

## Users and Non-Users: Legal Experience and Its Effect on Legal Consciousness

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A major question in the law and society literature is the effect of legal experience on individual attitudes toward legal institutions, in particular the court system. Positive attitudes and confidence in the legal system are important for generating citizen trust and confidence in government generally and also for inculcating citizen values and behavior that support the rule of law and encourage legal (and peaceful) resolution of disputes and grievances more specifically. Thus, these values are important for sustaining democracy. For a country like China, in transition from state socialism, in which legal modes of governance and social control were less common than administrative edicts, Communist Party campaigns, and state repression, attempts to build an effective legal system are also linked to limited political reform. Rule of law building is the Chinese Communist Party's (CCP) attempt to build more effective and efficient governance, while making an end run around democratization and the sharing of political power. In this case, creating positive citizen attitudes toward the legal system is part of a strategy to avoid democracy.

In this chapter, we examine how experience with the legal system affects Chinese citizens' evaluation of the courts through a series of comparisons between those who have used the law to resolve an employment dispute and those who have not as well as comparisons between disputants who remained positive and confident in the legal system and disputants who were fully disillusioned and negative. We find that legal experience leads to higher levels of disillusionment and more negative perceptions of the legal system's effectiveness and fairness. Whereas non-users tend to have vague but benevolent notions of the legal system and its effectiveness, actual disputants have less confidence in the effectiveness of the legal system.

Through in-depth interviews with disputants, however, we find that disillusionment is mitigated by increased feelings of personal efficacy and a sense that one has become educated about the law. These feelings are most evident among legal aid plaintiffs whose legal experiences were improved by constant contact with legal aid staff and a supportive social network built around the legal aid center.<sup>1</sup> Among disputants without the benefits of legal aid, however, we also find that disillusionment can be mitigated by increased feelings of personal efficacy and a perception that one is knowledgeable about the law, in effect, that one has become better at using the law, even if the law is more flawed than first believed. But why are some plaintiffs likelier to feel emboldened and encouraged by their legal experience whereas others fall into despondency, frustration, and anger? We argue that an individual's evaluation of her legal experience is strongly affected by her political identity. By political identity, we mean citizenship status, the nature (and timing) of political socialization, and whether the state's role in the dispute is fused as employer and political/legal authority. Older, urban disputants employed in the state sector are more prone to feelings of disillusionment, feelings of powerlessness, and inefficacy. Younger, rural disputants employed in the non-state sectors are likelier to have positive evaluations of their legal experience and to embrace the legal system as a potential space for rights protection. The construction of rule of law in China has attenuated the previously strong bonds between the party-state and urban workers in the public sectors but also has created new constituents from groups that previously were ignored or actively discriminated against in the old socialist order.

#### LABOR CONFLICT AND THE DISPUTE "PYRAMID"

The arguments presented here are based on research examining the legal mobilization of Chinese workers. Our findings and explanations may help us understand the broader legal context and the nature of dispute resolution in China today; however, we cannot be sure that labor disputes are representative of disputes more generally or are even similar to other types of common disputes. For example, given the high risks of unemployment in China, a large proportion of aggrieved employees "lump" their disputes in exchange for keeping their jobs. Second, Chinese lawyers

<sup>1</sup> Mary E. Gallagher, "Hope for Protection and Hopeless Choices": Labor Legal Aid in the PRC." In *Grassroots Political Reform in Contemporary China*, ed. Elizabeth J. Perry and Merle Goldman (Cambridge: Harvard University Press, 2007).

often decline to represent workers in labor disputes because compensation is often very low or nonexistent.<sup>2</sup> Third, the procedures for labor dispute resolution can be onerous and time-consuming. Many employees prefer to “vote with their feet” and find new employment rather than lodge a formal complaint.

To comprehend how legal mobilization around workplace rights is shaped by the institutional environment, it is important to understand some aspects of the labor dispute resolution procedures. First, this system is a three-step process of voluntary mediation, compulsory but not binding arbitration, and finally civil-court litigation. The government continues to rely on mediation as a main channel for resolution despite the rapid decline of firm-based mediation after the 1994 National Labor Law. Whereas most workers reject firm-based mediation as too closely associated with firm management to be fair, local labor arbitrators and civil-court judges are encouraged through salary and career incentives to push mediated resolutions at every level. Therefore, arbitration cases can result in an arbitrated mediation or an arbitral award. Judges may also resolve their cases through judicial mediation. The 2008 Labor Dispute Mediation and Arbitration Law strengthened the role of non-firm-based mediation, but also reduced some of the barriers to arbitration and litigation by lowering fees and lengthening the statute of limitations on most disputes from sixty days to one year.

Second, the important and compulsory arbitration stage has been beset by a number of problems, including weak institutional capacity, lack of professionalism and training, political interference from powerful local actors, lack of legitimacy because of the committee’s strong dependence on local labor bureaus, and lack of finality given the court-appeal option. Most arbitral awards are now appealed in civil court, making the arbitration process simply a stepping-stone to final resolution in court. This has added to the burden of the civil-court system, undermined the authority and legitimacy of labor arbitration, and complicated and lengthened an already difficult and expensive process for workers. Finally, labor disputes continue to rise on an annual basis at a fast rate. Despite the problems and frustrations of the formal resolution system, workers continue to make use of these institutions in increasing numbers. In 1995, arbitrated labor disputes reached 33,000; in 2006, this number increased to 447,000 disputes, with an annual average increase of more than 25 percent. In the

<sup>2</sup> Ethan Michelson, “The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work,” *Law & Society Review* 40, no. 1 (2006): 1–38.

wake of the global financial crisis and the passage of a tougher Labor Contract Law in 2008, total labor disputes in China rose to more than eight hundred thousand in that year. These large increases reflect the growing awareness among Chinese workers of their legal rights and the continuing problem of rampant violations of labor laws and regulations by many firms.

Some of these characteristics account for the pattern of legal mobilization that we see among the survey respondents. By constructing a dispute “pyramid” following the idea of Miller and Sarat<sup>3</sup> and Michelson,<sup>4</sup> we can see that a large proportion of the respondents with work-related problems did not escalate the problems into disputes. Among the 3,699 respondents (the overall number of cases was 4,112) who answered this question, 319 (8.6 percent) reported that they had labor problems during the last ten years. These problems include contract issues, working time, wage, injury, social security, and training problems. Only about one of four of these respondents reported that the problem became a dispute. Our return interviews in summer 2007 targeted these eighty-two subjects and completed twenty-eight cases (34.1 percent). Among the eighty-two disputants, fifty-six (68.3 percent) took actions to solve the disputes. These fifty-six actors employed various methods to solve their disputes (mainly mediation, arbitration, administrative methods, and litigation), and most of them used multiple methods. Among the ninety-one responses, mediation had thirty-six counts (39.6 percent), administrative methods twenty-four counts (26.4 percent), arbitration twenty-one counts (23.1 percent), and litigation ten counts (11.0 percent). The ten litigators (3.1 percent of the 319 cases with problems) are at the peak of the pyramid, but they are hard to see because of their small numbers, although we highlight them in black. This use of multiple methods is in part a result of the institutional framework set out by the 1994 and 2008 labor laws, which require a multistep process and encourage mediated resolutions. It also reflects the strategies of many aggrieved persons to use as many options as possible to increase the chances of success.

In the first part of this chapter we compare users with non-users. Users refer to the eighty-two disputants, non-users include those who never have had labor disputes and those who had labor problems that did not

<sup>3</sup> Richard E. Miller and Austin Sarat, “Grievances, Claims, and Disputes: Assessing the Adversary Culture,” *Law & Society Review* 15, no. 3/4 (1980–1981): 525–566.

<sup>4</sup> Ethan Michelson, “Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China,” *American Sociological Review* 72, no. 3 (2007): 459–485.

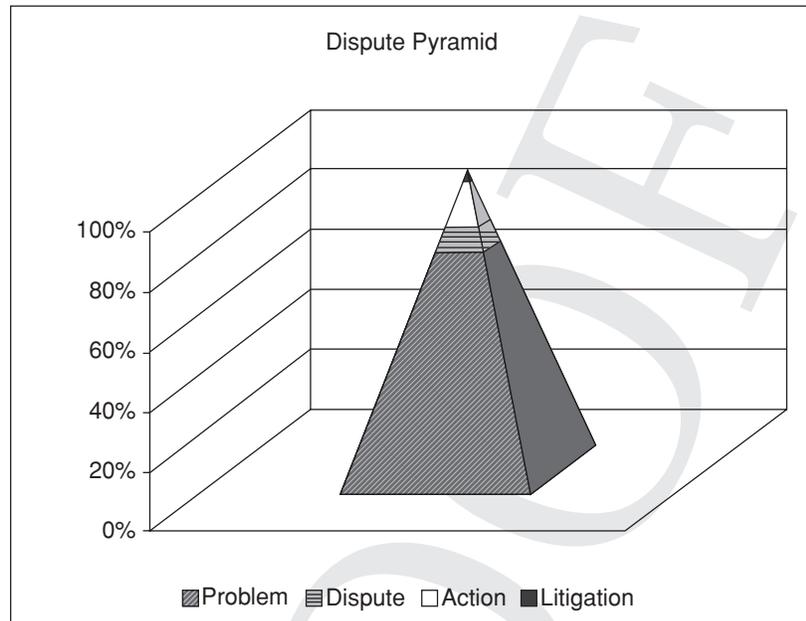


FIGURE 7.1. Dispute “Pyramid”. *Source*: 2005 Labor Law Survey.

escalate to disputes. The second part of the chapter compares the people living at the top of the “pyramid,” that is, the eighty-two disputants, with added evidence from an earlier interview project with legal-aid recipients in Shanghai (see Figure 7.1).

#### COMPARING USERS AND NON-USERS

One perplexing question that has puzzled generations of social scientists is the circulative relations between behavior and attitudes. Students of political participation have been haunted by the “reciprocal effects of participation and efficacy.”<sup>5</sup> Political scientists find it necessary to distinguish between internal political efficacy and external political efficacy, because they usually have distinctive effects and causes.<sup>6</sup> Internal

<sup>5</sup> Steven E. Finkel, “Reciprocal Effects of Participation and Political Efficacy: A Panel Analysis,” *American Journal of Political Science* 29, no. 4 (1985): 891–913.

<sup>6</sup> Robert E. Lane, *Political Life: Why and How People Get Involved in Politics* (New York: Free Press, 1965); George I. Balch, “Multiple Indicators in Survey Research: The Concept of ‘Sense of Political Efficacy,’” *Political Methodology* 1, no. 2 (1974): 1–43; Stephen C. Craig, “Efficacy, Trust, and Political Behavior: An Attempt to Resolve a

political efficacy “indicates individuals’ self-perceptions that they are capable of understanding politics and competent enough to participate in political acts such as voting.” External efficacy, by contrast, “measures expressed beliefs about political institutions. . . . The lack of external efficacy . . . indicates the belief that the public cannot influence political outcomes because government leaders and institutions are unresponsive.”<sup>7</sup> One of the main conclusions of the political efficacy literature is that participation, both its forms and results, have great but various impacts on internal and external efficacy. Mode of political participation matters. For example, it is found that involvement in campaign activities often enhances the feelings of political efficacy, yet peaceful protest has little effect.<sup>8</sup> Results matter as well. Madsen<sup>9</sup> finds that successful petitioners come to enjoy a somewhat enhanced sense of internal efficacy but do not view government as particularly responsive (external efficacy); unsuccessful petitioners do not see themselves as ineffectual (internal efficacy) but do see government responsiveness in distinctly negative terms (external efficacy). Participation behavior also has an indirect impact on efficacy through information seeking. Low participation usually leads to political inattentiveness, which contributes to low internal efficacy; high participation, by contrast, makes people more interested in political information and therefore contributes to enhanced efficacy.<sup>10</sup>

The law and society literature also finds the same pattern in people’s judicial behavior. Legal experience is often found to influence people’s confidence and their opinions of the legal system. Kritzer and Voelker,<sup>11</sup> in their Wisconsin study, find that those who have been to court recently have more favorable opinions about the courts than those who have not. Experience matters, but type of experience also is important. Benesh and

Lingering Conceptual Dilemma,” *American Politics Research* 7, no. 2 (1979): 225–239; Stephen C. Craig and Michael A. Maggionto, “Measuring Political Efficacy,” *Political Methodology* 8, no. 3 (1982): 85–109.

<sup>7</sup> Warren E. Miller, Arthur H. Miller, and Edward J. Schneider, *American National Election Studies Data Sourcebook 1952–1978* (Cambridge: Harvard University Press, 1980), p. 253.

<sup>8</sup> Steven E. Finkel, “The Effects of Participation on Political Efficacy and Political Support: Evidence from a West German Panel,” *Journal of Politics* 49, no. 2 (1987): 441–464.

<sup>9</sup> Douglas Madsen, “Political Self-Efficacy Tested,” *American Political Science Review* 81, no. 2 (1987): 571–581.

<sup>10</sup> Bruce E. Pinkleton, Erica Weintraub Austin, and Kristine K. J. Fortman, “Relationships of Media Use and Political Disaffection to Political Efficacy and Voting Behavior,” *Journal of Broadcasting and Electronic Media* 42, no. 1 (1998): 34–49.

<sup>11</sup> Herbert M. Kritzer and John Voelker, “Familiarity Breeds Respect: How Wisconsin Citizens View Their Courts,” *Judicature* 82, no. 2 (1998): 59–64.

Howell<sup>12</sup> find that those with more stake in the outcome of the court case and less control over it are least confident (e.g., defendants and plaintiffs), whereas those with little stake and substantial control are most confident (jurors).

We find this to be a very interesting perspective for viewing the dynamic of dispute experience and disputants' attitudes and beliefs in the Chinese context. We adopt the quasiexperimental idea and assume that involvement in, and experience of solving, a dispute will cause some changes in people's attitudes – here, efficacy and knowledge in particular – and distinguish users from non-users. Much work has been done on showing the flaws of the Chinese legal system and legal profession,<sup>13</sup> whereas little effort has been made to investigate the impact of these flaws on individual end-users' attitudes and beliefs.<sup>14</sup> We found the theoretical framework of participation and efficacy to be a very useful tool in explaining the relationship between legal experience and legal consciousness and knowledge in China. Zemans<sup>15</sup> argues that legal mobilization also should be seen as a form of political participation in the United States. Although modes of political participation are quite different in an authoritarian regime where campaign activity, voting in competitive elections, legal protest and demonstration, and so forth are constrained or forbidden entirely, the invocation of legal norms and use of the legal system (legal mobilization) are even more intrinsically political in an authoritarian regime than in an established democracy. For instance, invoking the law for rights protection (*weiquan*) has become an important kind of political

<sup>12</sup> Sara C. Benesh and Susan E. Howell, "Confidence in the Courts: A Comparison of Users and Non-users," *Behavioral Sciences and the Law* 19, no. 2 (2001): 199–214.

<sup>13</sup> Hungdah Chiu, "Institutionalizing a New Legal System in Deng's China" (Baltimore: School of Law University of Maryland, Occasional Papers/Reprints Series in Contemporary Asian Studies, no. 3, 1994); Ronald C. Keith, *China's Struggle for the Rule of Law* (New York: St. Martin's Press, 1994); Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford: Stanford University Press, 1999); Melanie Manion, "Corruption and Corruption Control: More of the Same in 1996." In *China Review*, 1997, ed. Maurice Brosseau, Kuan Hsin-chi, and Y. Y. Kueh (Hong Kong: The Chinese University Press, 1997), pp. 33–56; Pitman B. Potter, *Economic Contract Law of China: Legitimation and Contract Autonomy in the PRC* (Seattle: University of Washington Press, 1992); Randall Peerenboom, *China's Long March toward Rule of Law* (New York: Cambridge University Press, 2002); Michelson, "The Practice of Law as an Obstacle to Justice."

<sup>14</sup> Mary E. Gallagher, "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness," *Law & Society Review* 40, no. 4 (2006): 783–816.

<sup>15</sup> Frances Kahn Zemans, "Legal Mobilization: The Neglected Role of Law in the Political System," *American Political Science Review* 77, no. 3 (1983): 690–703.

participation in contemporary China.<sup>16</sup> Although some of the *weiquan* activity is overtly political, involving administrative suits against powerful local governments and firms (i.e., the work of *weiquan* lawyers), even the self-interested and small-scale legal mobilization of individual workers involves engagement with the political authority and demands on the state to take action against important local actors.

Contrary to mass participation in democracies, legal mobilization in China has some distinctive characteristics. First, people are almost always involuntarily involved in disputes. To solve disputes, they have to resort to the dispute-settlement mechanisms, including mediation, arbitration, administrative intervention, and litigation. There are very few cases in which people deliberately become involved in disputes and seek settlement, though they may receive much media attention such as the consumer protection activist, Wang Hai. Second, instead of fulfilling one's "democratic creed" through voting, the process of dispute resolution in China almost always is associated with bad experiences and sad stories. This is partly a result of the unfairness and ineffectiveness of the legal system and legal profession, which are well documented by scholars.<sup>17</sup> In addition, most disputants, according to our survey and interviews, are not satisfied with the results. Some gave up because of time and financial constraints; some took actions but soon found them powerless; and some, even when they won the case, did not achieve implementation of court decisions. These distinctive factors all contribute to a negative view of the resolution mechanisms, which have an impact on what we call the external efficacy of disputants.

We also expect some positive consequences of dispute involvement. Unlike routine political participation, like voting, dispute resolution is a sort of ad hoc activity in which few people have opportunities to become involved. Before their involvement, people usually have very little prior knowledge about the resolution system. Many have noticed the rise of "legal consciousness" among Chinese citizens,<sup>18</sup> but "low legal

<sup>16</sup> Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* (New York: Cambridge University Press, 2006).

<sup>17</sup> Peerenboom, *China's Long March toward Rule of Law*; Michelson, "The Practice of Law as an Obstacle to Justice."

<sup>18</sup> Minxin Pei, "Citizens v. Mandarins: Administrative Litigation in China," *The China Quarterly*, no. 152 (1997): 832–862; Philip Pan, "In China, Turning the Law Into the People's Protector," *The Washington Post*, December 28, 2004, p. A01; Willy Wo-Lap Lam, "On the Wave of Political Reform," *South China Morning Post*, June 21, 2000, p. 18; Hugo Restall, "Chinese Farmers Learn Their Rights," *Asian Wall Street Journal*, November 27, 2000, p. A31.

consciousness” is still a major barrier to an effective and robust rule of law,<sup>19</sup> and people come to the legal process often with only vague and imprecise knowledge of legal procedure and their actual codified rights.<sup>20</sup> Thus, we expect to see that disputants learn from the process. Involvement in disputes and the incentive to win can completely change the calculation of cost and benefit; as a result, it is no longer rational to remain ignorant, and information seeking becomes worthwhile. Information seeking also results from increased interest in legal knowledge. Whereas for average people, legal codes, regulations, the hierarchy of the courts, and complicated litigation procedures are too mysterious and useless to have any real-life application, they are extremely interesting to disputants for practical reasons. Disputants pay more attention to law-related news and information in the media; actively find legal information from books, magazines, television, and the Internet; and become interested in conversations with other people regarding the law and the legal system.<sup>21</sup> A better understanding of the law and legal procedures will lead to higher self-confidence in solving a dispute. “Knowledge is power,” and disputants feel empowered by the legal knowledge they attain through the resolution process. In addition, dispute-solving experience and practical knowledge help disputants find more efficient solutions, clearer targets, and more effective strategies. Because a successful campaign enhances a person’s confidence in participating in politics,<sup>22</sup> we expect to see a raised internal efficacy of disputants. We also anticipate that confident disputants, as some studies have shown,<sup>23</sup> will become “little experts,” diffusing legal information and helping other people with similar problems.

To summarize, we expect the effects of legal experience to be 1) a raised level of legal knowledge; 2) a higher internal efficacy (i.e., an enhanced confidence in dispute solving); and 3) a lowered external efficacy (i.e., a

<sup>19</sup> Peerenboom, *China’s Long March toward Rule of Law*.

<sup>20</sup> Gallagher, “Mobilizing the Law in China.”

<sup>21</sup> Daniela Stockmann and Mary E. Gallagher, “Mass Media Mobilization as a Means of Legal Reform in China.” Paper presented at the annual meeting of the American Political Science Association, Chicago, August 30–September 1, 2007, [http://www.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/2/0/9/2/7/pages209272/p209272-1.php](http://www.allacademic.com/meta/p_mla_apa_research_citation/2/0/9/2/7/pages209272/p209272-1.php) (accessed September 27, 2008).

<sup>22</sup> Finkel, “The Effects of Participation on Political Efficacy and Political Support.”

<sup>23</sup> Pierre F. Landry, “Using Clustered Spatial Data to Study Diffusion: The Case of Legal Institutions in China.” Paper presented at Sources and Methods in Chinese Politics: A Workshop on Methodology, Research Design and Fieldwork Strategies, University of Michigan, November 3–4, 2006; Gallagher, “Mobilizing the Law in China.”

negative view of the dispute-resolution mechanisms). We will elaborate on these effects in the following paragraphs.

*Legal Knowledge: How Well Do I Know the Law?*

In Gallagher's 2006 study of legal-aid plaintiffs, she found that many of her respondents acquired strategic knowledge through legal mobilization at the legal-aid center. The most important aspects of their new knowledge were "understanding laws and regulations, understanding legal procedure, and understanding how to attain and use evidence."<sup>24</sup> We found the same effects in the 2005 survey and the return in-depth interviews. Most of our respondents expressed feelings of a better grasp of the law, both in text and in practice, and some regretted that they had not kept evidence that would have allowed them to win the case.

Liu, a forty-four-year-old female worker, was employed in a collective textile enterprise in Wuxi. She was laid off after the enterprise was sold to a private owner. Liu had a big fight with her boss about her months of wages, medical care, and pension in arrears. The conflict resulted in Liu being paid one month of medical care and pension, but she was not paid any wages in arrears. In retrospect, Liu told the researcher, now that she knew more about the labor law and related laws, she realized that she should have resorted to the labor arbitration committee to ask for the unpaid wages, and the result would have been much better. But at the time, she had no idea that the city had a labor arbitration committee and did not even realize that what the enterprise did to her was illegal and that she could sue. She said that although now she understood, it was too late; otherwise, she would have sued the enterprise.<sup>25</sup> Liu's failure to negotiate a satisfactory settlement with her boss makes her more confident that the legal system is a better option for future disputes now that she knows the range of options available to her.

Zhang, a thirty-eight-year old migrant worker in a Taiwanese chemical industry enterprise in Wuxi, was going to lead a strike to ask for overtime wages. Before he decided to lead the strike, Zhang spent hundreds of yuan buying law books; after careful homework, he assured himself that the enterprise's overtime policy was illegal. He persuaded more than one hundred workers in the enterprise to follow him to strike, yet the employers soon found out about the plan and bought off the workers.

<sup>24</sup> Gallagher, "Mobilizing the Law in China," 800.

<sup>25</sup> CASE: Wuxi#9.

In the interview, Zhang told the researcher that he should have found a lawyer to take care of the dispute. “[T]he enterprise should strictly follow the labor regulations, even if it must be shut down I don’t have any sympathy for it.”<sup>26</sup>

Many of our respondents learned the importance of evidence through the dispute resolution process. Li, a fifty-year-old woman worker in a collective enterprise in Chongqing, was laid off and paid 20,000 RMB at a rate of 850 RMB per year in compensation (she had worked for the enterprise for twenty-nine years). She told the researcher that she should be paid much more than this, but because the employers were corrupt and diverted the money, there was no money left. Several of Li’s co-workers went to court to sue their employers for corruption, but they lost the case because they could not provide enough evidence. Li said the accountant in the enterprise had two versions of accounts, “one is real, the other fake; if we had had the real one, we would have won.”<sup>27</sup>

Zhou, a sixty-two-year-old trade union chairwoman in a Shenyang state-owned enterprise (SOE), led other workers to sue their former boss. She rented out some of their factory houses and used the money for the litigation fee and then was arrested for embezzlement. She was beaten up by police officers, yet the police could not prove her guilty. After her son bribed the policemen and paid 5,000 RMB, she was released. Afterward, she went to the local police department and asked that the money be returned, but the police refused. One of the police officers said to her, “It is true that your son gave me money, cigarettes, and bought us dinner, so what? Can you get them back?!” Zhou was angry, and she told the researcher that she really should have brought a tape recorder to tape the conversation and sue the police officer.<sup>28</sup>

Not only did our respondents learn from the process itself, but many also became interested in and actively sought out legal knowledge. Respondents report paying more attention to law-related news and law programs on television; some became interested in the legal case accounts and analysis in the newspapers; and some went to law firms and consulted with lawyers. A general feeling of our respondents is that at the beginning, they merely had a vague sense that something had gone wrong with the employers and policies, but they had no idea why it was wrong or whom they should blame. After they delved into law books, they felt

<sup>26</sup> CASE: Wuxi#5.

<sup>28</sup> CASE: Shenyang#4.

<sup>27</sup> CASE: Chongqing#4.

TABLE 7.1. *Judgment of a Vignette: Work-unit actions legal or not*

|                |       | Frequency | Percent |
|----------------|-------|-----------|---------|
| Non-Disputants | Yes   | 112       | 3.1     |
|                | No    | 3,500     | 96.8    |
|                | DK    | 5         | 0.1     |
|                | Total | 3,617     | 100     |
| Disputants     | Yes   | 1         | 1.2     |
|                | No    | 81        | 98.8    |
|                | Total | 82        | 100     |

Source: 2005 Labor Law Survey.

that they were armed with the law and had become powerful. They could then fight confidently against their employers.

This point is also supported by our survey data. When asked to judge whether and why the employer's conduct is legal in a vignette,<sup>29</sup> disputants have a clearer view and a more accurate judgment about the case (see Tables 7.1 and 7.2). Disputants are likelier to give a correct answer (the company's actions are illegal) and also to understand the reasons for the illegality (contracts cannot be terminated without compensation).

*Internal Efficacy: How Well Can I Work the Law?*

As soon as the disputants understand the rules of the game, many want to play it again. Gallagher also found this "law-affirming behavior" in her 2006 study.<sup>30</sup> We attribute this sort of behavior to an appreciation for the knowledge and information they have learned from the dispute process and also to an enhanced sense of confidence and a belief that "I can work the law better now." They have a sense that if they played it again, they would adopt more strategic methods.

Zhang, the would-be strike leader, left the Taiwanese enterprise after the failure of his plan to organize a strike. He still felt hatred toward his

<sup>29</sup> Because of the relatively small number of people in the general population with actual dispute experience, we use a hypothetical vignette to elicit people's attitudes and expected behavior in the dispute-resolution process. The vignette states, "Old Chen works at a company and has signed a five-year contract. Three-and-a-half years into his contract, the company management decided to terminate the employment contract, citing financial difficulties. In addition, the company refused to provide termination compensation. If you were Old Chen, what would you do?"

<sup>30</sup> Gallagher, "Mobilizing the Law in China," 805.

TABLE 7.2. *Reasons provided for illegality of employer's action*

|                |   | Frequency | Percent |
|----------------|---|-----------|---------|
| Non-Disputants | Cannot articulate reason                                  | 210       | 6       |
|                | Work-unit cannot terminate contracts                      | 1,131     | 32.3    |
|                | Work-unit cannot terminate contracts without compensation | 2,097     | 59.8    |
|                | Other   | 67        | 1.9     |
|                | Total   | 3,505     | 100     |
| Disputants     | Cannot articulate reason                                  | 1         | 1.2     |
|                | Work-unit cannot terminate contracts                      | 24        | 29.6    |
|                | Work-unit cannot terminate contracts without compensation | 53        | 65.4    |
|                | Other   | 3         | 3.7     |
|                | Total   | 81        | 100     |

Source: 2005 Labor Law Survey.

former boss even several years later when the interview was conducted. Because most of the workers he had mobilized to join the suit had been bought off by the employer, he had had to negotiate with the boss in a peaceful way. The dispute was resolved, but the workers had not gotten what they deserved (higher pay, overtime wages, and more labor protection). Zhang felt sorry for his co-workers and admitted that he had been too soft and the compromise was wrong. If he could do it again, he believes that he would be more strategic.

Liu, the textile factory worker, felt that she had already missed the chance to have a better position to negotiate with the employer. “We didn’t know there was an arbitration committee in the city,” Liu said. “[O]therwise, we should have gone there and ask[ed] for help. We could have gotten more. . . . We didn’t have the sense at the time.” Obviously, Liu had learned from the case: “[N]ow I know what the employer did was illegal. In retrospect, we should have used a legal method!”

Both Zhang and Liu thereafter became “little experts,” thus reconfirming Gallagher’s finding in her plaintiff study.<sup>31</sup> Liu told her friends with labor problems to go to the arbitration committee for consultancy. “We have already missed the chance,” Liu said. “I wouldn’t let my friends make the same mistake.” One of her friends went to court after listening to her advice. “She will win,” said Liu very confidently. Zhang was helping his brother-in-law on a similar labor case, and he suggested that his

<sup>31</sup> *Ibid.*, 807.

TABLE 7.3. *If you were Mr. Chen, what would you do?*

|                |             | Frequency | Percent |
|----------------|-------------|-----------|---------|
| Non-Disputants | Take action | 3,091     | 88.2    |
|                | Do nothing  | 414       | 11.8    |
|                | Total       | 3,505     | 100     |
| Disputants     | Take action | 71        | 87.7    |
|                | Do nothing  | 10        | 12.3    |
|                | Total       | 81        | 100     |

Source: 2005 Labor Law Survey.

brother-in-law consult a good lawyer. “A lot of friends came to me for help.” Zhang was quite proud. “Every time they came, I told them to go find lawyers – not just one. I suggested that they find several lawyers and then compare them.”

*External Efficacy: How Well Does the Law Work?*

Although the disputants attained higher internal efficacy through legal mobilization and learned new legal knowledge, most of them also had a negative view of the resolution mechanisms and felt disenchanted. This disenchantment resulted from their high expectations of the legal system.<sup>32</sup> To draw evidence from the survey and the return interviews, we can overcome some of the shortcomings of the legal-aid interviews, which was a nonrepresentative group.<sup>33</sup> In the survey, we interviewed a wide spectrum of disputants with experience in various dispute resolution methods. The results confirm that disenchantment is not limited to the legal-aid plaintiffs, but rather is associated with various kinds of disputants.

In Table 7.3, we cannot see any difference between the disputants and non-disputants as to whether they would take action; however, when we look at specific resolution methods, we find a more accurate picture whereby people who have had disputes also have less confidence in the resolution mechanisms, especially litigation (Tables 7.4–7.8). Nearly 78 percent of the non-disputants report that they would have used litigation to solve Mr. Chen’s problem, but only 63 percent of the disputants select litigation as a method. On the one hand, the non-disputants have vague confidence in these mechanisms, even though they have never used them. On the other hand, the disputants, when asked about the relative

<sup>32</sup> Ibid., 791.

<sup>33</sup> Ibid.

TABLE 7.4. *Use mediation?*

|                |       | Frequency | Percent |
|----------------|-------|-----------|---------|
| Non-Disputants | Yes   | 2,944     | 95.2    |
|                | No    | 147       | 4.8     |
|                | Total | 3,091     | 100     |
| Disputants     | Yes   | 64        | 90.1    |
|                | No    | 7         | 9.9     |
|                | Total | 71        | 100     |

Source: 2005 Labor Law Survey.

TABLE 7.5. *Use administrative methods?*

|                |       | Frequency | Percent |
|----------------|-------|-----------|---------|
| Non-Disputants | Yes   | 2,521     | 81.6    |
|                | No    | 570       | 18.4    |
|                | Total | 3,091     | 100     |
| Disputants     | Yes   | 52        | 73.2    |
|                | No    | 19        | 26.8    |
|                | Total | 71        | 100     |

Source: 2005 Labor Law Survey.

effectiveness of the different methods of resolution, are far more likely to feel that none of the options is effective or useful (Table 7.9).

The return interviews strengthen these findings. Many of our respondents doubt the idea that the government institutions and legal systems can serve the interests of the common people, and they felt powerless because of the nonresponsiveness of the legal system. Zhou, the union chair, gave up after going to court more than twenty times and never receiving a response. Zhao, a thirty-nine-year-old woman worker in a township enterprise, sued the township government for not paying for her medical care. The local court never opened sessions to inquire into her case, and a lawyer who originally promised to help her disappeared.<sup>34</sup>

Interestingly, although almost all of the disputants felt somewhat disenchanted with their legal experiences, the reasons they provided and the party they blamed were quite different. We elaborate on this comparison next.

<sup>34</sup> CASE: Wuxi#4.

*Users and Non-Users*

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TABLE 7.6. *Use arbitration?*

|                |       | Frequency | Percent |
|----------------|-------|-----------|---------|
| Non-Disputants | Yes   | 2,585     | 83.6    |
|                | No    | 506       | 16.4    |
|                | Total | 3,091     | 100     |
| Disputants     | Yes   | 54        | 76.1    |
|                | No    | 17        | 23.9    |
|                | Total | 71        | 100     |

Source: 2005 Labor Law Survey.

TABLE 7.7. *Use litigation?*

|                |       | Frequency | Valid percent |
|----------------|-------|-----------|---------------|
| Non-Disputants | Yes   | 2,406     | 77.8          |
|                | No    | 685       | 22.2          |
|                | Total | 3,091     | 100           |
| Disputants     | Yes   | 45        | 63.4          |
|                | No    | 26        | 36.6          |
|                | Total | 71        | 100           |

Source: 2005 Labor Law Survey.

TABLE 7.8. *Which method would you use first?*

|                |                        | Frequency | Percent |
|----------------|------------------------|-----------|---------|
| Non-Disputants | Mediation              | 2,691     | 89.2    |
|                | Administrative methods | 95        | 3.1     |
|                | Arbitration            | 146       | 4.8     |
|                | Litigation             | 84        | 2.8     |
|                | Total                  | 3,016     | 100.0   |
| Disputants     | Mediation              | 60        | 87.0    |
|                | Administrative methods | 2         | 2.9     |
|                | Arbitration            | 5         | 7.2     |
|                | Litigation             | 2         | 2.9     |
|                | Total                  | 69        | 100.0   |

Source: 2005 Labor Law Survey.

TABLE 7.9. *Which method is most effective?*

|                |                          | Frequency | Valid percent |
|----------------|--------------------------|-----------|---------------|
| Non-Disputants | Mediation                | 554       | 19.8          |
|                | Administrative methods   | 252       | 9.0           |
|                | Arbitration              | 535       | 19.1          |
|                | Litigation               | 1,378     | 49.3          |
|                | None is useful/effective | 78        | 2.8           |
|                | Total                    | 2,797     | 100.0         |
| Disputants     | Mediation                | 9         | 14.3          |
|                | Administrative methods   | 6         | 9.5           |
|                | Arbitration              | 20        | 31.7          |
|                | Litigation               | 18        | 28.6          |
|                | None is useful/effective | 10        | 15.9          |
|                | Total                    | 63        | 100.0         |

Source: 2005 Labor Law Survey.

#### COMPARING DISPUTANTS

In Gallagher's 2006 study of the effects of legal mobilization on legal-aid plaintiffs in Shanghai, she finds that disputants exhibit an interesting combination of disenchantment with the law and increased knowledge, confidence, and propensity to use the law. A large majority of the plaintiffs reported that they would use the law again to resolve future employment disputes, and three-quarters of the plaintiffs reported postdispute activities like helping friends, colleagues, and neighbors with their own workplace grievances. Although a propensity to sue is often used as evidence for a "rising legal consciousness" in China and other places where the rule of law is new or revived, Gallagher argues that legal consciousness does not develop linearly but should at least be conceptualized as dual, encompassing not only an individual's evaluation of the legal system but also including a separate evaluation of the individual's ability to use the legal system. A propensity to sue (measured by behavior) might be likelier, but it will coexist with higher levels of dissatisfaction with legal institutions (measured by attitudes).

In this chapter we extend this concept of legal consciousness to include these two components – how well does the law work (external efficacy) and how well can I work the law (internal efficacy) – while also paying attention to changes in legal knowledge. As the term "informed disenchantment" conveys, plaintiffs put much emphasize on the educative effects of the legal experience. Although increased legal knowledge can increase internal efficacy and give the disputants more confidence in their

ability to work the legal system, it also can contribute to declines in external efficacy, especially when a disputant discovers that the law in reality is different from the law on the books. The most important aspect of this concept is that the two separate dimensions (external and internal efficacy) do not necessarily move in concert. How these attributes are affected by legal experience is potentially related to many different variables, including the type of dispute, the individual's role in the dispute, the region, the type of firm, individual-level attributes such as education level and gender, the presence or absence of legal assistance, and so forth.

Unlike in the United States, where race, gender, and other ascriptive labels are often most important in mediating people's experiences with the law,<sup>35</sup> we find that in China a plaintiff's political identity is important in determining how legality is experienced and how legal experiences can change how people think about and use the law. In this section, we explore the possibility that differences in disenchantment are related to the political identity of the plaintiffs in labor disputes. The concept of political identity encompasses the plaintiff's citizenship (whether rural or urban), the nature and timing of political socialization (pre- or postenterprise reform), and the plaintiff's relationship to the state (whether the state is both employer and the legal authority or only the legal authority). It is not the case that the most privileged groups under socialism are more likely to feel empowered and confident in their legal institutions. Groups privileged under socialism invoke their hierarchical status within the old system that granted urban workers much higher levels of benefits and employment security than others, especially rural citizens. However, the legal system is built on the notion of equality before the law, fairness, and equal treatment. On the one hand, this "rule of law" framework takes away the entitlements of socialism. On the other hand, young rural workers employed in the private sector are emboldened by discourses of equality, fairness, and nondiscrimination. These disputants are more likely to feel efficacious, seeking out legal knowledge and assistance and learning to use the law to press for their rights.<sup>36</sup>

<sup>35</sup> Ivan Y. Sun and Yuning Wu, "Citizens' Perceptions of the Courts: The Impact of Race, Gender, and Recent Experience," *Journal of Criminal Justice* 34, no. 5 (2006): 457–467; Laura Beth Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment," *Law & Society Review* 34, no. 4 (2000): 1055–1090.

<sup>36</sup> Neil J. Diamant, "Pursuing Rights and Getting Justice on China's Ethnic Frontier, 1949–1966," *Law & Society Review* 35, no. 4 (2001): 799–840, on research in southwestern China, and Frank K. Upham, "Litigation and Moral Consciousness in Japan: An Interpretative Analysis of Four Japanese Pollution Suits," *Law & Society Review*

It should be noted here that we are not attempting to explain variation in terms of who decides to invoke the legal system or, in other words, “to climb the dispute pyramid.” Gallagher and colleagues find that a propensity to sue is related most consistently to levels of media exposure (higher levels of exposure are associated with escalation), residential status (local residents are more likely to escalate), and employment status (employed workers are more likely to escalate).<sup>37</sup> However, a considerable amount of city variation and contextual variables also is important. For example, the presence of a trade union at the workplace is associated with escalation among respondents in Wuxi and Shenyang, but not in Foshan or Chongqing. Our investigation here examines how different disputants experience and make sense of their attempts to resolve the conflict.<sup>38</sup>

#### *Disputant Differences: The Role of Political Identity*

The argument developed here was developed inductively and unexpectedly while conducting the first set of in-depth interviews with legal-aid plaintiffs in Shanghai. Some of the conclusions and arguments presented here contradict the original hypotheses and expectations developed while planning the process and applying for grants. Before the research began, we fully expected that a positive experience with the law and confidence in legal institutions would be associated with urban household status, higher levels of education and skills, and employment in firms with better working conditions and standards. When interviewing about fifty plaintiffs involved in labor disputes at a legal-aid center in Shanghai, we found that some of these expectations were borne out. For example, workers with higher levels of education and skills were more satisfied with their court experiences. However, we also noticed new and unexpected differences among disputants. Informants from outside Shanghai were more

10, no. 4 (1976): 579–619, on pollution victims in Japan, also find evidence that rural citizens can be more prone to legal mobilization than the supposed main beneficiaries of legal reform – urban, middle-class citizens. Whereas Mary E. Gallagher, Juan Chen, and Lyric Chen, “Losers and Lumpers: Determinants of Litigious Behavior Among Chinese Workers,” paper in progress, do not find that migrant workers are more likely to use the law, we do find that they experience the law more positively. Michelson, “Climbing the Dispute Pagoda,” also finds evidence questioning the link between legal mobilization and economic development.

<sup>37</sup> Gallagher, Chen, and Chen, “Losers and Lumpers.”

<sup>38</sup> Because we examine only involvement in employment disputes, we do not explore how the type of dispute affects these variables. We also do not explore regional variation. The four-city survey does indicate, however, considerable regional variation in levels of dispute activity and some differences in individual outcomes.

satisfied with the legal system than we expected, given the importance of residential status in determining levels of citizenship and treatment by the local government. Young workers were almost complacent about the disputing process, often content that procedurally, things worked out, even if their substantive demands were not met or were much reduced by the court or arbitral decision. Older workers, often employed in the state sector, were the most frustrated and disenchanted of all, vowing to inflict personal violence on corrupt managers and wayward court officials. Some older plaintiffs turned their employment disputes into drawn-out personal battles against the state and the economic restructuring that had ruined their lives.

Given the qualitative and inductive nature of this research, it is impossible to ascertain the relative importance of the different variables that might help to account for these differences. Given the problem of multicollinearity, this problem might occur even if we could approach the problem statistically. Some of these differences track age (older workers are employed largely in public firms); others might be related to one's workplace (workers in the non-state sector may have greater confidence that the courts are impartial). The role of residential status (urban vs. rural, local vs. nonlocal) is complicated by that fact that most migrants, including highly skilled urban migrants, are young and employed in the non-state sectors. These problems are compounded by the fact that all of these potentially important variables are in motion. Restructuring and corporatization of state firms is changing the way even state enterprises interact with and treat their workforce. The reform of the system of residence permits (*hukou*) is breaking down some of the differences between residents and migrants. Finally, older workers imbued with the moral economy of state socialism are passing into retirement. These methodological problems encourage us to think more conceptually about the relationship between an individual plaintiff's relationship to the state and the effects of his/her legal experience. Although some basic characteristics might be important now (and we note them below), we remain sensitive to the reality that the relationship of the Chinese state to individual citizens is constantly in flux.

The notion of political identity relates to three different aspects of the state-citizen relationship. It includes citizenship (rural vs. urban), workplace socialization (pre- or postreform), and the role of the state in a legal dispute (legal authority or legal authority/employer). Citizenship is a critical factor in political identity because citizenship in China is tightly related to one's residential status, in particular whether one is a rural or an

urban citizen. Social benefits, life chances, educational resources, formal employment opportunities, and access to key public goods all are closely tied to an individual's status as defined by citizenship.<sup>39</sup> Expectations and demands on the state are shaped by the *hukou* institution. Urban citizens in China have received much higher benefits and entitlements than their rural counterparts, and this continues to inform their expectations today.

The nature and timing of political socialization are important factors in understanding how people make sense of politics and government policies. We limit ourselves here to workplace socialization, in particular to whether a person was socialized into the workplace before or after enterprise reform. Workers who entered the workplace prior to the 1990s were more likely to be socialized into a socialist moral economy, enjoying a high level of benefits and a secure position in exchange for relatively low wages and mobility. Workers' identities were shaped by an ideology that exalted their status in society, and their relationship to the enterprise was noncontractual.

Workers who entered the workplace after enterprise reform (or who went directly into the small non-state sector in the 1980s) were more likely to be socialized into a workplace defined by contractual relations between firm and workers, fewer social benefits tied to the workplace, and a greater degree of mobility and insecurity. The workers' position in the workplace is established by their position, skills, and education rather than by their being part of a larger class. The political role of enterprises under socialism is underemphasized, whereas efficiency concerns are elevated. Firms in the non-state sectors exemplify this type of workplace socialization, but even some SOEs pursued these changes through the restructuring process.

Finally, the political identity of disputants is strongly affected by their perception of the state's role in the dispute. For workers employed at public firms, the role of the state is fused as both employer and the political/legal authority tasked with resolving the dispute. The plaintiffs' relationship to the legal system is powerfully affected by the notion that they are "suing the government," or "suing the party" and that by doing so, they are challenging the most powerful institutions by invoking its own institutions and organizations. There is a strong sense of disbelief that one can win against the state if the state itself is invested in the outcome, but this sense of disbelief is matched by a sense of anger that

<sup>39</sup> Dorothy J. Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market* (Berkeley: University of California Press, 1999); Lianjiang Li, "The Empowering Effect of Village Elections in China," *Asian Survey* 43, no. 4 (2003): 648–662.

TABLE 7.10. *Political identity and mobilization*

|                         | “Socialist” political identity   | “Post-Socialist” political identity                         |
|-------------------------|--|---|
| Target                  | STATE and EMPLOYER   | EMPLOYER  |
| Pattern of Mobilization | <i>Petition</i> before, during, and after legal process                      | Seldom petition ( <i>shangfang</i> )                        |
| Goal                    | “ <i>Yao yige shuofa</i> ”<br>Tendency to pursue case for non-material goals | Cost-benefit analysis of legal battle                       |
| Strategy                | Emphasis on particularistic social relations “workers’ rights”               | Emphasis on universal application of rules “citizen rights” |
| Evaluation              | Emphasis on substantive justice  | Emphasis on procedural justice                              |

winning such disputes is impossible because the state will always protect itself.

The four cases presented next illustrate some of the basic differences among disputants. We then discuss these differences more generally, as presented in Table 7.10. Because the differences among disputants is observable as an age or generational effect, we use this language to differentiate between two ideal groups: a “socialist generation” of older, urban workers employed in the public sector and a “post-socialist generation” of younger workers employed in the non-state sector. This helps us understand how differences in political identity may be distributed across Chinese society.

*Jiang’s Experience at the Shanghai Aircraft Factory*

Jiang was born in 1948 and is a typical representative of China’s “lost generation” of the Cultural Revolution. His formal education ended with middle school, and in 1968 he was “sent down,” as were many Shanghai youth, to the border area near the Soviet Union in Heilongjiang Province. He returned to Shanghai in 1979, and in 1985 he was allocated a job by the state in a local SOE producing airplane parts. In 1999 he was laid off by this enterprise. In 2002 he was formally given the status of laid off (*xiagang*) and given 10,000 RMB in severance compensation. His wife is also laid off and his son is still in school. Jiang and his family live on his meager income earned by odd jobs – for instance, delivering

water and selling his paintings on the street. He worries about illness now that his medical care from the enterprise has stopped. Jiang sued for reinstatement, arguing that he should be treated as a retired worker and given a pension and other benefits. His claims were denied by the labor arbitration committee that heard his case. But his severance pay was raised from 10,000 to 21,000 RMB. Jiang became ill after arbitration and decided not to pursue the case in a court appeal.

Like many older workers, Jiang began the dispute resolution process by mobilizing outside the legal system through petitioning state offices directly. Jiang petitioned the Shanghai Municipal Trade Union, the Shanghai Bureau of Labor and Social Security, the Shanghai Mayor's Office, and the controlling corporation of his own company. During the petitioning process, Jiang invoked his identity as a state worker and a patriotic citizen who had helped China protect its borders during the Cultural Revolution. His engagement with the legal system was a long but ultimately unsuccessful struggle to retrieve some perquisites of the socialist era. Such cases are often unsuccessful because the legal system (as part of a general trend toward contractual social relationships) does not protect these long-held benefits. Jiang's perceptions of the legal system, market reform, and access to justice are shaped by his memories of the past and the loss of that past through the switch from lifetime employment to contract labor. Jiang noted in the interview that "the common people are very angry. I have been unfairly treated in comparison with treatment in other companies and even treatment in workshops in my own company. The leaders are corrupt whereas my wife and I have worked hard our whole life and have suffered much bitterness. . . . My company asked me to make a sacrifice because I am older and an old comrade; they promised to take care of me, but they didn't care at all. I could be dead on the street. . . ."

Jiang's disappointment with the legal process goes far beyond his case and the individual circumstances that led to his job loss. He easily connects his hardships with his past identity as a patriotic student, then as a state sector worker, and finally as an "old comrade." Despite the legality of the enterprise's behavior, in his eyes it is unjust and immoral. His workplace dispute is linked to broader issues: corruption, government malfeasance, and the weak political position of Chinese workers.

#### *Trade-Union Chairwoman Zhou's Disappointment*

Zhou is the older female worker who was employed in the large state enterprise in Shenyang. Her case is also discussed above. She was

trade-union chairwoman until she retired in 1993. When her company was privatized, retired workers no longer received pensions, so Zhou began to mobilize the retired workers. She estimates that she filed more than twenty lawsuits, but ultimately she was unsuccessful. In the end, the local government restored her pension but not the pensions of sixty other retirees. Zhou feels that the law and the courts are completely useless. Although she tried many times to use connections with the local and provincial governments, she is disappointed that no official intervention in the case yielded better outcomes for her and her co-workers. She reports that she does not understand the law, that the labor law is not useful, and that she should have accepted long ago the statements of local officials that there is no way to win a case against the Communist Party. Unlike more efficacious disputants like Zhang and Li above, Zhou advises her friends and former co-workers to give up on lawsuits.

*Wei's Experience at the Foreign Supermarket*

Wei, a Shanghai local, was born in 1969 and has a high-school education. He was represented by the legal-aid center in his Shanghai labor dispute. Employed by a large, foreign supermarket, Wei worked on a year-to-year contract. He averaged about sixty hours in his six-day work week. After he inquired about some irregularities in how he was being compensated for overtime work, Wei was suddenly informed that his contract would not be renewed. Upon learning of his imminent dismissal, Wei sued the company for overtime compensation and holiday pay. The company negotiated some payment for holiday time but refused to pay any overtime. Wei lost the case in arbitration based on insufficient evidence. His appeal in civil court also was unsuccessful. After his loss, the company posted the court decision in the supermarket break room so that other workers would absorb the lesson of his loss. He now works as a cook in a hotel.

Wei's case was no more successful than Jiang's. But this reform-era loser experienced the legal system and the dispute resolution system very differently. He did not connect his problem at work with politics or the state. Like most disputants his age, he avoided petitioning or did not even consider it. He faced the typical difficulties of the "have-nots" in any legal system,<sup>40</sup> but these difficulties were not translated into a condemnation

<sup>40</sup> Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9, no. 1 (1974): 95-160.

of reform, labor markets, or contract employment. Wei does not identify with the demands of the socialist generation, such as lifetime employment or increased benefits, because he has not experienced these institutions during his time in the labor market. Although disappointed in the ability of the legal system to deliver just outcomes, his evaluative process differed from that of Jiang and Zhou. Wei focused on the procedural difficulties of a successful case, in particular his inability to retrieve crucial evidence. Attempts to record his manager making incriminating statements were unsuccessful, as were requests to fellow colleagues to assist him in his case by serving as witnesses. Wei made many attempts to educate himself about the legal process through newspapers, the labor bureau's hotline, and the staff at the legal-aid center. He focused on his own mistakes and on the ability of the employer to manipulate the legal system more successfully.

*Liao's Experience in a Japanese Company*

Liao is a young, college-educated woman from rural Jiangxi Province. She moved to Shanghai from Jiangxi after graduation and was hired by a wholly owned Japanese company that offered to change her residential status by issuing her a Shanghai residence permit. When an explosion occurred in her home village, she received oral consent from her manager to leave work for one week. After returning to work, she found that she had been demoted from her office position to a production line worker job in the factory. When she tried to quit, the company fined her 20,000 RMB for breaking her service agreement. Liao then began a long process of arbitration and litigation against the company. She noted that her outsider status precluded other options like petitioning or using connections. "No one would have given me the time of day." Feeling that there were no other options and that she didn't know anyone in Shanghai, Liao began to research the labor law in newspapers. After finding information about legal aid in a local paper, she began to feel more confident and determined. She lost in arbitration and then went through two more court appeals to get a successful decision fully implemented. Compared to arbitration, Liao found that the court was more logical, with greater procedural regularities. The court asked for more evidence. She reports that she would use legal channels again and that she believes in the law. At her new place of employment, she works on a one-year contract, which she examined carefully when she received it. Her status as an outsider in Shanghai led her to believe that the law is the only option and is more effective for someone with her background. Although she cried

intermittently during the interview, she remarked that the experience has strengthened her personality. She claims that she will not give up and that she has learned a lot and has greater confidence.

*Migrant Worker Zhang's Dispute in Wuxi*

Migrant worker Zhang was employed for many years in a Taiwanese company in Wuxi. He knew that the working conditions were poor and that the Taiwanese manager was not acting according to the law. To strengthen his case, Zhang took time off to go to a bookstore, where he purchased an expensive book on labor law. He then organized more than one hundred local and migrant workers to strike for better conditions. He promised the local workers that he could get the company to pay social insurance and promised the migrants that he could get the company to pay overtime. Before the strike, Zhang tried to entice support from the local safety bureau and the local trade union. The local safety bureau refused to help without more evidence, but a cadre at the trade union supported and encouraged him. Zhang reported that the trade-union cadre said, “[Y]ou have the ability to organize, you know how to use legal weapons to protect yourself, so you have the unconditional support of the trade union!” In the end, the company was successful in limiting the impact of the strike. Workers who pledged to strike were bought off, and the salaries of all the workers were raised slightly. Not long after the strike, Zhang left the company for new employment.

As was the case for Liao in her experience in Shanghai, Zhang did not believe that petitioning or government connections would have helped him with his dispute. Because he is a migrant worker, it is a waste of time to pursue these options. Yet Zhang also regrets not going further with his legal options. He concludes that next time he should try to find a good lawyer. This is the recommendation he makes to his friends when they seek him out for help with their own disputes.

These four cases show how different disputants dealt with the frustrations and difficulties of the dispute process. The disputants' patterns of mobilization were strongly affected by their own understandings of their identity in relationship to state institutions, policies, and ideologies. Older SOE workers like Zhou and Jiang unsuccessfully invoked their former identities as part of the vanguard class, whereas migrant workers like Zhang and Liao strategized according to their perception that as outsiders, legal options offered better chances than government connections. Whereas older workers judged the legal system for its

inability to produce satisfactory outcomes, younger plaintiffs felt empowered by the procedures, regardless of the less-than-satisfactory outcomes. We summarize these differences next and in Table 7.10.

#### PATTERN OF MOBILIZATION: LAW VERSUS PETITIONING

The differences between the two approaches were apparent in the paths taken to legal mobilization, specifically whether or not the decision to use the legal system was prefaced by any petitioning activity. Younger, non-state workers tended to take their cases directly to the legal system after direct negotiations with management failed. If these disputants wanted to attract outside attention to their cases, they went to the media. They barely even contemplated going to the government's petitioning offices.

For those coming from a long history of employment in SOEs or in the public sector more generally, legal mobilization often was the last resort. A decision was made either after long periods of petitioning activity had failed or after the petition office itself had redirected the case to arbitration. Law was the last resort and a path often opened by the state as these petitioners were reoriented away from Letters and Visits Offices and toward arbitration and the courts. In many cases, their pattern of mobilization reflected a three-pronged assault on the state for not caring enough about the plight of SOE workers: Mobilization would start with petitioning, move to the media, and often be pushed to the legal system after failures in the other realms.

For many within this older generation, "resolving disputes through law" is the state's strategy to avoid the moral obligations of socialist employment. Legal options are suspect and unreliable because the legal system tends to minimize the workers' relationship with their work-unit and to attenuate the moral claims they want to make on their employer and, by extension, on the state itself. For these reasons, workers from state companies almost never start with the law. In fact, their recourse to the law most often is a result of redirection by state officials who instruct them that they must "*yifa banshi*" (do things according to law) or use the legal system only as a result of a complete failure with the *shangfang*, *jingzuo* (petitioning and sitting outside government offices) pattern of moral remonstrance.

#### *Goal of Mobilization: Strategic versus Expressive*

This pattern of socialist mobilization (a long process of petitioning or, as one plaintiff stated, "I petitioned until my shoes broke," followed by a

lengthy process of arbitration and court appeals, often ending in either complete failure, a paltry settlement, or an unimplemented court order) was pursued long after it was apparent that the relative gains were far outweighed by the lost time, expense, mental and physical energy expended, and damage to one's mental health. The most common explanation was the need or desire for a *shuofa* (an explanation).

For those in the post-socialist generation, however, decisions to pursue or give up, to mediate or settle, often were made with less regard to proving the point and with much greater regard for the opportunity costs of a lengthy court process. Post-socialist workers, with less invested in one particular workplace and also concerned that possible media coverage or co-worker gossip would affect their employment chances elsewhere, were far more likely to give up, settle, "lump" the dispute, or move on if their chances of winning dimmed.

This difference is partly the result of the relative importance of any one particular job. Older SOE workers know that they potentially face a long period of unemployment and falling living standards, whereas those in the post-socialist generation can, indeed must, quickly move on. But we argue that there is more to the differences between these two groups than material interests.

For those in the older generation, standing up to an injustice on the job (very often associated with restructuring and ownership changes) and getting an explanation from the state (through the courts) is a moral condemnation not only of a single leader or a mismanaged firm, but also of what they believe to be an unjust reform process. By contrast, post-socialist younger workers are defined in part by the disconnect between economics and politics. Their problems on the job are merely part of this disconnect. There is little ability or inclination to attach political meaning to their grievances at work.

#### *Mobilization Discourse: Universalism versus Particularism*

One of the reasons older plaintiffs look first to petitioning and only second or third to the law is the difficulty that they have in invoking particularistic social relations as a strategy to win support for their cases. Their (sometimes former) identities as state workers are not respected or honored in the courts.<sup>41</sup> What matters is their labor contract. Long

<sup>41</sup> Mary E. Gallagher, "Use the Law as Your Weapon! Institutional Change and Legal Mobilization in China." In *Engaging the Law in China: State, Society, and Possibilities for Justice*, ed. Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien (Stanford: Stanford University Press, 2005).

tenure at one work-unit will get you a bigger settlement, but it won't save your job. The universal application of laws rarely benefits those whose social welfare and employment security were for so long guaranteed not through the law but through a particularistic relationship with the state through the SOE.

For younger plaintiffs, especially those with an "outsider" status, the most important criterion is that the laws be applied fairly, for both locals and non-locals alike. The universalism of the law, if it is applied correctly, grants them protections that they did not enjoy previously. And, not surprisingly, suspicions of discrimination or corruption are common sore points for this post-socialist generation.

*Evaluation: Procedural Fairness versus Substantive Outcomes*

Plaintiffs of both generations were often dissatisfied with the results of their cases. In the postdispute period, many reflected on the problems within the system and the mistakes and missteps that they had made along the way. But the younger plaintiffs tended to be more realistic about the process, often judging the experience by how the institutions worked and whether or not procedurally they were treated fairly and respectfully by the state and the involved court officials. They often had criticisms: too-close ties between labor bureaus and companies, weak courts, and badly trained and ill-prepared labor arbitrators. They wanted the procedures to be improved. For those of the socialist generation, there was a tendency to judge the experience based on distributive outcomes. Procedural issues that block a desired outcome, even when applied correctly and fairly, are illegitimate. Procedural technicalities that keep their issues out of the courts are seen as unfair amendments to a long-standing relationship that was not based on a legal contract. The rules of the game have been changed midstream. Therefore, the rules themselves are illegitimate and unfair.

CONCLUSION

The role of legal experience in changing people's attitudes and behavior vis-à-vis the legal system remains an understudied topic. In this chapter, we set out some basic arguments about the nature of legal mobilization in China. We find that legal experience can have contradictory effects on a "legal consciousness." Borrowing concepts from the study of political participation more broadly, we find that internal efficacy (how well one

works the law) can be strengthened through engagement with the legal system. Respondents with and without legal assistance reported increased confidence, better understanding of procedures, and optimism that they had improved enough to have a better chance the next time around. External efficacy (how well the law works), however, is adversely affected by contacts with the legal system as plaintiffs find legal institutions to be less effective and less responsive than they initially expected.

Although disputants of all stripes and colors report negative experiences and difficulties, our comparison of “users” finds that patterns of mobilization and evaluations of the legal system are strongly shaped by a plaintiff’s political identity. Disenchantment is most profound among those who were relatively well-off and protected by the socialist system of employment, whereas those who remained on the outside by virtue of age or birthplace are more sanguine about their chances with the law. Despite all the problems with the Chinese legal system, the very fact that it exists and is being increasingly used by workers seeking redress is an indication of the state’s success in building new institutions that can demobilize a formally powerful sector of society while mobilizing new actors and constituents.