textsuperscript{276} See id.
\textsuperscript{277} See id.
\textsuperscript{278} See SBA Interview B.
\textsuperscript{279} One scholar estimates that less than five percent of all legislators, whether at the national level or at the local level, have had a legal education. See Academic Interview A.
of what such reform might entail.\textsuperscript{280} They genuinely believe that the PRC cannot prosper without the rule of law, but they do not know, from an operational standpoint, how to accomplish this goal.\textsuperscript{281}

When looking for substantive expertise, both the central leadership and local governments turn primarily to legal scholars, especially to leading law professors from throughout the PRC.\textsuperscript{282} This reliance on outside expertise, in turn, creates a window of opportunity for the academic world to influence policy development, the drafting of new legislation, and the implementation of new laws. According to some scholars, such influence is important because the academic world is more inclined to advocate broader and more comprehensive reforms than those proposed by government officials on their own.\textsuperscript{283}

The role played by legal scholars is broad. They range from service as official advisors to state organs, to participation in ad hoc commissions that have been convened by the government to study a particular legal issue, to the conduct of independently initiated research and the submission of their findings to the government for possible incorporation into policy, to service as instructors in specially organized legal education classes for government leaders, to informal discussion of issues with their friends in government circles.\textsuperscript{284} Although most scholarly participation occurs directly between the scholar and the government, a limited amount of activity occurs through institutional intermediaries. This case study examines the role of the Law Institute of the Chinese Academy of Social Sciences [Zhongguo Shehui Kexue Xueyuan Faxue Yanjiu Suo] (Law Institute), a quasi-governmental but relatively independent research institute that regularly advises the Chinese central government on legal issues.

1. \textit{Introduction to the Law Institute}

The Law Institute was established in 1958 as a national-level legal research center within the Chinese Academy of Science before being transferred to the Chinese Academy of Social Sciences in 1979.\textsuperscript{285} The Chinese Academy of Social Sciences, in turn, had been founded on the model of Academia Sinica in Taiwan—as a government-funded brain trust which would exist outside the state apparatus with no formal powers and engage in independent research on which the government could draw when setting policy.\textsuperscript{286} Currently, the Law Institute employs approximately 140 researchers, publishes two legal journals, has research divisions in nine areas

\textsuperscript{280} \textit{See id.}
\textsuperscript{281} \textit{See id.; CASS Law Institute Interview A.}
\textsuperscript{282} \textit{See Academic Interview B; CIS Interview A.}
\textsuperscript{283} \textit{See Academic Interview A; CIS Interview A.}
\textsuperscript{284} \textit{See Academic Interview A.}
\textsuperscript{285} \textit{See THE LAW INSTITUTE OF THE CHINESE ACADEMY OF SOCIAL SCIENCES: AN INTRODUCTION 4 (1996) [hereinafter LAW INSTITUTE INTRO].}
\textsuperscript{286} \textit{See CASS Law Institute Interview A.}
of law, and operates nine research centers.\textsuperscript{287} Although researchers draw salaries directly from the central government and all of the Law Institute's operating funds come from the government, neither the government nor the researchers themselves consider Law Institute researchers to be government employees.\textsuperscript{288}

Historically, the Law Institute has played an active role in advising the NPC on legislation and in advocating increased use of legal mechanisms for ruling the PRC. As early as the late 1970s, the Law Institute and other research centers of the Chinese Academy of Social Sciences have aided central government officials in developing theoretical, ideological, and intellectual bases to justify the PRC's transformation from a command economy into a market system.\textsuperscript{289} In 1980, the Law Institute argued for the Gang of Four to be tried in accordance with a newly promulgated criminal code\textsuperscript{290} instead of with anti-counterrevolutionary regulations that dated back to the Cultural Revolution.\textsuperscript{291} Since 1982, either at the request of the NPC or on its own volition, the Law Institute has systematically helped draft, suggested revisions to, and submitted commentary on amendments to the Chinese Constitution and over fifty laws, including such important legislation as the Criminal Procedure Law (1996), the new Criminal Law (1997), and the Company Law (1993).\textsuperscript{292} In addition, Law Institute researchers also have been seconded to various government ministries to assist with drafting implementing regulations, have been consulted by the courts and the procuracy for legal advice, have convened academic conferences on various legal subjects, and have taught courses to familiarize government officials with the law.\textsuperscript{293} Of the seven times since 1995 that President Jiang Zemin has convened special lectures on law for the highest level of the Chinese leadership, three have been conducted by Law Institute personnel.\textsuperscript{294}

2. \textit{The Law Institute's Influence}

The influence of academics on the legislative process is difficult to measure because much of the influence occurs outside the public's view. Furthermore, the method of influence varies widely depending on context. Sometimes the influence is direct, such as when government authorities directly adopt a scholar's recommended revisions to draft legislation. Other times, the influence is indirect, such as when scholarly opinion slowly

\textsuperscript{287} See \textit{LAW INSTITUTE INTRO}, supra note 285, at 4–5.
\textsuperscript{288} See \textit{CASS Law Institute Interview A}.
\textsuperscript{289} See id.
\textsuperscript{291} See \textit{CASS Law Institute Interview A}.
\textsuperscript{292} See \textit{LAW INSTITUTE INTRO}, supra note 285, at 5–6.
\textsuperscript{293} See id. at 6; \textit{CASS Law Institute Interview A}.
\textsuperscript{294} See \textit{CASS Law Institute Interview A}.
changes the thinking of government officials. Despite difficulties in quantifying such influence, it is believed to be extensive.\textsuperscript{295} According to one scholar active in Shanghai politics, the Shanghai government adopts over fifty percent of the recommendations submitted by its outside academic advisors.\textsuperscript{296} Many other scholars point to examples of scholarly advice leading government officials to implement certain previously unconsidered reforms.\textsuperscript{297} Scholars who have lectured to government officials on legal issues also report instances of the same officials later publicly adopting the views expressed in their lectures.\textsuperscript{298}

The Law Institute has enjoyed its share of such success. Among the examples cited by one Law Institute researcher were the inclusion of a provision on legal aid in the Lawyers Law (1996) and the change in the Chinese leadership's conception of rule of law. In 1995, the Law Institute, on its own initiative, submitted a report to the NPC, criticizing the initial draft of the Lawyers Law for failing to support legal aid.\textsuperscript{299} In response to the report, the NPC inserted an additional chapter into the final draft of the Lawyers Law,\textsuperscript{300} which imposed on attorneys an "obligation to provide legal assistance [to the indigent] in accordance with state regulations."\textsuperscript{301} In the second example, Law Institute researchers again took initiative. During the early stages of President Jiang's advocacy of legal reform, official government policy called for enacting "rule by law." Believing that reform based on "rule by law" would be too instrumental, the Law Institute convened a conference on the "rule of law," substituting the government's use of the word "fazhi"—meaning "rule by law"—with a homonym which meant "rule of law."\textsuperscript{302} Using the materials from the conference, the Law Institute then lobbied the Chinese leadership quietly to change its criteria for legal reform, ultimately convincing the Chinese leadership to abandon its original definition of "fazhi" in favor of the more progressive homonym.\textsuperscript{303}

Both Law Institute researchers and outsiders believe that the Law Institute has a greater voice in central government policy than any other research center.\textsuperscript{304} This influence arises from four sources, most of which are related to the Law Institute's close relationship with the central government. The first is the government's traditional reliance on the Chinese Academy of Social Sciences for advice.\textsuperscript{305} The second comes from the stature of the Law Institute's leadership. For much of its history, many of the directors and vice directors of the Law Institute have been members of the NPC Committee on

\begin{itemize}
\item \textsuperscript{295} See Academic Interview A; CASS Law Institute Interview A; CJS Interview A.
\item \textsuperscript{296} See Academic Interview A.
\item \textsuperscript{297} See, e.g., infra notes 300–301, 322 and accompanying text.
\item \textsuperscript{298} See Academic Interview A; CJS Interview A.
\item \textsuperscript{299} See CASS Law Institute Interview A.
\item \textsuperscript{300} See id.
\item \textsuperscript{302} See CASS Law Institute Interview A.
\item \textsuperscript{303} See id.
\item \textsuperscript{304} See id.; CJS Interview A.
\item \textsuperscript{305} See CASS Law Institute Interview A.
\end{itemize}
Legal Affairs or members of the Chinese Communist Party's Political Consultative Conference. The presence of senior members of the Law Institute in these two politically influential bodies permits the Law Institute to participate in policy-making in a way that other research centers cannot.

The third advantage enjoyed by the Law Institute stems from its ability to use internal channels to communicate with government leaders. As part of its reporting duties to the central government, the Law Institute periodically submits reports to the Chinese leadership, summarizing its research findings. In recent years, the Law Institute has increasingly used these reports, called yaobao, as a tool to draw the attention of senior officials to issues that its researchers believe the government has overlooked. The yaobao reporting process in effect permits the Law Institute to initiate reforms indirectly through a route that is unavailable to other organizations.

Finally, the practice of seconding Law Institute personnel to government agencies also enhances the quality of the advice given. Among the limits to the scholarly community's ability to provide sound advice to government leaders is the lack of access to government data. This lack of data means that scholars often advise in a vacuum, relying primarily on legal theory and without an understanding of the factual context surrounding a problem. Law Institute researchers, however, are temporarily considered to be staff members of the agencies to which they are assigned. Such insider status permits them to see government data, which then permits them to give more effective advice.

3. Is the Law Institute Sufficiently Independent To Be Considered an NGO?

Its close ties with the central government raise questions about whether the Law Institute is sufficiently independent to be considered an NGO. Despite the willingness of government officials to listen to legal experts, the experts most trusted might not necessarily be the most objective. The scholar who too frequently, or too severely, criticizes those who call upon him for advice will not be consulted often because policy-makers will perceive him to be overly hostile. The frequency with which the central government consults the Law Institute and the high degree of respect the Chinese leadership has for its opinions could create an institutional reluctance to rock the boat. Furthermore, among academic circles, the Law Institute is

306. See id.
307. See id.
308. See id.
309. See Academic Interview A.
310. See CASS Law Institute Interview A.
311. See id.
312. See Academic Interview A.
313. See CJS Interview A.
considered to be more conservative than the research centers organized by many Chinese law schools.\textsuperscript{314} Such conservatism perhaps reflects the Law Institute's perception of itself as legal advisor to the government,\textsuperscript{315} but this is a perception that might lead its researchers to question only the technical soundness of a proposed policy without reference to the legitimacy of its underlying substantive goals.

Notwithstanding these doubts, the Law Institute can be considered independent for two reasons. First, as the examples cited above show, Law Institute researchers have been proactive in raising legal issues to the government's attention.\textsuperscript{316} According to one source, Law Institute researchers see their role as not only providing advice when asked, but also acting affirmatively to guide the government in its understanding of what the rule of law demands.\textsuperscript{317} Second, by seeing themselves foremost as scholars, Law Institute researchers draw upon an intellectual tradition that places the scholar outside the state apparatus but allocates for him an obligation to serve society.\textsuperscript{318} While it might be the scholar's lot to respect the government's authority to set policy, such deference does not prevent him from trying to persuade the government to adjust its policy when he believes that the policy can be improved. In other words, although there might not be room for open dissent, there is much opportunity for constructive criticism through internal channels.

F. Academic Approach: Center for Judicial Studies

The ability of university-based legal research centers to advance legal reform differs from that of the Law Institute. With fewer ties to state authorities, they exert only indirect influence. This case study examines the experiences of the Center for Judicial Studies (CJS), a legal research center that was established in 1996 within Beijing University's law department. The analysis focuses on the role of academic NGOs in promoting legal reform in the PRC.

1. The Role of Academic Legal Research Centers

University-based legal research centers help promote the rule of law in three ways: First, they engage in academic research on a variety of legal issues. Much of this research involves comparative studies of Chinese law and foreign laws, with the goal being to understand which foreign laws can serve as models for Chinese legislative reform and how such laws should be modified to fit within the context of Chinese society.\textsuperscript{319} Second, legal research centers provide a pool of experts whom the government can consult for

\begin{footnotesize}
314. See id.
315. See CASS Law Institute Interview A.
317. See CASS Law Institute Interview A.
318. See supra notes 275–288 and accompanying text.
319. See CJS Interview A.
\end{footnotesize}
substantive expertise. At times, a center as a whole serves as a consultant on certain discrete issues but usually only on an ad hoc basis. Third, research centers provide an institutional base through which scholars can coordinate their activities. Having such a base facilitates the organization of scholarly conferences, the systematic publication of legal materials, and exchange across disciplines. Having a discrete institutional structure apart from the state and apart from their mother universities also makes research centers a more attractive candidate for outside funding.

Since 1996, the CJS has engaged in a number of projects which have contributed in varying degrees to legal reform. For example, CJS members meeting informally with high court officials from Hebei Province convinced the court to establish a rule prohibiting judges from having ex parte contact with litigants when the opposing party is not present. The Kunming City Intermediate Court in Yunnan Province developed discovery rules based on advice it received from the CJS. As part of its Judicial Library Series, the CJS published a six-volume translation of the opinions of famous Western jurists. This collection has been warmly received to the point that the National Judge’s College has purchased complete sets for its students. Legal conferences organized by the CJS have been heavily attended, not only by law students but also by government officials. Such activities are in addition to the legal research sponsored by the CJS, the results of which are published in academic journals or popular media.

2. The Trade-Off Between Independence and Influence

Although research centers such as the CJS can list many examples of how they have helped shape new legislation, improve court procedures, and increase both the government’s and the public’s knowledge of the law, they lack the direct influence on policy that organizations with closer government ties wield. Unlike the Law Institute, the CJS receives no government funding, has no formal interaction with the government beyond that initiated by government officials themselves, and does not have access to internal communication channels such as the yaobao reporting process.

320. See id.
321. See Academic Interview D.
322. See CJS Interview A.
323. See id.
324. See id.
325. See id.
326. Major research projects undertaken by the CJS include (1) amassing an oral history of the Chinese legal profession since the early twentieth century; (2) studies on why many Chinese citizens believe that it is unnecessary for legal professionals to have a legal education; (3) studies on the selection of judges in the countryside; and (4) studies on how to improve the legal reasoning of judges. See id.
327. See id. For a discussion of the yaobao reporting process, see supra notes 307–308 and accompanying text.
Furthermore, as a matter of internal policy, the CJS insists on maintaining a certain distance from the state.\textsuperscript{328} This distance helps preserve scholarly independence, but it comes at the price of a much reduced voice in government affairs. Unlike the Law Institute, the CJS sees itself as, and indeed is limited as a practical matter to, playing a background role—using legal scholarship as a mechanism for slowly changing the government’s, the public’s, and the legal profession’s understanding of what the law should be.\textsuperscript{329}

Because the contributions of research centers to legal reform rest primarily with their ability to reshape legal culture, their effectiveness becomes difficult to measure. Although anecdotal evidence shows instances when specific advice has led to specific reform,\textsuperscript{330} the extent to which government officials see legal scholars as more than technical advisors to be consulted on discrete legal issues remains unclear. Furthermore, anecdotal evidence shows Chinese leaders incorporating the academic community’s view of the rule of law into their official policy pronouncements,\textsuperscript{331} but Chinese leaders have not engaged in reform with the vigor or speed that the academic community would like.\textsuperscript{332} Indeed, despite the respect accorded to the expertise of legal scholars, many government officials believe the academic community to be out of touch with the sociopolitical realities of the PRC.\textsuperscript{333} The assertion that the academic community’s views on legal reforms fail to account for the “nation’s special circumstances” is a frequent criticism,\textsuperscript{334} and it indicates that a substantial gap continues to exist between the government’s view toward reform and that of legal scholars.

The impact of research centers on the general public’s understanding of the law is even more difficult to gauge. With the CJS, for example, the academic nature of most of its activities means that the average citizen is unaware of them. Although legal scholars often publish essays on legal reform in popular newspapers,\textsuperscript{335} their effect on molding public opinion is unknown. Large gaps exist between the academic understanding of law and the public’s understanding.\textsuperscript{336} In the criminal field, for example, although many scholars believe that the law should constrain the state in its exercise of power against defendants, including those who have been convicted of a crime, much of the public still adheres to the traditional communist view that criminals, by virtue of their conduct, have removed themselves from the social order and thus should enjoy no rights.\textsuperscript{337} Compounding this problem is the tendency of the

\textsuperscript{328} See CJS Interview A.
\textsuperscript{329} See id.
\textsuperscript{330} See supra notes 295–296, 299–301, 322–326 and accompanying text.
\textsuperscript{331} See supra notes 302–303 and accompanying text; see also Academic Interview A (citing examples of Shanghai government leaders adopting views expressed during specially organized lectures on the rule of law).
\textsuperscript{332} See CJS Interview A; Academic Interview A.
\textsuperscript{333} See CJS Interview A; Academic Interview A.
\textsuperscript{334} CJS Interview A.
\textsuperscript{335} See Chen, supra note 17.
\textsuperscript{336} See Academic Interview A.
\textsuperscript{337} See CJS Interview A.
public to view macroscopic legal changes as a topic better left for the academic community to discuss and for the government to decide. Insofar as the average citizen concerns himself with learning about the law, the focus appears to be immediate and utilitarian—essentially, what he needs to know to resolve the problem at hand instead of theories on what the system should be.

These limits on the power of academic research centers to initiate change, however, should not be fatal to the claim that they are important to legal reform. Although not well funded, and still tied to their parent universities, research centers such as the CJS can be seen as the Chinese analogues to nonprofit think tanks in the West. The same criticisms that apply to the CJS—for example, about its ability to play only an indirect role in reform—can apply just as easily to such American NGOs as the Rand Corporation, the Urban Institute, and the American Enterprise Institute. Yet the existence of these criticisms does not detract from the role of research-oriented NGOs as a vital source of information. In the United States, for example, much social science research on the law, the economy, domestic issues, and international problems originates from NGO-sponsored projects. Many of these projects test the empirical validity of the assumptions under which certain government policies are made or gauge the effects of such policies. Although the political climate in the PRC is likely to continue to prohibit open criticism of government policy, the experiences of the CJS show that academic research centers can serve as vehicles through which nongovernmental experts can expand the depth of public discourse on important legal issues.

338. See Academic Interview A.


341. See infra Section III.A.

342. See John Pomfret, Politics Stirs Crackdown in China; New Party Threatens Ruling Communists, WASH. POST, Jan. 3, 1999, at A23 (describing “freewheeling debates on political reform” in PRC think tanks, but also stating that the presence of such debates does not necessarily translate into democracy or even more limited political reform in the future). But see Edward X. Gu, ‘Non-establishment’ Intellectuals, Public Space, and the Creation of Non-Governmental Organizations in China: The Chen Ziming-Wang Juntao Saga, 1998 CHINA J. 39, 39 (“The public space within which intellectuals undertake political policy-relevant research is heavily monitored and controlled by the Party-state.”).
G. Protecting Consumer Rights: The China Consumers Association

Of the NGOs profiled herein, the China Consumers’ Association (Xiaofeizhe Xiehui) (CCA) most closely resembles, in terms of structure, function, and legal status, the Chinese government’s vision of an NGO. The questions raised by this case study concern (1) the relationship between the state and state-sponsored NGOs, (2) the law-related ways in which state-sponsored NGOs in general, and the CCA in particular, assist state organs in implementing government-directed policy goals, and (3) the potential for independent action by state-sponsored NGOs. It also illustrates the role of NGOs in offering alternatives to court resolution of legal disputes.

1. Introduction to the CCA

The CCA traces its roots to a proposal jointly submitted in the early 1980s to the State Council by three central government agencies. The proposal sought to establish an NGO for the purpose of protecting consumers from unscrupulous business practices that were becoming commonplace as the PRC began to introduce market mechanisms into its economy. The goal was to create a body that would represent the interests of consumers, assist in the dissemination of relevant knowledge, and provide alternate, unofficial channels for resolving consumer disputes. In December 1984, the State Council approved the proposal and established the CCA.

The CCA’s promotional literature describe its aims as providing “social supervision on commodities and services,” providing “protection to consumers’ rights and interests,” providing “reasonable and scientific guidance on consumers’ activities,” and promoting “a healthy development of the socialist market economy.” In 1993, the NPC passed the PRC’s first comprehensive consumer protection law—the Law for the Protection of Consumer Rights and Interests (Consumer Protection Law)—which assigned seven tasks to the CCA: (1) provide relevant information to consumers; (2) help relevant government authorities supervise and inspect commodities and services; (3) advise relevant government authorities on consumer affairs; (4) receive, investigate, and mediate consumer complaints; (5) appraise the quality of commodities or services whose quality has been the subject of a complaint; (6) support consumers in lawsuits against violations of consumer interests; and (7) use the media to expose and criticize activities that violate consumer interests.

343. For a discussion of the Chinese government’s attitude toward NGOs, see supra notes 58–61 and accompanying text.
344. See CCA Interview A.
345. See id.
346. See CHINA CONSUMERS’ ASSOCIATION, CHINA’S CAMPAIGN TO PROTECT CONSUMERS IN PROGRESS I (1994) [hereinafter CAMPAIGN TO PROTECT CONSUMERS].
347. CHINA CONSUMERS ASSOCIATION INTRODUCTORY BROCHURE 2 (1998) [hereinafter CCA BROCHURE].
Since 1984, the CCA has established over 20,000 local branches, over 3000 offices at the county-level or above, and approximately 25,000 liaison points at various schools, enterprises, and administrative departments. Beyond regular paid employees, it relies on over 50,000 volunteers to staff its operations. Most of its budget comes directly from the central government. As with other government-sponsored organizations, many of the CCA's top-level personnel are former government officials, particularly from the National Bureau of Industry and Commerce (Guojia Gongshang Ju) and the National Bureau of Standards (Guojia Biaojun Ju), both of which have regulatory authority over some consumer affairs and both of which were instrumental in the formation of the CCA. Over the years, however, the number of former government officials who have been sent to the CCA has dropped considerably.

2. The Breadth of the CCA's Activities

The CCA engages in a number of activities to protect consumer rights, some of which are more directly related to the law than others. Roughly speaking, these activities can be broken into four categories: (1) research on consumer issues; (2) dissemination of knowledge to the public; (3) mediation of consumer disputes; and (4) advice to the government on consumer related issues. Such activities show the CCA to be an assistant to state actors in the enforcement of consumer protection regulations.

Research conducted by the CCA includes market surveys, quality assessments, comparisons of similar products, and safety tests. The goal of such research focuses largely on acquiring information for use by the public, manufacturers, retailers, and the government in promoting honest business dealings, heightening safety, and enhancing product quality. In addition, the CCA investigates thousands of manufacturers and retailers annually to ascertain the quality of the goods sold or services provided. Although the CCA, as an NGO, has no authority to launch criminal investigations, it often works together with government agencies in its investigations, thereby playing a quasi-governmental role in the enforcement of consumer regulations. Furthermore, even when government participation is absent from

349. See CCA BROCHURE, supra note 347, at 2.
350. See id.
351. See CCA Interview A; see also CCA BROCHURE, supra note 347, at 2 ("CCA is financed by governmental aid and social donations.").
352. See CCA Interview A.
353. See id.
354. See CAMPAIGN TO PROTECT CONSUMERS, supra note 346, at 2–3.
355. See CCA Interview A.
356. See CCA BROCHURE, supra note 347, at 15.
357. See id.
an investigation, the CCA may submit its findings to the relevant state authorities for a possible government response.\textsuperscript{358}

Consumer education is a primary goal of the CCA.\textsuperscript{359} CCA efforts to disseminate knowledge cover a broad spectrum of information. Such dissemination occurs primarily through media channels, through organized events, such as the events held every March 15 on World Consumer Rights Day, and through the fielding by CCA staff of telephone calls from disgruntled consumers.\textsuperscript{360} Some dissemination efforts focus on product knowledge: A prime example is the publication of the results of product quality tests conducted by the CCA.\textsuperscript{361} Other efforts focus on consumer rights. The CCA seeks to increase consumer awareness of the legal protections provided by the Consumer Protection Law; it also attempts to warn consumers of legal dangers in certain types of market transactions.\textsuperscript{362} One recent example of such warnings involved newspaper publication of explanations for commonly used contractual terms after a rash of adverse court judgments against consumers who had entered into real estate contracts without fully understanding the implications of their provisions.\textsuperscript{363} The CCA also uses the media to highlight certain cases that can serve as models for instructing the public on certain types of consumer problems.\textsuperscript{364}

With respect to the enforcement of Chinese consumer regulations, the CCA plays a more active role. First, the CCA fields complaints from disgruntled consumers and then attempts to mediate the dispute.\textsuperscript{365} Such mediation activity constitutes a large portion of the CCA’s work. Since 1996, its offices have received over three million complaints and successfully settled approximately ninety-seven percent of them.\textsuperscript{366} Although the role of the CCA in settling disputes is that of an impartial mediator rather than an advocate for the aggrieved consumer, its participation usually encourages retailers to settle more quickly and more favorably than if the consumer had not contacted the CCA.\textsuperscript{367} Part of the reason for this increased willingness to settle disputes is the perception that the CCA speaks with the unofficial backing of the government.\textsuperscript{368} If the retailer had indeed violated consumer regulations, it would be better off resolving the dispute through the CCA’s informal channels than facing official government prosecution.\textsuperscript{369} Second, the CCA

\textsuperscript{358} See CCA Interview A.
\textsuperscript{359} See id.
\textsuperscript{360} See CAMPAIGN TO PROTECT CONSUMERS, supra note 346, at 3–5; CCA BROCHURE, supra note 347, at 17–18.
\textsuperscript{361} See CAMPAIGN TO PROTECT CONSUMERS, supra note 346, at 2–4.
\textsuperscript{362} See CCA Interview A.
\textsuperscript{363} See id.
\textsuperscript{364} See id.
\textsuperscript{365} See CAMPAIGN TO PROTECT CONSUMERS, supra note 346, at 2; CCA BROCHURE, supra note 347, at 2.
\textsuperscript{367} See CCA Interview A.
\textsuperscript{368} See id.
\textsuperscript{369} See id.
tracks violations, referring retailers with particularly egregious violations or with multiple violations to government authorities for prosecution. 370 Third, when mediation fails, the CCA often encourages disgruntled consumers to seek legal redress. 371 The Consumer Protection Law charges the CCA with supporting consumer-initiated lawsuits against violators. 372 The law, however, does not define what the CCA’s duty to support such litigation actually entails, and the CCA remains unsure about how extensive a role it should play in this regard. 373 To date, much of the CCA’s support has been in the form of access to legal advice. Over the past year, CCA branches, however, have begun to coordinate with local law firms, arranging for firms to send lawyers to CCA offices to advise disgruntled consumers on the merits of litigation. 374

Beyond disseminating information and assisting with the enforcement of consumer protection laws, the CCA has played a central role in advising the government on consumer issues. Some of the impetus to adopt the Consumer Protection Law, for example, arose from CCA lobbying for greater legal protection for Chinese consumers. 375 Indeed, the CCA prepared the initial draft of the Consumer Protection Law and participated extensively in subsequent revisions of the draft. 376

Since the passage of the Consumer Protection Law in 1993, the CCA has continued to push for further legislative reforms. In this regard, the CCA is less a lobbyist in the Western sense of the word and more of a technical advisor. 377 It attempts to prompt legislative reform in largely a passive manner, primarily by submitting through formal channels the results of its research findings, by identifying recurring consumer problems, and by recommending new product standards. 378 To date, these efforts have met with varying degrees of success, with the most notable being the passage of regulations governing the quality of electronic goods. 379 Other CCA activities with respect to defining legal rules include its request to the Supreme People’s Court to issue an official interpretation to clarify certain ambiguities in the Consumer Protection Law. 380 The Court is expected to issue such an interpretation soon. 381
3. The Character of a Quasi-Governmental NGO

As an organization, the CCA shares many similarities with the All China Lawyers Association (ACLA): Both organizations exist officially outside the government apparatus but operate as state-sponsored NGOs, perform quasi-regulatory functions under the supervision of state organs, and have close working ties with state actors. From my conversations with representatives of the CCA and the ACLA, these state-sponsored NGOs appear to operate largely according to the paradigm of state-led civil society. Yet there are also signs of a desire for increased independence.

According to these conversations, both the CCA and the ACLA see themselves as separate from the state but operating within certain government-imposed confines. The feature most frequently raised in both conversations to distinguish the organization from its state counterpart was the lack of formal regulatory authority over the subject matter to which they were assigned. For example, the CCA official with whom I spoke complained about the CCA's need to rely on several different administrative agencies to enforce consumer protection laws. When the CCA found a violation or believed that certain reforms were needed, it could only refer the matter to the government; it could not sanction the violator directly or enact new regulations. Similarly, the ACLA officials with whom I spoke complained about the ACLA's lack of disciplinary authority over wayward attorneys. If the ACLA found a violation or believed that certain reforms were needed, it had to rely on the Ministry of Justice to act. Implicit in both sets of complaints was the belief that if the CCA or the ACLA were indeed part of the government, they would be able to take more aggressive action in protecting consumer rights or regulating the legal profession. Yet both the CCA and the ACLA representatives with whom I spoke also predicted a gradual increase in their organization's authority to regulate directly consumer affairs and the legal profession over the next several years.

There also was a tendency for both CCA and ACLA staff to see their respective organizations as being in a subordinate relationship to the state. The conversations reflected a belief that the state retained full authority to decide the respective issues that the CCA and the ACLA were assigned to monitor. The organizations' role was only to assist the state in enacting its policies. According to one CCA representative, political sensitivities prevent the CCA from criticizing government policies with which it disagrees. Instead, advocacy is always in the form of suggestions.

Ironically, the law itself functions as a limit on the organizations' willingness to be more proactive. The CCA defined its role by referring to the

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382. See supra notes 58–60 and accompanying text.
383. See CCA Interview A; ACLA Interview B.
384. See CCA Interview A.
385. See ACLA Interview A; ACLA Interview B.
386. See CCA Interview A; ACLA Interview B.
387. See CCA Interview A.
Consumer Protection Law, while the ACLA defined its role by referring to the Lawyers Law. Both the CCA and the ACLA viewed these laws as establishing substantive limits on the activities of the two organizations. Insofar as either organization wished to do more, it believed that it could not expand its activities until the NPC amended the Consumer Protection Law or the Lawyers Law to permit the organization to take over responsibilities currently assigned to state actors.

III. OBSTACLES TO THE DEVELOPMENT OF A STRONG NONPROFIT SECTOR

Part II of this Article demonstrated that Chinese NGOs can contribute in at least eleven ways to the development of the rule of law in the PRC:

(1) Supplement the state’s and the private sector’s efforts to provide legal services to people who cannot afford legal representation.

(2) Increase public awareness of rights, legal duties, and avenues for redress; expand public awareness of the legal significance attached to one’s behavior.

(3) Aid law enforcement by helping plaintiffs challenge violations of law or by reporting such violations to the appropriate authorities.

(4) Assist ordinary citizens in challenging arbitrary or erroneous action on the part of governmental officials.

(5) Assist the state in regulating certain professions or market activities, function as institutions to which the state can delegate regulatory authority, and serve as sources for standards above and beyond the minimum limits imposed by law.

(6) Develop substantive expertise for use in advising government leaders on legislation, implementation, and policy formation;

388. See id.
389. See ACLA Interview B.
390. See CCA Interview A; ACLA Interview B.
391. See CCA Interview A; ACLA Interview B.
392. See, e.g., supra Sections II.A, II.B, II.C.
393. See, e.g., supra Sections II.B, II.G.
394. See, e.g., supra Sections II.B, II.G.
395. See, e.g., supra Sections II.A, II.B, II.C, II.D.
396. See, e.g., supra Sections II.D, II.G.
influence the Chinese leadership’s conception of the role of law in society. 397

(7) Advocate the interests of disadvantaged segments of the community; draw attention to legal problems about which the mainstream community or the government might not be aware. 398

(8) Mount indirect challenges to government policy by suggesting reforms, litigating unlawful implementation methods, or encouraging some state organs to curb the activity of others. 399

(9) Assist in the training of members of the legal profession (including law students) and in the inculcation of a sense of ethical responsibility and public service. 400

(10) Serve as structures through which private parties interested in legal reform can pool resources and organize their activities. 401

(11) Mediate private disputes and provide alternate forums for dispute resolution. 402

The experiences of the eight NGOs profiled in Part II prove the feasibility of NGO involvement in legal reform. They also show, however, that such involvement occurs within fixed parameters—that NGO participation in Chinese legal reform has distinct characteristics brought about by the political climate, regulatory environment, and socioeconomic context of the PRC. These characteristics generally restrict NGO autonomy, thereby discouraging independent initiative. They also handicap the development of a strong, independent nonprofit sector as an alternative to the government and the private sector. This part examines the constraints on NGO activity in the PRC.

A. Political Constraints: The Need for a Political Patron

The political constraints on NGO activity express themselves in a number of different forms. The most direct constraint is the CCP’s willingness to suppress NGOs that it perceives to be hostile to its authority. This willingness to suppress allegedly hostile organizations was most visibly

397. See, e.g., supra Sections II.B, II.E, II.F.
398. See, e.g., supra Sections II.B, II.G.
399. See, e.g., supra Sections II.B, II.D, II.F.
400. See, e.g., supra Sections II.C, II.D.
401. See, e.g., supra Sections II.C, II.F.
402. See, e.g., supra Sections II.C, II.G.
Legal Reform in China

exhibited in the latter half of 1998, when the government cracked down on dissident efforts to form the PRC’s first legally registered opposition party. This crackdown led to the arrest, prosecution, and sentencing of the movement’s leaders to over ten years of prison each. Indeed, many believe that the high profile of the suppression was meant to be a message from the government to activist members of the public: The exercise of one’s freedom of association shall be acceptable only if such exercise does not seek to negate the CCP’s leadership.

Accompanying the crackdown were other efforts to tighten control over the freedom of association. These efforts included the promulgation of rules threatening film directors, singers, and software developers with life imprisonment if they attempt to “overthrow state power” or “endanger national security”; the exclusion of legal recognition for trade union bodies other than those under the All China Federation of Trade Unions; and new regulations to control e-mail networks more tightly.

This threat of suppression means that Chinese NGOs do not follow the adversarial model adopted by many NGOs in the West. When discussing their relations with the government, the NGOs profiled in Part II most often described these relations in one of two ways. Some identified themselves primarily as intermediaries between the state and the people—essentially vehicles that educate the public about the laws handed down by the Chinese leadership and through which the sentiments of the ordinary citizen can


404. See John Pomfret, China Tightens Reins on Dissent; Some Professionals Face Life in Prison, WASH. POST, Dec. 24, 1998, at A1 (describing sentencing of Xu Wenli to thirteen years in prison, Qin Yongmin to twelve years in prison, and Wang Youcai to eleven years in prison).

405. See Mary Kwang, China’s Dissident Movement Gets a New Lease on Life, STRAITS TIMES, Jan. 17, 1999, at 40 (quoting Premier Li Peng as saying that groups that try “to negate the leadership of the Communist Party . . . will not be allowed to exist”); China: Li: NPC Has No Plans for Structural Reform, CHINA DAILY, Dec. 2, 1998, available in 1998 WL 20479584 (same); see also Michael Laris, China Says Dissident Is “Security” Suspect; Charge Seen as Warning to Opposition Party, WASH. POST, Dec. 3, 1998, at A36 (describing arrest of democracy activist Xu Wenli as a “warning to other would-be leaders” of a Chinese opposition party); Pomfret, supra note 342 (describing crackdown as both in line with CCP intolerance of organized dissent and also part of a general political tightening); cf. John Mintz & Bart Gellman, U.S. Fears More Extensive Political Crackdown in China, WASH. POST, Jan. 12, 1999, at A13 (expressing fears that the Chinese government might imprison hundreds of activists in order to prevent the formation of the PRC’s first opposition party).

406. Matt Forney, Officials Are Muzzling Opposing Opinions Despite Rights Accord, ASIAN WALL ST. J., Dec. 28, 1998, at 1 (“[China has] widened its campaign against more political openness to include the media, academics and artists.”); see also Pomfret, supra note 342.


408. See id.
percolate up to the Chinese leadership.409 Others portrayed themselves as outside bodies of expertise, available to advise on public issues whenever the government desires such advice.410 Either way, implicit in the two portrayals is the image of the NGO as an assistant to the government, helping the government better accomplish official goals, instead of a maverick who breaks from accepted policy to pursue an independent agenda or a critic who challenges the government’s decisions. Even the more activist organizations tend to describe their activities as drawing crucial issues to the government’s attention rather than pressuring the government for reform.411 Similarly, NGOs that challenge government action in court tend to characterize their challenges as attempts to ensure that local government conduct is consistent with the standards articulated by the central government rather than as opposition to official policy.412

The initiative taken by many of the eight NGOs to change government policy413 shows that some of this self-avowed deference to the government is simply lip service—a way of dressing up activism as advice in order to fit it within the confines of acceptable political behavior. But such deference also reflects to some degree a genuine perception on the part of some NGOs, especially those with close ties to the government, that an independent NGO community at this point in time would disrupt social stability.414 Some organizations are used to being led by the state and thus believe their proper role is to work within the parameters of the authority the state has delegated to them and to execute the mission the state has defined for them.415 But regardless of the degree to which an NGO actually believes that it should play only a supporting role to the government, the result of this deference is likely to be self-restraint on the part of NGOs in opposing government policy. The deference model allocates to the state primary responsibility for directing legal reform.

From a power-dynamics perspective, the image of the NGO as an assistant to the government also reflects the high degree to which power remains concentrated in state organs instead of dispersed throughout society at large. For example, as the experiences of the SBA and the CCA evince, the ability of NGOs to protect the legal rights of their constituents often hinges on their ability to mobilize government organs to intercede on their behalf, especially when the threat arises from another government arm.416 In the legislative context, the experiences of the Law Institute and the CJS show that

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409. See, e.g., CCA Interview A; BWC Interview A.
410. See, e.g., CASS Interview A; CJS Interview A; supra Subsection II.F.1.
411. See, e.g., BWC Interview B; CJS Interview A; see also supra Subsection II.F.2 (discussing difficulties associated with initiating change in government policy).
412. See, e.g., Wuhan Center Interview A; supra note 146 and accompanying text.
413. See supra Sections II.B, II.D, II.E, II.F, II.G.
414. Representatives from both the CCA and the ACLA said that although their respective organizations favor greater autonomy, the current level of autonomy they enjoy is appropriate given the PRC’s current state of development. See CCA Interview A; ACLA Interview B.
415. See CCA Interview A; ACLA Interview B; see also supra Subsection II.G.3 (describing the CCA’s and the ACLA’s views of their role).
416. See supra Subsection II.D.2; supra notes 368–370 and accompanying text.
Legal Reform in China

the ability of NGOs to initiate legal change depends on their ability to convince government leaders to adopt their recommendations. With only the power to litigate administrative error and no power to compel more in-depth change, Chinese NGOs often cannot be effective unless they are able to associate themselves with a state actor—whether that actor is an administrative agency or an influential government official. This reliance on a government patron, however, means that the government can wield significant indirect control over an NGO’s activities. It also makes NGO-initiated reform more conservative by establishing the patron’s tolerance for reform as the de facto limit on the scope and breadth of the change the NGO can successfully advocate.

In short, these political constraints mean that the paradigm of state-led civil society continues to apply to Chinese NGOs engaged in legal reform. Although Part II of this Article demonstrated that Chinese NGOs can contribute greatly to the establishment of a stable legal system in the PRC, it remains unclear how much of their success is attributable to the central government’s own desire to promote rule of law. Where an NGO’s interests and the Chinese leadership’s interests are aligned, the range of permissible activity appears to be great, but where the interests are in direct conflict, it appears that the NGO must defer. If this generalization is true, then perhaps the fundamental factor to an NGO’s ability to initiate reform becomes a question of political astuteness: Is the NGO savvy enough to work for change from within?

B. Legal Constraints: The Regulations on the Registration and Management of Social Organizations

The political constraints on NGO autonomy are supplemented by a regulatory environment designed to maximize government control over NGO activity. For much of the past ten years, the central government regulated NGOs through a set of regulations promulgated after the 1989 suppression of democracy activists in Tiananmen Square. These regulations defined a two-step registration process through which a social organization could obtain formal legal status only if it found a state organ or CCP-affiliated body to sponsor its existence and then obtained the approval of the Ministry of Civil Affairs (MCA). These regulations assigned to the sponsor primary responsibility for supervising the organization’s activities. They also vested approval authority of the organization’s budget and staffing plans in the

417. See supra Sections II.B, II.E, II.F.
418. See supra notes 164–167 and accompanying text.
420. See id. arts. 2, 6, 7, 9–14.
421. See id. arts. 5–8, 23–24.
sponsor instead of in the organization itself. The effect of the sponsor requirement was to favor the formation of NGOs by individuals with close ties to the government, while making it difficult for those outside the state establishment to organize formally. The 1989 Regulations' prohibition of multiple organizations in the same region from operating in the same field also allowed government-sponsored NGOs to monopolize certain activities, denying other organizations the opportunity to compete with them.

In November 1998, the State Council repealed the 1989 Regulations, replacing them with a new set of Regulations on the Registration and Administration of Social Organizations. These new regulations reaffirmed the CCP's policy of strict oversight over NGOs, and indeed sought to tighten government control over all types of social organizations. The 1998 Regulations follow largely the regulatory structure enacted in the 1989 Regulations but changed this structure in nine major ways:

1. Using language stronger than that in the 1989 Regulations, they prohibit social organizations from acting in ways that would violate government policy, harm national unity, or endanger state security. Critics charge this new language with foreclosing the opportunity for NGOs to dissent against government policy.

2. They set forth minimum membership and funding requirements for the establishment of legally registered social organizations.

3. They add an extra step to the registration process, requiring the social organization to first find a sponsor, second obtain initial approval from the MCA to engage in preparatory activities to establish the organization, and then obtain final approval from the MCA for the formal founding of the organization. The addition of this extra step was to prevent groups from circumventing the registration process by

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422. See id. art. 17.
423. See Academic Interview E.
424. See 1989 Regulations, art. 16.
426. See Becker, supra note 407, at 17 (quoting Asia NGO expert Allen Choate, who described the 1998 Regulations as "tougther" and "more controlling").
428. See BOUND AND GAGGED, supra note 425, at 5.
430. See id. art. 12.
Operating in the guise of a preparatory committee for an indefinite period of time. They permit the MCA to prohibit preemptively the registration of any social organization that it believes will engage in activities contrary to government policy.

They prohibit individuals who have been deprived of their political rights—namely political dissidents—from forming or holding positions of responsibility in a social organization.

They define in detail the ways in which sponsors shall supervise the social organization's activities. The 1989 Regulations did not define the sponsor's supervisory role with particularity, and thus in practice, some sponsors exercised only minimal supervision over the organizations they sponsored.

They permit criminal prosecution of any party who acts through an unregistered social organization. They do not contain the 1989 Regulations' procedures for administrative appeal of the MCA's decisions, thereby immunizing MCA decisions from challenge.

They require all social organizations to re-register within one year of the promulgation of the 1998 Regulations. Critics believe that the purpose behind this re-registration requirement is the government's desire to purge the PRC of...
Critics of the 1998 Regulations believe that these regulations, besides increasing government control of NGOs, will force NGOs to devote valuable resources to meeting bureaucratic demands, discourage NGOs from pursuing innovative projects, and inject arbitrariness and the potential for corruption into the registration process.\textsuperscript{439}

Despite these concerns, the effect the 1998 Regulations will have on Chinese NGOs involved in legal reform is unclear. While the nonprofit community expressed alarm when the 1998 Regulations were first promulgated, some of this fear has subsided as the expected chilling effect and the expected purge has failed to occur.\textsuperscript{441} Furthermore, according to one person who works closely with Chinese NGOs, many NGOs involved in legal matters exist as subdivisions of public universities and thus are considered to be secondary or tertiary organizations.\textsuperscript{442} As secondary and tertiary organizations, these NGOs are supervised by their parent institution and do not need to register with the MCA.\textsuperscript{443} They thus have been able to evade the regulatory framework. If there is a direct legal threat to these NGOs, it will not surface until the enactment of the proposed Regulations on the Registration and Management of Institutional Units, which would apply to NGOs that are established underneath a parent institution.\textsuperscript{444} The content of these proposed regulations remains unknown to the public.

Although the 1998 Regulations are not expected to prevent Chinese NGOs from continuing their current legal reform activities, this new legal climate does pose obstacles to the expansion of the role of NGOs in the legal arena. First, the regulations hinder the participation of NGOs that are organized along models different from those currently active in legal affairs. For example, while academic-organized organizations can evade registration, most grass-roots organizations cannot enter into existence unless they comply with the 1998 Regulations.\textsuperscript{445} Second, the fact that the MCA has not exercised

\begin{itemize}
  \item \textsuperscript{439} See \textit{Bound and Gagged}, supra note 425, at 6.
  \item \textsuperscript{440} See \textit{id.} at 6--7.
  \item \textsuperscript{441} See \textit{Academic Interview D.}
  \item \textsuperscript{442} See \textit{id.} Of the eight NGOs profiled in Part II, five were established as subdivisions or affiliates of a public university.
  \item \textsuperscript{443} See \textit{Academic Interview D.} Other ways that groups have evaded the registration process have been to register as a business or to remain unregistered. See \textit{id.} In the past, the government seemed willing to tolerate unregistered groups so long as they maintained a low profile and did not engage in any politically sensitive activities. The government's current attitude is unclear. With respect to NGOs operating under the guise of businesses, the government has sought to crack down on these NGOs by promulgating the provisional Regulations on the Registration and Management of People-Organized Non-Enterprise Units (\textit{Minban Feiyaide Danwei Dengji Guanli Zanxing Tiaoli}). These provisional regulations subject NGOs registered as businesses to registration requirements similar to those required under the 1998 Regulations. See \textit{Becker, supra} note 407, at 17.
  \item \textsuperscript{444} See \textit{Becker, supra} note 407, at 17 (saying that the Chinese government is currently preparing regulations on the registration and management of institutional units).
  \item \textsuperscript{445} This prejudice against grassroots organizations perhaps reflects the fear that such organizations, if they are able to mobilize large numbers of workers, pose a greater threat to the CCP than advocacy for political reforms by establishment intellectuals. \textit{Cf.} Pomfret, \textit{supra} note 342
\end{itemize}
its expanded authority under the 1998 Regulations to clamp down on unregistered or more independent-minded NGOs does not mean that it will not do so in the future. The threat is still there, and on the margin, the possibility of MCA suppression might convince NGOs to toe the government line more closely.

In the end, whether or not the 1998 Regulations (or the proposed regulations covering secondary and tertiary organizations) will impede NGO formation over the long run will most likely depend on the CCP’s perception of the threat, if any, that the nonprofit sector will pose to its authority. Although the 1989 Regulations were implemented by CCP hard-liners as part of a post-Tiananmen backlash against the freedom of association, they have not prevented the dramatic growth of the Chinese nonprofit sector over the past ten years. Furthermore, this is a growth that the Chinese leadership does not appear to want to stop, let alone rollback. At worst, the 1998 Regulations represent an attempt to ensure that the state continues to direct NGO activity; it represents the desire to control and not the desire to eliminate. Insofar as the CCP does not feel a need to shrink the current scope of permissible activity, the 1998 Regulations will not prevent NGOs in the legal arena from operating as before. And insofar as the CCP believes that a liberalization of the nonprofit sector will help the state cope with the PRC’s domestic problems, then the 1998 Regulations could become more of a procedural annoyance than a substantive limit on NGO activity.

C. Operational Constraints: Funding and Managing Chinese NGOs

The last sets of obstacles to the expansion of NGO participation in legal affairs are operational, arising from the financial needs and the organizational structure of the NGOs themselves. Of these obstacles, the most severe appear to be financial.

1. Inadequate Funding

Of the eight NGOs profiled in Part II, five have expressly identified inadequate funding as the most serious constraint on their activities. Three receive most of their funding from the Ford Foundation and would be unable to continue their operations without it.

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446. See Academic Interview D.
448. See CAUSE OF FAR REACHING SIGNIFICANCE, supra note 143, at 5–6 (describing the BWC's staffing problem); FUSLAC Interview A; Huazheng Interview A; SBA Interview A; CCA Interview A; Academic Interview C.
to sustain their work if such funding were withdrawn. All appear to live hand-to-mouth, with no endowments to generate income or reserves to sustain themselves during times of financial hardship. These budgetary constraints not only limit the number of projects in which an NGO can engage but also appear to place many of the NGOs in a precarious state of existence. If their existing funding sources disappear, they are likely to wither away and die. Inadequate funding also exacerbates staffing problems, making it difficult for NGOs to hire and retain quality personnel. In some cases, inadequate funding infringes on autonomy by forcing the NGO to rely on government personnel to staff its operations.

Of the eight NGOs profiled, only two appeared to be financially stable. These two, the China Consumers Association and the Law Institute, however, receive the bulk of their operating funds from the government, and such reliance on government funding, in turn, raises questions of autonomy. It should be no surprise that the three NGOs mentioned herein that were funded by the government also have retired government officials within their leadership ranks, were formed by the state instead of by private individuals, and have been assigned formal supporting roles to the government.

Chinese NGOs face funding problems for five reasons. The first reason is socio-historical—namely the absence within Chinese society of a tradition of charitable giving to strangers. This disinclination to give to strangers is compounded by the communist state’s past monopoly of social services. The average Chinese citizen continues to see the state as the source for solutions to social problems and is thus unfamiliar with the concept and value of philanthropy.

The second reason is economic. Despite rapid economic growth, the PRC remains a developing country, and the average Chinese citizen is poor by Western standards. Social wealth has not reached a level sufficient to support a large nonprofit sector. Although the rise of a new generation of wealthy businessmen has led to greater levels of giving, the amount donated is still small when compared to Western giving. Many donors tend to see their donations as informal investments rather than charity and thus often will not

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449. These three are the Wuhan Center, the BWC, and the CIS. See Academic Interview D.
450. See id.
451. See, e.g., CAUSE OF FAR REACHING SIGNIFICANCE, supra note 143, at 5–6 (describing the BWC’s staffing problem).
452. See, e.g., supra notes 273–274 and accompanying text.
453. See supra notes 288, 351 and accompanying text.
454. The three are the SBA, the Law Institute, and the CCA.
455. See supra notes 306, 352–353 and accompanying text.
456. See supra notes 285, 344–346 and accompanying text.
457. See supra notes 286, 305, 348 and accompanying text.
458. See Xin & Zhang, supra note 58, at 91.
459. See id. at 104.
460. See id.
461. See Academic Interview D.
give unless they are able to reap some form of gain from the transaction or are granted some role in directing the activities of the NGO.\footnote{462} The third reason stems from a dearth of tax incentives for corporations and private individuals to donate to charitable causes.\footnote{463} Although the National Tax Bureau and the Ministry of Finance attempted to redress this problem by jointly issuing a circular in March 1997 to allow charitable contributions to cultural programs to be deductible for up to three percent of total profits,\footnote{464} it is unclear whether these new rules have resulted in a rise in donations. Furthermore, the high rate of tax evasion in the PRC\footnote{465} suggests that the utility of these incentives are limited.

The fourth reason Chinese NGOs face funding problems is inexperience on the part of NGOs in strategic fundraising. To date, most fundraising has been haphazard.\footnote{466} Deficiencies in the Chinese legal regime hamper capital formation, thereby preventing Chinese NGOs from accumulating large endowments with which to sustain their operations.\footnote{467} Only recently have NGO leaders begun to realize the importance of taking systematic steps toward cultivating reliable, long-term sources of revenue.\footnote{468}

The last reason is a lack of public accountability. Inconsistent accounting and a lack of transparency make it difficult for outsiders to assess the fiscal soundness of Chinese NGOs, which in turn leads potential donors to hesitate on making contributions.\footnote{469}

An expansion of the Chinese nonprofit sector therefore requires both specific reforms directed at enabling Chinese NGOs to be financially self-sufficient as well as broader socioeconomic changes within Chinese society. Specific reforms could include (1) the expansion of tax incentives for charitable giving, (2) the implementation of laws on the corporate governance of nonprofit entities, with such laws being tailored in a way that would aid capital accumulation, (3) a loosening of the restrictions on donations from foreign sources, (4) clear auditing guidelines for NGOs, and (5) requiring public disclosure of the financial statements of NGOs. The value of such reforms, however, would be limited until more fundamental change occurs in the PRC. If the PRC is to fund a strong nonprofit sector, it cannot do so until

\footnotetext{462}{See id.} \footnotetext{463}{See Xin & Zhang, supra note 58, at 102.} \footnotetext{464}{See id.} \footnotetext{465}{See Rowan Callick, Untouchables Getting a Feel for China’s Lost Billions, AUSTRALIAN FIN. REV., Mar. 17, 1999, at 1; China Recovers 20 Bln Yuan in Tax Defaults in 1998, AFX News, Jan. 13, 1999, available in 1999 WL 10489910; Damian Wild, Chinese Look to Foreign Experts To Tackle Tax, ACCT. AGE, Aug. 13, 1998, at 2; see also Frank Langfitt, Yes to Maoism, No to the Tax Collector: Chinese Village Prosper by Avoiding Levies, BALT. SUN, Mar. 26, 1999, at 14A (describing unpaid taxes as a “chronic problem” in the PRC).} \footnotetext{466}{See Academic Interview D.} \footnotetext{467}{See Xin & Zhang, supra note 58, at 103–04.} \footnotetext{468}{See id.} \footnotetext{469}{See id. at 106–07.}
the country is wealthier, has established an effective tax collection system, and has convinced its population of the value of philanthropy.

2. **Inadequate Management**

On the operational side, two problems confront Chinese NGOs. The first problem is a lack of strategic foresight. Although all eight NGOs profiled herein expressed high aspirations for the future, none expressed a plan for long-term growth or a strategy for achieving these aspirations. According to one source familiar with three of these NGOs, this lack of concrete plans for organizational development and for strengthening internal structures to support the long-term operation of the NGO is commonplace. The young age of many of these NGOs and the idealism with which they were founded means that many are focused on producing immediate results but pay scant attention to sustainability. Some also suffer identity crises, engaging in a plethora of projects without concentrating on developing core competencies.

The second problem is endemic among many first-generation NGOs worldwide. NGOs not established by the government are often formed by strong-minded, well-connected individuals. Such NGOs frequently derive their legitimacy from their leaders' prestige and often are effective because of their leaders' ties with the government. But while a powerful leader can be an asset to an NGO—and perhaps a necessity if the NGO is to engage in more activist projects—excessive reliance on the leader can prevent the NGO from developing a separate institutional identity. Such over-reliance also can prevent the NGO from developing the capability, as an institution, to continue to function effectively without the leader.

**CONCLUSION**

The study of the Chinese nonprofit sector's contribution to legal reform is still in an infant stage. Most academic articles on and most media coverage of law-related NGO activity in the PRC have focused largely on the development of legal aid clinics. With respect to NGOs in general, although some scholarly literature discusses the history of social organizations in China—examining whether civil society existed in imperial China or debating whether civil society exists in the modern PRC—to date, there has been no comprehensive survey of nonprofit activity in the PRC. This absence of comprehensive data means that studies such as this one are subject to

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470. See id.
471. See id.
472. See Academic Interview D.
474. See, e.g., Brook, supra note 62; Brook & Frolic, supra note 57; Frolic, supra note 58.
methodological limitations. The case-study method, while useful in providing examples of what a few specific organizations have done, cannot claim conclusively to do more than that. It remains unclear whether the type of activities described in this Article represent the whole of NGO activity in the legal arena.

In particular, although this Article attempts to paint a broad picture of NGO activity in legal affairs, its findings should be evaluated with three caveats in mind. First, all of the NGOs profiled herein either are national-level organizations, local but still at the level of a major municipality, or affiliated with a prominent educational institution. There is no examination of NGO activity at more local levels or in rural areas. Second, none of the NGOs profiled herein can be described as grass-root organizations. All were organized either under legislative mandate or by members of the nation’s educated elite. Insofar as these NGOs have successfully contributed to the rule of law, a key reason for their success derives from the power, prestige, and access afforded by the elite composition of their membership or by the government ties of their leaders. The effectiveness of more populist organizations remains unknown. Third, as mentioned before, my reliance on first-person interviews for much of the information used in these case studies means that my portrayal of the NGOs profiled herein will reflect the biases of the people with whom I spoke. The difficulty with obtaining independent confirmation of many of their assertions means that my analysis could be based on inaccurate information.

On a substantive level, the findings herein caution against believing that Chinese NGOs will play a pervasive role in defining the Chinese legal landscape anytime soon. As Part III demonstrates, severe political, legal, and organizational obstacles hinder NGO development in the PRC. Furthermore, many of the features that make NGOs effective in the West are diluted by the CCP’s efforts to maintain control over the nonprofit sector. For instance, initiative and the potential for a multiplicity of actors to engage in the same field are among the nonprofit sector’s strongest advantages, but insofar as the Chinese leadership continues to permit government-created NGOs to monopolize certain fields, diversity of action is stifled.

That said, the argument for the development of a vibrant nonprofit sector in the PRC does not rest on any belief that NGOs are superior to government or private actors in promoting legal reform. It comes from the belief that the state, private actors, and NGOs can function within a complex web of cooperation and mutual checks-and-balances. It envisions NGOs not as competing with private actors and the government for a bigger piece of the legal reform pie but as stepping in to fill certain gaps. The eight NGOs profiled in this Article have demonstrated at least eleven ways in which Chinese NGOs can fill these gaps. They have filled these gaps despite being subject to political, legal, and organizational obstacles which impede their
effectiveness. They have asserted independence in creative ways while working within the confines of state-led civil society. In short, the experiences of the eight NGOs profiled herein demonstrate that the sprouts of NGO involvement in legal affairs have emerged in the PRC.

Whether or when these sprouts will develop into a full-fledged forest is beyond the scope of this Article, but if the Chinese nonprofit sector continues to expand as it has in the past several years, then there is hope. In all areas of Chinese society, we have begun to see a move from the top-down approach to social organization originally practiced by the government toward a more bottom-up approach. This trend is visible in the Chinese nonprofit sector. It is clear that the Chinese nonprofit sector cannot blossom without the existence of a strong legal framework. As the NGOs profiled in this Article show, however, the nonprofit sector itself, limited as its role currently might be, can nevertheless be an important force in creating and sustaining this framework.

475. See Xin & Zhang, supra note 58, at 110.
### APPENDIX A:
**DESCRIPTION OF SOURCES**

<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic Interview A</td>
<td>Law professor at a major Shanghai area university; legislator with the Shanghai People's Congress, March 16, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>Academic Interview B</td>
<td>Political science professor at major Shanghai area university, March 15, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>Academic Interview C</td>
<td>Adjunct law professor at Fudan University and the East China University for Politics &amp; Law; informal advisor to both the FUSLAC and the Huazheng Center, March 16, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>Academic Interview D</td>
<td>Director of China-related projects for an American foundation with extensive ties to Chinese NGOs, March 18, 1999, in Beijing, China</td>
</tr>
<tr>
<td>ACLA Interview A</td>
<td>Senior member of the ACLA leadership, March 19, 1999, in Beijing, China</td>
</tr>
<tr>
<td>ACLA Interview B</td>
<td>Senior member of the ACLA leadership, March 19, 1999, in Beijing, China</td>
</tr>
<tr>
<td>BWC Interview A</td>
<td>BWC staff attorney, March 22, 1999, in Beijing, China</td>
</tr>
<tr>
<td>BWC Interview B</td>
<td>BWC staff attorney, March 22, 1999, in Beijing, China</td>
</tr>
<tr>
<td>CASS Law Institute Interview A</td>
<td>CASS Law Institute researcher, March 6, 1999, in New York, New York</td>
</tr>
<tr>
<td>CCA Interview A</td>
<td>Legal affairs director for the CCA, March 22, 1999, in Beijing, China</td>
</tr>
<tr>
<td>CJS Interview A</td>
<td>Beijing University law professor affiliated with the CJS, March 19, 1999, in Beijing, China</td>
</tr>
<tr>
<td>FUSLAC Interview A</td>
<td>Fourth-year law student at Fudan University; co-founder of the FUSLAC, March 14, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>Interview A</td>
<td>Third-year law student at the East China University for Politics &amp; Law; student director at the Huazheng Center, March 14, 1999, in Shanghai, China</td>
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<tr>
<td>Huazheng Interview B</td>
<td>Third-year law student at the East China University for Politics &amp; Law; student director at the Huazheng Center, March 14, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>Huazheng Interview C</td>
<td>Third-year law student at the East China University for Politics &amp; Law; student director at the Huazheng Center, March 14, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>Huazheng Interview D</td>
<td>Third-year law student at the East China University for Politics &amp; Law; student director at the Huazheng Center, March 14, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>SBA Interview A</td>
<td>Attorney in the Shanghai area; member of the SBA’s Board of Directors, February 1, 1999, in New York, New York</td>
</tr>
<tr>
<td>SBA Interview B</td>
<td>Attorney in the Shanghai area, March 15, 1999, in Shanghai, China</td>
</tr>
<tr>
<td>Wuhan Center Interview A</td>
<td>A vice director for the Wuhan Center, April 19, 1999, in New Haven, Connecticut</td>
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</tbody>
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