

# LAW, DEVELOPMENT, AND THE RIGHTS OF CHINESE WOMEN: A SNAPSHOT FROM THE FIELD

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## I. INTRODUCTION

In this era of post-communist regimes, several trends pervade academic and economic development debates. First, market principles are said to be not only the prime weapon for invigorating stagnant economies, but also the route to greater freedoms and liberties. Certainly, the embrace of the market has given an amazing boost to China's national economy, now growing at an enviable annual rate of about 7%. Yet the broad application of market concepts has also brought about serious domestic problems, from widening gaps between rich and poor to massive urban migration, widespread unemployment, corruption, and growing unrest in both city and countryside. The meaning of market concepts to the rights of Chinese citizens thus requires a more complex understanding of what kind of rights are at issue and for to whom those rights flow.

Hand in hand with market development has marched a second trend: the reliance on legal structures and the language of rights. Legal development, critical to market development, has assumed prominence not only as a means of effecting economic and political change, but also

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as an end in itself—as a goal synonymous with the liberal norms of freedom and democracy. Rule of law in World Trade Organization-parlance and in the international human rights framework refers to a system that features independent and impartial decision-makers, transparent and open rules that apply uniformly to all, and a process that ensures the protection of fundamental rights and interests. This approach suggests that, as a matter of course, contracts should be privately negotiated and enforced according to law. By extension, disadvantaged groups should also seek to vindicate their rights in the courts rather than in the streets.<sup>1</sup> Where the Chinese state previously loomed in the provision of health and other social welfare benefits, private individuals are now responsible for the negotiation of such benefits with each other, and seek enforcement within the parameters of the legal structure.

The third commonly accepted mantra, along with markets and the language of rights, is globalization and the pull towards universality.<sup>2</sup> Both market values and the language of rights draw force precisely from their assumed universality that theoretically transcends particular culture and history. In the modern world, majority rule and respect for human rights, as ensured by the rule of law, are framed in universal terms.<sup>3</sup> Interestingly, this convergence is often challenged by a contrasting response of a reassertion of local cultural practices that define group memberships, individual identities, and community concepts of justice.<sup>4</sup> While globalization has certainly affected the domestic socio-economic rights of Chinese citizens—for example, China's tremendous migrant labor population and associated labor rights are tied to the flux of the global economy and to China's entry into the WTO—the question remains whether protection of these rights resides in a universal and global answer or, as Chinese leaders have often posited, in one that rests on local Chinese contexts.

In the local context of China's post-communist world, the combination of globalization, markets, and rule of law has meant decentralization rather than centralization, increasing emphasis on formality and legality over informality and policy, and individual responsibility over state obligations. The endorsement of a privatization

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<sup>1</sup> Bryant Garth, *Law and Society as Law and Development*, 37 LAW & SOC'Y REVIEW 305, 306 (2003).

<sup>2</sup> See generally THE ROLE OF LAW AND LEGAL INSTITUTIONS IN ASIAN ECONOMIC DEVELOPMENT 1960-1995 (Katharina Pistor & Philip A. Wellons eds., 1999); LAW, CAPITALISM AND POWER IN ASIA (Kanishka Jayasuriya ed., 1999).

<sup>3</sup> See, e.g., JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (2d ed. 1989); Thomas Carothers, *The Rule of Law Revival*, 7 FOREIGN AFF. 95, 95-107 (1998).

<sup>4</sup> Amy Chua, *Markets, Democracy and Ethnicity*, in EAST ASIAN LAW – UNIVERSAL NORMS AND LOCAL CULTURES (Arthur Rosett et al. eds., 2003).

strategy has also extended from economics to the social realm. Rule of law now supports some limited political reform backed by a legal framework that primarily focuses on the establishment of property rights. Markets are created at all levels and private rather than state initiatives are increasingly turned to not only in the creation of rights for economic development, but also in the provision of social services and the alleviation of poverty.

Since China's reforms, we have seen the state withdrawing from a number of areas with the expectation that the private sector will step in to fill in the gap. Rapid economic change has also meant an increasingly dangerous gap between the rich and the poor; between the haves and the have-nots. We see the social and economic disparities play out most distinctly between coastal and interior areas, between rural and urban residents, and between Han and ethnic minorities, all in the face of a retreating central government. The Chinese response has so far been to continue withdrawing from the direct provision of services and to continue development with an emphasis on market principles, investing in infrastructure, and a progressive opening to the outside world.<sup>5</sup> The demands of poverty and state responsibility for redistribution have been redefined as a state response that urges a new ideology of markets and individual responsibility distinct from community obligations. Poverty is addressed largely through economic policies that are supposed to promote growth and the development of infrastructure, along with market incentives and legal institutions focusing on private property rights and their protection.<sup>6</sup>

Will this emphasis on market development and legal rights result in an equal attainment of rights and, in particular, socio-economic rights among Chinese citizens? In human rights literature, socio-economic rights are generally known as second and third generation rights, often lagging behind political and civil rights.<sup>7</sup> Yet, there is an increasing recognition that socio-economic rights are integral to political and civil rights. Indeed, democracy is not simply a right to vote if the voter lives in complete human squalor. As Stephen Holmes has so aptly noted, "the

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<sup>5</sup> Information Office of the State Council, *The Development-Oriented Poverty Reduction Program for Rural China*, at [http://fpeng.peopledaily.com.cn/200110/15/print20011015\\_82292.html](http://fpeng.peopledaily.com.cn/200110/15/print20011015_82292.html) (Oct. 15, 2001).

<sup>6</sup> "Through a comprehensive approach that emphasizes strengthening the rule of law to reduce poverty, the Legal and Judicial Reform Practice Group is working with governments, judges, lawyers, scholars, civil society representatives and other organizations to build better legal institutions and judicial systems that address the needs of the poor and the most vulnerable." World Bank 2002, *Legal and Judicial Reform*, available at <http://www4.worldbank.org/legal/legltr/> (last visited Mar. 6, 2006).

<sup>7</sup> For good background information on human rights and the global economy, see JEANNE M. WOODS & HOPE LEWIS, *HUMAN RIGHTS AND THE GLOBAL MARKETPLACE* (2005).

Hobbesian problem has to be solved before the Lockean solution looks attractive . . . . Civil society cannot exist unless a liberal state can extract social resources and use them, under democratic scrutiny, to supply other essential public goods.”<sup>8</sup>

This paper focuses on the reality of Chinese legal reforms and the socio-economic rights of Chinese women. What is arguably different about socio-economic rights, in contrast to political and civil rights, is that while political and civil rights are rights to be asserted against the state, socio-economic rights—and most importantly equal access to socio-economic rights—require the state for their guarantee. Socio-economic and political and civil rights are therefore in tension with each other at times, as civil and political rights demand a limited state while socio-economic rights seek the enlargement of state powers. And so, while much attention is paid to political and civil rights, equal attention must be paid to socio-economic rights.

In the specific area of Chinese women’s rights, socio-economic rights are an important area of focus. The impact of the private economy and the market approach has been especially detrimental to Chinese women and the family-unit.<sup>9</sup> Even as economic reforms have created new markets in the more public spheres of labor, goods, and property, these same reforms are increasingly creating unintended and sometimes detrimental markets in much more private spheres affecting the family and the identity of women. These unintended “markets” include adoption markets (markets for unwanted female children), marriage markets (markets for the exchange of brides), sex markets (prostitution), and image markets (advertising female images as objects of desire). The market has also rendered volatile relations between genders and generations.<sup>10</sup> Correspondingly, it is those branches of law—such as family and inheritance law with reference to property—that fall within the realm of culture wherein these tensions are most apparent.

Further, recent rule of law language has justified state withdrawal from previous policies that affirmatively protect women’s rights, and the private sector has not stepped in fully to provide needed services. Market rhetoric and the right to contract have supported the reduction of state support for medical and health benefits, the provision of public education, and labor protection for Chinese women. While some formal legal rights

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<sup>8</sup> Stephen Holmes, *Constitutionalism, Democracy, and State Decay*, in DELIBERATIVE DEMOCRACY AND HUMAN RIGHTS 122 (Harold Hongju Koh & Ronald C. Slye eds., 1999).

<sup>9</sup> See Congressional-Executive Commission on China, *Holding Up Half the Sky: Women's Rights in China's Changing Economy* (Feb. 24, 2003), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_hearings&docid=f:86631.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:86631.wais).

<sup>10</sup> See Margaret Y.K. Woo, *Shaping Citizenship: Chinese Family Law and Women*, 15 YALE J. L. & FEMINISM 75 (2003).

are thus established on paper, these rights are assumed to be realized through the markets and enforced through the courts rather than governmental programs.

Where the alliance of globalization, markets, and privatization increasingly demands the retreat of the state from the private sphere, Chinese women's rights advocates now face multiple contradictions: even as they seek freedom from the state, they must at the same time seek state protection; even as they struggle for rights at odds with the family, they must battle for strengthening the family in the absence of the state. These advocates must balance the demand for equal rights with the risk of treating women as if they were men, while disadvantaging them at points where they are indeed different in the process. Yet they must face the reality that a call for different treatment can, in turn, result in discriminatory treatment.<sup>11</sup>

What does this all mean? My own work has been to critically examine how the complex interaction of markets, law, and development has added or subtracted to the well-being of ordinary Chinese citizens. Specifically, has the development of a private market and an accompanying legal structure resulted in a greater sense of rights entitlement and rights assertion among ordinary citizens and especially Chinese women? Today's global governance takes the form of standardized language bringing in the vocabulary of rights, including women's socio-economic rights. Both a body of substantive rights protection as well as a structure of procedural guarantees are established in China along with a transmission of the language of rights. But abstract rights and the implementation of legal codes do not always mean rights adoption, and neither does formal equality always translate into substantive equality.<sup>12</sup> Rights on the book require private individuals to assert and enforce those rights.

In the instance of Chinese legal reforms, the number of civil cases litigated in the courts has been on the rise since the reinstitution of a civil court system, reflecting the rise in disputes that naturally occurs with more economic transactions. The 2003 Supreme People's Court Work Report reported a 20% increase in the last five years in the number of civil cases filed by Chinese citizens asserting their social and economic rights. Certain categories of cases warrant particular attention. For

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<sup>11</sup> See generally Margaret Y.K. Woo, *Law and the Gendered Citizenship*, in *CHANGING CONCEPTS OF CITIZENSHIP IN CONTEMPORARY CHINA* (Elizabeth Perry & Merle Goldman eds., 2002).

<sup>12</sup> Some skeptics question whether an over-reliance on a rights tradition may actually deflect attention from or impede other more valuable approaches to social change. They question the efficacy of relying on human rights charters, doctrine, and litigation to bring about a just society. See Karl Klare, *Legal Theory & Democratic Reconstruction: Reflections on 1989*, 26 U.B.C. L. REV. 69 (1991).

example, personal injury compensation cases rose by 60% over the last five years, contract cases increased by 9%, divorce and family law cases increased by 5%, but labor cases increased by only 1.7%. Commercial cases also increased by 39% and administrative appeals increased by 65%.<sup>13</sup>

These statistics, however, do not reflect whether or how the trends of globalization, markets, and rule of law have actually been infused into Chinese legal culture. I have attempted, through empirical and ethnographic work,<sup>14</sup> to examine how Chinese legal reforms have been adapted in Chinese legal culture and, more importantly, how the language of rights either has or has not helped women to transform themselves from social objects to social subjects, while at the same time contributing to the institutionalization of China's legal processes. Can ordinary citizens, and in particular female litigants, effectively use the Chinese courts as an instrument for the enforcement of their socio-economic rights? Does the process of using the courts add to the Chinese sense of citizenship or has it primarily operated to protect the property rights of the rich and powerful, leaving the socio-economic rights of the weak and marginalized unprotected? How are women, historically one of the most marginalized groups in Chinese society, navigating between the state's policy of reform and tradition? How are women using the legal process, and are women transformed by law (which is both reflective of culture and constitutive of culture) and by their experiences in the legal process?

## II. DATA

With the assistance of a legal aid office in Beijing, I collected questionnaires from sixty four litigants in an attempt to unravel the complicated attitudes of litigants who are facing these market changes by using the legal system. Between fall of 2002 and spring of 2003, we randomly collected questionnaires from litigants as they came through the legal aid office seeking advice and assistance. The questionnaire asked questions ranging from litigants' attitudes towards the legal system and their expectations of their lawyers, to their experiences as well as the effects that the legal system has had on them. This paper merely summarizes some of the results.

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<sup>13</sup> See 最高人民法院工作报告 [Supreme People's Court Work Report], Mar. 11, 2003, available at <http://www.people.com.cn/GB/shizheng/19/20030322/950241.html> (last visited Jan. 30, 2006).

<sup>14</sup> For a good discussion of the importance and difficulties of empirical work in China, see Donald C. Clarke, *Empirical Research in Chinese Law*, in *BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW* (Erik Jensen & Thomas Heller eds., 2003).

Admittedly, broad definitive conclusions cannot be drawn from a sixty four (or seventy four<sup>15</sup>) questionnaire sample. Furthermore, these samples are limited in that they are all litigants gathered from Beijing. Nevertheless, the answers to the questionnaire do lead to some interesting observations, particularly when placed in the context of other data, including documentary research and case studies.<sup>16</sup> While these observations are not definitive conclusions about legal attitudes in China, they do elucidate some trends that add to an otherwise speculative and abstract picture of legal reforms in China. These snapshots could thus lay the groundwork for additional research in the field.

*A. What do we have so far?*

Some background information about our litigants: As a group, they were a literate pool. A majority of them received some education, with 32.8% receiving only a high school education and 34.4% receiving a college education. This seemed to support some modernization theories that predict greater education is needed for the assertion of legal rights. Similarly, the group consisted of 25% professionals, 10.9% peasants, 12.5% blue-collar, and 12.5% white-collar workers.

Conveniently, our sixty four litigants split evenly between men and women, with 45.3% male and 48.4% female, and the remainder were unidentified. While the cases in which these litigants sought assistance included divorce, support, labor, personal injury, housing, debt, and economic disputes, female litigants dominated the divorce, labor, and housing cases. This is consistent with national data which generally concludes that women's rights are most threatened in the socio-economic rights area of family, housing, and labor.

With the deepening of economic reforms and a greater reliance on markets, women's social status has increased in some ways but decreased in many others. While the market economy has offered women greater mobility and freedom, such mobility has also resulted in greater threats to women at home and in the workplace. Thus, our data shows that of our litigants, female litigants were involved in 71.4% of the divorce cases, 57.1% of the labor cases, and 70% of the housing cases. Clearly, those are the areas of greatest concern affecting Chinese women.

Since the reforms of the 1980s and 1990s, the Chinese government has enacted a number of laws for the protection of the socio-

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<sup>15</sup> We collected an additional ten questionnaires in a pilot study which, although not included in the charts, aided us in our analysis of the overall trends.

<sup>16</sup> This triage method is discussed in SHULAMIT REINHARZ, *FEMINIST METHODS IN SOCIAL RESEARCH* 46 (1992).

economic rights of Chinese women—including a women's rights and interests law, a new marriage and family law, and greater labor protections. Despite these provisions, Chinese women still face violence in the family, inequity in inheritance and property divisions, and labor discrimination. With the recent emphasis on legality, the Chinese state also relies on the courts rather than social groups to protect these rights, and requires that individual female litigants assert these rights themselves. The question, then, is how and whether these courts are being used to enforce these rights and, regardless of the outcome of these cases, whether the actual legal experience has served to empower women.

Among the litigants surveyed, some interesting observations regarding the class of litigants as a whole can be drawn. Perhaps because of the limited sample size, gender difference appeared to have some role—yet not a predominant one—in predicting a litigant's expectation from litigation and his or her satisfaction and feelings about the legal experience. Gender difference was significant, however, as to self-perceptions regarding legal knowledge and control over the litigation. As a whole, the answers did reveal a subtle but changing attitude in legal culture by litigants of both sexes, one that is perhaps unintended by the Chinese state in its reinstitution of a legal system to promote a market economy. The answers also challenged the ideal that Chinese litigants favor informality over formality, mediation over adjudication, and the preservation of relationships over rights assertion.

### 1. Preference for Litigation Outcome

The traditional understanding is that people in China abhor litigation and would rather preserve relationships than engage in the divisive assertion of rights. Thus, while legal historians of China have recently added more fully to the picture of the role of law in traditional China, it is generally accepted that it was the criminal, not the civil, that dominated the formal legal process. Civil disputes were relegated to the extralegal and mediation, and were resolved by compromise solutions. The aversion to the formal court process was attributed to a “culturally instilled notion that resorting to the courts was a sign of failure of, perhaps social morality, and certainly of management of interpersonal relationships,” and the courts were perceived as an “unpredictable mediatory agency concerned with maintaining harmony, and at worst a punitive agency concerned only



with criminals. Few would have turned to it to protect or assert their civil rights over property, debt, marriage or inheritance.”<sup>17</sup>

Even after the Chinese turned to economic reforms and formal legality in the 1980s, it was assumed that this traditional culture still persisted. In *Contracts with a Chinese Face*, Arthur Rosett and Lucie Cheng wrote that, despite efforts at legal reform and instilling notions of formal legality, Chinese judges adhered to “*heqing*, *heli*, and *hefa*” (enforce relationships, rightness, and law) in the enforcement of contract obligations.<sup>18</sup> Law and the enforcement of legal rights arguably came last in this trilogy. Similarly, in an article on contract enforcement in China in the late 1980’s, David Zweig and his colleagues noted that litigants would rather share a “half a loaf” outcome than a zero-sum game of winner takes all.<sup>19</sup> Interestingly, this view seems to have receded in prominence today.

In our questionnaire, we asked litigants to specify their preferred outcome from litigation—to enforce rights, to restore relationships, or to benefit both sides. Regardless of whether or not these litigants would have answered the question differently before the reform, it is quite clear what their answers are today. More litigants (both male and female) chose “enforce rights” as their preferred outcome at 68% male and 71% female, with “benefit both sides” a distant second at 32% male and 14% female. Only four female litigants, or 14% of the female respondents, chose “restoring relationships” as their preferred outcome.

Interestingly, contrary to the stereotypical image of women as more conciliatory and compromising, it was female litigants who had a slight edge in choosing enforcement of their rights as the preferred outcome (see Table 1). A greater percentage of male respondents than female respondents chose “to benefit both sides” as their preferred outcome. However, all four of the litigants who chose “to restore relationships” as their answer were women. Given the nature of the cases involving women—that is, cases involving family and housing issues—one would have expected a higher percentage of women to choose restoring relationships as their primary preferred outcome.

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<sup>17</sup> PHILIP C.C. HUANG, CIVIL JUSTICE IN CHINA: REPRESENTATION AND PRACTICE IN THE QING 180 (1996).

<sup>18</sup> Arthur Rosett & Lucie Cheng, *Contracts with a Contract Face: Socially Embedded Factors in the Transformation from Hierarchy to Market, 1979-1989*, 5 J. OF CHINESE L. 143, 224-25 (1991).

<sup>19</sup> David Zweig et al., *Law, Contracts, and Economic Modernization: Lessons From the Recent Chinese Rural Reforms*, 23 STAN. J. OF INT’L L. 319 (1987).

**Table 1: Expectation of Outcomes by Sex**

<i>Expectation of Outcome</i>	<b>Raw</b>		<b>Percent</b>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
<i>Enforce Rights</i>	17	20	68%	71%
<i>Restore Relationship</i>	0	4	0%	14%
<i>Benefit to Both Sides</i>	8	4	32%	14%
<b>TOTAL</b>	25	28	100%	100%
Pearson $X^2(2) = 5.4241$ Pr = 0.066				

## 2. Level of Legal Knowledge

As to the level of legal knowledge held by litigants and where they received this knowledge, there were some gender variations in the answers. By and large, most litigants professed having a little legal knowledge before going to court. A greater percentage of men (48%), however, than women (19%) professed a casual knowledge, while more women (58%) than men (28%) professed only a little knowledge of the legal system prior to going to court (see Table 2 below).

**Table 2: Prior Reported Knowledge of the Legal System by Sex**

Knowledge of the legal system before going to court	<b>Raw</b>		<b>Percent</b>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
<i>Professional</i>	0	1	0%	3%
<i>Casual</i>	14	6	48%	19%
<i>A Little</i>	8	18	28%	58%
<i>Other</i>	7	6	24%	19%
<b>TOTAL</b>	29	31	100%	100%
Pearson $X^2(3) = 8.0654$ Pr = 0.045				

As to where litigants received their legal knowledge, legal propaganda and news reports proved to be the main sources of information, with word of mouth coming in last. Some men professed to be self-taught, but women litigants by and large seemed to receive their information more from news and legal propaganda, followed by word of mouth, rather than self-teaching. This would then support the strategy of providing legal information more through training by civil society organizations and the news media, rather than reliance on self-teaching.

### 3. Level of Confidence in the Courts

When asked whether they believe in the fairness of the courts, the majority of the litigants as a whole answered that they believed decisions of the courts to be unfair. Interestingly, more women than men perceived court decisions as unfair. A greater percentage of female respondents (69%), constituting a slight majority over male respondents (63%), checked the “unfair” box. Meanwhile, the percentage of men checking the “fair” box (37%) was slightly more than the percentage of women (31%) who did so (Table 3 below).

**Table 3: Perceived Fairness of Decision by Sex**

Do you generally regard the decisions of the court as fair?	Raw		Percent	
	Male	Female	Male	Female
<i>Yes</i>	10	8	37%	31%
<i>No</i>	17	18	63%	69%
<b>TOTAL</b>	27	26	100%	100%
Pearson $X^2(1) = 0.2320$ Pr = 0.630				

Regarding their own specific cases, litigants also held the view that their cases were not handled fairly. About 47.3% of those who answered the question thought the court’s decision in their case was unfair, 36.4% thought that it was somewhat fair, and 16.4% thought that it was fair. As to whether these litigants thought their case was handled in a manner to benefit both sides, 29.6% said yes and 70.4% said no. Certainly, it is unsurprising that those litigants who lost their case would perceive the court decision as being unfair. What is surprising is that even those who secured a victory or partial victory (about eight litigants) thought that their court decision was unfair.

The perception that the decision was unfair correlated with the perception that a litigant had little influence over the decision. More litigants perceived that they had little influence over the decisions than those who perceived that they had an influence over the decision. Scholars such as Thomas Tyler, have generally concluded that people who believe they have some control over the decision are generally more supportive of court decisions, regardless of whether the decision was beneficial to them.<sup>20</sup> While there is not enough information from which to draw a direct causal relationship, the data seems to demonstrate a

<sup>20</sup> See generally THOMAS TYLER, *WHY PEOPLE OBEY LAWS* (1990).

correlation between a “sense of fairness” and a “sense of control” over the litigation

As for gender differences, it would appear that a slightly higher percentage of women (57%) than men (37%) perceived decisions in their own cases as unfair. Of the few people who felt that they had influence over the decision, a higher percentage of men (41%) than women (27%) expressed the sentiment that they had either a great deal of influence or some influence over the outcome of their decision (see Table 4 below).

**Table 4: Influence Over Decision by Sex**

Do you feel you had much influence over the decisions made by the judge?	Raw		Percent	
	Male	Female	Male	Female
<i>A Great Deal of Influence</i>	5	2	19%	8%
<i>Some Influence</i>	6	5	22%	19%
<i>A Little Influence</i>	2	5	7%	19%
<i>Not Much Influence</i>	13	11	48%	42%
<i>Do Not Know</i>	1	3	4%	12%
<b>TOTAL</b>	27	26	100%	100%
Pearson $X^2(4) = 3.8115$ Pr = 0.432				

4. Effect of the Litigation on Litigants

Could there be radiating effects from mere participation in the legal system such that litigants felt empowered even if they lost their case? What might be the effects of having litigated a case, regardless of the outcome, on those who took legal action to enforce their rights?

We asked our litigants whether and how the process of litigation had affected them. By and large, a slightly higher percentage of female respondents (100%) than male respondents (94%) felt that their ability to handle disputes had increased as a result of bringing their lawsuit. Both male and female respondents felt equally that their knowledge of law was increased as a result of the litigation. There was a slight gender difference as to the perception of self-respect: of those who responded, a majority of male respondents (82%) and female respondents (79%) answered that the litigation increased their self-respect. Interestingly, more women (21%) than men (18%) answered that the litigation decreased their self-respect (see Table 5). Nevertheless, as a whole, most litigants felt that their self-respect had increased after litigation.

**Table 5: Self-Respect by Sex**

Your self-respect:	Raw		Percent	
	Male	Female	Male	Female
<i>Increased</i>	9	11	82%	79%
<i>Decreased</i>	2	3	18%	21%
<b>TOTAL</b>	11	14	100%	100%
Pearson $X^2(1) = 0.0406$ Pr = 0.840				

Finally, while some litigants agreed that the experience increased their trust in law and justice, an almost equal number of litigants agreed that their trust in the legal system decreased as a result of the litigation. Of those who agreed that the experience increased their trust in the legal system, there were more men (66%) than women (42%).

### III. CONCLUSION

What does the data tell us? Critical to understanding Chinese legal reform is an inquiry into the identities of the stakeholders: that is, who wins and who loses in this global legal market. Arguing for global governance or global norms can mean either contending for the convergence and integration of norms in an increasingly borderless world or for some form of "polychromatic contestation"<sup>21</sup> with global trends matching step with equally strengthening local identities. Rule of law, in its demand for predictability and transparency of legal systems, can serve to not only resolve individual disputes, but can also legitimize existing elites, reinforce state powers, and reconstruct social norms and identities.

Who wins and who loses under these policies? In my work, I see the trends toward intertwining of the global market working at cross-purposes to each other rather than in a single trajectory of economic interests unequivocally leading to greater freedoms. Where capital markets are aligned with a soft authoritarian state, there is the possibility of judicial processes and the building up of courts undermined by economic market principles such that legal assistance is increasingly limited to those few who can afford it in the private market. Similarly, in the assumption that rule of law builds up rights and identities and the growth of a civil society, I see the possibility of over-reliance on the language of rights, where the use of the courts means adoption of an individualistic and particularistic form of citizenship to the detriment of

<sup>21</sup> I borrow this term from my colleague Professor Anthony Farley of Boston College Law School, who used it to refer to the multiple voices of racial groups in the United States.

those who were once protected by more communal norms. There is also a further danger of the state co-opting the language of markets and rights and turning it against the individual citizen—all with the blessing of the world community.

In the case of China, we see an increased use of civil courts by private individuals seeking the enforcement of their socio-economic rights. State laws and courts, as an institutional site of resistance, can be potential sites for contesting and constructing social values. Yet, in only a few cases have Chinese citizens asserted legal claims against the Chinese state for broad-based changes rather than against private individuals for economic compensation or social benefits.

More frequently, as demonstrated by both my data and official statistics, civil cases are an individual assertion of private socio-economic rights against other private individuals, as in debt, contract, and family law cases. In this way, civil courts are utilized to protect the socio-economic rights of citizens, but not to effectuate large-scale structural change. The Chinese civil justice system thus continues primarily to serve the purpose of resolving disputes between individuals rather than that of restructuring social norms.

There are, however, encouraging incidents of individuals asserting legal claims against the state. For example, the case of Qi Yuling represented an unusual claim against the state when Ms. Qi sued a school and others for forging papers and thereby depriving her of admission into the school. A court in Shandong ruled in favor of Qi Yuling under Article 47 of the Constitution, which guarantees a citizen's right to education, and awarded her ¥50,000 for damages flowing from its deprivation.<sup>22</sup> Though not a case of an individual seeking broad-based change, it does represent a rare incident of a court determining an individual's rights as asserted against the state that resulted in a constitutional interpretation empowering individual citizens with legal entitlements rather than as simply passive recipients.

The case of Wang Yulun and Li Erxian represents another promising legal empowerment effort.<sup>23</sup> Wang and Li brought a gender discrimination suit against Wujiang township in Xinjing County challenging as discriminatory the village rules (村规民约, *cungui minyue*) that stipulated a woman must transfer her census registration when she gets married and thereafter is denied any further village

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<sup>22</sup> Shen Kui, *Is It the Beginning of the Era of the Rule of the Constitution? Reinterpreting China's "First Constitutional Case"*, 12 PAC. RIM L. & POL'Y J. 199 (2003).

<sup>23</sup> 论男女平等的宪法原则在“民事的领域”内的直接效力 [The Direct Effect of the Constitutional Principle of Gender Equality in the "Civil Domain"], 中国法学网 [China Legal Web], at <http://www.iolaw.org.cn/shownews.asp?id=2333> (last visited Mar. 5, 2006).

benefits. The Xinjing District Level People's Court deemed the village's transferring of the plaintiff's census and land registration to be discriminatory, and awarded the plaintiffs ¥5000—the amount of the land registration transfer fee to which they were entitled.

Yet, these cases represent nascent and limited claims against the state by female litigants for the protection of their socio-economic rights. While the law allows for administrative litigation, such cases are still rarely brought, and when they are brought, they are brought only as appeals of administrative agency action. Very rarely do we see litigation brought against the state to hold it accountable for failing to provide a citizen socio-economic benefits.

When considering the identities of Chinese women, we must not ignore the fact that gender is “made, remade, and transformed in fundamental ways through legal institutions and the discourses of disputing.”<sup>24</sup> The language of rights can serve to some extent as a focus for organizing social change and, in other instances, as a trump card against structural inequities. In my data, there was a trend suggesting a greater sense of self-respect by Chinese women who participated in litigation (either as plaintiff or defendant). While Chinese women may, on the whole, also mistrust the substantive outcome of courts and have less of a sense of influence on court decisions, court participation nevertheless can have the impact of increasing a sense of self-respect that is critical to a woman's identity.

Additionally, whether in bringing or defending litigation, to an even greater extent than men, these women litigants do not want compromise solutions, but rather prefer the enforcement of their legal rights. These women increasingly speak the language of rights and have high expectations for the courts. Whether this is a departure from traditional norms and the signals the victory of global legal language, the reality is that these Chinese citizens, particularly the disempowered elements among them, are speaking the language of rights.

Yet, these same women litigants also profess to hold less legal knowledge and less influence over court decisions. In addition, they have less trust and confidence in the fairness of court decisions. Despite the language of rights, it would appear that women perceive themselves as getting the short end of rights protection. In a slightly greater percentage than men, women litigants perceive court decisions as unfair.

Ultimately, then, formal equality and private rights protection can mean some increased rights recognition, but not necessarily substantive

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<sup>24</sup> SUSAN F. HIRSCH, *PRONOUNCING AND PERSEVERING: GENDER AND DISCOURSES OF DISPUTING IN AN AFRICAN ISLAMIC COURT* 3 (1998).

equality. Leaving private enforcement of rights to individuals alone does not necessarily result in equality and the attainment of rights protection. For rights enforcement, other structural means are also needed, such as expanding and targeting legal education for women or providing legal assistance to women such that they have greater control over shaping litigation outcomes. This may require an expansion or retention of existing state authority where the private sector has not developed to fill this role, concomitant with strengthened means of holding state authorities accountable. These structural means may be equally important in ensuring substantive outcomes of equality as is the formal legal language in guaranteeing equality itself.

Rights language can be powerful, and there is evidence that rights language is crossing boundaries despite competing concepts of regionalism and the counter-vocabulary of duty, responsibility, and collective commitment. While rights language can give some self-fulfillment such as greater self-respect, substantive equality is not necessarily guaranteed. In the movement towards rights and legality, there still needs to be systematic change to background sociological and political conditions to avoid rendering the pursuit of "rights" vulnerable to distorted and distinctly unequal outcomes. Much, therefore, still needs to be done to preserve the socio-economic rights of Chinese women.