LEGAL AID AND THE RULE OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA

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I. INTRODUCTION

The main purpose of this study is to evaluate the present state of legal aid in China.\(^1\) On one level, this is an easy question. All measures of quantity indicate real progress since the Chinese government decided to construct a national legal aid system in 1994. Since then, the Ministry of Justice has established 32,000 legal aid organizations and over 55,000 legal aid stations at the county, district, provincial, and municipal levels. In the past ten years, these offices have handled over two million cases and assisted over three million individuals. In fact, more indigent Chinese citizens are presently receiving free legal services than ever before in the history of the People's Republic of China.\(^2\)

Yet upon closer inspection, these figures raise as many questions as they answer. How many citizens needed aid but didn’t receive it? What impact did the legal aid experience have on those who sought assistance? What types of cases were handled, and perhaps more importantly, what types of cases weren’t? While isolated statistics can provide a helpful snapshot of our subject, here a more in depth analysis is clearly warranted.

The Literature

Very little has been written on legal aid in China. Benjamin Lieberman was among the first, penning a 1999 article entitled “Legal Aid and Public Interest Law in China,” which provided a sweeping overview of both state-run and non-governmental legal aid institutions in China at the time. Through interviews conducted in 1996, 1997, and 1998 with a number of Chinese scholars, students, officials, and attorneys, Lieberman sought to understand how legal aid was developing in the context of an authoritarian state where lawyers were not fully autonomous. He writes that legal aid has, in certain instances, “proven effective in assisting individuals in protecting their rights,” though low caseloads and the heavy hand of state control warrant caution “against excessive optimism regard-

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1. This paper draws extensively upon field research conducted in the summer of 2009. Interview participants included legal aid lawyers, clients, administrators, officials, and academics from four Chinese cities – Suzhou, Fuzhou, Wuhan, and Beijing. For the safety of those interviewed, any piece of information attributed to them is cited anonymously by location, type of respondent, and date interviewed. The only exceptions pertain to the several academics who agreed to be cited by name.

ing the development of legal aid in China.”³ A year later, Allen Choate published a paper entitled “Legal Aid in China,” based on another set of interviews conducted by the Asia Foundation at legal aid centers in Guizhou and Yunnan. He is in some ways more optimistic than Liebman, concluding that “China’s approach to its public legal aid program seems appropriate for the country’s circumstances,” adding that “the program’s single greatest limitation resides in the shortcoming of the judicial system itself.”⁴

Others have proposed reform possibilities. In a 2001 article, Charles Ogletree argues for the adoption of a “critical cases model” in Chinese legal aid, where legal representation is apportioned on the basis of “the complexity of the case, the seriousness of the charge, and the ability of the accused to represent himself.”⁵ On the non-governmental side, Pamela Phan has studied legal aid clinics at Wuhan University Law School and Northwest University of Political Science and Law, concluding that the American model for clinical legal education, particularly in its emphasis on “social justice,” could be instructive in the Chinese context.⁶

Though all of these studies have made valuable contributions to our understanding of the subject, there is much room for further research. The late 1990’s might not seem long ago, but in the fast-moving world of Chinese legal development, ten years is an eternity. In fact, the State Council did not even promulgate its Regulations on Legal Aid, the national blueprint for the Chinese legal aid system, until 2003. Clearly there is a need to update the existing literature. Moreover, none of these studies evaluate the state of Chinese legal aid with respect to a set of clearly delineated standards. The articles by Liebman and Choate point out areas of weakness but they do not systematically identify the positive and negative impact legal aid is having on the Chinese legal reform effort. In order to chart a path for future development, we must first offer a clear assessment of what is working and what is not. That is the task for the present study: to evaluate the current state of legal

aid according to a set of clearly defined criteria in order to inform future policy debates as legal aid enters its next phase of development.

Partial Legalization

How does one evaluate a legal aid system? A good starting point would be to ask what are the goals of Chinese legal aid, and then to assess the extent it has accomplished those aims. The problem is that the goals often differ depending on whom you ask, and some parties, such as the Chinese government, have multiple and sometimes overlapping objectives that are not entirely transparent. According to the official Legal Aid webpage administered by the Ministry of Justice, the goals of legal aid are to “guarantee that all citizens enjoy equal and [im]partial protection by law” and to “complete human rights protection mechanism[s].”7 Rhetorically, this is no different from what most foreign rule of law advocates would like to see.8 But the government also sees legal aid as carrying out its substantive social policy goals: frustrated peasants are far more welcome settling their grievances in courts than on the streets, and in this way, legal aid promotes a brand of “harmony” that is particularly prized by the current regime.

Further complicating matters is the fact that in recent years this connection between the rule of law and social harmony has become couched in ideological legitimacy. In a 2008 speech to the National Conference on Political-Legal Work, President HU Jintao championed a new doctrine known as “the Three Supremes”, under which judges and procurators were required to “regard as supreme the Party’s cause, the people’s interest, and the Constitution and laws.”9 This meant, among other things, that legal personnel should focus on more harmonious aspects of their work, taking into account the Party’s larger interest in social stability. As such, judges and lawyers were required to attend study sessions that emphasized mediation over litigation as the favored means of dispute resolution. Under this doctrine, law remained a tool to achieve greater social ends, one that continued to be subservient to the interests of the Party.

There is a tension between this particular conception of the rule of law – call it "rule of law with Chinese characteristics" if you like – and liberal Western notions of what the rule of law consists. The latter, writes Michael Dowdle, holds that the "rule of law recognizes a distinction between legal authority and political authority, and requires the former to trump the latter. In China, however, the opposite is said to be true—the authority of law is subordinated . . . to political interests."\textsuperscript{10} He terms this the instrumentalist critique. Much more can be said on this topic, but the crucial point is this: if the goal of Chinese legal aid is to promote the "rule of law," then our assessment of legal aid in this study should probe the extent to which legal aid has been contributing to rule of law development. But given the oft-conflicting conceptions of what the "rule of law" should normatively consist, how does one establish fair criteria on which to judge the current success of Chinese legal aid? Under the instrumentalist critique, the crucial criterion is the degree to which the Chinese Communist Party (CCP) has subordinated itself to the Constitution and its laws. By these standards, China remains far from realizing the rule of law ideal.\textsuperscript{11} But that doesn't mean we can't say anything meaningful about legal aid's contributions to Chinese rule of law. In fact, the instrumentalist critique that Dowdle describes is ultimately too absolutist; the rule of law should be understood as a developing process rather than an end-state.

Generally speaking, a system ruled by law incorporates two distinct types of legalization – the legalization of society, or what I call social legalization, and the legalization of government, or political legalization. The Chinese government wishes to legalize Chinese society. That is, it would like its citizens and organizations to conduct their affairs according to established legal rules and procedures. This promotes predictability and order, encouraging investment and economic growth while enabling the Party to better manage and guide societal development. But the rule of law also consists of political legalization, in which the government itself must also conduct its business according to laws. The central government permits this at the local and bureaucratic level through a limited criminal and administrative litigation regime, but they themselves refuse to be subject to higher order legal rules. In this way, the Party can bolster its own legitimacy through weeding out local corruption while its own actions remain outside the scope of legal scru-

\textsuperscript{11} Ibid, 8-9.
tiny. Therefore, when the Chinese leadership speaks of promoting a society ruled by law, they are in effect talking about a partial legalization of Chinese society – a cocktail of social legalization and a lower-order form of political legalization.

The good news is that this form of partial legalization is still a worthy goal. One could even argue that other elements of Chinese law must improve prior to the realization of a fully legalized state; that is, a legally informed public, a more professionalized class of lawyers and jurists, and a fairer system generally will increase demands for legal supremacy for those sitting atop the highest perches of government. In fact, partial legalization represents a policy area where the Chinese government and international civil society intersect. The former desires it in order to promote its own policy goals, while the latter hopes that partial legalization will sow the seeds for a more encompassing form of political legalization later on.

With this in mind, one may consider the role of legal aid in China’s current system. As suggested, legal aid is nowhere near a state of development where it could promote an absolutist conception of the rule of law. But although legal aid faces serious challenges in bringing about higher-order political legalization, it can make crucial contributions to partial legalization. In particular, vast areas of Chinese law require practical improvement, changes ranging from increasing awareness of legal rights to raising the quality of lawyers available to the rural public. Simply put, China is still early enough in its current stage of legal development that we can content ourselves with these other issues of capacity, quality, and education first.

And so when we ask how legal aid has contributed to the rule of law, we are in effect asking two questions. First, has legal aid had a legalizing effect on Chinese society? And second, has legal aid had a legalizing effect on Chinese government? Framed in this way, the rule of law no longer becomes an all or nothing concept. Even if full political legalization hasn’t been realized, we can still say something useful about how specific areas within the rule of law domain are developing. This will allow us to explore more methodically the ways in which partial legalization is being realized under the current legal aid regime.

Argument

Taken together, the evidence suggests that legal aid has contributed to Chinese rule of law in palpable ways along several dimensions. These include instilling faith in the legal system among
the impoverished, providing legal education to a largely uninformed clientele, providing public interest legal training for law students and young lawyers, curbing the excesses of local governments and businesses, and promoting fairer treatment of criminal defendants. All of these effects illustrate the ways in which legal aid has contributed to the legalization of Chinese society, and to a lesser extent, the legalization of Chinese government.

However, the positive impact of legal aid has been significantly limited in scope, coverage, and quality. Resource inadequacies, onerous eligibility requirements, a lack of basic legal awareness among the poor, and deficiencies in the legal system itself all contribute to the system’s limitations. Moreover, the prospects for future improvement are limited by both political and practical constraints that are relatively inflexible in the short-term. Nevertheless, there are a number of creative approaches that might effectively enhance the quality of Chinese legal aid, including creating a legal service fellowship program for young graduates, expanding clinical education at Chinese law schools, and creating a permanent class of traveling legal aid staff lawyers to penetrate into China’s remote localities.

II. CHINESE LAW AND LEGAL AID

The development of Chinese legal aid can be understood as the natural outgrowth of two parallel forces – legal reform efforts in China that began in the early 1980’s, and broader trends of global liberalization that accelerated in the 1990’s. It is not surprising then that the modern Chinese legal aid system features both Western and Chinese elements. This section provides the historical background necessary toward understanding how Chinese legal aid came to be, as well as a descriptive account of what the system is like today.

History of Chinese Law and Legal Aid

Chinese legal aid services began to emerge in the early 20th century. Once the imperial order gave way to the new Republic of China in 1912, major Chinese cities witnessed a surge in legal activity, largely as an outcome of increased Western influence. In the 1920’s and 1930’s, legal aid organizations formed in several of these
urban centers, though the relative backwardness of the legal profession did not lend itself to quality legal aid services.\textsuperscript{12}

After Mao established the People’s Republic of China in 1949, Chinese law became infused with a new revolutionary purpose. Lawyers were formally defined as “state legal workers” who were required to place the needs of the Party-state and socialist class struggle above the interests of any individual client. Yet even during the early years of Mao’s China, limited forms of legal aid persisted. Several national laws existed that required lawyers to provide services to indigent clients in a limited range of civil and criminal matters. However, since most legal disputes were not handled through formal legal processes, it is questionable to what extent legal aid was provided in practice. Additionally, Chinese criminal tribunals were ruthless and punishment driven. In the rare instances in which a lawyer would be present, they were almost always confined to pleading leniency rather than arguing against culpability.\textsuperscript{13} As such, legal aid remained starkly limited during this period.

The first real breakthrough in modern Chinese legal development occurred in 1979. Party leaders began to infuse law with new purpose and direction – a welcome change after the excesses of the Cultural Revolution. As China began to modernize, budding institutions and practices created demand for an entirely new set of regulations designed to manage an increasingly complex society. Courts began to tackle an array of economic and civil disputes, from questions of state compensation and administrative litigation to bankruptcy law. These newer areas of legal administration required not only a functional system of punishment, but a level of technical proficiency to guide and manage societal progress. The CCP now employed law in new and more efficient ways to further its policy goals.

Certain forms of legal aid evolved and expanded during this period. The 1979 People’s Court Organic Law, for instance, granted courts the discretion to appoint “necessary” defenders to assist criminal defendants.\textsuperscript{14} Not long thereafter, the 1980 Interim Regulation on Lawyers codified the requirement for lawyers to accept


\textsuperscript{14} People’s Organic Law, \textit{zhong hua ren min gong he guo ren min fa yuan zu zhi fa}, 1 July 1979.
criminal cases assigned by courts.\textsuperscript{15} Unfortunately, these laws were not implemented evenly or systematically. Lieberman writes that "courts assigned cases to lawyers with whom judges were acquainted, and lawyers often did little in the way of presenting a defense, in part because the Criminal Procedure Law limited their involvement in criminal proceedings." In civil law, legal aid was even less developed. The 1981 Provisions on Lawyers' Fees actually regressed in some ways from its predecessor statute. Although the 1981 provisions enlarged the scope of civil issues in which legal aid might be provided to include disputes over "retirement payments" and "labor insurance," it also made such work voluntary.\textsuperscript{16} However, the practical impact of these laws should not be overstated— in 1980 there were only 2000 practicing lawyers in China serving a population of 981,000,000.\textsuperscript{17}

Though legal aid was still drastically underdeveloped in the 1980's, various state-affiliated organizations began to offer public legal services, often informally and at subsidized rates. Mediation committees run by Villagers Committees and Resident Committees became a frequent source of free legal advice for the impoverished.\textsuperscript{18} Town-operated Legal Service Offices were also prevalent during the period. They provided legal counsel, mediation, notary services, and sometimes even litigation support to poor citizens. Fees, albeit subsidized, were usually charged.\textsuperscript{19} Legal Service Offices continue to exist today, usually staffed by non-lawyers and popular in more rural areas of China where legal aid is poor or nonexistent.\textsuperscript{20}

The first brick of the modern Chinese legal aid system was laid in 1992 when the Wuhan University Law School established its Center for the Protection of the Rights of Disadvantaged Citizens, a six-department non-governmental legal aid center that prides it-
self as being the first modern legal aid clinic in China. On the governmental side, significant movement began in 1994 when then Justice Minister XIAO Yang announced his intention to construct a national legal aid system. Draft legislation circulated widely during this period among scholars and bureaucrats, while media reports frequently included celebrations of “virtuous” lawyers who performed pro bono work on behalf of aggrieved clients.21

The rudiments of a legislative framework were codified in 1996 under two major reformist statutes – the 1996 Lawyers Law and 1996 Amendments to the Criminal Procedure Law (CPL). Article 42 of the Lawyers Law made the provisions of legal aid services a “duty and responsibility” for all lawyers in China.22 Any financially deprived citizen with a legal grievance on “family, work-related injury, criminal procedure, claims for state compensation, or claims for lawful payment of disability or bereavement of pensions” could receive legal aid “in accordance with state regulations.”23 Article 43 charged the State Council’s Administration Department for Judicial Affairs to issue specific and formal regulations for legal aid – a task that was completed in 2003 under the Regulations on Legal Aid.24 The 1996 CPL amended the 1979 version, adding economic hardship, blindness, and being prosecuted for capital crimes to the short list of circumstances in which the court may appoint a defender.25

Motivations

Why did China decide to pursue a national policy for legal aid? Although Minister Xiao conceived of the idea, it could not have been put into place without widespread Party support. Accordingly, one must consider what motivated China’s leadership. These motivations can be understood in terms of three types of policies – legal policy, social policy, and foreign policy.

As legal policy, legal aid reflects the commitment of Chinese leaders to partially legalize Chinese society. If the Party is to “manage” society through law, it must first ensure that citizens develop a legal consciousness and frequently use legal channels to address

23. Ibid. Art. 41.
24. Ibid. Art. 43.
their grievances. Equipping the disadvantaged with legal assistance can potentially go a long way towards realizing these outcomes. The provision of legal aid is also seen by China's elites as a means of crafting an "advanced legal system." Liebman has quoted Minister XIAO Yang as remarking that the extent to which a society provides legal assistance to the poor is a measure of that society's legal development.26 Because most mature systems feature quality legal aid services, and because China has rhetorically committed itself to building an advanced legal system, it was a natural next step for it too to construct a national legal aid system.

Turning next to social motivations, legal aid can provide aggrieved citizens an outlet to address their legitimate concerns. Protests have become increasingly frequent in Chinese society, rising from 10,000 in 1994 to 74,000 a decade later.27 If individuals can find resolution to their problems through courts, then their frustrations are less likely to be directed at the government. Legal aid also aligns more broadly with China's conception of socialism with Chinese characteristics. Helping the nation's poor has increasingly been seen as a means of tempering the excesses of capitalism. Government statements have been replete with this sort of rhetoric. In September of 2007, Vice-Minister of the Ministry of Justice ZHAO Dacheng delivered a lecture on the ongoing topic of "Building Socialism and Harmonious Society through Legal Service and Legal Aid."28

More structurally, providing legal assistance to the poor can also help ensure that national policy mandates are carried out at the local level. Village officials often have every incentive to pursue their own agendas, to engage in corrupt practices and to collude with other officials. The victims of local deviancy are almost always the rural poor. Arming them to use law as a "weapon," as legal popularization campaigns have stressed, can potentially check against local misbehavior. This is one reason why lower-order political legalization, discussed earlier, has been supported by upper echelons of the CCP.

28. Dacheng Zhao, "Building Socialism and Harmonious Society through Legal Service and Legal Aid," *fa lu fu wu he fa lu yuan zhu gong zuo wei gui jian she hui zhu yi he xie she hui fu wu*, lecture delivered at the Ministry of Justice on 9 September 2007.
Finally, some have pointed to a third reason why China has pursued legal aid: to soften global perceptions of its human rights record. This is legal aid as foreign policy. In the face of heavy international criticism over its domestic human rights record, the Chinese government has often pointed to its legal aid programs as evidence that progress is being made. The Ministry of Justice’s Legal Aid Center devotes an entire section of its English language website to “Case Files,” featuring stories of sympathetic victims who found justice through legal aid. It was no surprise that when President Clinton made his state visit to China in 1998, both then First Lady Hillary Clinton and Secretary of State Madeleine Albright visited the Center for Women’s Law and Legal Services at Beijing University. Albright later commented that the organization “had earned a place in Chinese legal history” for its “innovative and courageous work.”

To be sure, these motivations do not presuppose a monolithic government with singular and united interests. Legal aid was the brainchild of reformers in the national government, and it remains unpopular among lower level cadres and members of the business elite who stand to lose from a legally empowered citizenry. But national politicians have come to regard it as useful for all the reasons highlighted above. Everything from partial legalization to a re-channeling of public discontent to the tampering of foreign criticism serves to bolster the legitimacy of a ruling Party that does not have the benefit of a democratically responsive public.

The Regulatory Framework

The best way to understand Chinese legal aid today is to begin with the Regulations on Legal Aid. Enacted in September of 2003, it completed the charge set forth in the 1996 Lawyers Law, which

requested that the State Council submit "specific measure for legal aid."\textsuperscript{33}

In its first chapter, the Regulations on Legal Aid outline a set of rights and duties previously non-existent in the Chinese legal aid regime. Article 2 of the chapter stipulates that citizens who meet the requirements for legal aid "shall be entitled to obtain... legal services."\textsuperscript{34} Article 3 frames the provision of legal aid as a government "responsibility" and Article 6 establishes the performance of legal aid as a "duty" for all lawyers.\textsuperscript{35} This is perhaps the most important way in which Chinese legal aid differs from other systems. Every lawyer in Chinese society is expected to provide legal aid to indigent clients when called by their local Justice Bureau, reflecting their obligations to the state and to society at large.

The second chapter defines the scope of eligibility for legal aid, with civil and criminal cases treated differently. Individuals facing financial hardship may apply for legal aid when requesting for state compensation, social insurance, survivor's pensions or relief funds, family support, and employment compensation.\textsuperscript{36} Article 10 allows for some flexibility on this point, stating that when provinces, autonomous regions, and municipalities are giving effect to this provision in their own laws, "supplementary provisions" could be made.\textsuperscript{37} The Beijing Municipality Regulations on Legal Aid, for instance, add domestic abuse, traffic accidents, medical malpractice, and product liability to the range of eligible cases.\textsuperscript{38} In criminal matters, courts are expected to contact legal aid institutions to appoint a lawyer for defendants who are poor, disabled, minors, or subject to capital punishment in the pending case.\textsuperscript{39} In recent years, among those who have received legal aid, 50% were farmers or migrant workers, 20% were female, 7% were disabled, 10% were seniors, and 15% were minors.\textsuperscript{40}

\textsuperscript{33} Law of the People's Republic of China on Lawyers, zhong hua ren min gong he guo lu shin fa, Art. 43, 15 May 1996.
\textsuperscript{34} The Regulation on Legal Aid, fa lu yuan zhu tiao li, Art. 2, 21 July 2003.
\textsuperscript{35} Ibid, Art. 3.
\textsuperscript{36} Ibid, Art. 10, 21 July 2003.
\textsuperscript{37} Ibid.
\textsuperscript{38} Regulation of Beijing Municipality on Legal Aid, bei jing shi fa lu yuan zhu tiao li, Art. 9, 19 December 2008.
\textsuperscript{39} The Regulation on Legal Aid, fa lu yuan zhu tiao li, Art. 11, 21 July 2003.
Article 13 of Chapter 2 stipulates that standards for assessing economic hardship would be determined by people’s governments at the provincial and municipal level, taking into account “economic development and demand for legal aid of the locality.” Most provincial regulations mandate that legal aid be provided only to those who fall below “minimum standards of living [dibao],” as determined by local people’s congresses in each area. Dibao refers to a social insurance system implemented by the State Council in 1997, intended to create a safety net for the most impoverished citizens in China. The minimum standard is set by the Civil Affairs Departments of municipal and county governments, taking into account basic costs of food, clothing, housing, and other necessities. If the average family income falls below this standard, payments are doled out to remedy the shortfall. Shaanxi Province, for instance, ties its economic hardship standard for legal aid to local dibao thresholds. In its provincial capital of Xi’an, the minimum standard of living in 2009 was 260 yuan per month, covering 156,000 urban residents and 172,000 rural residents. By law, these individuals would be eligible for aid.

Chapter 3 requires legal aid applicants to present certification of economic hardship, a valid ID, and materials relating to their case. Very often, applicants who have legitimate grievances fail to grasp the importance of retaining written evidence, resulting inevitably in being denied assistance. To ease some of the burdens of this provision, the National Legal Aid Center announced in 2006 that migrant workers would no longer need to show evidence of financial hardship to receive legal aid. Finally, Article 19 of this section allows applicants to appeal the eligibility decision of a legal aid institution to the Justice Bureau that oversees it. This does not happen very often, according to administrators who were surveyed.

42. The Regulations of Shaanxi Province on Legal Aid, shan xi sheng fa lu yuan zhu tiao li, 30 July 2008.
44. The Regulation on Legal Aid, fa lu yuan zhu tiao li, Art. 11, 21 July 2003.
45. Client B (Beijing Legal Aid Client), Personal Interview, 10 July 2009 and Lawyer Xu (Beijing Xuanwu Qu Legal Aid Lawyer), Personal Interview, 22 July 2009.
47. The Regulation on Legal Aid, fa lu yuan zhu tiao li, Art. 19, 21 July 2003.
though it is unclear how many legal aid applicants know how to navigate formal bureaucratic procedures.  

In its fourth chapter, the 2003 Regulations mandate that local legal aid institutions have free choice between a judicare model or a staff attorney system. This flexibility is set forth in Article 21: “Legal aid institutions may designate a law firm to arrange for lawyers to handle the legal aid case. . . . it may also arrange for its own staff to handle the legal aid case.” In practice, most legal aid organizations incorporate both. A legal aid staff lawyer in the Xuanwu District of Beijing indicated that the vast majority of cases were assigned to private lawyers, while he and the other two staff lawyer would take on approximately 10 cases each per year. “If a case is particularly complex, I might choose to do it,” he remarked, “and sometimes the client requests that I handle the case rather than an outside lawyer, since we’ve been working closely since the beginning and he has more faith in my abilities.” There are over 40 law firms in his district that receive case assignments annually. Each firm is also responsible for staffing the consulting booths at the legal aid office for one week each year, where potential applicants can share their stories and receive legal advice. These outside lawyers, or “societal lawyers” as they’re termed in legal aid offices, are entitled to receive compensation for their services under Article 24. The amount is also determined at the provincial and municipal levels. In Beijing, society lawyers receive 800 yuan for a civil case and 500 yuan for a criminal case. “Criminal cases are much easier to handle in China than civil cases,” a Xicheng District lawyer remarked.

Finally, Chapter 5 lays out punishments for noncompliance. Law firms that refuse to accept legal aid work are subject to warnings and the suspension of business. Those who improperly accept money from the client, embezzle legal aid funds, deny legal aid to those who are eligible, or supply it to those who aren’t, may face

48. Lawyer C (Beijing Chaoyang Qu Legal Aid Lawyer). Personal Interview, 6 July 2009.
49. The Regulation on Legal Aid, fa lu yuan zhu tiao li, Art. 21, 21 July 2003.
51. Lawyer Xu (Beijing Xuanwu Qu Legal Aid Lawyer), Personal Interview, 22 July 2009.
52. Lawyer X (Beijing Xicheng Qu Legal Aid Volunteer), Personal Interview, 7 July 2009.
53. Ibid.
disciplinary sanctions.\textsuperscript{54} Violations of trust do occur in legal aid bureaus today, and this will be explored more fully later on.

\section*{Structures, Operations, and Finances}

At the highest level, Chinese legal aid is administered by the National Legal Aid Center, which was established in the Ministry of Justice in December of 1996. It is significant that the Ministry carved out a new Vice Ministerial center for legal aid as opposed to simply creating a new bureau or placing it within the network of existing offices. According to Choate, this reflects the “importance the leadership attaches to legal aid development.”\textsuperscript{55} A National Legal Aid Foundation was also established in 1997, an independent nonprofit set up to raise funds to supplement the annual budget allocated to the National Legal Aid Center.

Many more legal aid centers have been erected by lower level Justice Bureaus. The National Legal Aid Center develops guidelines to oversee and coordinate activities conducted by its counterparts in the provinces. Legal aid centers in provincial Justice Bureaus, in turn, manage work handled by legal aid centers established at the district, county, and city-level. Though all legal aid centers within this hierarchy conduct legal aid work, including the National Center on matters of national, international, or trans-provincial scope, most legal aid is provided at the lower levels. Many local centers conduct their work through work stations set up in every urban neighborhood of their district. As of 2009, China had more than 3,200 legal aid centers and 55,000 legal aid work stations, 300 centers short of its goal of having legal aid centers in every province, municipality, district, and county in China.\textsuperscript{56}

On the budgetary side, total government spending for legal aid hit 670 million yuan in 2008. It is composed mostly of state-allocated funds and private donations.\textsuperscript{57} Inadequate legal aid funding is a problem universal to all countries, but it is all the more acute in

\textsuperscript{54} The Regulation on Legal Aid, \textit{fa lu yuan zhu tiao li}, Art. 27, 21 July 2003.


China where annually a mere six cents is spent per citizen. To compare, California spends three dollars per capita on civil legal aid, while England and Wales spend 30 dollars per capita. To meet the demands of what will only be larger caseloads in the future, China will have to funnel significantly more money into its legal aid programs.

Legal aid organizations have also developed rapidly outside the state system, though even "non-governmental" entities in China are never fully autonomous. University-based clinics at schools like Wuhan University and Beijing University provide aid through student and professor volunteers. These institutions coexist fairly well with their state-run counterparts, largely because their faculty and deans hold influence in government and the Party. Clients are sometimes more willing to seek the assistance of University-based clinics, particularly if they are suing another government agency. University centers also tend to be more utilitarian, often choosing cases with the highest potential social value, even if the client is not as economically deprived as other applicants with more routine legal grievances.

One particularly notable "academic" legal aid institution is the Beijing Dongfang Public Interest and Legal Aid Law Firm, affiliated with the Chinese Academy of Social Sciences. Unlike state-run legal aid programs, Beijing Dongfang only takes on select cases where there is a possibility of effecting widespread changes in law and policy. Serving the needs of an individual client is secondary to its goal of producing systemic change. As a result, the firm's lawyers often find themselves creating test cases, sometimes with their own colleagues as plaintiffs, in order to invalidate provisions that they believe to be inconsistent with higher laws, even constitutional principles. For instance, in 2005 a Dongfang lawyer named HUANG Jinrong purchased a train ticket so that he could initiate a lawsuit against the Beijing Railway Bureau for not informing him that his

60. Professor X (Professor at Wuhan University Law School), Personal Interview, 23 June 2009.
62. Professor H (Professor at the Chinese Academy of Social Sciences), Personal Interview, 8 July 2009.
railway ticket included a 2% mandatory insurance fee. The Bureau's failure to indicate this information constituted an infringement of his right to consumer information, he argued. The court ultimately ruled in favor of the Bureau, and Huang lost again on appeal.\footnote{Zexian Chen. “Huang Jinrong v. Beijing Railway Bureau,” huang jin rong su bei jing tie lu ju an, Public Interest Litigation Newsletter, published by the Chinese Academy of Social Sciences (2007), p. 2.}

Beyond academia, nonprofits and private firms have also entered the legal aid arena. The All-China Women’s Federation, the largest NGO in China, has established its own legal aid clinics focused on women’s rights in several rural counties.\footnote{Benjamin L. Liebman, “Legal Aid and Public Interest Law in China,” Texas International Law Journal Vol 34 (1999), p. 213.} Many for-profit law firms also engage in legal aid work on a voluntary basis, in addition to their obligations under the 1996 Lawyers Law.\footnote{Ibid. p. 249.} It is uncertain how large the scale of this effort is, and at least one municipal-level administrator indicated that her office did not compile such data.\footnote{Administrator B (Beijing Legal Aid Administrator), Personal Interview, 3 July 2009.}

**Conclusion**

The Chinese legal system has come a long way since 1979, and even further from its imperial past. The development of legal aid parallels both the rapidity and momentum of these larger legal reform trends, progressing from virtual non-existence up until the 1990’s to the enactment of a comprehensive regulatory framework in 2003. But what has it actually accomplished? Has legal aid contributed to the development of the rule of law in ways that both the Chinese government and international observers expected? This is the task of the next two sections, to dig one layer deeper into legal aid in practice and discern the specific ways in which it has – and has not – promoted the rule of law in the People’s Republic of China.

**III. STRENGTHENING THE RULE OF LAW**

The specific mechanisms through which legal aid has contributed to Chinese rule of law development are many and varied. They include instilling into indigent clients a faith in the fairness of the legal system, providing legal education to applicants and members
of the public, providing public interest legal training to young lawyers and law students, checking local government and business excess, and promoting fairer treatment of criminal defendants. The first three mechanisms - faith, education, and training - can be thought of as capacity-building mechanisms which empower different actors in the Chinese legal system. By contrast, the other mechanisms involving business, government, and criminal law are more justice-oriented means by which legal aid protects individuals against the many powerful interests that dominate Chinese society.

These mechanisms are crucial to highlight, particularly as we look to where legal aid should progress next. At the same time, we should ensure that these contributions are not just general effects, but can be rigorously linked to positive rule of law outcomes. That is, how does legal training for lawyers or legal education for clients actually contribute to the legalization of Chinese society or government? This section outlines a number of ways in which this can occur.

**Faith in the Legal System**

Legal aid has left many clients more confident in the ability of the legal system to produce just outcomes. The effect is most pronounced when a client ultimately wins her case, but improved faith can also arise from positive interactions with legal aid lawyers, or from stories in the media that document the triumphs of legal aid. Only when citizens trust legal institutions will they actually begin to use them—a necessary step towards the legalization of Chinese society.

For many individuals, applying for free legal assistance is the path of last resort. Given the relative recency of legal aid’s expansion, many indigent clients are simply unaware that these services even exist. They spend years wrapped up in a maze of administrative networks that have neither the jurisdiction nor the incentive to help.67 Even if they have heard of legal aid, clients tend to remain wary of litigation, a form of dispute resolution perceived to be too confrontational for their Confucian instincts. “I don’t want to go to court,” said one applicant in Fuzhou, “I just want to win.”68 It is in this context that clients sometimes find themselves startled – and delighted – by various elements of their legal aid experience. In fact, a positive legal aid experience can shatter one’s preconceived

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67. Client F (Fuzhou Legal Aid Recipient), Personal Interview, 19 June 2009.
68. Ibid.
notions about law and legal process, replacing it with a newfound confidence in the fairness of the legal system as a whole.

For obvious reasons, such transformations are particularly powerful when clients emerge victorious from their case. One compelling example occurred in 2009 in Beijing. A migrant worker at the Shenzhen Great Wall Construction Company became blind in one eye after sustaining a serious injury while operating machinery at work. The facts of the case fell very neatly into the set of provisions concerning workplace injuries, rules that entitled the worker to compensation from his employer, who refused. With the help of a staff lawyer at the Chaoyang District Legal Aid Bureau, the worker then took the case to court, winning both the original judgment and on appeal. The judge awarded him 45,000 yuan, only 5,000 shy of his total monetary request based on medical bills and other expenses. His employer approached him after the trial, offering a “mediated” settlement of 20,000 yuan, explaining that the judge’s ruling would be difficult to implement. True to its word, the company did not hand over the 45,000 yuan. Instead, noted the legal aid lawyer who handled this case, “it disappeared.”

In response, lawyers at the legal aid bureau conducted an exhaustive search for all operational construction sites in Beijing. Once they re-discovered the Great Wall Company, they informed the court and confronted the owners, who continued to balk at their legal obligations. The judge then sent court police to the construction site, forcing the owners to hand over all 45,000 yuan in cash while a crowd of gathered pedestrians looked on. The client was elated. The Chaoyang District Legal Aid Bureau maintains a scrapbook with pictures of their previous clients and guests – today, the book contains a photograph of the client grinning toothily while clutching wads of 100 yuan bills. “He is more confident in our legal system,” his lawyer told me, “largely due to his appreciation for the fact that our system provides something like legal aid.”

The client has referred several friends to the bureau and continues to visit frequently.

Not all clients receive extensive case assistance. In fact, a fair number only use such services for preliminary consultations and for

69. Lawyer C (Beijing Chaoyang Qu Legal Aid Lawyer), Personal Interview, 6 July 2009.
70. Ibid.
71. Ibid.
72. Lawyer Cf (Beijing Chaoyang Qu Legal Aid Lawyer). Personal Interview, 6 July 2009.
one reason or another their legal aid experience ends there. Even in these situations, however, legal aid can have a positive impact on how individuals perceive the legal system as a whole. In June 2009, I observed an elderly woman walk into a Suzhou legal aid clinic for consultation. The woman was an illiterate widower from Anhui Province. Her husband had passed away eight years ago in a work-related accident, and she believed she was entitled to benefits from his former employer. “I have little understanding of law,” she repeated frequently throughout the conversation. After she finished, the lawyer explained that she may have a case, and because her income fell below the minimum standard of living, she was eligible for legal aid. But because she wished to sue a company, she would have to seek the assistance of the legal aid bureau whose jurisdiction included the district where the company was situated. He then gave her a map of where this bureau was located, writing down the directions, including which bus routes to take, on the back of a folded sheet of paper.

On one level, the service offered by the staff lawyer in this case may seem insignificant, especially when set against the dramatic legal victories discussed earlier. The elderly woman, however, was moved to the point of tears. Although she had yet to receive any substantive legal aid, in over a decade of petitioning, she had never encountered someone who seemed so willing to help. The fact alone that the government had provided a lawyer to give her this service, even if it consisted of just one consultation that did little to further her case, struck a powerful chord within her. “You are a good person,” she said to the staff attorney. “Lawyers are good people.” Here, too, is an instance in which a client develops positive views about legal aid, views that naturally expand into a more optimistic attitude towards the legal system as a whole.

In addition to helping individual clients, legal aid bureaus have also begun to pursue publicity activities to promote trust in Chinese law. The Beijing Xuanwu District Legal Aid Bureau even caters its advertisements to national holidays and festivals. On Senior Citizen Day, it purchases walking canes and prints the legal aid hotline phone number and clinic address on the back of the cane. These gifts are delivered to the front doorsteps of elderly citizens living in the District. Such acts of goodwill not only promote the services

73. Client S (Suzhou Legal Aid Recipient), Personal Interview, 12 June 2009.
74. Ibid.
75. Lawyer Xu (Beijing Xuanwu Qu Legal Aid Lawyer), Personal Interview, 22 July 2009.
of the bureau, but also help to create reciprocal goodwill from gift
recipients in the district. For affected individuals, appreciation for
legal aid can easily translate to appreciation for the legal system as
a whole.

The primary means of advertisement is through the media. Every
legal aid lawyer surveyed in this study has highlighted the
importance of developing robust working relationships with local
reporters. The more common partnerships are with writers at the
Workers Daily and the Rule of Law Daily, given their respective
emphasis on poverty and legal development.76 But stories cham-
pioning legal aid victories can be found in most major newspapers
and television networks. In her study of 50 legal aid plaintiffs at a
Shanghai legal aid bureau, Mary Gallagher found that 69% of
plaintiffs first heard about legal aid from a media source.77 Among
those who did, the overall effect was a strengthening of their faith
in the legal system’s ability to deliver just outcomes. For instance,
after DU Linxiang, an elderly worker who was awarded a large
amount of severance pay with legal assistance, appeared on a popu-
lar law program on television, a line of similarly situated older
workers lined up outside his door, hoping to glean some advice
about how to work the system in their favor. “Other plaintiffs men-
tioned this case by name as giving them great encouragement and
confidence in pursuing their case,” writes Gallagher.78

Thus there are several ways in which legal aid promotes an
improved faith in the rule of law among those who come into contact
with it. But how does faith in the legal system actually promote the
rule of law? For society to be properly legalized, individuals should
not only conduct their affairs according to law, but should be in-
clined to resolve their disputes through established legal channels.
But citizens won’t pursue formal legal processes unless they are
confident in the ability of these institutions to produce just out-
comes. Legal aid can promote this confidence, and enhance the ca-
pacity of the legal system generally. The many retired workers who
waited outside DU Linxiang’s door did what they did because pro-

76. Lawyer X (Beijing Xicheng Qu Legal Aid Volunteer), Personal Interview, 7
July 2009 and Lawyer Xu (Beijing Xuanwu Qu Legal Aid Lawyer), Personal Interview,
22 July 2009.

77. Mary E. Gallagher, “Mobilizing the Law in China: ‘Informed Disenchantment’
and the Development of Legal Consciousness,” Paper presented at the Annual Meeting
of the American Political Science Association, Washington D.C., September 1-4, 2005,
p. 22.

78. Ibid, 23.
grams touting the potential of legal aid awakened a sense within them that they too could benefit through courts and litigation. Similarly, the half-blind migrant worker in Chaoyang would not have recommended his friends and acquaintances to the legal aid clinic unless he believed that positive outcomes could be realized. Social legalization, then, is not just about legal rules and institutions – perceptions and attitudes about the law are just as crucial.

**Legal Education**

Legal aid has also helped individuals learn more about Chinese law. Legal knowledge is most often transmitted through routine consultations between legal aid lawyers and clients, though such knowledge can also be shared through experiential mistakes and missteps. On another level, legal aid publications and other media sources also provide legal education, though here the target audience is broader – the greater Chinese public. All of these mechanisms contribute to a more law-based society.

Many Chinese citizens lack competence in basic laws and legal procedures. Party leaders are well aware of these inadequacies. In fact, legal education has been a key component of the government’s legal reform project. Popular legal education has primarily been conducted through state-directed media organs – newspapers, magazines, television, and the internet. There is an entire state-run television channel (CCTV-12) called “Society and Law,” with daily programs such as *Legal Lecture Room* and *At the Scene of the Court*.79

Within this larger process of creating a more legally literate citizenry, legal aid has emerged as a crucial tool. In one particularly striking example, during the summer of 2009, a retired coal miner named LIU Litai applied for legal assistance at the Fuzhou Center for Legal Aid. For nearly two decades, Liu had been shuffled back and forth between various government bureaus. When he arrived at the Fuzhou Center, he carried a bundle of “official” evidentiary documents wrapped in fraying rags. Semi-literate at best, Liu had paid someone who was purportedly more educated to type up a list of his legal claims and entitlements. The legal aid lawyer glanced at

his documents, which were riddled with grammatical errors and bizarre turns of phrase, and concluded that he had no case.\footnote{80}

Liu’s documents explained that regulations passed in 1987 stipulated that anyone serving between five and eight years in the People’s Liberation Army (PLA) should enjoy a minimum wage of 58 yuan a month. He had served from March of 1963 to March of 1968, but was only paid 37 yuan a month, less than what the new law mandated. What he failed to realize, of course, was that the new minimum wage law did not apply retroactively. In fact, he knew so little about legal compensation that he drafted a complaint asking for “an apartment with three bedrooms and one living room, a 60,000 yuan automobile, 10,000 videotapes, and 1500 kilograms of rice.” One of these papers was addressed formally to current and past leaders in the Chinese Communist Party, including HU Jintao, JIANG Zemin, ZHU Rongji, and WEN Jiabao.\footnote{81}

Liu’s story is not unique. As a result of the state-led legal popularization campaigns, of which legal aid advertising is a part, many more individuals are beginning to feel a stronger sense of legal empowerment. This is a positive development in that many citizens are beginning to have more confidence in the law. But having such “faith” is not sufficient in of itself – clients must also know and understand the law at a basic level of competency. Unfortunately, many clients have an incomplete or inaccurate grasp of the law and legal procedure. This was certainly the case with Liu, who simply did not have a legitimate legal grievance despite his persistence spanning two decades. At the end of our interviews, he finally acknowledged that he understood why he wasn’t entitled to the benefits he had requested.\footnote{82} The lesson was bitter, but it was a form of necessary experiential legal instruction that many individuals are receiving today.

In describing the sort of instruction that Liu received, Gallagher uses the term “informed disenchantment”, the result of a process where the idealistic naiveté of legal aid applicants becomes grounded in a firmer sense of reality.\footnote{83} They learn that courts aren’t

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\footnote{80. Client F (Fuzhou Legal Aid Recipient), Personal Interview, 19 June 2009. [name changed]}
\footnote{81. Client F’s “evidentiary” documents, photocopied on 19 June 2009.}
\footnote{82. Ibid.}
as fair or independent as the newspapers portrayed, or that simply being right isn’t enough – one needs to collect evidence to prove transgression in order to vindicate one’s legal rights. Such a transition can be disorienting, and there is the possibility that clients might become disaffected by the legal system’s inability to deliver the outcomes they had desired. Gallagher did not find this to be true for her subjects, who “overwhelmingly report that they will use the law again and the next time, they will be ready for it.”

Liu did not seem as enthusiastic, but he did express relief that he had finally received a resolution of sorts to his twenty-year crusade, even though it wasn’t the outcome he had hoped for.

Beyond lawyer-client interactions, legal education also takes place through the legal aid office’s publicity-generating activities. The Chaoyang District Legal Aid Bureau publishes a glossy newsletter every season entitled Chaoyang Legal Aid, which it distributes at workstations and other offices throughout the district. Each issue contains sections that unpack new laws and regulations that pertain to the country’s poor, often restating the salient points of each law in simpler more accessible terms. The first issue of 2009, for instance, devotes four pages to a new notice issued by the State Council on migrant workers. Another regular column in the newsletter is entitled Questions and Answers on Law, where readers can pose questions for legal aid staff lawyers to answer. In the fourth issue of 2007, a reader wrote:

I was working at a private garment factory when, recently, in order to finish a batch of clothes by a certain deadline, the factory forced all the employees to work overtime. Because I had worked without rest for so long, I asked the factory to give me reasonable resting hours during work. My manager then ordered security to physically abuse us. . . I asked to be released from my contract, but the manager told me that doing so would require me to compensate the firm for their economic loss. My question: am I legally obligated to compensate the firm?

84. Ibid, 27.
85. Client F (Fuzhou Legal Aid Recipient), Personal Interview, 19 June 2009.
The published response cited Article 32 of the Labor Law, which mandates that labor contracts could be nullified at the request of the victim when "violence, coercion, or any other illegal method of constraining bodily freedom is used" to exact labor. The worker, therefore, was not obligated to pay her firm for voluntarily ending her contract.  

In other editions, question and answer sections have been devoted to specific legislation. The second issue of 2008, for instance, contained a section titled *Questions and Answers on the Labor Contract Law*. It responded to questions like "What kinds of labor contracts exist?" and "When labor contracts are being signed, what type of information must be disclosed on both sides?" Though it is unclear how many people read this newsletter such as this, those who do gain access to a wealth of legal information that might meaningfully improve their lives.

On a broader level, general interest newspapers have also allowed legal aid services to transmit valuable information to the Chinese public. One July 2009 issue of the *People’s Daily* profiled a migrant worker who, with the assistance of two different legal aid bureaus, had recovered compensation for workplace injury sustained years earlier. More interesting for our purposes is the layout of the page. The article occupies about a quarter of the spread in the center, while the rest of page features sections such as "What is legal aid?" and "Who is eligible for legal aid?" followed by extensive explanations of the 2003 Regulations on Legal Aid. This sort of layout is not at all uncommon. It has the dual effect of promoting faith in the rule of law by narrating sympathetic tales of poor workers realizing their legal rights, and by educating readers about relevant laws and provisions – in this case, the ones concerning legal aid itself.

Legal education and attitudes are deeply intertwined. The previous section argued that social legalization requires individuals to be confident in the fairness of the legal system. It is equally important, however, that citizens possess basic legal knowledge. In order to actually realize one’s rights, citizens would do well to be equipped with an understanding of what laws apply, when they apply, and how to realize the rights that they confer. Newsletters that

88. Ibid.
89. Ibid.
90. Lian Xin, “The Fate of a Migrant Worker and the Collaboration of Two Districts,” *yi ge nong min gong de ming yun he liang ge de qu de he zuo*, *People’s Daily*, July 22, 2009, p. 19.
demystify new codes and answer frequently asked questions have the effect of augmenting an individual's grasp of laws and procedure. Though the coal miner LIU Litai was ultimately rejected by the legal aid provider, he left the experience with a more complete knowledge of why the law did not protect him in the ways he had envisioned. It was not an easy lesson to learn, but a necessary one in the context of a society seeking to be ruled by laws.

**Public Interest Legal Training**

In its several forms, legal aid has provided important legal training to young lawyers and law students. The cases that they handle are necessarily public interest-oriented, helping to expose future leaders in the Chinese legal profession to the social justice side of lawyering. This form of training has important effects on not only the current legalization of Chinese society and government, but also on the future of the Chinese legal reform effort.

In private firms, young lawyers handle the bulk of the assigned legal aid caseload. Senior partners are known to assign such cases to the most junior attorneys in the firm, often deeming such work to be unworthy of their own time. Indeed, a corporate lawyer in Wuhan welcomed legal aid cases when they were assigned. "Receiving and handling these cases are a good way to train new hires who have just graduated from law school," he remarked.  

91 In regions where lawyers are required to staff legal aid consultation booths, firms are also known to send their least experienced associates to advise indigent clients, saving established attorneys for more profitable cases.  

92 Many legal aid administrators welcomed this arrangement, commenting that younger associates are often more motivated and put more care into their work.  

93 These young lawyers end up being exposed to social justice lawyering at formative points in their career.

Within University-based clinics, student volunteers are often the only ones with the time and willingness to offer legal advice and draft the various documents required to process a case. At the Center for the Protection of the Rights of Disadvantaged Citizens at Wuhan University, roughly 30 law students staff the clinic. Cur-

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91. Lawyer Z (Wuhan Legal Aid Volunteer). Personal Interview, 22 June 2009.  
93. Administrator W (Wuhan Legal Aid Administrator). Personal Interview. 24 June 2009 and Lawyer Cf (Beijing Chaoyang Qu Legal Aid Lawyer). Personal Interview, 6 July 2009.
rently, the Center operates six departments that are each overseen by one or two faculty members who serve as mentors to the student volunteers. Because of the practical training the experience provides, particularly at a time when Chinese law students spend much of their class time learning socialist theories of law, applications have risen tremendously for the two to three dozen slots that are available. In 2008, law students working at the clinic provided in-person consultations to 2,020 visitors, answered 541 queries by phone, and responded to 36 letters. Most importantly, they accepted a total of 47 cases.

Though many of these are routine cases relating to traffic accidents or labor disputes — which still offer an important mode of practical training for students — some of the cases are intellectually exciting, allowing law students to play an important role in cases at the frontier of Chinese legal development. In 2008, the Administrative Law Department at Wuhan University’s legal aid center won an important case called XU Jianguo v. Traffic Department of Huangzhou City. The plaintiff, Xu, was a resident of the Huangzhou District in Huanggang City, Hubei Province. He wished to purchase a motorbike, but could not find any of the relevant laws or regulations pertaining to motorbike purchase on the government website. On May 1, 2008, he sent a letter to the Traffic Department of the Huangzhou District Government requesting information about licenses, fees, and fines. The letter was received two days later, but the Traffic Department failed to respond within the time limit required by the Governmental Information Publicity Regulations. With the assistance of SHEN Xiaoping, a faculty volunteer at the Wuhan University clinic, Xu then brought the Traffic Department to court, demanding that they issue a timely response per their obligations required by law. On October 9, 2008, the People’s Court of Huangzhou District ruled in favor of the plaintiff.

Though not quite a landmark case, this ruling was covered widely in the People’s Daily, the Beijing News, the Law Weekly, the Changjiang Times, and the Chutian Metropolis Daily and Huanggang Daily. It was championed as a victory for the development of

94. Professor X (Professor at Wuhan University Law School), Personal Interview, 23 June 2009.
96. Ibid.
97. Ibid.
Chinese rule of law, since a government office was forced to carry out the orders of a court when caught shirking its legal obligations. More importantly, it represented a clear example of students receiving legal training on a legal aid case that promoted lower-order political legalization. Students were involved in every aspect of the case, from fulfilling clerical duties to observing lawyers in court.

A legalized society requires its legal workers to be professionalized and well-trained. Even if laws and procedures were perfectly formulated, and individuals fully confident in seeking redress through legal channels, rule of law outcomes could not be realized if lawyers were not adept at navigating the legal system. Viewed in that light, any form of training would be helpful. What makes legal aid training even more noteworthy is that it is both practical and public interest focused. Hands-on training is important because learning theories of law or even legal codes cannot translate into quality legal representation until they are coupled with real-world experience. Public interest training is crucial because it teaches students and new lawyers how law is being used to promote socially beneficial outcomes. Particularly at a time when free market policies have created a spiritual vacuum of sorts in Chinese society, it is all the more important for the country’s legal professionals to be grounded in a sense of social responsibility. This can be thought of as a type of long-term capacity building, instilling a professional ethic within current cohorts of students and lawyers to benefit future generations.

Checks against Government and Business Excess

In recent years, legal aid lawyers have successfully litigated against two of the most dominant interests in Chinese society – business and government. Whether the plaintiffs are wronged employees, deceived consumers, or victims of local corruption or police brutality, there are many documented cases in which legal aid lawyers were able to help aggrieved individuals realize their legal rights, even against the resistance of major networks of influence. By rendering powerful interests accountable to laws and punishments, legal aid has promoted the sort of legal equality required in a system ruled by laws.

When challenging powerful business interests, the poor are especially vulnerable. The asymmetry of power between wealthy businesses and destitute individuals is not exclusive to China, but it is exacerbated by a culture of connections, or guanxi, that pervades the modern Chinese marketplace. It is not uncommon practice for
businesses to curry the favor of regulators with gifts and sometimes even bribes, cultivating the type of insider relationships needed to continue their corrupt and backdoor practices.98 Without money, influence, or even a rudimentary sense of what laws might apply or what legal protections are owed to them, deceived individuals face the starkest of odds in seeking legal redress in these types of cases.

In select instances, however, legal aid has been able to bridge the seemingly insurmountable gap and deliver justice to victims of business misbehavior. In 2001, 500 migrant workers from Anhui Province signed a one-year labor contract with the Maanshan Construction Installation Company. At the end of the year, the company refused to pay the wages owed to them. Because of the large number of plaintiffs involved, the case was taken on by the Beijing Municipal Legal Aid Center, which then assigned the case to GU Meirong, a prominent Beijing lawyer. The case was brought before the Beijing No. 2 Intermediate People’s Court, which ultimately ruled against the construction company, ordering it to pay a total of 5,034,450 yuan to the 500 plaintiffs. The original judgment was affirmed on appeal.99

Though employees are the most common victims of business excess, consumers are also vulnerable. In 1995, two thousand farmers in Guangxi County planted newly-purchased seeds on over two million acres of rice paddy. The seeds were fake, and there was no subsequent harvest. Devastated, the farmers appealed to local party officials and media organizations, whose efforts caught the attention of the Nanning Justice Bureau and eight volunteer legal aid lawyers. For months the lawyers worked with these victims to sue their seed vendor. Coordination was an issue, as affected farmers were spread out between 15 towns in the region. In the end, the vendor was forced to pay a total of over six million yuan to compensate the farmers for their loss.100

Local governments have also been known to overstep the bounds of legality. In select instances, legal aid lawyers have been successful in dealing with government misconduct at the lower or

administrative level. In 1999, a rural Guizhou county magistrate illegally evicted several dozen families from their homes in order to construct a golf course on their property. Not only were the afflicted families denied compensation, many of them were subjected to police coercion when they refused to leave their homes. They then filed a formal petition in the county government requesting an administrative remedy. The petition was denied. Only later did these families seek assistance from the local legal aid center. Lawyers at the clinic reached a significant monetary settlement with both the local government and the golf company. The county magistrate was since arrested and imprisoned for corruption.\textsuperscript{101}

Legal aid workers have also had some limited success in holding Public Security Bureaus accountable – not an easy task given their influence in Chinese society. Luo narrates the case of an elderly man surnamed Wang, whose son died of illness while detained by the local Public Security Bureau. Assisted by legal aid lawyers in the area, Wang sued the Bureau in the local Intermediate People’s Court. Judges ultimately held the defendant liable for the son’s death. An out of court settlement was later reached, whereby Wang was compensated 20,000 yuan for his son’s death. His daughter-in-law and two grandsons were also permitted to change their rural residence permits to urban ones.\textsuperscript{102} Few would agree that a settlement like this was proportionate to the atrocity of the act committed – and that would be fair. The key point is that without the assistance of legal aid, Wang and his family would likely have gotten nothing at all.

The several cases highlighted above are emblematic of a more basic problem – how does one build a rule of law system on foundations characterized by such stark asymmetries of power? Whether it is a company withholding wages or an official seizing property without indemnification, the victims are always individuals who are far weaker in reality than according to the letter of law. Businesses and officials have a multitude of personal and institutional tools in their arsenal, while individuals have none. A core feature of a partially legalized society is for businesses and lower-order government bureaus to be just as constrained by higher laws as are their employees, consumers, and constituents. Legal aid has served an important


role in helping aggrieved victims realize their rights in the face of powerful interests that try to subvert them.

**Fairer Treatment of Criminal Defendants**

As far as asymmetries go, perhaps the greatest such imbalance is that between criminal defendants and the Chinese state. Legal aid lawyers have had some notable but limited successes in protecting defendants against an overwhelmingly powerful procuracy. These victories contribute to the realization of a fairer criminal process in particular, and a more just legal system in general.

China’s criminal procedures are currently in a period of transition. The old inquisitorial model, in which procurators and judges actively sought out the facts of a given case, is slowly being replaced by an adversarial one, where defense lawyers and procurators present competing cases before an impartial court. Many of these reforms are contained in the 1996 Criminal Procedure Law (CPL), which expanded the role of defense lawyers.\(^{103}\) In theory, these reforms were intended to bring more fairness to Chinese criminal trials. Empowering trained defense lawyers would provide defendants a better shot at airing the truth than under the old model. In reality, procurators have been successful in continuing their dominance, retaining much of their old supervisory function and using new legal tools, such as a loophole in Article 306 of the 1996 CPL that permits them to detain defense lawyers, to preserve their authority.\(^{104}\) As a result, acquittal rates continue to be strikingly low. Between 1997 and 2005, only 0.66% of over 40,000 Chinese criminal defendants were pronounced innocent.\(^{105}\) Most defendants continue to stand trial without assistance of counsel.\(^{106}\) Thus, even innocent citizens suspected of criminal activity face an extraordinary array of institutional barriers when charged.

Given the challenges confronting defendants, it is unsurprising that criminal law has been an important area for legal aid services. The 1996 CPL instructs courts to designate lawyers for defendants

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104. Ibid, p. 1013.
who are unable to afford one. In most jurisdictions, this task is farmed out to local legal aid centers that typically either handle the case themselves or enlist private lawyers. Legal aid lawyers have had some notable successes in promoting the rights of the criminally accused. These successes, however, are quite limited, and they must be viewed in the context of a criminal justice system where convictions are expected and punishments severe.

The Guangzhou Legal Aid Center has been at the forefront of Chinese criminal legal aid. Founded in 1995, the Center concentrates primarily on criminal cases assigned by local courts, allowing it to develop expertise in handling criminal matters, as well as a positive working relationship with local courts through frequent dealings with one another. Both factors have contributed to its success. Liebman, who personally interviewed staff lawyers at the clinic, recounts the following:

Lawyers at the Center recall that in the first ten months after the Center was established, there were at least ten similar cases in which arguments by its lawyers succeeded in convincing courts to reduce sentences or to convict defendants of less crimes than those initially charged. In one case, they saved a defendant's life by proving that he was not yet eighteen years old and thus could not legally be sentenced to death.

Shortly after the center opened, the provincial court in Guangdong assigned it the task of appealing the death penalty convictions of a group of individuals who were believed to have committed a number of murders. The Center assigned 12 lawyers to the case, and ultimately succeeded in overturning one of the death sentences issued by the Shenzhen Intermediate Court on the grounds that the defendant was unaware of what his partners were intending, and was in fact only at one of the many murders that were committed.

Legal aid lawyers in other regions of China have had similar sorts of success. Luo recounts the story of a Hunan Public Security Bureau officer surnamed Zhou, who had exposed a local tax collec-

109. Ibid.
110. Ibid.
tor's penchant for gambling and prostitution. Enraged, the official sought retribution through repeatedly fining a store owned by Zhou's wife on the basis of tax evasion. This greatly frustrated Zhou, leading him into a physical altercation with a government employee who was sent to deliver yet another fine to the family's business. The employee was injured, and the ensuing media attention generated Party pressure for Zhou and his wife to be held legally accountable. In the trial that followed, the local court sentenced Zhou to one year in prison and a fine of 2,000 yuan. His wife was also found guilty and forced to pay 5,000 yuan as punishment. On appeal, however, the family turned to several legal aid lawyers for assistance. The lawyers were able to convince the higher court to reverse the original judgment. Zhou would no longer have to serve a prison sentence, and his wife was declared not guilty.111

Criminal law falls somewhere in between the boundaries of social and political legalization. Citizens will only have faith in the legal system if they perceive individuals to be treated fairly by legal institutions, including criminal tribunals. At the same time, crimes are prosecuted by procuracies that theoretically represent the interests of the state and the people as a whole – which thus introduces a political element as well. The cases highlighted above illustrate instances in which legal aid has empowered criminal defendants, promoting fairer treatment of suspects and less draconian sentencing by courts. This furthers the cause of social legalization by softening some of the more ruthless aspects of the criminal justice system, but it also weakens the power of domineering procurators, agents of the state who are no longer able to do exactly as they wish. This can be understood as a politically legalized outcome as well.

Conclusion

Taken together, the cases above speak to a broader point – legal aid has promoted the fundamental tenet of legal equality across a broad range of legal disputes. This study draws particular attention to businesses, government organs, and procurators because legal inequality is most likely when these agents are party to the dispute, but this isn’t to discount the thousands of other cases each year where individuals realize important legal protections – from petty traffic accidents to family disputes. The capacity building

effects highlighted earlier—faith, education, and training, help improve the system generally, enhancing its ability to accommodate both routine cases and ones involving entrenched business or government interests. These contributions have furthered China’s progress towards partial legalization. But they have also been severely limited. The next section turns to this other side of modern Chinese legal aid.

IV. LIMITATIONS AND SETBACKS

Labeling Chinese legal aid as a success story would be premature. In recent years, the Chinese government and its media extensions have orchestrated an outpouring of publications, articles, and programs celebrating the triumphs of legal aid. These narratives provide evidence for progress in the country’s legal aid capabilities. Indeed many of these outcomes would have been unimaginable in China just decades earlier.

Although individual instances of legal aid’s success are heartening, they reveal very little about the development of the system as a whole. It is commendable that with the help of a legal aid lawyer, a migrant worker succeeded in suing his employer for workplace compensation, but how often do these victories actually occur? The wealthy Chaoyang Legal Aid Bureau in Beijing publishes a beautiful and informative magazine every season containing a wealth of legal information, but how probable is it that bureaus in poorer regions like Gansu and Xinjiang offer the same quality materials? These questions go beyond simply asking whether legal aid has had any success—it has. The more interesting question is whether legal aid successes have been prevalent and systematic. Unfortunately, the evidence does not suggest this to be the case. On the whole, legal aid services remain significantly limited in scope, coverage, and quality.

Limiting Factors

The reasons for this are manifold. Taken broadly, they can be grouped under four main categories—severe resource constraints, narrow and onerous eligibility requirements, a lack of legal awareness among the urban and rural poor, and deficiencies in the legal system itself.
Resource Constraints

The first and most serious constraint is one of resources. This problem is particularly acute in rural areas and the poorer provinces where demand for free legal services is greatest. These provinces and localities have less money to allocate to legal aid bureaus, while the bulk of the country’s legal professionals concentrate in urban metropolises where economic opportunities are richer. Thus the problem can be mapped along two interrelated dimensions – insufficient financial resources and inadequate legal resources.

Take, for instance, the case of Hainan, an impoverished island province along the Southern coast of China. A 2009 Provincial Justice Bureau report states that annual budgets for legal aid are set at 30,000-50,000 yuan in richer districts, while poorer districts are only able to allocate 3,000-5,000 yuan. This meager outlay is “far from fulfilling the legal aid development needs of the province,” the report concludes, estimating that current legal aid capacity is only meeting 30% of total demand.\textsuperscript{112} Indeed, such funds are hardly enough to cover basic staffing costs, leaving publicity, training, investigatory, and court processing fees largely unaccounted for. As a result, many legal aid bureaus in Hainan do not have their own separate office space. Instead, they reside within the offices of local Justice Bureaus, forced to share phones lines and computers with other civil servants employed by the agency.

In addition to funding constraints, the report continues, legal aid staff members are “limited in number” and “poor in quality.”\textsuperscript{113} Only 45% of employees have a law degree. Staff lawyers who handle cases only account for 14% of all employees, while only 60% of employees have undergone any sort of formal training.\textsuperscript{114} Because the quality of legal aid services has been correspondingly low, many legal aid bureaus have had trouble winning the confidence of potential clients, further limiting the scope of their impact. The report continues:

The vast majority of lawyers concentrate in Haikou, Sanya, and other large and medium-sized cities, while impoverished communities concentrate in the outer, poorer,

\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
lawyer-deficient districts. This creates an outcome where legal aid lawyers in Haikou, Sanya and other large and medium-sized cities 'can't fill their stomachs,' while outer districts have a phenomenon where many people have cases but no lawyers to execute them.\textsuperscript{115}

Lawyers simply have no incentive to reside and practice in impoverished areas. For the few who do settle in these districts, pay is so low that they are loath to perform legal aid services when asked. It is not surprising that legal aid bureaus in the less fortunate districts of Hainan handle fewer than 10 cases annually.\textsuperscript{116} In fact, as of July 2009, 210 counties in China did not have a single lawyer.\textsuperscript{117} Yet the country's poor are of course overwhelmingly concentrated in these regions, and these rural residents have scant knowledge of legal rights and processes. The reality then is a cruel irony – supply is weakest in areas where demand is highest.

Officials are well aware of these deficiencies. The Ministry of Justice estimates that more than 700,000 cases each year require legal aid, but that only one-fourth of these are actually handled by legal aid bureaus. The state appropriates a mere six cents per person annually in legal aid funding, "far below the average level of . . . developing countries," the Ministry notes.\textsuperscript{118} When administrators from around the country gathered at the 2009 National Legal Aid Center Directors' Conference in Nanjing, participants singled out the poorer Central and Western provinces as having significant resource deficiencies, particularly with respect to the recruitment of competent legal talent.\textsuperscript{119} That year, the Ministry of Justice issued its 2009 Points on Legal Aid Work, a set of non-binding policy directives targeting all legal aid bureaus in the country. Chief among these points was to "expand the coverage of legal aid" and in particular to remedy the "human resource deficiencies of the Western

\textsuperscript{115} Ibid.

\textsuperscript{116} Ibid.

\textsuperscript{117} Pan Yanan, "Poor Areas in China to Get Free Legal Aid," \textit{Xinhua News}, July 31, 2009.


regions." These sentiments were echoed repeatedly in interviews with legal aid administrators, lawyers, and scholars.

Eligibility Requirements

Legal aid is also limited by the narrow and burdensome eligibility requirements that are often imposed on applicants. Deserving clients frequently find themselves unable to receive aid because their grievance was not one of a half dozen case types covered by law, or because they failed to qualify under economic hardship standards, or because they were unable to furnish proper evidence of their financial distress.

National regulations stipulate that clients may apply for legal aid in disputes relating to state compensation, social insurance, survivor's pensions or relief funds, family support, and employment compensation. When provinces and municipalities are giving effect to this provision in their own laws, "supplementary provisions" may also made. Although large swaths of disputes do fall under this umbrella, a variety of case types lay outside the law's enclosure. The most significant omission is that of many types of civil tort disputes. Some provinces and municipalities have sought to lessen the gap by covering traffic accidents and medical mishaps in their own legal aid regulations, but this type of lower-order remedy is far from widespread or uniform. Routine disputes between individuals are among the most common types of legal conflicts, but unfortunately the law does not ensure legal aid coverage for many of these cases. This is not to mention the many more sensitive case types that aren't covered by legal aid regulations, from discrimination and defamation to religious persecution.

In response to these shortcomings, the Ministry of Justice convened a one-year campaign in 2009 entitled Making Legal Aid Services Convenient, recommending in part that more case types should be brought under the legal aid umbrella. The report singled out relatively wealthy Zhejiang Province as an effective model, since its legal aid provisions provided for a broader range of categories including "land contract rights, neighbor rights, conflicts over the right of homestead use, inferior medical treatment, inferior seed and fertilizer cases, and cases where environmental pollution causes

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damages in agriculture and aquaculture."122 Officials are well aware that case type limitations are inhibiting further legal aid expansion.

At the same time, even case types that should be permitted by national or local regulations are sometimes rejected by legal aid centers for other reasons. For instance, the exercise of eminent domain by local and provincial governments comes with an accompanying legal obligation to compensate affected individuals. Such cases should technically fall under the "state compensation" category mandated by the 2003 Regulations on Legal Aid. Unfortunately, cases of government takings often involve overwhelming state interests that exert both real and perceived pressures on legal aid providers. For an example of overwhelming state interests, look no further than the recent Olympic Games in Beijing. The Centre on Housing Rights and Evictions in Geneva estimates that nearly 1.5 million Chinese people have been displaced in planning efforts for the Games. They were often forcibly removed with meager financial compensation.123 For those who refused, the "methods of repression and harassment that authorities have used include police surveillance, arbitrary detention without charge, house arrest, and imprisonment."124 Under conditions like these, legal aid lawyers and administrators, who are effectively civil servants of their Justice Bureau – low-level government employees – are hesitant to accept such cases. One professor and legal aid practitioner observed that the odds of receiving state legal assistance in taking cases were slim, leaving a hole in coverage that University-based clinics have been attempting to fill.125 Unfortunately there are only so many law school clinics, and they almost all concentrate in areas far away from many affected victims.

Yet even if an applicant has an acceptable case, she must overcome stringent economic hardship standards that bar many deserving individuals from receiving aid. Most provinces and municipalities stipulate that only applicants whose income falls below the local minimum standard of living value may receive aid.

124. Ibid, 29
125. Professor H (Professor at the Chinese Academy of Social Sciences), Personal Interview, 8 July 2009.
Every legal aid lawyer interviewed in this study indicated that they would have to turn away applicants whose monthly income was high enough that they were ineligible to receive legal aid, but who certainly did not have the means to afford a private lawyer. The 2009 Making Legal Services Convenient campaign also identified this problem as a major challenge for further legal aid development. It charged other provinces to model their practices off of those implemented in Jiangxi Province, where individuals making less than 1.5 times the local minimum standard of living value could receive aid. Moreover, the disabled, the elderly, women, children, and migrant workers could apply for aid if their income fell beneath two times the local minimum standard of living value.¹²⁶ The major challenge still stems from one of resource constraints. If rural legal aid centers are having difficulty recruiting the talent and garnering the funds to meet current demand, the problem would be that much worse if hardship standards were relaxed and more people could qualify for legal aid assistance.

The final set of eligibility hurdles are procedural. In order to receive aid, clients must complete a legal aid application form, provide proof of economic hardship and identity, and furnish material evidence relating to their case. For uneducated farmers, migrant workers, and other disadvantaged individuals, these requirements often prove too burdensome to meet. One client interviewed for this study noted that he had to return several times to the legal aid bureau because each time he had forgotten an item or misunderstood what was required of him. This amounted to a substantial sum of money spent on bus fares, as he lived in a township several hours from the legal aid center in Fuzhou.¹²⁷ The provision requiring proof of economic hardship is particularly difficult for applicants to follow. A Xi’an municipal legal aid administrator noted that those who lived below the local minimum standard of living could provide a card attesting to that effect, but even this delays and oftentimes dissuades individuals from completing the applica-


¹²⁷. Client F (Fuzhou Legal Aid Recipient), Personal Interview, 19 June 2009.
tion process. "This threshold is a tad high," another legal aid lawyer remarked.128

The 2009 Making Legal Services Convenient campaign identified this as an area where improvements could be made. It recommended creating a "legal aid card" to be distributed to those living beneath the minimum standard of living and disabled and elderly citizens who were facing an undefined degree of hardship. This card could be presented at the first instance of legal aid contact, and would automatically fulfill the economic hardship provision, allowing applicants to receive aid with minimal procedural difficulty. It also recommends that legal aid centers automatically provide aid to those who are in time-sensitive "emergency situations," allowing proof of hardship to be supplied ex post.129

Legal Awareness

Legal aid is also limited by a crippling lack of basic legal literacy among the urban and rural poor. This is in some ways a two-step problem. First, individuals have such a superficial understanding of legal rights and processes that they often do not think to seek legal resolution to conflicts and challenges that arise. This is a problem of poverty and education. Second, even if potential clients believe they have recourse under the law, they aren't aware that legal aid services exist to advocate on behalf of their interests. This is in one sense a problem of publicity, but it also reflects the reality that the legal aid system is not developed and effective enough to garner widespread attention among impoverished communities.

In November of 2009, a migrant worker surnamed Wang learned from a co-worker that the local legal aid center in Xi’an might be able to resolve an employment-related matter from three years ago. Specifically, his previous employer owed him a significant amount of wages from several years past, but had refused to hand over the money. After consulting with a lawyer at the clinic, Wang learned that the statute of limitations for pursuing cases like these had already expired. "It was difficult enough for me to realize that this place [the legal aid center] could help me acquire wages


that are owed to me,” he told a journalist, “but once I did realize this – it was too late.”¹³⁰ Wang is just one of a countless multitude whose lack of awareness and legal literacy prevented them from securing their rights through legal aid.

Systemic Flaws

Finally, while this does not appear in China’s official reports and policy directives, the Chinese legal aid system is also severely limited by fundamental deficiencies in Chinese law and legal process. Even if a client is informed enough to know legal aid is available, is lucky enough to reside in a wealthy area where he could secure access to a competent lawyer, and is able to overcome the procedural hurdles required to receive aid, he would still have to overcome the most difficult hurdle of all – the Chinese legal system. As Choate writes:

Expanding access to courts is not the same as expanding access to justice. Until the judicial system is perceived to be dispensing justice in a more transparent and predictable manner, legal aid will look more like relief than reform – helpful and needed but not necessarily transformative.¹³¹

Though both legal aid and the legal system have changed somewhat since Choate’s writing, his main point persists. Not even a perfect legal aid system could deliver positive rule of law outcomes like curbing government and business excess, or strengthening the rights of criminal defendants, if the judiciary were easily swayed by private or political interests, or if procurators used coercive tactics to exact confessions out of defendants. In fact, legal aid clients who experience egregiously unfair treatment under the law would likely form negative impressions of the Chinese legal system, and be less likely to resolve future disputes through legal remedy. This poses an exceptionally difficult problem for legal aid as it stands today.

Limited Legalization

Taken together, these factors severely limit the contributions of legal aid to Chinese rule of law development. When financial and

¹³⁰ “Public Interest Legal Aid Moving Forward Faces Many Obstacles,” gong yi fa lu yuan zhu qian xing lu shang zhang ai duo, Xi’an Evening Newspaper, December 3, 2009.

legal resource constraints prevent the penetration of legal aid into impoverished regions, entire communities are unable to enjoy the beneficial legalizing effects of legal aid. The point is a simple one – legal aid cannot check local government excess, provide legal education to clients, instill a faith in the rule of law, or promote any of the other outcomes outlined earlier when its services are poor (and often absent) in so many areas of the country. Onerous eligibility requirements, which are in part an outcome of resource constraints but also reflective of political pressures, and a lack of legal awareness among indigent populations all have the same effect – severely limiting the potential of legal aid to produce positive rule of law outcomes. Deficiencies in Chinese law are even worse; not only do they reduce the likelihood that a deserving client attains victory, but they might also create negative attitudes towards the legal system, undermining Chinese legal development.

Responses

Many in China are aware that these limitations exist. Government officials have implemented fellowship programs and policy campaigns aimed at expanding the scope of state-provided legal aid services. Lawyers have begun to take sensitive pro bono cases excluded from the official legal aid regime, while self-educated advocates – “barefoot lawyers” – have tried to empower individuals in the rural backwaters of China. Unfortunately, these responses have not adequately substituted for the severe gap in legal aid coverage and quality.

Government Response

The government has launched a number of campaigns and programs aimed at broadening the scope of legal aid. For instance, in 2006 the China Legal Aid Foundation within the Ministry of Justice launched a campaign entitled Chinese Women Legal Aid Action, appropriating 2,113,000 yuan to support legal aid services for women. Funds were provided to a select number of legal aid centers with the expectation that each bureau could increase its caseload by 120-200 cases. From 2006-2007, the campaign affected operations in 10 provinces, 186 cities and districts, and assisted 5,932 individuals throughout 1,877 cases handled.\textsuperscript{132} Although these results are admi-

rable, such victories are not enough to bridge persistent gaps in coverage.

Another recent innovation by the China Legal Aid Foundation has been the launching of a fellowship program aimed at recruiting lawyers to work at legal aid bureaus in remote Western provinces in China. The program is called China Legal Aid Volunteer Action. In July of 2009, an inaugural class of 30 lawyers and 70 recent law school graduates traveled to placements in Sichuan, Yunnan, Gansu, Guizhou, and Qinghai provinces, as well as Inner Mongolia and Ningxia Hui autonomous regions. An original copy of the application form also listed Hainan and Xinjiang as destination possibilities. The lawyers, most of whom are senior law firm partners from wealthy areas like Beijing, Shanghai, Jiangsu, and Guangdong, are expected to handle at least 20 legal aid cases each year, for a total of 1-3 years. To compensate them for their services, the China Legal Aid Foundation pays each lawyer 30,000 yuan annually, as well as a 1,000 yuan/month living stipend and 1,500 yuan for transportation costs. Though this is far less than the handsome salaries that these lawyers enjoyed in their previous jobs, it is higher than mean incomes in their placement regions and will more than cover their daily expenses.

The program is young and the inaugural class small, but it is well worth monitoring as one potential remedy to bridge the resource limitations of Chinese legal aid. It is particularly noteworthy that over 500 lawyers applied for the 30 spots available, demonstrating that there is significant interest in some segments of the Chinese legal profession towards promoting legal equality among marginalized groups. The question is how to harness these public interest energies towards an effective large-scale remedy for legal aid.

134. “Notice Concerning the Recruitment and Selection of Volunteer Lawyers for ‘1+1′ Chinese Legal Aid Volunteer Action,” guan yu “1+1” zhong guo fa lu yuan zhi yuan zhe xing dong lu shi zhi yuan zhe zhou de tong zhi. The China Legal Aid Foundation, June 6, 2009.
135. Ibid.
137. Ibid.
Societal Response

Non-governmental entities have also attempted to address the shortfall in legal aid. We’ve already discussed University-based legal aid and pro bono cases handled by private firms, but two other developments deserve attention – barefoot lawyers and human rights lawyers.

In recent years, a number of rural peasants have begun to teach themselves basic legal knowledge in order to help aggrieved victims in their own and other similarly situated communities seek justice. They are referred to as “barefoot lawyers,” modeled off of Mao’s 1960’s initiative to send “barefoot doctors” into rural villages to provide basic medical care. The most prominent of these individuals is a man named CHEN Guangcheng, a blind activist from the impoverished Yinan County of Shandong Province. Chen has successfully taken local tax collectors to court for refusing to adhere to certain national tax regulations that exempt the handicapped from payment. Though he is admired by his own community as well as many international observers (he was featured in a 2002 Newsweek cover story), local governments are far less appreciative of his efforts.

In July, 2004, the Communist Party Committee and People’s Government of Linyi City put forth a “Decision Regarding Strengthening Population Control Efforts in the New Era,” a new set of policy provisions that lead to violent and coercive methods of population control enforcement. CHEN Guangcheng began to investigate the matter, sending a number of other barefoot lawyer colleagues into the 12 affected districts to offer legal aid services. Local governments soon initiated surveillance activities, forcing Chen to flee Shanghai, Nanjing, and Beijing, where he was ultimately abducted by local government officials from Linyi City. He was then closely monitored at his home. A trip in 2005 to visit his father’s cemetery entailed an escort of more than 300 “monitors” directed by local officials to monitor Chen and his wife.

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141. Ibid, 38.
His story is a sobering reminder that a host of political and institutional pressures continue to restrict the pace of Chinese legal development in the modern era. Barefoot lawyers arose to meet the critical needs of the rural Chinese population, who have little access to state-run legal aid. But sometimes gaps in coverage exist because certain interested parties desire them to. Nevertheless, barefoot lawyers like Chen have had some success, and their efforts have at times empowered individuals to successfully realize their legal rights.

In addition to barefoot lawyers, China’s professionally-trained attorneys have sometimes gone beyond occasional pro bono cases to devote themselves full-time to providing legal advocacy to marginalized groups. Many of these individuals can rightly be called human rights lawyers or “rights defenders,” because they tend to focus on certain case types affecting basic human freedoms and protections that are excluded by the formal legal aid regime. They, too, have had some real success in certain cases, but the political pressures that they face are even greater than those of barefoot lawyers. This is in part because their advocacy efforts touch upon not just local government interests, but national ones as well.

China’s most famous and radical human rights lawyer is GAO Zhisheng, a once celebrated attorney whose later representation of Falun Gong torture victims has resulted in threats, torture, and kidnaping under the direction of central government officials. Most lawyers, including rights defenders who share similar values with Gao, have decried his approach as counterproductive to the cause of legal reform in China. Eschewing Gao’s confrontational approach, these lawyers are more interested in realizing real institutional change, however incremental, through reform-minded approaches to legal development. Gao, by contrast, is less consequentialist. He is known to pursue what he perceives to be morally right with little regard to the inevitable consequences of his activism.

Punitive measures against lawyers like Gao are extremely severe. Consider the account Gao offers in his famous “Letter from the Twenty-first Century Dungeon,” recounting the details of one of his torture sessions with Chinese authorities.

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143. Ibid, p. 1223.
Four men with electronic batons started to beat my head and body with ferocity. Nothing but the noise of the beating and my stressed moaning could be heard in the room. I was beaten so severely that my whole body began shaking uncontrollably on the floor...on the twelfth or thirteenth day of my kidnapping, when I could again open my eyes, I saw my body was in a horrifying condition. Not a single centimeter of my skin was normal. The skin all over my body had turned black.  

Gao is not the typical Chinese rights defender, but his story serves as a warning to those who dare intrude on the carefully circumscribed boundaries of permissibility in modern China.

Lawyers who adopt a pragmatic approach have been far more successful, though even these advocates have occasionally run into trouble. XU Zhiyong, a prominent lawyer and legal scholar, has cultivated a strong reputation for his incremental approach aimed at promoting reform from within the current system. Early in his career, Xu heard that an artist named SUN Zhigang had been beaten to death as a consequence of dangerous national vagrancy laws. In response, he successfully campaigned for the State Council to abolish its laws that permitted public security bureaus to detain individuals who had wandered outside the region where they were registered. But even incrementalists like Xu are not immune from the changing tides of political climate. His organization, the Open Constitution Society, published a 2009 report blaming the 2008 Tibet riots on failed government policies rather than the deliberate instigation of the Dalai Lama – the Chinese government’s position. It was closed down by local authorities, ostensibly for tax-related reasons, and Xu was detained by the local police. “He was doing everything aboveboard,” a Human Rights Watch researcher noted, “a voice of moderation. . . if he goes down, who is safe?” Thus even the most moderate of rights defenders have a difficult time escaping the scrutiny of governmental officials.


Abuses of Legal Aid

Though official documents acknowledge the limited scope of modern legal aid, they are far less likely to report the abuses. One municipal administrator indicated that there simply weren’t any.\(^{147}\) High-level officials regard legal aid as one of the crown jewels of the legal reform effort, and so it is not surprising that evidence of its failures are kept beneath the radar.

Fortunately, increased access to the World Wide Web has empowered individuals to share their stories at a pace and scale that even censors cannot constrain. On July 23, 2008, a man with the username “child prodigy” created a discussion thread on an online forum discussing daily affairs in Jilin City. According to the poster, a lawyer named MENG Xiangui had represented him in a criminal case five years earlier. Meng was a staff lawyer employed by the Jilin Legal Aid Bureau. At the outset, Meng requested that his client furnish 10,000 yuan as a “gift” to the procurator in order to deter him from pursuing a trial. The client agreed, oblivious that his family had already given Meng 18,000 yuan, ostensibly for the same reasons. In the end, the procurator decided not to try the case, though the defendant’s possible culpability would remain on his legal record. Determined to clear his name, the client appealed to a higher court, finally winning a pronouncement of “not guilty.” But even after his victory, the client felt as if he had been coerced to supply the “bribe” money, and demanded the 28,000 yuan be returned to his family. He discussed the matter with the Deputy Director of the Jilin Legal Aid Bureau, providing a taped conversation with Meng as evidence. He later received the Bureau’s endorsement for repayment. As of 2008, the client had yet to receive the money back. Apparently the Bureau later pressured the client’s family to refuse to admit ever paying money to Meng, leaving him little recourse for repayment.\(^{148}\)

Incidents like these illustrate how legal aid can negatively affect rule of law development. Several elements of this story are alarming. First, a legal aid lawyer should never ask clients to pay bribes in order to realize a favorable outcome. This is not only illegal, but also distorts the client’s views about the fairness of the Chi-

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147. Administrator B (Beijing Legal Aid Administrator), Personal Interview, 3 July 2009.

nese legal system while simultaneously instilling a form of perverse legal education where clients are taught how to game the system. Rather than promote positive rule of law outcomes, Meng was actively undermining them. Second, if he actually did coerce the client and his family into supplying the bribe, then the act was even more improper. He took advantage of the large power and knowledge asymmetries between him and the client in a context where he was expected to be helpful, not exploitative. This damages the reputation of the legal profession, particularly in the eyes of the client. “Just look at how judicial organs conduct their affairs!” the client laments at the end of his post.\textsuperscript{149} Rather than create more faith in the legal system, this brush with legal aid had a decidedly opposite effect on the poster. Finally, by threatening the family to change their story ex post, the Bureau again used its institutional advantage to protect its own interests at the expense of what was just.

It is difficult to estimate how widespread abuses like this are. In one sense, they reflect larger imperfections in Chinese society – procurators often accept bribes and bureaucracies are prone to cover their mistakes. The important question is whether this type of abuse occurs at the level of isolated “rogue” lawyers or bureaus, or whether they are more widespread and systemic. The former would not be unrealistic even in a mature legal system; it is the latter case that would be truly problematic. There is some evidence that abuses are more prevalent: one lawyer in Wuhan referenced a scathing report last year alleging that a network of legal aid providers in rural Hubei Province were cheating clients out of money by improperly accepting fees.\textsuperscript{150} But without access to better information from the government or Chinese civil society, it is difficult to conclude anything more definitive.

**Conclusion**

What we can say with certainty is that legal aid’s contributions to Chinese rule of law remain starkly limited in both coverage and quality. Although such services do make meaningful contributions to the rule of law, they are not so expansive that we can regard legal aid as a major force of legalization in Chinese society. Despite these shortcomings, the channels through which legal aid can positively shape Chinese rule of law are clear – legal education, training, promoting faith in the legal system, and checking against business, gov-

\textsuperscript{149} Ibid.
\textsuperscript{150} Lawyer Z (Wuhan Legal Aid Volunteer), Personal Interview, 22 June 2009.
ernment, and procurator excess. Legal aid therefore has the potential of becoming a major legalizing force, but only if the constraints imposed by resources, eligibility requirements, legal literacy problems, and the legal system itself are adequately addressed. The final section reflects on future legal aid policy.

V. RECOMMENDATIONS

The overarching goal of any legal aid policy should be to extend the positive rule of law contributions of legal aid as broadly as possible. Based on recent programs, campaigns, and policy directives implemented by the Chinese government, this proposition seems hardly controversial. But it is framed in general terms. At the level of specific reform proposals, an array of practical and political constraints limits the possibilities for future growth. The real question is how legal aid can be expanded and improved within this matrix of restrictions.

Constraints

It is difficult to define the precise boundaries of political permissibility in modern China. Indeed these boundaries are more fluid than some might believe. A host of factors, from foreign events to internal crises to shifting perceptions of threat and security, all contribute to a set of prevailing political priorities and sensitivities that are unique to their time and circumstances. For instance, 2009 was a particularly bad year for Chinese lawyers. Two dozen human rights lawyers mysteriously failed to pass the routine annual license renewal process. The portion of law firms overseen by party branch secretaries ballooned to 90% up from 50% just one year earlier. Many attribute this to the heightened sensitivities of the government in the 20th anniversary year of the Tiananmen Massacre.151 Just one year earlier, rights lawyers were treated far less stringently.

Realizing that the boundaries of sensitivity are less than static, we can still arrive at a somewhat stable account of what can feasibly be implemented to expand Chinese legal aid to broader swaths of the population. In short, the central government will only pursue policies that continue to align with its partial legalization goals. Party leaders would like China to move towards a law-based soci-

ety, but not in a way that conflicts with any of their core interests or erodes the scope of their power. Legal aid should not be exposing the underside of failed national government policies, or protecting the rights of dissident groups who threaten the "stability" of Chinese society. But in the eyes of the Party, if legal aid reforms can better educate ordinary citizens, re-channel their discontented energies away from less "socially desirable" activities such as protest, or help check deviant local governments, then it should be encouraged.

Note that this discussion assumes a short- to medium-term time frame; over the long run, the boundaries of sensitivity might change in significant ways, expanding (or limiting) the menu of reform possibilities. For instance, loosening case type restrictions to include victims of ethnic or religious persecution (including members of the Falun Gong) would be almost inconceivable in the near-term, absent any major shifts in the political landscape. This would certainly extend access to justice to newer types of disadvantaged groups, but given the high level of priority these issues occupy in central government circles, the chances of this happening are slim.

The same principle applies to practical constraints. The previous section discussed how severe gaps in both financial and legal resources continue to deprive individuals of legal counsel, and how an immature legal system promotes unjust outcomes that undermine the legalization benefits of legal aid. In the short-term, these constraints probably cannot be lifted. The number of lawyers in China increases every year, but it will be quite some time before this figure approaches a place where legal aid demand can be suitably met. Similarly, while Western provinces like Gansu, Qinghai, and Sichuan remain impoverished, their capacity to fund quality legal aid will continue to be diminished. Economic development may come to these provinces and other rural counties throughout China, but this is not something we can expect in the near-term. Also, deficiencies in Chinese law and legal process may take even longer to abate. The benefits of legal aid are limited by the capacities of the current legal system itself.

This does suggest one important point: the best long-term approach for improving legal aid is to support policies that promote economic growth and legal development. Since district and provincial governments are responsible for allocating legal aid funds annually, no amount of lump-sum transfer from the National Legal Aid Center or the China Legal Aid Foundation will be able to create legal aid centers whose quality is sustainable over time. On the
other hand, policies that develop the economies of needy regions will fill the local treasuries with more funds each year, not only bolstering the capacity of rural legal aid bureaus to provide more and better quality services, but also reducing the proportion of people who need legal aid as per capita incomes rise. Along the same lines, developing a fairer legal system will strengthen the ability of legal aid to deliver just outcomes to its clients. It will also encourage more needy individuals to seek legal aid once narratives of its possibilities become widely known. Thus, a far-sighted approach to legal aid must necessarily hold these two priorities as key.

In the short-term, however, both political and practical constraints cannot be lifted. The Chinese government is willing to expand legal aid only to the extent that it continues to fulfill the state’s partial legalization objectives. Moreover, it currently does so with very limited funds, constrained by a still developing legal system and an insufficient pool of lawyers distributed unevenly throughout the country.

**Current Approach**

It is no surprise then that the current high-level government approach is cautious and incremental. It aims to produce improvement through careful experimentation and a steady emphasis on areas that are politically safe and inoffensive. This is the style of the ruling regime. For instance, the 2009 *Making Legal Aid Services Convenient* campaign advocates reducing onerous eligibility requirements through a set of common sense recommendations, including distributing identification cards to certain disadvantaged groups allowing them to bypass the sometimes prohibitive task of “proving” economic hardship.\(^{152}\) The *China Legal Aid Volunteer Action* fellowship program has only recruited 30 lawyers – a welcome experiment, but one that needs to be expanded dramatically in order to lengthen the reach of legal aid.\(^{153}\) The China Legal Aid Foundation mostly implements programs like *Chinese Women Legal Aid Action*, consisting of relatively small supplemental funding


\(^{153}\) Pan Yanan, “Poor Areas in China to Get Free Legal Aid,” *Xinhua News*, July 31, 2009.
transfers to needy areas with restrictive targets and provisions (in this case, permitting only certain classes of women’s rights cases).\textsuperscript{154}

The kinds of cases championed by legal aid centers are consistent with the government’s social policy objectives with respect to legal aid. Of the 10 cases headlined on the homepage of the National Legal Aid Center, two relate to traffic accidents, one to consumer protections, six to employment and workplace-related issues, and one to mitigated punishment for a minor. Similarly, when the Beijing Municipal Justice Bureau published a volume of select legal aid cases handled by Beijing legal aid lawyers, more than half of the cases related to employment and workplace issues, while most of the others had to do with routine civil disputes like traffic accidents and childcare obligations.\textsuperscript{155} The government appears to favor these types of successes – cases between private parties where the only government involvement is in the context of being helpful (i.e. supplying legal aid). Of course legal aid bureaus have at times checked local and administrative excess as well, but even here the public emphasis is placed on the fact that state workers are helping individuals seek justice.

Both the priorities and main elements of the current approach reflect the political and practical constraints of the time. It is difficult from our vantage point to evaluate the success of specific programs, given the limited amount of information that is publicly available. It is also difficult to gauge whether larger-scale programs are feasible, without knowing the precise details of the internal policy discussion. The general orientation of China’s program appears roughly appropriate to country’s circumstances, even if the pace seems excruciatingly slow.

**Policy Recommendations**

But even within this matrix of constraints, more can be done along the margins to expand the reach, scope, and quality of Chinese legal aid. This section will offer several policy recommendations that are feasible within the short to medium-term. They are not intended to be comprehensive or exhaustive; rather, they sug-


gest some new and somewhat innovative ways to extend the positive rule of law contributions that legal aid is capable of producing.

Rethinking Legal Aid Fellowships

The China Legal Aid Volunteer Action program represents a step in the right direction. There is real benefit to sending lawyers into impoverished regions to assist underserved citizens. But if such programs are to have large-scale impact, important changes will have to be made. One possibility would be to target recent law school graduates, and incentivize their participation through preferred admission guarantees at top Chinese and/or foreign graduate programs. This revised program would have to recruit far more than the 30 lawyers in the current class, though it would similarly send out volunteers to resource deficient locations for fixed terms of service.

There are several advantages to recruiting recent graduates rather than middle-aged lawyers. First, accomplished lawyers are harder to recruit given their familial responsibilities and the affluent lifestyles they are already accustomed to. A fellowship program like this would only have broad scope if it could enlist large numbers of participants at a scale that is probably not realistic with older lawyers. The number of students graduating from undergrad-uate law schools, on the other hand, has ballooned in recent years, leading already to a saturation of the legal marketplace in urban areas like Beijing. 156 As more students enter the profession, lucrative private sector jobs will be harder to come by. A legal fellowship in Western China would provide important hands-on training while setting young lawyers up for further education at prominent graduate programs in law. The second advantage is that a fellowship program with a younger membership corps would provide important public interest legal training to a younger generation of lawyers who may one day shape the future of Chinese legal reform. Older lawyers may be more experienced, and they may still play an important role training recent graduates in the Western outposts, but the social investment per capita is much higher for younger lawyers.

Chinese graduate schools would be contributing to the public good by rewarding public service activities among their future applicants. Universities in the United States and the United Kingdom, which are highly coveted by the throngs of Chinese college gradu-

156. Administrator B (Beijing Legal Aid Administrator). Personal Interview. 3 July 2009.
ates today, could also play an important role in the legal reform effort by promising preferential treatment or setting aside scholarships for participants in this program. Though some students might be motivated to participate purely out of self-interest, there are ways to minimize this effect. Fordham Law School is particularly strong in this regard, stipulating that their current Chinese scholarship students would see their grants turned into loans if they did not return to China.\footnote{157} A program like this would not be without its challenges. The primary impediment is funding. The current stipend level for fellows in Western China is set at 30,000 yuan per year.\footnote{158} A class of 1,000 lawyers (a very small number for a country of 1.3 billion) would require 30 million yuan annually in stipend fees alone, not to mention the additional staffing and operational costs that this might entail. The China Legal Aid Foundation would have to step up its fundraising efforts, an admittedly difficult task in the current global economic recession. Currently, most of its funding comes from government allocations and private donations.\footnote{159} Nevertheless, the potential of such a program could garner significant foreign interest, particularly if non-Chinese law schools agreed to host alumni fellows. The key strategy would be to give foreign parties a stake in the success of this program, encouraging new money to flow into the Foundation’s coffers. Organizations like the Ford and Hewlett Foundations, which are already funding legal reform projects in China, might also be more willing to step up their contributions once the potential impact of such a program is made clear.

**Expanding Clinical Legal Education**

Chinese law schools could also contribute to improving China’s legal aid effort. In particular, Pamela Phan has argued that law schools adopt clinical law courses in the formal curriculum, arguing that it would both improve Chinese legal education and introduce a

\footnote{157} Martin Flaherty, Director of the Leitner Center for International Law and Justice at Fordham University, Personal Interview, March 28, 2010.

\footnote{158} Pan Yanan, “Poor Areas in China to Get Free Legal Aid,” Xinhua News, July 31, 2009.

culture of "social justice" to aspiring young lawyers.\textsuperscript{160} Another consequence of expanding clinical legal education would be to broaden the reach of University-based legal aid services to more people.

Clinical legal education is the study of legal practice, as distinct from the study of legal doctrine, code, or theory. Courses require students to work on actual legal cases, providing hands-on training under the supervision of an experienced clinical professor. The pedagogy was first popularized in the United States in the early 20th century as a means of bridging theory and practice. This can be traced to the legal realism movement in the 1920's and 1930's, when scholars began to emphasize law as a means to an end rather than an end in of itself. Since then, clinical law has developed an important social justice dimension, focusing on providing free legal services to deprived members of the local community who are in need of assistance.

The current Chinese legal curriculum is predominantly lecture-oriented. Professors teach in the civil law style, emphasizing the application of legal codes to factual circumstances. Francis Wang, former Dean of Suzhou University Law School, writes that, "while the lecture format is an extremely efficient conveyor of doctrinal knowledge... its exclusive use does not develop the skill sets necessary to transform students into actively engaged legal problem solvers."\textsuperscript{161} This is precisely what clinical legal education is intended to do. Recognizing this, in September of 2000, the Ford Foundation helped fund and establish the first ever Chinese clinical law course at seven separate law schools in Shanghai, Beijing, and Wuhan. Shortly thereafter, a nonprofit association of Chinese clinical educators, or the Committee of Chinese Clinical Legal Educators (CCCLE), was founded to advocate for improved clinical practices. Unfortunately, clinical law has not gained much ground since then — most of China's 600 law schools do not offer anything resembling clinical training.\textsuperscript{162}


The many limitations of state-provided legal aid services leave ample room for clinical legal education to expand and improve. Now is the right time for a renewed push by the CCCLE, law school deans, and even foreign educators and donors to collaborate and introduce more clinical courses into the traditional LLB curriculum. The benefits would be threefold – providing free legal services to indigent clients, offering practical legal training to law students, and as Phan emphasizes, instilling a culture of social justice that will cultivate a set of important professional ethics among law students.  

XIANG Yan, a Professor at Wuhan University Law School and the Director of the Children’s Advocacy Department of the University’s legal aid center, outlines two central challenges that impede the further expansion of clinical legal education. The first:

The main reason why most law schools have not introduced clinical legal education is the lack of resources. Student-faculty ratios at Chinese law schools cannot compete with those in the West. For many [Chinese] universities, opening a clinical course, where professors generally only take on 8-10 students, is very costly.  

Of course the question of funding is always a problem, and here we can only ask that the Ministry of Justice and Education allocate more funds to this cause, and that foreign charities like the Ford Foundation build on their already admirable efforts in the area. On the question of developing quality clinical professors, however, the threshold is somewhat lower than that for tenured faculty members. Clinical professors do not need to meet onerous standards of scholarship; rather, they need to be experienced lawyers who are trained in clinical pedagogy as adapted to Chinese circumstances. “A common theme that continually resurfaces,” writes Phan, “... has been this very concept of localization, or ‘indigenization,’ of curriculum development.” On this point, a collaborative partnership between experienced clinical legal professors in the United States and their counterparts in China would be particularly useful. Mutual dialogue could help push forward the discussion of how to adapt the

163. Ibid, 117.
164. Professor Xiang Yan (Professor at Wuhan University Law School), Personal Interview, 23 June 2009.
advantages of the American model to a uniquely Chinese context. This could operate on a law school to law school basis, but larger scale discussions could be facilitated by the American Bar Association’s China Rule of Law Initiative, or even a resuscitated version of the Department of State’s US-China Rule of Law Initiative. Both programs have been quite successful in hosting exchanges, discussions, and forums that promote mutual understanding and trust.

Beyond these practical challenges, an expansion of clinical legal education must also overcome steep ideological hurdles. As Professor Xiang explains: “The second reason is one of perspective: At present, Chinese legal scholars are still debating whether the purpose of legal instruction is ideological education, or professional education.”166 This is an even more difficult problem. Chinese law students continue to take mandatory political courses entitled “Deng’s Thought” and “Mao’s Thought,” reflecting the persistent influence of Party ideology on legal training, and also the less practical orientation of Chinese legal education generally.167 Dean Francis Wang goes as far as to say that “the major Chinese law schools do not even consider their goal to be educating lawyers,” adding that the curriculum is so “theoretically-based” that many might conclude Chinese law schools were designed to produce legal scholars, not practicing attorneys.168 This is a constraint that cannot be lifted in the short-term. However, this paper is not recommending a complete re-orientation of Chinese legal education towards the clinical side; rather, it argues that now is an opportune time for reformers to push harder for clinical education at more schools, even at a smaller scale, to help meet the growing demand for legal aid and sow the seeds for future development. If clinical courses have already been established at major trend-setting institutions such as Beijing University, there is no reason why other schools cannot also do so with proper funding and guidance.

Institutionalizing the Practice of “Barefoot Lawyering”

Another course would be to create a new type of permanent legal aid staff lawyer with duties akin to those of traditional “bare-

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166. Professor Xiang Yan (Professor at Wuhan University Law School), Personal Interview, 23 June 2009.
168. Ibid.
foot lawyers.” Provincial Legal Aid Centers would hire a full-time team of lawyers, with the same civil servant status that regular staff lawyers have, and provide them a travel budget and mandate to go into remote, impoverished communities to provide legal consultations and assistance. These traveling lawyers would stay in each location for a fixed but flexible time period, depending on the status of pending cases, before moving on to another location to offer the same types of services. They would be overseen by provincial officials who are better equipped to assess the relative needs of different counties in the province.

Many rural counties are too poor to hire and maintain full-time legal aid lawyers. This new class of traveling lawyers could help close this gap in coverage through a schedule of visitations. By entering the provincial and not county-level payroll, this program would also help shift funding responsibilities to provincial governments that are better equipped to bear them. Traveling lawyers would be able to provide more competent services than traditional “barefoot lawyers,” whose self-taught legal knowledge cannot compare with the professional education that licensed attorneys are expected to have.

The national government would have good reasons to pursue this. Barefoot lawyers have previously been perceived as unmanageable, traveling from village to village to take on all sorts of cases that often embarrassed both local and central government officials.169 By institutionalizing the notion of a traveling lawyer, the Chinese government could structure and legitimate the practice. Traveling lawyers on salary with the provincial Justice Bureau would have to adhere to the same case type limitations that apply to all government legal aid attorneys. They would also be taking direction from higher-level officials who are more attuned to the goals and preferences of the Party leadership. Moreover, traveling lawyers who are successful might even attain mythic status, as some barefoot lawyers already have, but in this formulation citizens would be grateful towards the help of the state rather than crusaders who are often opposing state actions. The government would be able to derive the benefits of barefoot lawyering while reducing its perceived costs.

The biggest hurdle might come from the ardent opposition of low-level cadres who have a stake in maintaining the status quo. A

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system where outside lawyers come in and help citizens litigate their cases, sometimes even against government agencies and officials, could quite easily be perceived as unwanted interference. Moreover, China’s is a relationship-based society. One reason why state-run legal aid centers, University legal aid clinics, and various government organs in urban areas have been able to co-exist so well is because they have developed a long-term working partnership with each other.\textsuperscript{170} Traveling lawyers will never be permanent fixtures in the communities they set out to assist, adding to the suspicion of skeptical cadres.

Fortunately, checking against local corruption is very much consistent with the central government’s lower order political legalization goals. Party leaders realize that the legitimacy of their regime relies on continued public support for government policies. Because so much societal discontent is due to local misbehavior, top officials have used legal aid as a means of enforcing and implementing national law and policy, promoting faith in Party leadership. The argument in favor of instituting traveling lawyers despite local opposition should be couched in these terms, appealing to the broader interests of the ruling regime. The central government might even begin small, as it prefers to do, installing a small team of traveling lawyers in a couple of provinces for a trial period before reevaluating and planning for future expansion.

Summary

In the analysis above, I offered three ways in which both the Chinese government and international civil society can help improve the Chinese legal aid system today. Truly transformational change is unlikely in the near-term, but it would be equally false to suggest we simply wait until resources grow or political sensitivities abate before pursuing further improvement. The constraints are indeed onerous, but this only means we need to devise more creative solutions to meet today’s pressing needs.

Legal aid has developed in real ways since Liebman and Choate first began documenting its operations in the late 1990’s. In the past decade, China has seen not only the promulgation of a comprehensive set of national regulations on legal aid, but also the construction of hundreds of new legal aid centers throughout the country. By most accounts, citizens have become more aware of le-

\textsuperscript{170} Administrator B (Beijing Legal Aid Administrator), Personal Interview, 3 July 2009.
legal aid services during this period, and case volumes have been increasing as more and more applicants receive assistance. Success stories are frequently paraded around on television, in newspapers, and on the internet, bolstering the narrative of legal aid as a savior for China's most disenfranchised populations.

These success stories highlight a number of ways in which legal aid has been promoting positive rule of law outcomes in China. Though these contributions are not "rule of law" in an absolutist conception of the term, they certainly have legalizing force, in a way that comports with the partial legalization goals of the Chinese government. These mechanisms include providing legal education, training, engendering faith in the legal system, curbing business and (local) government excess, and strengthening the rights of criminal defendants.

But in evaluating the system as a whole, this study has been less interested in isolated data points and more focused on broader trends and patterns. "Data points" are useful insofar as they reveal the potential of legal aid, particularly with respect to what sorts of rule of law contributions are possible through it. But in the end the system has to be evaluated nationally and holistically. By that measure, it continues to face serious hurdles, from resource and eligibility constraints to broader deficiencies in legal literacy and systemic maturity.

In the long-term, economic growth and legal development offer the best hope for extending the positive rule of law contributions of legal aid to larger sections of the population. In the near-term, political and practical constraints severely limit the policy options available to officials. The next phase of legal aid development must address the problems of coverage and quality head-on, working actively and creatively to ensure that more people can realize the legal rights and protections they deserve.
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