Xinfang: An Alternative to Formal Chinese Legal Institutions

Carl F. Minzner
Fordham University School of Law, cminzner@law.fordham.edu

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Problems in Faxi village started out small. Residents suspected the local Communist Party secretary of skimming public funds for his own use. Groups of villagers mounted multiple trips to township authorities, requesting the secretary be removed from his post. Gradually, problems spread. After sacking the Party secretary to appease popular sentiment, township authorities attempted to reassert control over local affairs by rigging village committee elections. Villagers, now incensed by a combination of both electoral and financial injustices, began a steady process of petitioning higher levels of government for redress of their grievances. Over the next two years, Faxi petitioners launched petitions and protests directed at a range of township, county, and provincial officials.

The Faxi petition movement grew in size and organizational skill. Blocked at lower levels, villagers coordinated the arrival of more than a hundred petitioners in the provincial capital. When county officials intervened yet again in village elections, Faxi petitioners resorted to more confrontational tactics: blocking roads and disrupting local elections.

The ensuing detention and trial of petition leaders prompted a shift in the locus of petitioning efforts, but not in their nature. Faxi petitioners began to exert pressure on the courts through favorable media reports and advocacy by delegates from the local people’s congress (LPC). Ultimately, this strategy succeeded in winning Faxi petitioners the support of key provincial officials, leading to the reversal of the criminal sentences for the petition leaders. Yet, even this apparent victory did not end the story, as villagers returned home to
continue their petitioning efforts against the local officials whose actions had given rise to their grievances.¹

The Faxi case is far from unusual, either in scale or in nature. Recent Chinese mass petition movements have involved the mobilization of hundreds, even thousands, of individuals.² In one incident alone, government efforts to dam the Dadu river in Sichuan province and resettle local residents led to mass protests of more than 100,000 individuals, engendering major clashes with police.³ For individual Chinese petitioners, struggles to present their grievances to higher authorities often sink into a Kafkaesque series of unending visits to government bureau after government bureau.⁴ Many petitioners eke out desperate existences for years or decades in Beijing shantytowns, pursuing their petitions in a cat-and-mouse fashion, subject to deportation or mistreatment by national and local authorities.⁵

Sometimes, as in the case of Zhu Zhengliang, the results of individual petitioning efforts are even more tragic. Authorities condemned and demolished Zhu’s house under a local redevelopment scheme in 2002. Zhu repeatedly petitioned county, city, and provincial officials, challenging the amount of compensation he received for his property loss. Finding no redress at lower levels, Zhu traveled to Beijing, engaging in a dramatic self-immolation attempt in Tiananmen Square on September 15, 2003.⁶

The route followed by these individuals and groups is that of "petitioning," a traditional means of seeking justice firmly rooted in Chinese history.⁷ Defined broadly as an effort to "go past basic-level institutions to reach higher-level bodies, express problems and request their resolution,"⁸ petitioning includes a variety of practices that parallel, overlap, and in some cases replace formal legal channels. These practices have survived into the post-1949 People’s Republic of China in the form of citizen petitioning of numerous “letters and visits” (xinfang) bureaus distributed throughout all Chinese government organs, including the courts.

¹ For a more detailed discussion of the Faxi petitioning efforts, see infra notes 283–294 and accompanying text.
⁵ Yi Ban, The View Beneath the Bridge, 1 CHINA RTS. F. 56 (2004).
⁷ For a vivid, but unrealistically positive, cinematic portrayal of the Chinese petitioning experience, see QIU JU DA GUAN SI [THE STORY OF QIU JU] (Sil-Metropole Organization & Youth Film Studio of Beijing Film Academy 1992).
Development of a modern legal system over the past two decades has not eliminated these petitioning practices and institutions. Formal Chinese legal institutions have developed internal means of accommodating petitioning behavior. Since the 1990s, Chinese authorities have also passed a web of regulations to govern both petitioners’ practices and the operation of national, provincial, and local xinfang bureaus.

Despite these developments, xinfang bureaus and petitioning practices exist uneasily alongside, and sometimes within, China’s formal legal institutions. This article uses the terms “formal legal institutions” and “formal legal channels” to refer to those institutions, such as courts, procuratorates, and the administrative law system, that purport to ground their authority and decisions primarily on formal law and legal norms. In contrast, xinfang institutions derive their influence from the political power of the Communist Party and individual officials. They reflect the ability of Party leaders to personally intervene in and resolve particular disputes, regardless of legal norms. They represent the rule of man (or Party), not the rule of law. Petitioning efforts aimed at triggering the discretionary involvement of key Party officials in the resolution of grievances are important practical alternatives to formal legal channels for Chinese citizens seeking to resolve their grievances.

Available Chinese statistics suggest that citizen use of petitioning practices and xinfang bureaus far exceeds that of formal legal channels. According to the director of the national xinfang bureau, the State Bureau for Letters and Calls, letters and visits to Party and government xinfang bureaus at the county level and higher totaled 8,640,040 for the first nine months of 2002, corresponding with an annual rate of 11.5 million per year. In comparison, the entire Chinese judiciary handles six million legal cases annually.

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9 Chinese procuratorates are the rough equivalent of American district attorney offices. Like courts, however, they are theoretically independent of local governments. Because China is an authoritarian state, even formal legal institutions such as the courts and procuratorates are subject to a range of political control by Party authorities.

10 The conflict between law, formal legal channels, and the rule of law on the one hand and institutions or practices based on personal power has been noted by others as well. RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD THE RULE OF LAW 484 (2000) (noting that villager petitioning of individual village or Party leaders may reflect the inadequacies of formal legal channels); Deng Haijian, Bao zhang xin fang quan li xu yao zhi du he li [Protecting Xinfang Rights and Interests Requires Institutions Joining Forces], May 10, 2005, at http://www.legaldaily.com.cn/fzsp/2005-05/10/content_211160.htm.

11 While tension exists between the principles governing xinfang institutions and petitioning practices on the one hand and formal legal channels on the other, there is often not a black and white choice between the two in practice. Some Chinese citizens attempt to use both simultaneously to resolve their grievances, and there is substantial overlap between xinfang and legal institutions in practice.


13 Chinese statistics on judicial workload vary depending on what is counted as a “case.” The 2005 Supreme People’s Court Work Report lists the Chinese court system as handling 7,873,745 total cases, including roughly two million “enforcement” (zhixing) cases. ZUI GAO REN MIN FA YUAN 2005 NIAN GONG ZUO BAO GAO [2005 SUP. PEOPLE’S CT. WORK REPORT] (2005) [hereinafter 2005 SPC WORK REPORT]. This differs from prior reporting practices, which did not include zhixing cases in the total; see also ZUI GAO REN MIN FA YUAN 2004 NIAN GONG ZUO BAO GAO [2004 SUP. PEOPLE’S CT. WORK REPORT] (2004) [hereinafter 2004 SPC WORK REPORT] (listing only 5,687,905 cases); ZUI GAO REN MIN FA YUAN 2002 NIAN GONG ZUO BAO GAO [2002 SUP. PEOPLE’S CT. WORK REPORT] (2002) [hereinafter 2002 SPC WORK REPORT] (listing only 5,927,660 cases).
within the judiciary, use of *xinfang* channels appears to outweigh more formal procedures. According to the 2003 Work Report of the Supreme People's Court (SPC), the entire Chinese judiciary handled forty-two million letters and visits during the preceding five years, compared with approximately thirty million formal legal cases. Despite this reliance, *xinfang* channels rarely yield results for individual petitioners. According to a recent Chinese study, less than 0.2% of petitioners surveyed succeeded in having their complaints addressed.

*Xinfang* petitions represent a range of grievances. Some, such as the petioning efforts of Faxi villagers, are organized political challenges to the decisions of local officials. Others are individual appeals for justice by aggrieved petitioners. Many petitions contain legally cognizable grievances. Some are extra-legal appeals of court decisions. As one Chinese observer has noted, "*Xinfang*—a mechanism originally established to resolve political problems—has gradually evolved into a system of assistance serving as a replacement for the judicial system." Despite its importance, the *xinfang* system has been little studied by Western and Chinese academics. It operates at the intersection of law and politics, but has been incompletely analyzed by scholars of both fields. Legal academic works, even those which extensively analyze China's transition to the rule of law, discuss petitioning institutions only in passing. Western political scientists have conducted extensive analysis of Chinese petitioner practices, but have focused little on their overlap with formal Chinese legal

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15 Zhao Ling, Xin fang gai ge yin fa zheng yi [Xinfang Reform Triggers Controversy], NANN FANG ZHOU MO [SOUTHERN WEEKEND], Nov. 18, 2004.

16 Lang Pingping, Xin zhi du de gai ge bi xu tong si fa zhi du de gai ge xiang tiao [Reform of the Xinfang System Must Be Coordinated with Judicial Reform], QING NIAN BAO [CHINA YOUTH DAILY], Nov. 30, 2004. One scholar has noted that fewer than two percent of rural Chinese grievances "involve a lawyer, a court, or any office of the formal legal system ...." Ethan Michelson, Causes and Consequences of Grievances in Rural China (Mar. 28, 2004) (unpublished manuscript, on file with the author). U.S. studies have found that approximately ten percent of American grievances involve lawyers. "Survey data suggest that ten percent of Beijing 'disputes' end up in court." Id.


18 PEERENBOOM, supra note 10, at 419-20.
channels, and still less on xinfang regulations and institutions themselves. Neither legal scholars nor political scientists have comprehensively analyzed the Chinese xinfang system, analyzing both xinfang institutions and petitioner responses to them.

This Article attempts to fill this academic void. It provides an overview of the xinfang system and the petitioning practices employed by Chinese citizens to access it. It analyzes the extent to which they pose important alternatives to the legal institutions on which most Western observers interested in Chinese rule of law developments have focused their attention. It also analyzes in depth the state-society interaction at the heart of the xinfang system.

This Article’s focus on the interaction between xinfang institutions and practices and formal legal ones is not intended to overlook the important political role of the xinfang system. Indeed, xinfang channels also serve as an important practical alternative to other political channels.

This Article argues that the xinfang system is fundamentally a multipurpose tool of governance for an authoritarian state, rather than an institution of particularized justice based on legal norms. It is deeply rooted in Chinese history and serves important political goals for Chinese leadership. It partially overlaps with the legal system in attempting to resolve some individual grievances. However, several core aims (such as providing a regular stream of information to leadership on incidents of social instability) differ from and clash with those of formal legal channels.

Given the institutional weaknesses of the Chinese judiciary and government limitations on citizen political participation, xinfang appeals remain a popular channel for injured citizens to prompt elite involvement in the resolution of their particular grievances. In practice, the xinfang system often replaces formal legal channels as the locus for citizen dispute resolution. Contrary to the conclusions of many foreign observers, China may not be developing a Western-style rule of law but rather a modernized form of traditional petitioning structures and practices.

This Article also contends that xinfang regulations create incentives that amplify citizen petitioning behavior, encouraging the politicization of individual grievances. Xinfang institutions are designed only to respond to certain types of petitions—in particular, organized, repetitive, and large-scale ones. Citizens are increasingly using these types of petitions to resolve their grievances. Chinese petitioner behavior may represent an adaptive response to state-established xinfang “game rules.” These rules may be breeding social instability through an incentive structure rewarding larger, more organized, and more disruptive petitioning incidents.


20 This argument finds some common ground with those scholars who argue that traditional political and legal structures set China on a quite different evolutionary course from those of Western democracies. See, e.g., Wei Pan, Toward a Consultative Rule of Law Regime in China, 12 J. OF CONTEMP CHINA 1, 3 (2003). This Article, however, will focus primarily on the actual operation of the Chinese xinfang system and its consequences, without attempting to address the larger normative question of whether a particular system is superior.
This Article is divided into seven different parts to analyze Chinese petitioning institutions and practices. Part I sets forth general terminology and provides historical context. It argues that the xinfang system should be understood as a multipurpose governance tool deeply rooted in imperial and Communist practices. Part II identifies how this fundamental nature is reflected in existing People’s Republic of China (P.R.C.) government regulations, through an extensive analysis of current national and provincial xinfang rules. It also argues that the new 2005 xinfang regulations do not represent a fundamental change to prior practices.

Both Parts I and II identify the extent to which the wide-ranging governance goals of modern and historical Chinese petitioning institutions conflict with the aims of formal legal channels. Part III argues that this conflict exists within formal Chinese legal institutions as well. It details a range of petitioning practices within the Chinese judiciary that contradict formal legal norms.

Part IV analyzes the tactics of Chinese petitioners and the internal practices of the xinfang institutions that respond to them. It argues that Chinese petitioner practices may represent an adaptive response to the incentive structure embodied in xinfang regulations and institutions.

Through an analysis of available data, Part V explores the extent to which this interplay may be undermining formal Chinese legal institutions. It also suggests that the xinfang system may be generating a dangerously escalating spiral of socially destabilizing behavior, in the form of increasingly large and organized mass petitioning activities.

Part VI provides a comparative perspective, suggesting that medieval English and French political diversity led to a gradual dissociation of judicial power from the persons of the monarch themselves, in contrast to China. It suggests that political liberalization may be a necessary condition in China for serious reform of the xinfang system.

Part VII draws together the above strands into an overall analysis.
II. BACKGROUND

A. Definitions

The proliferation of terms for Chinese appeals for justice complicates discussion of the topic. For example, the Chinese constitution guarantees the right of every citizen to raise appeals (shensu), report offenses (jianju), and submit accusations (konggao) of illegal behavior on the part of government organs and officials. Additional terms, such as jubao (informing on official malfeasance), are present in various provincial and agency regulations. Definitions of the above terms share a core meaning of informing higher authorities as to wrongdoing, and may be used both formally and informally. English-language academic sources use numerous and conflicting translations to describe the above practices. Examples include "lodging complaints," "appealing to higher authorities," and citizen "contacting." While these English terms accurately encompass certain elements of the popular redress of grievances, they are not entirely satisfactory for the purpose of analyzing the xinfang process from a legal perspective. In particular, they often fail to encompass the fundamental nature of these popular appeals for justice as requests for assistance from higher authorities rather than assertions of clearly defined rights. Further, the above terms also fail to capture the fact that these sometimes informal appeals are firmly grounded in well-defined historical Chinese precedent.

21 XIAN FA [CONSTITUTION], art. 41 (1982) (P.R.C.). Until 2005, the national xinfang [letters and visits] regulations provided not only for the raising of the above items, but also accusations (konggao) of violations of one's own legal rights. Xin fang tiao li [Xinfang Regulations] art. 8 (Oct. 28, 1995) [hereinafter 1995 Nat'l Xinfang Regs.].


23 Jubao is defined as jianju, and both of these terms, as well as konggao, share a core definition of informing higher authorities as to wrongdoing. HAN YU DA CI DIAN [CHINESE DICTIONARY], supra note 8, at 5274, 2715, 3683. But see Zui gao ren min jian cha yuan, ju bao zhong xin [Jubao Center of the Supreme People's Procuracy], supra note 22 (noting that konggao differs from jubao, in that the former is initiated by an injured party and is aimed at upholding one's own legal rights, while the latter is aimed at upholding justice generally or the interests of the nation as a whole). These terms also possess both informal and formal usages. Konggao is commonly used both to refer to a formal lawsuit, or the process for bringing one, as well as mere verbal accusations. Jianju can refer to revelations of mistakes as well as legal wrongdoing. HAN YU DA CI DIAN [CHINESE DICTIONARY], supra note 8, at 2715. Shensu is almost identical to the English term "appeal" in having both formal and informal uses. Id. at 4615.


26 Laura Luehrmann, supra note 19, at 847.

27 While the characterization of popular appeals as requests for higher-level intervention still remains generally true, scholars have noted an increased willingness on the part of Chinese citizens to employ mass direct action tactics to challenge activities of local officials, freely citing central government policies and slogans in the process. Access to Justice in China: Staff Roundtable of the Congressional-Executive Commission on China, (July 12, 2004) [hereinafter C.E.C.C. Staff Roundtable] (written statement of Professor Kevin O'Brien, University of California, Berkeley), http://www.cecc.gov/pages/roundtables/071204/index.php.
To address the above problems, this Article will employ the terms "petitions" and "petitioners" as umbrella terms to describe Chinese appeals to justice and the individuals who bring them. This has several advantages. First, these terms are already in common use in media accounts of Chinese practices. Second, the relatively broad scope of the verb "to petition" roughly corresponds to the Chinese term shangfang, "to go past basic level institutions to reach higher-level bodies, express problems and request their resolution," which is often used as a catchall phrase in the Chinese media to cover all of the above activities. Third, the multiple informal and legal meanings for the English terms accurately reflect the mixed nature of the Chinese terms discussed above. Fourth, these terms carry historical connotations of imperial practices that this Article will argue are critical to understanding modern practices. Fifth, the term "petition" critically encompasses the concept of an appeal to discretionary authority, rather than an assertion of clearly defined independent rights, which this Article identifies as a core characteristic of the xinfang system.

In contrast, this Article will employ the Chinese term xinfang to describe the thousands of "letters and visits" offices associated with various government agencies that handle the bulk of petition work, as well as to identify the system and process as a whole. This is done for several reasons. The term xinfang is commonly used in both relevant regulations as well as in common parlance. Xinfang bureaus are a key component of the post-1949 P.R.C. government structure. Finally, xinfang offices differ in critical ways from imperial institutions. Consequently, distinguishing these bureaus with a more specific term than just "petition offices" is necessary for careful discussion. The use of xinfang to describe the processes and systems at question here does incur some disadvantages. Petitioning activities are not restricted to the xinfang bureaus of various Chinese government or Party agencies. Media organs, for example, are also often targets. For simplicity, however, this Article will primarily focus on government and Party xinfang bureaus, without implying that they are the sole locus of petitioning activities in China.

B. Historical Context

A review of the historical roots of the modern xinfang system and citizen petitioning practices reveals four key points. First, the modern xinfang system is firmly rooted in imperial and post-1949 Communist practices. Second, the xinfang system reflects the merger of judicial and administrative power in Chinese political and legal systems. Third, the xinfang system is a multipurpose governance tool. Fourth, these characteristics of the xinfang


29 HAN YU DA CI DIAN [CHINESE DICTIONARY], supra note 8, at 121.

30 The use of the term “petition” in this article is slightly broader than the dictionary definition given for shangfang, in that it also is used to encompass the initial approach to lower-level government organs, as well as any subsequent efforts to reach beyond them.

system generate citizen petitioning with broad scope, unclear limits, and little regard for formal jurisdictional lines.

1. Imperial Chinese Practices

Both Western and Chinese observers have remarked on the fused nature of judicial and administrative authority in imperial China. Despite a highly developed bureaucratic administrative structure, professional judicial organs were extremely few. While a few organs of the central government might count as specialized judicial organs, local governments were a combination of judicial and administrative authority. As to the administration of law in concrete cases, these were carried out not by professional judges, [but rather by officials for whom] judicial responsibilities were but merely one element of their official careers. Ultimate judicial authority rested in the hands of the emperor, while all judicial organs were theoretically but consulting organs [to assist] the emperor in making the final decision.\(^\text{32}\)

The office of district magistrate, the lowest level official of the Chinese bureaucracy, illustrates this merger of judicial and administrative authority.\(^\text{33}\) As the government official charged with administering the affairs of a Chinese county (xian), the magistrate simultaneously shouldered multiple responsibilities. Not only did he hear all local criminal and civil legal suits, but he also supervised local tax collection, regulated labor service requirements, and ensured the maintenance of public order.\(^\text{34}\) The Ming (1368–1644) and Qing (1644–1911) dynasties witnessed the development of a cadre of professional judicial clerks serving under district magistrates, familiar with the law and adept at drafting legal documents. However, clerks were not an independent judicial authority separated from the administrative state structure. Clerks lacked government status and were personally employed and paid by the magistrates themselves. As Chinese historians have noted, their main role was to keep the magistrates out of trouble by helping magistrates avoid disciplinary punishment as a result of incorrect legal decisions.\(^\text{35}\)

Aside from the automatic review required for magistrate sentences that went beyond the use of the pillory (stocks), imperial China possessed several mechanisms by which dissatisfied parties might challenge lower-level decisions.\(^\text{36}\) First, parties might approach individual imperial censors, agents of the emperor bearing wide surveillance responsibilities. Censors reported on local conditions throughout the realm and monitored the performance of government agents at all levels of the imperial bureaucracy. They also provided the emperor with commentary and criticism on the correctness of


\(^{33}\) Derek Bodde & Clarence Morris, Law in Imperial China 4–5, 114 (1967).

\(^{34}\) John R. Watt, The District Magistrate in Late Imperial China 11–21 (1972).

\(^{35}\) Guo Jian et al., supra note 32, at 445.

particular government actions, including individual legal decisions.\textsuperscript{37} Second, parties might seek direct ("capital") appeals to the imperial throne. No concept of finality limited such appeals.\textsuperscript{38} Rather, parties dissatisfied with local magistrate decisions would proceed to imperial institutions in Beijing, such as the gendarmerie or the censorate, and attempt to summon officials to hear their petitions by banging the grievance drum located outside their offices. In extreme cases, petitioners might attempt to gain the attention of the emperor himself by kneeling in front of the palace gate or before an imperial procession.\textsuperscript{39} In all cases, petitioners' goals were the same: to convince high-ranking government officials, or the emperor himself, to intercede in the petitioners' cases.\textsuperscript{40} Intercession often involved the preparation of written memorials to the throne describing petitioners' complaints and/or recommending solutions.\textsuperscript{41}

The handling of individual case appeals was not a purely judicial function. Censorial memorials to central government officials were generally focused on correcting or improving imperial governance as a whole. Censorial review and comments on individual magistrate case decisions were but a component of their governance work.\textsuperscript{42} Similarly, capital appeals were not only a means for assuring justice in individual cases. They also served as an imperial information channel regarding social problems and as a means for central officials to monitor decisions made by local officials.\textsuperscript{43} Indeed, appeals of local decisions served as a "performance review" for local officials, who were disciplined for their own incorrect decisions as well of those of their subordinates.\textsuperscript{44} Chinese legal codes dating back to the Spring and Autumn period (770–476 B.C.) provided for individual criminal liability for officials who handed down incorrect sentences. Punishments were applied for both intentionally incorrect sentences as well as unintentional errors in the application of law.\textsuperscript{45} Appeals and memorials assisted the emperor in governing more effectively by providing a flow of information to help him root out corruption, correctly resolve individual cases, acquire knowledge of local conditions, receive popular input, assure good government, and review the work performance of local authorities.\textsuperscript{46}

\begin{itemize}
    \item[37] Laura Luehrmann, Officials Face the Masses: Citizen Contacting in Modern China, 23–24 (2000) (unpublished Ph.D. dissertation, The Ohio State University) (on file with The Ohio State University Main Library).
    \item[38] Ocko, supra note 36, at 299.
    \item[39] Id. at 294.
    \item[40] Id. at 294–95; Luehrmann, supra note 37, at 23–25.
    \item[41] Luehrmann, supra note 37, at 23–25.
    \item[42] Id.; Ocko, supra note 36, at 300.
    \item[43] Luehrmann, supra note 37, at 20–23, 27–28; Ocko, supra note 36, at 292.
    \item[44] Ocko, supra note 36, at 301–02.
    \item[45] GUO JIAN ET AL., supra note 32, at 501–03. Beginning with the Tang Dynasty (618–907 A.D.) code, the term churu renzui appears to have come into common use to describe this offense. Id. Although rarely seen in modern times, the term churu renzui is still occasionally employed in reference to mistaken decisions of modern Chinese courts. See YANGQUAN SHI ZHONG JI REN MIN FA YUAN GONG ZUO BAO GAO [WORK REPORT OF THE INTERM. PEOPLE'S CT. OF YANGQUAN CITY] (Apr. 20, 2003) (asserting the determination of court officials to avoid guilty verdicts in the absence of sufficient evidence).
    \item[46] ZHANG BAONI, XIN FANG GONG ZUO JI BEN ZHI SHI [BASIC KNOWLEDGE OF XINFANG WORK] 156–57 (1985); Luehrmann, supra note 37, at 20–29.
\end{itemize}
operated less as a specialized judicial instrument and more as an all-purpose governance tool for ensuring effective administration of the imperial domains.

Guangyuan Zhou’s account of an 1870s tax protest in Sichuan illustrates the hybrid judicial/administrative nature of the imperial Chinese appeals system and its nature as a tool of governance.\(^4\) Aggrieved by tax policies devolving collection powers to members of the local gentry, residents began submitting accusations of malfeasance to various government authorities. Receiving no redress, two petitioners embarked upon a capital appeal. Central officials refused to intervene and returned the case to the provincial authorities. This resulted in the detention and beating of one of the principal petitioners, Yuan Tiangjiao, for filing baseless complaints. Yuan escaped and organized a series of written complaints and public protests against the local magistrate and other officials. As the situation deteriorated, Yuan’s demonstrations multiplied, leading to clashes with local militia. By 1876, the district magistrate perceived the situation to have slipped out of control and reported Yuan as being in open rebellion. The provincial governor sent in troops to suppress rioters, leading to several hundred deaths and significant property damage.

Yuan himself escaped to the home of an imperial censor, who proceeded to memorialize the emperor on Yuan’s version of events, describing the mishandling of the tax protest by local officials. Other memorials reached the emperor as well. The governor responsible for dispatching troops submitted memorials defending his decision as well as that of the local magistrate. A group of Sichuan officials also petitioned the throne, rejecting the governor’s report based on information they received from relatives back home. Imperial commissioners sent from the central government to investigate provided yet a further stream of memorials. At question was not merely the guilt or innocence of Yuan himself, but also the culpability of the district magistrate and the provincial commander-in-chief. Under a statute imposing penalties on officials for “provoking the people to revolt,” the latter two were ultimately decapitated for poor governance and improperly responding to the initial protests.\(^4\)

The Sichuan tax protest illustrates two key features of imperial petitioning institutions. First, both commoners and officials employed the appeals process as a governance tool. Commoners challenging local tax policies phrased their complaints to the emperor in terms of protests against misgovernance by local officials. Higher officials used memorials as a means to review the performance of lower-level officials and establish liability for the suppression of the tax protests. Second, the appeals process joined administrative and judicial state capacities. Yuan’s capital appeal of local tax policies led to criminal punishment for bringing a complaint that provincial officials considered baseless.\(^4\) Memorials regarding the liability of the local officials involved in Yuan’s case focused as much on their practical failure to


\(^4\) *Id.* at 432.
handle the citizen protests as on the precise legal nature of the charge at hand. As Zhou noted, during the appeals, "local politics were translated into legal terms." As it developed, the Qing imperial appeals system experienced both a growing caseload and increasingly professionalized citizen use. As of the mid-1800s, an extensive network of "capital-appeals specialists" existed to provide services to individual petitioners. Efforts by the Qing government to impose limits on the use of the capital appeals system had limited effect. Substantively, petitioners were barred from appealing ordinary civil matters to the emperor. Procedurally, petitioners were required to present appeals to successively higher levels of government in turn before proceeding to Beijing. In reality, petitioners often ignored both of these limits. Officials also often accepted both civil appeals and petitions that had bypassed lower-level officials. The failure of the central government to limit petitioning appears to have led to a massive increase in its use by the end of the nineteenth century, swamping the capacity of imperial institutions. Central officials addressed gross injuries only when they became major political scandals, while local officials repeatedly engaged in efforts to conceal problems from their superiors and repress petitioning behavior.

The difficulty for imperial Chinese officials in imposing limits on the use of the appeals system resulted from its nature as a governance tool designed to assist the emperor in his personal ruling of the nation, rather than as a specialized judicial organ. The emperor rejected efforts on the part of the bureaucracy to streamline, limit, or professionalize the petitioning process. Ocko notes that the emperor himself rebuffed the 1810 request of an imperial censor, overloaded by appeals, to reject petitions without passing their content up to the emperor. The emperor similarly criticized efforts by imperial censors and the gendarmerie to include assessments of the validity of individual capital appeals as an improper introduction of their own opinions into the cases. These decisions may seem illogical from the standpoint of judicial efficiency, since they effectively encouraged a massive influx of cases to central officials. The appeals system, however, served important administrative governance purposes. Any effort by lower-level bureaucrats to cut off or dilute the flow of information to the emperor necessarily posed a threat to his rule and was rejected.

The imperial petitioning practices and institutions described above contained the seeds of the xinfang system that would develop after 1949 under the People's Republic of China.
2. Post-1949 Xinfang Institutions

Other scholars have already described the historical development of post-1949 Chinese xinfang institutions. Consequently, this Article will only briefly sketch these developments. Formal petitioning institutions reappeared almost immediately after 1949. Building on pre-existing Communist practices of maintaining contact with the population through the "mass line," the General Administration Council (GAC) (precursor to the State Council) developed a working group to handle citizen complaints in 1950. In 1951, the GAC issued a directive ordering governments at the county level and higher to establish departments equipped to handle the letters and visits of the masses. This provided the initial regulatory basis for the establishment of a national xinfang system. Xinfang bureaus developed rapidly in the 1950s, spreading throughout provincial and central government agencies and experiencing explosive growth in the number of petitions handled.

As with their imperial predecessors, xinfang bureaus fulfilled numerous governance roles. As its composite terms xin ("letters") and fang ("visits") suggest, xinfang bureaus were responsible for receiving a wide range of citizen input on various issues. The 1951 GAC directive charged xinfang bureaus with receiving citizen opinions, questions, accusations, and demands. Xinfang bureaus enabled the central leadership to receive complaints regarding offenses and misbehavior of local cadres and served as a source of raw information regarding local conditions. They also played a key role in the numerous Chinese political campaigns, serving as a channel for authorities to receive citizen tips and complaints on politically suspect activities.

Xinfang bureaus also served as a channel for citizens seeking to protect their individual rights and interests in the absence of a functional legal system. One political rehabilitation case is a good example. Liu, a university graduate, served as a government official with the Nanchang municipal airport during the 1950s. During the political purges of the 1950s and 1960s, authorities identified him as politically suspect and sentenced him to reeducation through labor (RETL). Even after his release, his detention record limited his employment prospects. Following the political reforms of the late 1970s, Liu approached the provincial Communist Party committee seeking to be reinstated in his government job. Provincial Party authorities accepted his case and sent it to the Nanchang Municipal Party Committee for disposition.

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60 See generally Cai Yongshun, Managed Participation in China, supra note 19 (discussing the relationship between political participation and authoritarian political institutions in China); Luehrmann, supra note 37 (arguing that the system of citizen complaints in China promotes governmental legitimacy).
61 Luehrmann, supra note 37, at 31–32.
62 Luerhmann notes an average 58.2% increase in the number of complaints in twenty-one provincial-level xinfang bureaus between 1955 and 1956. Luehrmann, supra note 19, at 851.
63 Zheng wu yuan guan yu chu li ren min lai xin he jie jian ren min gong zuo de jue ding [Decision of the General Administration Council on the Work of Handling Letters and Visits From the People] (June 7, 1951). The decision includes citizens' opinions, questions, accusations, and demands as among the types of issues addressed by xinfang bureaus at the county-level and higher.
64 Luehrmann, supra note 19, at 849–50.
65 Ying Xing, supra note 17, at 58, 60.
66 The example below is taken from LIANG YUNFU & YU QIHONG, YOU XIAO XIN FANG [EFFECTIVE PETITIONING] 180–82 (1989).
Nanchang Party xinfang officials then attempted to transfer the case to the machinery bureau of the local government.\textsuperscript{67} This bureau, however, had since been divided into multiple state-owned enterprises (SOEs), and it was unclear which should assume responsibility for Liu’s case. The municipal xinfang bureau negotiated with all the SOEs involved, eventually convincing the Jitong enterprise to accept the case. Jitong sent out personnel to investigate the basis for Liu’s initial RETL sentence. After establishing it as baseless, Jitong appears to have successfully convinced the municipal RETL committee to wipe out Liu’s original sentence. The Nanchang City Personnel Bureau then agreed to reinstate Liu to his original government rank and give him adequate work.

Liu’s rehabilitation raised an additional question: Which organization would assume responsibility for him? Xinfang officials from the Nanchang Party committee discovered that workers and equipment from Liu’s former work unit were primarily absorbed by the Jiangxi Electric Machinery Company (JEMC). The xinfang bureau of the Nanchang Party committee organized a conference of relevant leaders, which reached the decision that the JEMC would assume responsibility for Liu, including the provision of both rations and residence.\textsuperscript{68}

This example illustrates how xinfang institutions served the role of resolving individual grievances in the absence of formal legal institutions. Resolution of Liu’s case took place via extended negotiations between administrative bureaus, facilitated by xinfang personnel, rather than in a court of law. Xinfang bureaus called relevant officials together, contacted leaders, and engaged in negotiations to reach agreement on the resolution of Liu’s particular grievance.

3. Modern Xinfang Institutions

Xinfang bureaus are currently present in almost all Chinese government organs. These include people’s congresses, procuracies, courts, national and local governments, Party committees, and Party discipline commissions, to name but a few.\textsuperscript{69} One website lists approximately fifty different xinfang bureaus in Beijing alone.\textsuperscript{70} Discussion of the operation of each of these bureaus is beyond the scope of this Article, which will explore the operation of court, government, and Party xinfang bureaus.

Government xinfang bureaus are often shared by corresponding Party institutions. For example, the xinfang bureau of the State Council is located at exactly the same address as that of the Communist Party’s Central Committee. At least one publication identifies them as the same institution.\textsuperscript{71} The Shaanxi}\textsuperscript{67} Most likely, the machinery bureau bore administrative responsibility for Liu’s former work unit.
\textsuperscript{68} LIANG YUNFU & YU QHONG, supra note 66, at 180–82.
\textsuperscript{69} Cai Yongshun, supra note 19, at 431–32. The Chinese media has also traditionally operated as a xinfang organ. It continues to serve many of these same functions. For an excellent discussion, see generally Benjamin Liebman, supra note 31 (discussing the symbiotic relationship between the media and the legal system).
\textsuperscript{70} See Zhong yang ji guan he Beijing Shi ji guan suo she xin fang dian hua [Phone Numbers and Addresses for Central Gov’t and Beijing City Xinfang Bureaus], http://www1.cci.gov.cn/serve/docscopy/wngjml/b/ba/010/bad/bad00.htm (last visited Nov. 9, 2004).
provincial xinfang bureau handles petitions to the provincial government, the provincial Party committee, and the provincial LPC. There is perhaps no better illustration of the continued concentration of political and legal power in modern China than the fact that individual petitioners seeking justice from the government, legislature, or Party would approach exactly the same xinfang institution.

Xinfang bureaus respond to citizen petitions in a variety of ways. In a small number of cases, xinfang bureaus may decide to intervene directly either by sending their own personnel out to investigate or by recommending that Party or government authorities take action. More commonly, xinfang bureaus simply refer individual petitions to other government agencies for action. Many petitioners who approach higher-level agencies with complaints about local officials merely have their grievances sent back to the same officials whose conduct is the source of the complaint. Even when higher-level xinfang bureaus give instructions in their referrals on how to resolve the citizen grievances, they are often easily ignored by local officials, resulting in a low rate of success for petitioners. Part V addresses how Chinese officials decide which of these strategies to pursue in practice.

For Chinese authorities, the xinfang system operates as a multipurpose governance tool. As a governance tool, xinfang bureaus serve four important roles. First, xinfang bureaus are an information collection resource for government and Party officials. In a nondemocratic system with severe restrictions on the freedom of the press, central leaders themselves often lack information about local developments. Xinfang bureaus partially fill this void by providing Chinese leaders with a regular stream of information based on petitioner complaints. These complaints include both information on particular problems and general analysis of xinfang trends.

Second, xinfang organs help higher-level authorities check the principal-agent problem inherent in Chinese governance. Absent direct citizen input into the political system, central authorities must rely on local officials to implement government directives and also report on their efforts in doing so. This conflict of interest offers many opportunities for abuse. Lower-level officials may simply file false reports or exaggerate conditions. Xinfang bureaus consequently offer a means of employing popular opinion to monitor the actions of local officials. Individual petitions may reveal instances of

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73 Cai Yongshun, supra note 19, at 445–46.
74 Id. at 435–46.
75 Luehrmann, supra note 19, at 845–46.
76 Id. at 848.
77 See discussion infra Part III(G). This function was formalized in the 2005 national regulations. Xin fang tiao li [Xinfang Regulations] art. 39 (Jan. 17, 2005) [hereinafter 2005 Nat’l Xinfang Regs.]; see Cai Yongshun, supra note 19, at 438–39.
78 Xinfang organs are but one of many tools the Chinese state employs to check pervasive principal-agent problems. Kevin O’Brien, Neither Transgressive Nor Contained: Boundary-Spanning Contention in China, 8 MOBILIZATION 51, 60 (2003).
illegal conduct by officials. Statistical comparisons regarding the numbers, types, and locations of petitions may also assist higher-level officials in determining systematic malfeasance in particular regions or administrative bureaus.\textsuperscript{80} Because of this, local officials have incentives to block citizen efforts to reach higher authorities.\textsuperscript{81}

Third, xinfang bureaus help address violations of citizens’ rights. Cai notes that “for citizens, [the xinfang system] helps address a wide range of issues in the absence of a strong legal system.”\textsuperscript{82} On paper, the system is aimed in part at protecting the individual legal rights of each petitioner.\textsuperscript{83} In reality, xinfang bureaus primarily operate to attract leadership interest to—and prompt intervention in—selected cases and to assist with cases that higher officials have already designated for resolution.\textsuperscript{84} Xinfang bureaus serve as a “tripwire” for issues likely to produce social destabilization. For example, the decision by a xinfang bureau to prompt leadership intervention in the handling of a mass petition of two hundred aggrieved laid-off workers might successfully preempt a mass protest of a group ten times larger.

Finally, xinfang organs carry out some propaganda functions to help maintain social order. As noted in the following section, regulations direct xinfang organs not only to handle individual problems, but also to conduct a degree of “thought direction” (sixiang shudao) by convincing petitioners to halt their petitioning behavior even in those cases that manifestly lack any basis in policy or law. More directly, xinfang organs also often act in concert with security organs to pacify the citizenry.\textsuperscript{85}

For Chinese citizens, the xinfang system offers an important means of political participation. As many political scientists have noted, citizen petitioning of xinfang institutions represents a form of permissible citizen political participation in an otherwise closed authoritarian system.\textsuperscript{86} Luehrmann employs the term “citizen contacting” to describe these activities. She notes that xinfang bureaus have experienced a decline since the 1980s in the number of citizen petitions dealing with “historical grievances” such as Liu’s political rectification discussed above.\textsuperscript{87} As a corollary, the types of
issues raised through the *xinfang* system have become diverse. Luerhrmann’s study of *xinfang* petitions through 1995 classifies grievances expressed in citizen petitions in five general categories: (1) community relations (neighborhood disputes); (2) problems obtaining public services; (3) economic issues (such as government benefits); (4) political affairs (criticism of particular local policies or accusations of corruption regarding particular local officials); and (5) appeals of government decisions.88

The *xinfang* system plays an equally important role in redressing violations of citizen rights. While Luerhmann accurately categorizes the issues raised by citizen complaints in the *xinfang* system, her use of the general term “citizen contacting” may overlook the extent to which these activities are heavily focused on the protection of citizen rights. This Article uses the term “petitioning” (as opposed to “contacting”) to emphasize the extent to which these activities actually serve as a proxy for citizen use of formal legal channels to protect their rights. Other authors have also made this point. Cai notes that the *xinfang* system “encourages citizens to appeal to the government, even though their problems can be addressed through the legal system.”89

According to Yu, “[i]n theory, the *xinfang* system is but one means of redress for administrative acts among a number of others, such as administrative litigation and administrative reconsideration, and the judicial system is the country’s main forum for redress of citizens’ rights . . . .” In practice, “petitioners commonly view the *xinfang* system as a special power superior to other forms of administrative redress, or even judicial redress.”90

Available statistics support these conclusions. Cai notes an overwhelming preference of peasants to use petitioning to protect their rights.91 A recent survey of Beijing petitioners revealed that 63.4% had previously filed suit in court, and courts had refused to hear 42.9% of these cases.92 Petitions involving legal matters comprise 34% of letters and 75% of visits to the *xinfang* bureau of the National People’s Congress (NPC), of which 70% are appeals of a decision of first instance by a judicial organ.93 Chinese scholars note that many petitions to government *xinfang* bureaus could equally well be brought as formal challenges under China’s Administrative Litigation or Administrative Reconsideration Laws.94

In summary, the modern Chinese *xinfang* system has retained many of the characteristics of the imperial systems it replaced.95 *Xinfang* bureaus are general multipurpose tools of governance. They reflect the fact that Chinese judicial and administrative power remains tightly linked in the hands of a few.

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88 *Id.* at 859–64. The available data do not permit clear breakdowns of the percentages of *xinfang* cases which fall within these different categories.
89 Cai Yongshun, *supra* note 19, at 439.
91 Cai Yongshun, *supra* note 19, at 430.
94 Ying Xing, *supra* note 17, at 58, 66–70.
95 This comparison has been drawn by others as well. See Luerhmann, *supra* note 19, at 850.
The *xinfang* system serves as an alternative to formal legal channels for many citizens seeking to resolve their grievances, and handles many legally cognizable grievances. However, redress of individual grievances is only one part of the *xinfang* system’s overall governance role.96

III. XINFANG REGULATIONS

This Part introduces the general principles of Chinese *xinfang* regulations. The diversity of *xinfang* organs makes this a challenge. Review of the national *xinfang* regulations promulgated by the State Council (binding on national ministries and local governments), applicable provincial regulations passed by provincial LPCs (binding on local governments, courts, and procuratorates), and a selection of national ministry rules (binding only on the given ministry) reveals many common characteristics and some differences.97

This Part also seeks to illustrate two broader points. First, the *xinfang* system is a multipurpose governance tool. Providing fair hearings for individual citizen complaints in accordance with established laws and regulations is but one of many aims. Second, *xinfang* channels for individual citizen complaints significantly overlap with formal legal channels.

Keeping in mind the wide disparity between written Chinese laws and regulations and actual practice, the author makes no pretense that the following analysis actually describes the Chinese *xinfang* system in practice. However, it helps supplement later sections detailing actual operations of the *xinfang* system. It also provides some insight into how Chinese officials think the system should operate.

A. Purpose: A Governance Link Between Rulers and Ruled

National and provincial *xinfang* regulations express the *xinfang* system’s governance role in characterizing one of its primary purposes as “maintaining connections between the government and the masses.”98

As a general-purpose governance tool, with historical origins in centralized authoritarian rule, the *xinfang* system encompasses multiple functions frequently the province of separate government or private institutions in Western countries. *Xinfang* regulations direct *xinfang* bureaus to (1) provide information to central authorities and conduct research on social problems; (2) serve as a channel for citizen input into policymaking; (3) monitor the conduct of local government officials; (4) participate in maintaining social order; (5) conduct some propaganda functions; and (6) handle individual grievances.

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96 The *xinfang* system’s mixed nature is reflected in the self-description of the system by the National Xinfang Bureau, which characterizes the system as targeting multiple audiences: “serving leaders via providing information feedback and harmonizing relationships . . . and also serving the people via resolving their problems.” XIN FANG XUE GAI LUN, supra note 71, at 89.

97 This Part is based on a study of the 1995 and 2005 national *xinfang* regulations. These, as well as the provincial *xinfang* regulations cited below are available online at http://www.law-lib.com (except as otherwise noted), as are a selection of national ministry *xinfang* regulations. These generally correspond with numerous other local *xinfang* regulations and directives. See, for example, the *xinfang* systems of the Lufeng county government, Xin fang gong zuo gang wei zhi ze [Xinfang Work Responsibilities], http://www.lufeng.gov.cn/lufengxz/bmjw(xf2).htm (last visited Jan. 4, 2004) and the Panzhihua City Disciplinary Committee’s 2004 Nian zhi du [Xinfang Work 2004 Organization], http://www.pzhlz.net/jbzn311-1.html (last visited Jan. 4, 2004).

The last point deserves further elaboration. *Xinfang* regulations do frequently assert as one of their primary purposes protecting the "lawful rights and interests" (*hefa quanyi*) of individuals.\(^9\) However, in almost all cases, this is coupled with the goal of "maintaining connections between the government and the masses."\(^10\) In other words, the *xinfang* system's aim of protecting individual legal interests is but one element of a larger focus on governance: how to effectively rule the country.

**B. Xinfang Organs Required in a Broad Range of Government Entities**

*Xinfang* regulations require the establishment of an extremely broad network of *xinfang* organs. National regulations require every government at the county level and above to establish a *xinfang* organ. Subcounty governments and government bureaus are required either to establish *xinfang* organs or to designate particular personnel to handle *xinfang* petitions.\(^10\) Provincial regulations are even broader. Some require the creation of a *xinfang* organ within every LPC, government, court, and procuratorate at county level and above.\(^10\) Some require a staff of full-time workers.\(^10\) Others allow individual bureaus to allocate either full-time or part-time personnel depending on the need.\(^10\)

Under national regulations, *xinfang* organs and their parent administrative entities are generally responsible for handling petitions falling within their jurisdiction and transferring others to the appropriate authorities.\(^10\) *Xinfang* regulations require local governments and administrative agencies to resolve petitions transferred to them as well as petitions they receive directly.\(^10\) National regulations specifically require petitioners to raise petitions falling within the jurisdiction of LPCs, courts, or procuratorates with

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100 2005 Nat'l Xinfang Regs., *supra* note 77, at art. 1. *But see* Beijing Shi tiao li [Beijing City Xinfang Regulations] art. 1 (Sept. 8, 1994) (asserting the goal of the regulations as promoting socialist democracy and protecting the legal rights of individuals).

101 2005 Nat'l Xinfang Regs., *supra* note 77, at art. 6. Note that the 2005 regulations require county-level or higher governments to establish a designated organ (*jigou*), while the prior 1995 regulations allowed these governments to simply employ designated individuals to handle *xinfang* work. 1995 Xinfang Regs., *supra* note 21, at art. 6.

102 Zhejiang Xinfang Regs., *supra* note 22, at art. 18.

103 *Id.*

104 Jiangxi Prov. Xinfang Regulations, *supra* note 99, at art. 8; Heilongjiang Sheng tiao li [Heilongjiang Prov. Xinfang Regulations] art. 12 (October 17, 2003). Some regulations specify that relatively lower-level government entities, such as township governments, street offices, and subordinate organs of higher governments may merely designate part-time *xinfang* workers. *E.g.*, Zhejiang Xinfang Regs., *supra* note 22, at art. 18.

105 See 2005 Nat'l Xinfang Regs., *supra* note 77, at arts. 21(2) (directing government *xinfang* bureaux to transfer petitions to the relevant administrative entity) & 22 (directing administrative organs that receive petitions falling outside of their jurisdiction to transfer them to the appropriate authority).

106 *Id.* at arts. 22, 32.
the relevant organ.107 Provincial regulations parallel national regulations in respecting such jurisdictional lines.108

Some provincial regulations view legislative and judicial organs as merely part of a line of petition-handling institutions. For example, 2004 Zhejiang provincial regulations instruct that petitions “should be raised with the government entity which has the legal authority to issue a decision on their handling.”109 “Government organ” is further defined as “every level of state, administrative, trial, and procuratorial organ within this province.”110 This tendency is even more pronounced in older regulations.111

C. Broad Scope of Xinfang Issues

Xinfang regulations allow citizens to raise a wide number of issues in their petitions. Under the new 2005 national regulations, these include (1) the provision of information on a situation, (2) suggestions, (3) opinions, (4) complaints and requests as to actions that the given administrative organ has the legal responsibility for carrying out, and (5) refusals to comply with the decisions of (or dissatisfaction with the behavior of) administrative organs and workers.112 Many provincial regulations governing the work of LPCs, courts, procuratorates, and governments copy the prior 1995 national regulations and allow petitioners to expose the illegal behavior of officials by filing accusations as to violations of the legal rights of petitioners or others.113

This broad scope is consistent with the role of the xinfang system as a general-purpose governance tool. By collecting petitioner suggestions, demands, and reports, xinfang organs function as information-collection tools for central leaders. By receiving petitioner revelations of illegal official behavior, xinfang organs help higher-level officials use mass participation and supervision to monitor the behavior of local officials. All of the above allow petitioners a limited form of political input into leadership decisions.114

107 Id. at art. 15. Government xinfang organs are further required to direct petitioners to raise such petitions appropriately. Id. at art. 21(1). Similar language existed in the preceding 1995 regulations. 1995 Xinfang Regs., supra note 21, at arts. 9, 11.


109 Zhejiang Xinfang Regs., supra note 22, at art. 10.

110 Id. at art. 2.

111 See Xizang Zizhi Qu xin fang tiao li [Tibet Autonomous Region Xinfang Regulations] arts. 12–16 (Apr. 15, 1995) [hereinafter T.A.R. Xinfang Regs.]. For a particularly instructive earlier example, see the excerpt of the undated (but pre-1991) Zhong yang ge bu men gui kou fen gong jie dai qun zhong lai fang de ban fa [Temporary Rules Governing Central Bureaus Returning Received Petitions to the Source], in XIN FANG XUE GAI LUN, supra note 71, at 367–70, which lays out in twenty-two articles of excruciating detail as to which petitions are to be handled by which government bodies. For example, petitions received by central government bureaus that are related to social benefits and disaster assistance are to be handled by the Ministry of Civil Affairs, petitions related to medical accidents are to be handled by the Ministry of Health, petitions related to the rehabilitation of individuals designated as “capitalists” are to be handled by the appropriate units within the Communist Party, and “appeals related to civil or criminal law are to be handled by the Supreme People’s Court.” Id. To this author’s mind, this listing (which verges on a jurisdictional allocation of authority among bureaus) accurately reflects the historical tendency to view formal Chinese legal institutions as simply one of many petition-handling entities.


113 See, e.g., 1995 Xinfang Regs., supra note 21, at art. 8; Zhejiang Xinfang Regs., supra note 22, at art. 9.

114 Note that in practice this line is often clearly drawn at challenging central, as opposed to local, government policies. Luehrmann, supra note 19, at 863.
Allowing petitioners to raise accusations of violations of individual legal rights reflects concern with resolving at least some particular petitioner grievances. However, the inclusion of legal violations alongside other issues suggests that legal violations are merely viewed as a subset of more generalized governance issues.

**D. Broad Definition of Xinfang Activities**

*Xinfang* activities may take almost any form. They include letters, phone calls, faxes, visits, or emails to any government office with regard to any of the issues discussed above. They may be made by individuals, groups, or organizations.

**E. Numerous Responsibilities for Xinfang Bureaus**

National *xinfang* regulations charge government *xinfang* bureaus with:

1. receiving and transferring citizen petitions to the local government or administrative agency with the legal responsibility for handling the subject matter of the particular petition,
2. handling petitions expressly designated for resolution by higher-level authorities,
3. negotiating and mediating to ensure the resolution of “important” petitions,
4. supervising and investigating the resolution of petitions (by other entities),
5. research and analysis into *xinfang* trends and statistics,
6. preparation of policy suggestions regarding improving government work,
7. guiding the *xinfang* work of lower-level governments and bureaus.

**F. Lack of Clarity Regarding at What Level Petitions Should be Filed**

National and provincial *xinfang* regulations commonly attempt to redirect petitions to lower levels of government. This is often expressed under the principles of “returning the problem to the source” (guikou banli) and “assuming responsibility accordingly” (fenguan fuze). This recognizes two key points. First, central authorities are often overloaded by petitions. Second, many petitions raise problems that are predominately local issues and difficult for higher government officials to involve themselves in on a regular basis.

Despite the expressed desire of many *xinfang* regulations to handle petitions at the lowest possible level of government, the regulations are often internally conflicted on this point. For example, Article 16 of the 2005 national *xinfang* regulations explicitly directs petitioners to present petitions to the administrative entity with authority to handle them, or to the next immediately higher administrative unit. However, Article 21(3) directs that petitions “involving the work of lower level administrative organs” should be

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116 *Id.* arts. 6(1), 21.
117 *Id.* arts. 6, 21, & 39.
118 *Id.* at arts. 4, 21(3); 1995 Nat’l Xinfang Regs, *supra* note 21, at art. 4; see Liaoning Sheng Ren min dai biao da hui Chang wu we yuan hui guan yu xiu gai “Liaoning Sheng xin fang tiao li” de jue ding [Decision of the Standing Committee of the Liaoning Prov. People’s Congress on amending the “Liaoning Prov. Xinfang Regulations”] art. 5 (Aug. 1, 2003) (inserting the terms into the regulations).
redirected to the corresponding organ.\textsuperscript{121} Provincial \textit{xinfang} regulations exhibit a similar unwillingness to definitively bar direct petitions to higher-level organs.\textsuperscript{122}

The above directives appear to be in open contradiction, justifying both petitioners who directly approach higher-level organs and the \textit{xinfang} offices that reject their petitions. This anomaly is entirely consistent with the nature of the \textit{xinfang} system as a flexible governance tool. It allows higher-level units discretion to involve themselves in particular petitions that merit sustained attention (either because of the issues involved or the number of petitioners).\textsuperscript{123} It also allows higher authorities the ability to simply ignore large numbers of other petitions.

\textbf{G. Emphasis on Information Flow to Higher Authorities}

Consistent with the role of \textit{xinfang} organs as a conduit for information to higher authorities, national and provincial regulations attempt to ensure the accurate and timely reporting of useful information. \textit{Xinfang} regulations commonly specify a reward system for petitioners whose activities improve government performance and efficiency.\textsuperscript{124} Regulations also direct citizens to notify relevant organs of important issues, such as those relating to civil unrest.\textsuperscript{125} Both the 2005 national regulations and multiple provincial regulations also charge \textit{xinfang} organs with the responsibility for analyzing and reporting on general \textit{xinfang} trends, separately from the handling of individual petitions.\textsuperscript{126}

\textbf{H. Jurisdictional Overlap with Formal Legal System}

Many elements of \textit{xinfang} regulations charge \textit{xinfang} organs with the responsibility of handling individual petitions in ways that specifically overlap

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\item\textsuperscript{121} 2005 Nat'l Xinfang Regs., supra note 77, at art. 21(3). Prior language explicitly allowed that "if the higher-level administrative entity feels it necessary to directly accept the petition presented, it may do so." 1995 Xinfang Regs., supra note 21, at art. 10.
\item\textsuperscript{122} The Chongqing city regulations states that such petitions "should first" be raised with basic-level government organs. Chongqing Shi xin fang tiao li [Chongqing City Xinfang Regulations] art. 15 (Sept. 26, 2001). Shanxi province allows petitions to higher-level institutions "in cases where the [basic level] government institutions cannot or do not resolve" the petitions. Shanxi Sheng xin fang tiao li [Shanxi Prov. Xinfang Regulations] art. 12 (Aug. 1, 1996). \textit{But see} Qinghai Sheng xin fang tiao li [Qinghai Prov. Xinfang Regulations] art. 9 (Sept. 26, 1996) (requiring petitioners to first present petitions to the responsible bureau or unit, and, in cases where the petitioner is dissatisfied with the outcome, allowing him to petition "with the [lower-level] decision in hand").
\item\textsuperscript{123} Aside from administrative reasons, this may also reflect a belief in both the validity of the complaints of petitioners willing to fight the system and repeatedly struggle to reach higher levels, and the ability of such behavior to indicate a failure of performance on the part of lower-level government officials charged with the handling of their petitions.
\item\textsuperscript{124} \textit{See}, e.g., 2005 Nat'l Xinfang Regs., supra note 77, at art. 8; 1995 Xinfang Regs., supra note 21, at art. 38.
\item\textsuperscript{125} \textit{See}, e.g., 2005 Nat'l Xinfang Regs., supra note 77, at art. 26; 1995 Xinfang Regs., supra note 21, at art. 24. Note the manner in which these articles envisage the system as a cascading series of "alarms" designed to notify progressively higher levels in the chain of command, as citizens inform nearby government bureaus, and as these bureaus are subsequently obligated to notify higher-level agencies charged with the handling of their petitions.
\item\textsuperscript{126} 2005 Nat'l Xinfang Regs., supra note 77, at art. 39 (requiring the provision of statistical information on the total number of petitions, the problems raised, the bureaus against which they are directed, and the extent to which formal suggestions of the government \textit{xinfang} bureaus responding to these petitions are adopted by the bureaus to which they are addressed); \textit{see also} Zhejiang Xinfang Regs., supra note 22, at art. 19(4). Gansu Sheng xin fang tiao li [Gansu Prov. Xinfang Regulations] art. 13(6) (July 26, 2002).
\end{enumerate}
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and intersect with the formal legal and judicial systems. This list is not intended to be exhaustive, merely illustrative.

First, many provincial xinfang regulations (as well as the national regulations in effect until 2005) provide that xinfang bureaus should handle accusations as to violations of the lawful rights of the petitioner, as well as reports of illegal behavior of government officials.127 Both national and many provincial regulations address this conflict by explicitly directing petitions that “legally may be resolved by litigation, administrative reconsideration, or arbitration” to be raised with the appropriate judicial or administrative authority.128 However, many older, but still effective, provincial xinfang regulations from the early and middle 1990s lack such a requirement.129 This creates an overlap between court and xinfang jurisdiction.

Second, xinfang regulations create a multi-stage reconsideration (fucha and fuhe) procedure for administrative decisions that is apparently parallel to the Administrative Litigation Law or the Administrative Reconsideration (Fu yi) Law.130 General outlines of the xinfang reconsideration (fucha) process are discussed in more detail below.

Third, many local provincial xinfang regulations allow LPCs to review petitions of decisions or opinions of governments, courts, and procuratorates of the corresponding administrative level.131 For example, under Yunnan xinfang regulations:

127 See, e.g., 1995 Xinfang Regs., supra note 21, at arts. 8(b), (c); Zhejiang Xinfang Regs., supra note 22, at art. 9(c).
129 A rough survey of provincial xinfang regulations reveals approximately ten provinces without such a requirement. E.g., Shanxi Prov. Xinfang Regulations, supra note 122; Guizhou Sheng xin fang tiao li [Guizhou Prov. Xinfang Regulations] (Nov. 27, 1990). For an example of relatively recent provincial xinfang regulations which lack such a requirement, see Liaoning Sheng ren min dai biao da hui chang wu wei yuan hui xin fang tiao li de jue ding [Decision of the Standing Committee of the Liaoning Prov. People's Congress Regarding Amending Liaoning Xinfang Regulations] (Aug. 2003) [hereinafter Liaoning Decision].
130 2005 Nat'l Xinfang Regs., supra note 77, at arts. 34–35. Article 33 of the 1995 national xinfang regulations appeared to suggest that these three review procedures could be used in conjunction with one another, stating, “[w]ith regard to the handling and decisions made by administrative organs, petitioners and relevant work units should respect and implement them; if dissatisfied with the handling, in addition to applying for reconsideration (fuyi) or filing an administrative lawsuit in accordance with law or administrative regulations, they may request reconsideration (fucha) by the original handling organ within 30 days of receipt of the notice of decision.” 1995 Xinfang Regs., supra note 21, at art. 33 (emphasis added). The Administrative Litigation Law was passed in 1989, and the Administrative Reconsideration Law was passed in 1991. Xin zhe sheng su song fa [Administrative Reconsideration Law] (promulgated by the Standing Comm. Nat'l People's Cong., April 4, 1989, effective October 1, 1990) (P.R.C.), available at http://www.law-lib.com/law/law_view.asp?id=5641; Fu yi fa [Administrative Reconsideration Law] (promulgated by the Standing Comm. Nat'l People's Cong., April 29, 1991, effective October 1, 1999) (P.R.C.), available at http://www.law-lib.com/law/law_view.asp?id=478. Had the drafters of the 1995 xinfang regulations wished to unify the disparate linguistic usages, one presumes they could have done so.
131 Some provincial xinfang regulations allow LPC xinfang organs to handle petitions of “decisions” of courts or procuratorates, but only those petitions involving “suggestions” and “criticisms” of local government actions. This may suggest a lesser degree of LPC supervision over local government actions. Gansu Xinfang Regs., supra note 126, at 21(4). Others allow the LPC to hear petitions of “binding decisions” of all three entities. Fujian Sheng Ge ji ren min dai biao da hui Chang wei yuan hui xin fang tiao li [Fujian Province Xinfang Work Regulations for the Standing Committees of Local People's Congresses] art. 5(2) (Nov. 18, 2000), available at http://www.yfzs.gov.cn/gb/info/LawData/difang/Fujian/2003-03-21/1543239620.html. For a more detailed discussion of the subject of LPC individual case supervision of court decisions, see generally CONG.-EXEC. COMMIT' ON CHINA, ANN. REP. 81 (2004) [hereinafter 2004 C.E.C.C. ANN. REP.].
regulations, LPCs must accept citizen petitions such as suggestions and criticism of their own work, revelations of illegal behavior of LPC personnel, and "appeals of illegal decisions" of government, courts, and procuratorates of the same administrative level. Local governments, courts, and procuratorates must accept petitions involving appeals of decisions of their respective subordinate entities (such as municipal governments and district courts). Similar requirements exist in other provincial systems, some of which grant government and judicial organs even more sweeping powers to hear petitions. For example, Gansu xinfang regulations require LPCs to hear "appeals of those decisions and opinions of people's courts and procuratorates that have already taken legal effect."135

Fourth, provincial xinfang regulations formally obligate courts, along with other government organs, to hear a wide range of petitions in addition to legally cognizable injuries. Some regulations simply require courts to handle the same types and scope of petitions as other government organs. Others specifically list those that courts must accept. For example, the 2003 Heilongjiang provincial regulations require courts to accept the following petitions:

1. Suggestions, criticisms, and opinions of court work.
2. Accusations and revelations regarding violations of law or discipline of judges or court workers.
3. Suits or appeals of criminal, civil, administrative, and other cases within court jurisdiction.
4. Appeals of court opinions, mediated outcomes, and decisions that have already taken legal effect.

From a political science perspective, such regulations make Chinese courts (along with other government organs) responsible for handling a wide range of public input. From a legal perspective, they create an "expanded jurisdiction" for Chinese courts, requiring them to handle a range of issues beyond the precise letter of the law. Such regulations create an avenue for Chinese petitioners to approach courts before, during, and after judicial proceedings in an effort to influence court decisions.

I. Disposition of Petitions: Unclear Rules and Xinfang Bureau "Soft Power"

Peerenboom, Judicial Independence and Judicial Accountability: An Empirical Study of Individual Case Supervision (draft manuscript, on file with the author).


133 Id. arts. 15-17. The Yunnan regulations use nearly identical language to refer to government, procuratorate, and court review of lower-level decisions. This suggests a tendency to view court jurisdiction and procedure as but another subdivision within the bureaucracy.


135 Gansu Xinfang Regs., supra note 126, at 21(4). The regulations also appear to charge courts with the responsibility of hearing petition appeals (shensu, instead of shangsu) of court decisions and mediated agreements, without application of a doctrine of finality. Id. at art. 23(3).

136 Zhejiang Xinfang Regs., supra note 22, at art. 9.

137 Heilongjiang Prov. Xinfang Regs., supra note 104, at art. 23. Although both the third and fourth clauses use the same term "shensu," which this Article translates as "appeal," the usage in the fourth clause may come closer to the English "complaint regarding."
Xinfang regulations rarely provide details regarding how one should resolve petitions. In part, this is because actually resolving individual cases equitably and according to law is not the main goal of the xinfang system. Rather, other goals, such as facilitating the flow of information to leaders and serving as a tripwire mechanism for particularly disruptive cases, are at least equally important. Consequently, xinfang regulations often ensure differential treatment for particular cases. For example, national regulations direct leaders of xinfang bureaus to personally read “important” xinfang appeals and personally receive “important” xinfang visitors.\(^{138}\)

While national regulations do establish a procedural framework (discussed below) for individual petitions, they provide little guidance on how administrative agencies are expected to resolve individual petitions that are transferred to them. Prior to 2005, there was a complete void regarding these expectations. The new 2005 regulations now state:

After investigation and review by the competent administrative authority, the petition should be handled in accordance with law, regulations, and other decisions in one of the following ways, and a written response sent to the petitioner:

1. Requests for which the facts are clear, and are in accordance with law, regulation, or other decisions, should be supported;
2. In the case of requests which are reasonable, but which lack a legal basis, “explanation work” [jieshi gongzuo] should be done on the petitioner;
3. Requests lacking a factual basis or not in accordance with law, regulation, or other decisions, should not be supported; \([\text{and}]\)

If the competent administrative authority issues a decision supporting the petitioner’s request under section (1), it should urge [duncu] relevant organs or units to execute it.\(^{139}\)

Critical issues left unaddressed include: the substantive and procedural standards one should apply to the review process, the ability of administrative agencies to compel compliance from other entities during the process, the rights of the petitioner in the review process, and the actual effect of any decision reached. In the words of one municipal public security official, “...leadership directives, administrative orders, and internal digestion remain the main methods for carrying out xinfang work.”\(^{140}\)

Interestingly, the new 2005 regulations contain explicit provisions allowing (but not requiring) administrative organs to hold hearings for the purpose of resolving “important, complex, or difficult” xinfang issues. The regulations generally instruct that these hearings should be public, involve

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\(^{138}\) 2005 Nat’l Xinfang Regs., supra note 77, at art. 5.

\(^{139}\) Id. at art. 32.

\(^{140}\) Xu Jianying, Shi xian gong an xin fang gong zuo fa zhi hua de ruo si kao [Some Thoughts on Realizing Rule of Law in Xinfang Work], 6 J. ZHEJIANG POLICE C. PUB. SECURITY SCI. J. 137, 137 (2002).
quasi-judicial characteristics such as debate and questioning, and should aim to discover the facts and assign responsibility. Local governments must implement the precise details of the hearings.141 The results of such hearings at the appellate level may be available to the public.142

Xinfang regulations grant xinfang bureaus a degree of “soft” dispute-resolution power to press agencies and parties to solve issues relating to petition work. Some regulations explicitly authorize xinfang bureaus to engage in mediation of disputes raised in petitions.143 Others, including the 2005 national regulations, charge xinfang bureaus with proposing policy recommendations to government leaders regarding issues encountered during the xinfang process.144 National and provincial regulations also allow xinfang bureaus to propose corrective measures and administrative punishments for government agencies and individuals derelict in their handling of petition work.145 This likely allows xinfang bureaus some leverage in pressing relevant administrative authorities to take concrete action with regard to the handling of key xinfang issues.

Many provincial regulations list the powers xinfang workers may exercise in handling individual petitions. Gansu regulations allow xinfang bureaus and administrative agencies handling petitions to conduct investigations, arrange meetings with petitioners, attend court cases, and summon petitioners and others for hearings.146 Heilongjiang regulations authorize xinfang bureaus to listen to the reports of administrative entities handling particular petitions, but only allow them to convene conferences of “relevant bureaus” or conduct hearings in “important or difficult” cases.147 Many xinfang regulations authorize xinfang workers to read documents and attend meetings, if necessary to handle particular petitions.148

Provincial xinfang regulations outline a process for passing critical petitions and issues to leadership figures for resolution. Xinfang regulations governing the Fujian LPC Standing Committee provide that most individual petitions should be transferred to the correct entity for handling, while “important” ones are to be accompanied by a letter to the relevant local government organ, court, or procuratorate. For important petitions requiring further investigation, the regulations direct the general office of the LPC standing committee to organize an investigation and report to the chairman’s meeting for a decision on how precisely to handle them. For petitions that are both “important” and “typical,” the LPC chairs must propose a specific

142 Id. at art. 35.
145 2005 Nat’l Xinfang Regs., supra note 77, at arts. 36, 38; Zhejiang Xinfang Regs., supra note 22, at art. 41.
146 Gansu Xinfang Regs., supra note 126, at art. 31. Both the petitioner and “relevant individuals” must be notified in writing fifteen days in advance of any hearings. Id.
147 Heilongjiang Xinfang Regs., supra note 104, at art. 15.
148 See, e.g., Gansu Xinfang Regs., supra note 126, at art. 18; Heilongjiang Xinfang Regs., supra note 104, at art. 15.
investigation composed of LPC delegates, which then must report back to the entire standing committee. Similar provisions exist in other xinfang regulations.

Xinfang regulations do not focus uniquely on reaching a legally correct decision in the handling of individual petitions. Rather, the petitioner's acceptance of this decision is viewed as equally important, reflecting concerns with maintaining social order. National regulations emphasize the need to conduct "explaining work" (jieshi gongzuo) in handling petitions with merit, but no legal basis. Shanghai regulations require the handling of individual petitions to include components of "resolving [them] according to law" as well as conducting "thought guidance" (sixiang shudao). Zhejiang regulations instruct government organs to resolve citizen petitions that are based in law or on regulations appropriately, and "conduct thought guidance" and "[the] work of convincing the populace" (shuofu gongzuo) for those that are not.

J. Xinfang Procedure Resembles Judicial Procedure

Xinfang regulations set out procedural requirements resembling judicial ones. Xinfang bureaus must notify petitioners within fifteen days of receipt of petitions. National regulations impose time limits for handling petitions. Administrative organs must resolve petitions within sixty days, with a thirty-day extension permitted for complicated cases. Formal written decisions must be issued to petitioners. Some provincial regulations require the decision to include a recitation of facts and a statement of reasons.

Xinfang regulations impose duties of confidentiality, truthfulness, and impartiality. National regulations require administrative bureaus and workers not to pass materials submitted by petitioners to any accused party. Some provincial regulations establish a general duty of confidentiality. National regulations direct organs handling petitions to recuse workers with conflicts of

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149 Fujian Sheng ge ji Ren min dai biao da hui Chang wei yuan hui xin fang tiao li [Fujian Province Xinfang Work Regulations for the Standing Committees of Local People's Congresses] (Nov. 18, 2000).

150 See, e.g., Heilongjiang Xinfang Regs., supra note 104, at art. 35. Note that LPCs are specifically authorized to issue inquiries and demands for information from other government organs, including courts and procuratorates.

151 2005 Nat'l Xinfang Regs., supra note 77, at art. 32(2).

152 Shanghai City Xinfang Regs., supra note 128, at art. 6(4).


155 Id. at art. 33.

156 See, e.g., 2005 Nat'l Xinfang Regs., supra note 77, at art. 32; Heilongjiang Xinfang Regs., supra note 104, at arts. 30–33. The requirement of notifying the petitioner of the actual decision is a new addition to the 2005 regulations. Perhaps reflecting the nature of the xinfang system as a governance tool operating for the benefit of the bureaucracy, the 1995 regulations did not necessarily require administrative entities to notify the petitioner of the final decision, but did require the administrative entity handling the petition to provide the entity which transferred the petition to it with a written report on the outcome of the case. 1995 Nat'l Xinfang Regs., supra note 21, at arts. 30–31. Specifically, the 1995 national regulations required the administrative organ handling the petition to notify the petitioner of its decision, "depending on the circumstances." Id. at art. 30.

157 Zhejiang Xinfang Regs., supra note 22, at art. 41.

158 2005 Nat'l Xinfang Regs., supra note 77, at art. 23.

159 Zhejiang Xinfang Regs., supra note 22, at art. 21(4).
Some provincial regulations allow petitioners to request such a recusal. National and provincial xinfang regulations provide that government workers who lose or destroy relevant materials, disclose or leak relevant information, or take actions to retaliate against petitioners should receive administrative discipline or criminal sanctions, depending on the severity of their actions. Xinfang regulations also often require petitioners to report facts truthfully and not to file baseless petitions. Failure to do so results in sanctions.

K. General Absence of Finality

Xinfang regulations avoid bright lines regarding the finality of decisions. In part, this reflects a desire to ensure that higher leadership figures can intervene at will in petitions involving serious problems or large groups of petitioners.

The 1995 national regulations and many provincial regulations granted petitioners a right to appeal decisions of lower-level administrative organs to higher-level ones. Theoretically, the appellate decision had a degree of finality. However, these regulations also provided that if administrative entities discovered that their decisions or those of their subordinate organs were in error, they should either handle the matter again, or compel their subordinate organization to do so. This clause gave administrative bureaus (and petitioners) an almost unlimited opportunity to seek reopening of agency decisions.

The 2005 regulations take some modest steps to strengthen the finality of xinfang appeals. The new regulations replace the prior system of single appeals (fucha), with one of double appeals (first fucha, then fuhe). Appeals should be made to “the next higher level administrative organ” above the one that made the initial or appellate decision. Appeals must be made within thirty days of receipt of the written agency notification, and require merely that the petitioner “disagree” with them. The new regulations lack any reference to the ability of agencies to independently reopen cases on their own volition. However, even these moves to strengthen the finality of official decisions regarding petitions contain some hesitation. If a petitioner disagrees with the second appellate decision (fuhe), continued handling of the petition is barred, but only if the petitioner continues to raise “the same facts and the same

161 See, e.g., Zhejiang Xinfang Regs., supra note 22, at art 11(3).
164 See, e.g., Zhejiang Xinfang Regs., supra note 22, at art. 35 (specifying that xinfang workers may give piping jiaoyu, “criticism education,” to petitioners who fail to respect the guidelines set out—including the duty of truthfulness—or may call on public security organs to “maintain order”).
166 The 1995 national regulations explicitly provided that if, upon review (fucha), it was determined that the petition was handled appropriately, no further action would be taken. 1995 Nat’l Xinfang Regs., supra note 21, at art. 34.
167 Id. at art. 35.
reason” as a basis for his petition.\textsuperscript{169} This appears to allow continued petitioning on the same matter if the petitioner can make new factual allegations.

As noted above, many provincial \textit{xinfang} regulations weaken the finality of court, government, and procuratorate decisions by explicitly providing for LPC review.\textsuperscript{170}

\textbf{L. Assistance to Petitioners}

Many \textit{xinfang} regulations require \textit{xinfang} bureaus to provide a range of assistance to petitioners. At a minimum, \textit{xinfang} bureaus (and the administrative organs to which they are attached) are generally responsible for recognizing the nature of a petition and transferring it to the appropriate administrative entity.\textsuperscript{171} Some regulations require administrative entities to inform petitioners who raise issues outside their jurisdiction which government office bears responsibility for handling the issues at stake.\textsuperscript{172}

Several provincial regulations envisage \textit{xinfang} bureaus as providing an even greater degree of service. Shanghai requires \textit{xinfang} workers to be selected on the basis of their knowledge of relevant regulations and the law.\textsuperscript{173} Gansu province requires that \textit{xinfang} workers have an ability to mediate.\textsuperscript{174} Some recent provincial regulations explicitly grant petitioners the right to request \textit{xinfang} workers to provide legal advice and information.\textsuperscript{175} Still other regulations permit government \textit{xinfang} bureaus to arrange the participation of lawyers or other legal professionals to provide assistance to government agencies, \textit{xinfang} bureaus, and petitioners themselves.\textsuperscript{176}

\textbf{M. Limitations on Expressive Conduct}

Chinese \textit{xinfang} regulations limit expressive conduct. National regulations require that petitioners expressing collective grievances in person select no more than five representatives.\textsuperscript{177} Petitioners must visit government offices at designated reception areas.\textsuperscript{178}

Provincial regulations include even more explicit limitations. Gansu regulations forbid the use of posters or pamphlets.\textsuperscript{179} The Yunnan government bans the “disruption of social order by means of placards, flag-waving, slogans, speeches, distributing leaflets, posters, or forming processions . . . ." \textsuperscript{180} \textit{Xinfang} regulations permit petitions representing
requests directed towards government authority, not demonstrations embodying organized opposition against it. 181

N. Limitations on Petitioning Tactics

Further prohibitions on particular petitioning behaviors offer some insight into the varied tactics petitioners employ. They also illustrate the potential for violence latent in the petitioning process. National regulations bar encircling government buildings, threatening or beating xinfang workers, destruction of government property, and possession of explosives. 182 Since 2005, national regulations have also explicitly barred the inciting of others to engage in petitioning activity. 183 Provincial regulations forbid the abandonment of children or the elderly at reception areas, the occupation of buildings, the blocking of government vehicles, and the general creation of a "terrorist atmosphere." 184 Explicit bans on self-mutilation and suicide also exist. 185

O. Control Measures

Xinfang regulations use Chinese administrative and criminal penalties to curb petitioners' activities. Until 2005, national regulations provided for the use of the (now-abolished) custody and repatriation (qiansong) system to enforce general adherence to xinfang procedure. 186 Some provincial regulations explicitly allow for the use of re-education through labor. 187 In contrast, both the new 2005 national regulations and some provincial ones rely solely on regulations governing public order and criminal law to constrain the behavior of petitioners. 188 Such developments raise hopes that punitive

181 See T.A.R. Xinfang Regs., supra note 111, at art. 29 (holding that petitioning activity “directly or indirectly constituting a demonstration” is to be sanctioned according to laws governing demonstrations). Modern xinfang regulations' preoccupation with limiting organized expressive conduct directed at central authority, even if nonviolent, is not new. A Qing statute provided that “[i]f [individuals] gathered in numbers of forty to fifty to engage in tax protest, shut up their shops, or refused to attend the civil service examinations as a protest against the authorities . . . .” the leaders would be punished by decapitation. Guangyuan Zhou, supra note 47, at 427-56.

182 2005 Nat'l Xinfang Regs., supra note 77, at art. 20.

183 Id. at art. 20(5).

184 Zhejiang Xinfang Regs., supra note 22, at art. 34.

185 Id.

186 1995 Nat'l Xinfang Regs., supra note 21, at art. 22. Regulations for the Tibetan Autonomous Region clarify that the use of the custody and repatriation system to remove petitioners is triggered by a formal written request by a xinfang bureau to the local Public Security Bureau that “assists” with the removal. T.A.R. Xinfang Regs., supra note 111, at art. 23; see also 2004 C.E.C.C. ANN. REP., supra note 131, at 18; CONG-EXEC.COMM’N ON CHINA, ANN. REP. 19 (2003); CONG-EXEC.COMM’N ON CHINA, ANN. REP. 29–30 (2002) (all discussing the custody and repatriation system and its abolition).

187 See, e.g., Henan Xinfang Regs., supra note 175, at art. 35.

188 2005 Nat'l Xinfang Regs., supra note 77, at art. 47. Yunnan, with regulations paralleling the national regulations, explicitly revised its regulations in 2003 to remove references to the use of the custody and repatriation system. Guan yu xiu gai Yunnan Sheng gong min xin fang tiao Ii de jue ding [Decision on Amending the Yunnan Prov. Xinfang Regulations] (Sept. 28, 2005). The Heilongjiang provincial government similarly abolished local regulations on the detention and repatriation of petitioners. See Heilongjiang Sheng Ren min zheng fu guan yu fei zhi “Heilongjiang Sheng xin fang shou rong qian song gong zuo gui ding” de jue ding [Decision of the Heilongjiang People’s Prov. Gov't on the Elimination of "Heilongjiang Prov. Xinfang Detention and Repatriation Work Rules"] (Dec. 3, 2003) (authorizing only punishment from the petitioner's work unit, administrative punishment from the public security bureau, and criminal liability); see also Zhejiang Xinfang Regs., supra note 22, at art. 42.
measures associated with the xinfang system might be becoming marginally less arbitrary.\textsuperscript{189}

Chinese xinfang regulations are strongly paternalistic in the use of coercive methods. Consistent with the "instructional" emphasis of the system, many regulations require that xinfang workers, or the petitioner's work unit, employ "criticism education" (piping jiaoyu) with regard to recalcitrant petitioners, prior to using administrative punishments.\textsuperscript{190} Similar attitudes are present in the vague requirements of some xinfang regulations (and independent of the clear references to the custody and repatriation system) that the petitioner's guardian (jianhuren), work unit, or the local authorities from the petitioner's home area "remove" or "handle" troublesome petitioners.\textsuperscript{191} For example, 1994 Beijing regulations state:

As to problems raised by petitioners which relevant bureaus have already handled, but which petitioners stubbornly and without reason continue to raise before higher level authorities, the petitioners work unit or the people's government of the petitioner's place of residence should take measures to ensure that he does not continuously appeal (chansu).\textsuperscript{192}

\textit{P. 2005 National Xinfang Regulations}

The new 2005 national xinfang regulations suggest the direction reform of the xinfang system may take. These reforms followed a survey of the xinfang system conducted by the Chinese Academy of Social Sciences in the fall of 2004 that found only a small fraction of citizen petitions were even actually acknowledged and that over half of petitioners surveyed experienced beatings or other reprisals by government officials for their petitioning activities. Chinese media commentary noted that Chinese government

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  \item[\textsuperscript{189}] However, the recently enacted Law on Public Order Administrative Punishments contains clauses that local officials could use as catchall provisions to detain petitioners. Zhi an guan li chu fa fa [Law on Public Order Administrative Punishments] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2005, effective March 1, 2006) art. 55, http://www.gov.cn/gongbao/content/2005/content_77704.htm (allowing authorities to detain individuals between ten and fifteen days for inciting or conspiring with others to engage in illegal assemblies or demonstrations).
  
  \item[\textsuperscript{190}] 1995 Nat'l Xinfang Regs., supra note 21, at art. 41.; Beijing City Xinfang Regs., supra note 100, at art. 33; T.A.R. Xinfang Regs., supra note 111, at art. 28. Note, however, that the new 2005 national xinfang regulations omit any reference to "criticism education."
  
  \item[\textsuperscript{191}] Zhejiang Xinfang Regs., supra note 22, at art. 36. Separate provisions exist for the removal of individuals suspected of having contagious diseases or mental illnesses. \textit{Id.} at art 37.
  
  \item[\textsuperscript{192}] Beijing Xinfang Regs., supra note 100, at art. 24. Provisions such as these raise human rights concerns, as it is unclear whether they represent a blank check to local authorities to undertake any and all measures to halt petitioning activities. For another such directive, issued after the presumptive abolition of the custody and repatriation system, see, National Land and Resources Bureau, Guan yu zuo hao "liang hui" qi jian guo tu zi yuan xinfang gong zuo de jin ji tong zhi [Urgent Notice on Handling Land and Resources Xinfang Work During the Meeting of the National People's Conference] (Feb. 11, 2004). The directive was issued during preparations for the NPC conference in 2004, instructing personnel to do their utmost to halt petitioners from reaching Beijing and to cooperate with other officials in persuading those in Beijing to return to their home regions. \textit{Id.} at art 7.
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authorities rejected calls either to strengthen or weaken xinfang institutions, choosing instead to follow a "third path" of regularizing the system.\textsuperscript{193}

The 2005 regulations demonstrate some commitment to reducing the more obvious conflicts between xinfang channels and formal legal ones. The 1995 regulations expressly charged government xinfang bureaus with handling petitions regarding the "legal violations of the rights of the petitioner."\textsuperscript{194} The 2005 regulations omit this language.\textsuperscript{195} The 2005 regulations include express language that petitions should be resolved in accordance with law and regulations. The 1995 regulations had left this an open question.\textsuperscript{196} The 2005 regulations remove prior language suggesting that resort to the xinfang system was supplemental to remedies under the Administrative Litigation and Administrative Reconsideration Laws. The new regulations take steps to strengthen the finality of decisions, and include permissive language allowing for the holding of quasi-judicial hearings.\textsuperscript{197} The 2005 regulations ameliorate some of the coercive aspects of the xinfang system. They remove reference to the (now abolished) administrative system of custody and repatriation as a punitive measure for petitioner infractions.\textsuperscript{198} They also encourage the organized participation of legal aid organs in resolution of petitions, under the guidance of xinfang bureaus.\textsuperscript{199}

While the 2005 regulations suggest some commitment to reform of the xinfang systems consistent with rule of law norms, they also demonstrate an equal, if not stronger, intent to strengthen the traditional governance role of xinfang bureaus. First, the new regulations expand the scope of xinfang institutions. The 1995 regulations merely required governments at the county-level and higher either to establish xinfang bureaus or to designate personnel to handle xinfang issues.\textsuperscript{200} The 2005 regulations require county-level and higher governments to establish xinfang bureaus. The new regulations also require that township governments establish formal xinfang bureaus or designate personnel to handle xinfang issues.\textsuperscript{201} Further, the 2005 regulations require all county, township, and town governments and their subordinate administrative bureaus to institute a system of "xinfang leadership reception days" (fuze ren xinfang jiedairi zhidu) in which petitioners can directly approach responsible officials of various government bureaus.\textsuperscript{202}

Second, the new regulations grant xinfang bureaus a range of "soft power" to intervene and affect the disposition of particular cases. Prior national regulations were devoid of references to particular powers that xinfang


\textsuperscript{194} 1995 Nat'l Xinfang Regs., supra note 21, at art. 8(3).

\textsuperscript{195} 2005 Nat'l Xinfang Regs., supra note 77, at art. 14.

\textsuperscript{196} Id. at art. 32; 1995 Nat'l Xinfang Regs., supra note 21, at arts. 15, 26.

\textsuperscript{197} Id. at arts. 31, 34-35.

\textsuperscript{198} Compare id. at art. 47 with 1995 Nat'l Xinfang Regs., supra note 21, at art. 22.

\textsuperscript{199} 2005 Nat'l Xinfang Regs., supra note 77, at art. 13.

\textsuperscript{200} 1995 Nat'l Xinfang Regs., supra note 21, at art. 6.

\textsuperscript{201} 2005 Nat'l Xinfang Regs., supra note 77, at art. 6.

\textsuperscript{202} Id. at art. 10.
bureaus might employ to expedite the handling of particular petitions. In contrast, the 2005 regulations charge government xinfang bureaus with the responsibility for raising proposals of corrective action, policy changes, and administrative punishments with the appropriate bureaus.203

Third, the 2005 regulations reinforce the information collection function of xinfang bureaus by specifically charging them with the regular reporting of xinfang statistics to higher government authorities.204 The regulations also vest the national xinfang authority, the State Bureau of Letters and Calls, with the responsibility of creating a national xinfang network, capable of tracking petitions nationwide.205 Corresponding responsibilities are placed on local xinfang bureaus.206

Fourth, the 2005 regulations reinforce the role of the xinfang system as an oversight tool of lower bureaucratic levels by requiring that each level of government implement a “xinfang responsibility system” (xinfang gongzuo zeren zhi).207 These systems apply a wide range of administrative punishments to officials for the mere occurrence of petitioning behavior in their jurisdiction.208 Local governments are required to make officials' success in handling petitions (or lack thereof) a component in their performance reviews of civil servants.209

Conclusion

The preceding review of Chinese xinfang regulations reveals several core characteristics of the system they seek to establish. The xinfang system is a multiple-purpose governance tool. It overlaps in content and aim with formal Chinese legal institutions. However, the goals of the xinfang system are broader than those of formal rule of law institutions. In addition to resolving individual citizen grievances, core aims of the xinfang system include providing useful information to leadership figures, assisting regime institutions to maintain social stability, and monitoring the work of lower-level officials.

Because of these goals, some of the characteristics of the xinfang system differ significantly from what might be expected from rule of law institutions. Examples include the lack of finality in decisions, vague and overlapping jurisdiction between institutions, and differential treatment for particular cases. This is not to say that the xinfang system is completely at odds with formal legal norms. Indeed, xinfang regulations adopt some of the norms of legal institutions, including establishing procedural time limits and norms, requiring judiciable cases to be directed towards legal channels, and (more recently) demanding that xinfang decisions take the form of a written

203 Id. at arts. 36–38.
204 Id. at art. 39.
205 Id. at arts. 11–12.
206 Id.
207 Id. at art. 7. While, as discussed below, xinfang responsibility systems are commonly used in various levels of Chinese government, the 2005 national regulations mark the first time they have been formally included in any of the comprehensive provincial or national xinfang regulations.
208 Id. at arts. 40–44. For greater detail and further discussion, see infra Part V.
209 Id. The 2005 regulations also charge xinfang bureaus with the responsibility of reporting (among other statistics) the rate at which various bureaus adopt the proposals submitted by xinfang bureaus for corrective action and policy. This likely represents an effort to add more teeth to the oversight function of xinfang bureaus. Id. at art. 39 (2)–(3).
opinion issued to the petitioner. However, the rule of law elements in the xinfang system should be viewed merely as components of a larger, generalized governance tool.

Consistent with its historical origins, the xinfang system described in the regulations is a model of governance distinct from liberal democratic models. Rather than emphasizing the egalitarian protection of individual rights under a well-defined system of law, the xinfang regulations aim at a smooth transfer of information between officials and citizens who cooperate in the process of improving the governance of society. Conflict between rulers and ruled is conceived of with difficulty, if at all. On a practical level, xinfang regulations establish a system of rule designed to meet the governance needs of an authoritarian government which sets social stability as its highest goal.

The 2005 xinfang regulations suggest that Chinese government reform of the xinfang system will not be a simple case of abolishing the system or of imposing rule of law norms in a single step. While the new regulations do include some measures that bring the xinfang regulations closer to legal norms, other elements strongly reinforce the role of the xinfang system as an authoritarian governance tool. The xinfang system may be in the middle of a long process of evolution rather than replacement. This process appears determined as much by the historical characteristics of the system as by recently introduced rule of law norms.

Despite the underlying nature of the xinfang system as a tool for authoritarian rule, it does create a set of game rules for the management of disputes. Petitioners may raise individual and collective grievances within partially defined channels. While protests of central decisions are barred, petitions seeking assistance of higher officials are permitted. Repetitive challenges of government decisions at progressively higher levels are allowed. These game rules have allowed the practice of petitioning to develop as a practical process for the resolution of particular grievances that is the subject of Part V.

IV. PETITIONING WITHIN FORMAL LEGAL INSTITUTIONS

Although this paper has primarily discussed citizen petitioning in the context of Party and government xinfang bureaus, citizen petitioning is not limited to that route. Legal institutions such as the courts are also the targets of petitioning efforts. As a result, they have developed a wide range of institutional practices designed to handle citizen petitions. As in Party and government xinfang bureaus, these practices serve as multipurpose governance tools, rather than as means of assuring individual justice under law. This section will briefly detail five such examples to illustrate the extent to which xinfang practices permeate Chinese government institutions, including those based on formal legal norms.

First, the evolution of Chinese courts themselves is intertwined with that of xinfang institutions. Prior to the late 1980s, court xinfang bureaus bore the responsibility for receiving and filing legal complaints. In 1987 and 1997, the Supreme People’s Court enacted reforms transforming court xinfang bureaus into modern docketing tribunals (li’an ting), charged with many of the
same responsibilities. Similar trends occurred in local Chinese courts. However, some still retain court xinfang bureaus. In practice, the work of both reception (li'an) and oversight (shenpan jiandu) tribunals overlaps with that of court and government xinfang organs. Touting reforms carried out by his court, the chief justice of a local Changchun court noted in 2002:

The court xinfang bureau and the docketing group of judges are co-located in the main reception hall. If parties continue to contest or express doubts regarding cases that the reception judges have decided do not meet the legal requirements for filing, or are outside the scope of cases handled by the court, xinfang personnel will carry out the necessary work of explaining and answering their grievances.

In cases which a party requests retrial (zaishen) or rehearing (shensu) of a case, xinfang personnel will record the case information and examine the case record. If meritless, xinfang personnel will attempt to convince the complainant to drop the case. If investigation reveals that the case in fact has errors, the xinfang personnel will notify the court president. Upon his approval, the case will be turned over for investigation and review to determine whether to carry out rehearing procedures.

As with their government counterparts, court xinfang personnel monitor the behavior of judicial officials, conduct a range of soft negotiations to resolve citizen grievances, and coordinate with Party leadership to head off social unrest.

In 1987, the xinfang office of the Supreme People’s Court was replaced by the complaint and petition tribunal [gaosu shensu ting]. This latter organ was subsequently divided into the reception tribunal [li’an ting] and the judicial supervision tribunal [shenpan jiandu ting] in 1997. Yvonne Yee Foon Chan, The Letters and Visits System as a Means of Redress of Grievances in the People’s Republic of China 46 (Apr. 14, 1989) (unpublished M.A. dissertation, Harvard University) (on file with Harvard University). Court reception tribunals are charged with determining whether individual cases meet the legal requirements necessary to be handled by one of the other substantive tribunals (for example, civil or administrative) of the court.

The Ameng Intermediate People’s Court of Inner Mongolia was established in 1980 with a criminal, civil, and economic tribunal and a xinfang reception office. According to an article previously published on the Ameng Intermediate People’s Court website, the xinfang bureau was subsequently eliminated in 1988 and replaced with a complaint and petition tribunal. http://www.alashanzjfy.com/ArticleShow.asp?ArticleID=2, available at http://www.google.com (search “www.alashanzjfy.com/ArticleShow.asp?ArticleID=2”, follow “Google’s cache” hyperlink) (printed copy on file with author). Similarly, in the Shanghai Huangpu district, the court’s xinfang bureau was responsible for receiving and deciding whether to accept cases until 1990, when it was taken over by a complaint and petition tribunal (shen su ting). See http://www.shtong.gov.cn, http://www.shtong.gov.cn/node2/node4/node2249/huangpu/node35709/node35773/ (last visited Jan. 30, 2006).


Cha Wenfeng, Gou jian xin fang gong zuo da ge ju, shi xian ji ceng fa yuan jian she xin kua yue [Building a Xinfang Work Structure, Realizing a New Stage in the Development of Basic-Level Courts], 8 XIN CHANG ZHENG [NEW LONG MARCH] 50 (2002). The xinfang bureau of the above court is also involved in attempting to ensure the execution of court judgments. Id.

See, for example, the description of a Shandong basic level court official, expressed in Song Zhaoping, Fa yuan ru he zuo hao shi an xin fang gong zuo [How Courts Successfully Carry Out Xinfang

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Second, Chinese law contains an expansive and ill-defined retrial procedure known as trial supervision (zaishen, tishen). This procedure allows multiple actors, including parties, the procuratorate, and higher courts, significant leeway to request or compel the reopening of final court decisions. This facilitates citizen petitioning of courts and limits the finality of court judgments.215

Third, judicial practices commonly known as “court president reception days” (yuanzhang jiedai ri) facilitate citizen petitioning.216 “Reception days” are designated days on which higher court officials are expected to personally receive petitioners seeking to present grievances on a wide range of issues.217 Precise details differ from court to court. For example, measures employed by one Hunan basic level people’s court include the weekly reception of petitioners by members of the court adjudication committee, regular visits by the court president to rural areas to hear citizen petitions, and regular meetings with local corporate managers to better understand their concerns.218 One Beijing intermediate court requires judges to hear petitions related to ongoing cases, requests for case rehearing (zaishen), and complaints regarding judicial discipline.219 Precise expectations regarding how petitions are to be disposed of are left vague. The Beijing court guidelines require that petitions relating to ongoing cases be handled by the presiding judge, who is expected to “resolve those petitions which can be resolved,” and appease petitioners with appropriate explanations regarding those which cannot.220 As with government xinfang practices, court “reception days” serve multiple roles. They allow senior judicial officials to supervise the behavior of junior judges and to intervene in particular cases raised by recalcitrant petitioners, heading off destabilizing petitioning incidents.221


216 Note that the 2005 regulations to the national xinfang regulations require the establishment of such “reception days” for all governments and bureaus at the county level and below. 2005 Nat’l Xinfang Regs., supra note 77, at art. 10.


219 FIRST INTERMEDIATE COURT OF BEIJING COURT, supra note 217, at art. 5.

220 Id. at art. 9.

221 Local Chinese court officials highlight these roles. For an example, see the description of the role of court reception days in FOSHAN SHI ZHONG JI REN MIN FA YUAN [FOSHAN CITY INTERMEDIATE PEOPLE’S COURT, ], KAI ZHAN SHE HUI ZHI AN ZONG HE ZHI LIE GONG ZUO BAO GAO [WORK REPORT ON IMPLEMENTING COMPREHENSIVE MANAGEMENT OF SOCIAL ORDER] art. 5(3) (Sept. 6, 2004), available at http://www.fszyf.gov.cn/shownews.asp?newsid=5219.
appeal. Some Chinese courts explicitly identify cases which elicit "intense reactions from the media or parties to the case" as one of the targets at which responsibility systems are directed. Others link disciplinary measures to cases which result in repeated petitions to higher-level authorities, and identify them as one component of larger efforts to maintain social order. Such systems effectively reward extended petitioning efforts directed at progressively higher levels of the judiciary, giving parties an additional tool to pressure judges to decide cases favorably.

Fifth, the formal supervision of court work by LPCs offers parties an additional route to appeal final decisions of court cases. China's Constitution specifies that LPCs are responsible for "supervising" the work of both courts and administrative organs. Scholars have noted that LPCs have gradually expanded their influence over courts since the 1990s. As noted earlier, many provincial xinfang regulations dating from the same time period charge LPCs with hearing a wide range of petitions relating to court work, including appeals of final court decisions and complaints of judicial misdeeds. In practice, LPCs frequently avail themselves of the power to exercise "individual case supervision" (ge'an jiandu) to affect the disposition of court cases attracting popular interest. Unsurprisingly, this encourages petitioning activity to people's congresses aimed at reversing unfavorable lower court decisions. According to one source, thirty-four percent of letters and seventy-five percent of visits to the xinfang bureau of the NPC are petitions involving legal matters, of which seventy percent are appeals of a decision of first instance by a judicial organ.

Conclusion

Petitioning behavior and institutions permeate the Chinese legal system. As with government xinfang bureaus, Chinese judicial petitioning institutions serve multiple governance interests. They assist courts to monitor

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222 2004 C.E.C.C. ANN. REP., supra note 131, at 79.
223 See id. at 79, n. 746 (citing Ma Shuanzhi, SHAANXI SHENG GAO JI REN MIN FA YUAN GUAN YU SHEN PAN JIAN DU GONG ZUO HE WEI FA SHEN PAN ZE REN ZHUI JIU GONG ZUO QING KUANG DE BAO GAO [SHAANXI HIGH PEOPLE'S COURT REPORT ON WORK REGARDING TRIAL SUPERVISION AND RESPONSIBILITY FOR ILLEGAL BEHAVIOR], SHAANXI NAT'L PEOPLE'S CONG., Nov. 20, 2002, available at http://www.sxrd.gov.cn[complete web address] (identifying cases reversed on appeal, "reversed cases which the lower court disagrees with," "cases identified by higher leaders," and "cases receiving an intense reaction from media or parties to the case" as four key types of cases at which the local responsibility system is directed).
224 See FOSHAN CITY INTERMEDIATE PEOPLE'S COURT, supra note 221, at art. 5(3).
226 As scholars have noted, this is the result of (1) the generally lower standing of court personnel within Party hierarchy and (2) reforms which increased the relative standing of the LPCs. LPCs have had relatively less success in exercising supervision over administrative organs. Young Nam Cho, Symbiotic Neighbor or Extra-court Judge, 176 CHINA Q. 1068, 1070 (2003).
227 See discussion supra Part III(H). These generally correspond with the types of appeals to LPCs noted in by Young Nam Cho. Young Nam Cho, supra note 226, at 1073.
229 Zhou Zhijiang, supra note 93; see also Randall Peerenboom, supra note 131, at 30 (noting that "many parties turn to the procuracy or people's congress without first appealing to avoid the costs of appeal or because the statute of limitations has run").
the performance of judges, resolve potentially destabilizing conflicts, and allow leadership figures to intervene in selected cases. Responsibility systems, vague retrial procedures, and LPC review of individual cases create mechanisms that facilitate and reward repeated citizen petitioning of judicial and government authorities regarding court cases.

V. PETITIONING IN PRACTICE

National and provincial xinfang regulations provide a partial understanding of how the Chinese petitioning system should work in theory. However, the regulations shed little light on how citizens and officials use the system in practice. This section will attempt to illustrate the actual nature of Chinese petitioning. Contrary to popular perceptions, citizen petitioning and official responses are not the result of misinformed, uncoordinated actions of individuals who simply fail to understand formal legal rules. Rather, petitioning is the result of a complex state-society interaction with its own internally consistent set of "game rules." These rules somewhat resemble the xinfang regulations discussed earlier but are even more highly influenced by internal Party disciplinary regulations governing official responses to citizen petitions. Interaction between citizens and officials, each seeking to employ the petition process for their own purposes (dispute resolution on the one hand, governance on the other), sustains and supports these internal "game rules."

A. Citizen Use of the Petition System

Foreign legal observers seeking to understand the development of Chinese legal institutions and popular dispute resolution practices often overlook petitioning institutions and their deep historical roots. Some draw broad characterizations of the Chinese character, asserting that Chinese citizens are traditionally unaccustomed to the concept of challenging decisions of government officials. Other observers oversimplify the nature of pre-1979 institutions, casting them as purely mediative in nature. Both of these views ignore the extent to which traditional Chinese petitioning institutions (both imperial and Communist) formed an active locus for dispute resolution, particularly of state-society conflicts. When foreign observers do analyze xinfang institutions and the behavior of Chinese petitioners, they often view them through foreign lenses, translating them into more familiar organizations and behavior. Some foreign experts have described xinfang bureaus as "the equivalent of ombudsmen," while one Western journalist has characterized the documents prepared by petitioners as "samizdat, like the Soviet books printed underground to escape censors."

230 See Randy Pereenboom, A Government of Laws: Democracy, Rule of Law, and Administrative Law Reform in the P.R.C., 12 J. CONTEMP. CHINA 45, 55 (2003) (citing low numbers of administrative law and reconsideration cases as evidence that Chinese citizens are unaccustomed to challenging government decisions).

231 For an excellent rebuttal of this argument, see generally Neil Diamant, Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches, 44 J. CONFLICT RESOL. 523 (2000). Note that while Diamant portrays Chinese plaintiffs as more willing to employ the courts than traditionally believed, his article also describes a process of repeated appeals to "higher level state institutions" in some divorce cases, which appear to fall within the category of petitioning behavior described in this article. Id. at 534.

232 For the comparison to ombudsmen, see Isabelle Thireau & Hua Linshan, The Moral Universe of Aggrieved Chinese Workers: Workers' Appeals to Arbitration Committees and Letters and Visits Offices, 50 CHINA J. 83, 83 (2003). The dictionary definition of "ombudsman" as "an official appointed
Chinese petitioners inhabit an environment different from that faced by Western plaintiffs. First, the Chinese government is a large, bureaucratic, authoritarian system. Although the Chinese government is not monolithic, centralized Party control does mean that institutional divisions (including those of the courts) are much less clear than in Western societies. Senior officials consequently possess a much greater ability to intervene in a range of individual problems if necessary, regardless of whether the problem might be conceived of as an administrative, judicial, or legislative one. Second, despite the ability to intervene in particular problems, Chinese leadership is limited by its need to rely on lower-level officials to carry out the minutaie of day-to-day governance. As O’Brien notes, this creates “formidable principal-agent problems.”

Given that authoritarianism allows local leaders to wield a wide degree of power over the population they govern and to control the flow of information, how can central leaders be certain that their agents are actually carrying out their directives?

These two characteristics of Chinese politics open the door for citizen petitioning. Central leaders rely on petitions to help resolve the above principal-agent problem, using popular input as a tool to ferret out corrupt or disobedient local officials. However, official dependence on this tool also allows citizens an opportunity to use it for their own purposes. In O’Brien’s words, this has given rise to a “boundary-spanning contention” by Chinese citizens that “(1) operates near the boundary of authorized channels, (2) employs the rhetoric and commitments of the powerful to curb political or economic power and (3) hinges on locating and exploiting divisions within officialdom.” To the above definition might be added a fourth: (4) strives to prompt the intervention of higher-level authorities as a means to counteract the decisions of local officials. Taken together, these four elements broadly define Chinese petitioning.

While political scientists employ the term “boundary-spanning contention” to designate behavior that crosses the boundary between sanctioned and unsanctioned behavior, it has the additional benefit of accurately capturing the nature of petitioning behavior that crosses the boundary between “legal” and “political” action. Chinese petitioning efforts can range from the efforts of individual AIDS victims to obtain medical care to investigate complaints by individuals against maladministration by officials’ does resemble one of the roles of the xinfang bureaus. However, ombudsmen traditionally have served a role as a “deputy of a group to handle the legal affairs of the group and protect its interests generally.” In other words, the Western concept of ombudsmen carries the connotation of an institution that represents the interests of the individuals who seek to use them. Xinfang bureaus, in contrast, primarily aim to serve the governance interests of Party leaders. For the comparison to samizdat, see Ian Johnson, Wall Street Journal, Revolution From Below: China’s Emerging Civil Society, Speech at the Carnegie Endowment for Int’l Peace (Apr. 1, 2004), available at http://www.ceip.org/files/pdf/2004-04-29-IanJohnson-transcript.pdf.
to struggles by neighborhood groups to stop illegal construction in a local park \(^{239}\) to massive movements involving thousands of petitioners seeking compensation for their forced relocation in major hydroelectric projects.\(^{240}\)

A comprehensive description of various Chinese petitioning practices would require analysis from the fields of political science, sociology, and psychology.\(^{241}\) This is beyond the scope of this Article. For now, suffice it to identify four distinctive characteristics of petitioning practices that interact with xinfang institutions. These include: (1) the generalization of grievances, (2) the seeking of higher-level discretionary intervention in particular grievances, (3) the mobilization of support, and (4) repetitive, nonfinal appeals.

1. Generalization of Grievances

Chinese petitioners attempt to generalize their grievances, rather than particularize them into discrete, individual ones. In a comparative study of grievances presented to the Shenzhen labor bureau and to the local xinfang bureau, researchers found that petitions to xinfang bureaus raised more generalized grievances, often disclosing "a multiplicity of abuses, as if to show that the treatment faced is unjust not only from one particular aspect, but from many perspectives."\(^{242}\) Some petitions employ Communist rhetoric in an effort to alert officials to the injustices suffered by workers, including "slaves," "proletarians," and "running-dogs."\(^{243}\) In contrast, grievances presented to arbitration committees tend to be particularized, focusing on discrete injuries.\(^{244}\) While many petitioners raise legal provisions in support of their grievances, only a very few rely exclusively on the law in arguing for their position, tending to raise both government pronouncements and general social norms as well.\(^{245}\) However, the generalization of grievances does not extend to open opposition to core central government policies.\(^{246}\)

2. Seeking Higher-Level Discretionary Intervention

Chinese petitioners also commonly seek the discretionary intervention of higher-level officials as a means to apply pressure on local authorities in resolving particular disputes.\(^{247}\) Petitioning efforts are often not clearly channeled. Groups of rural petitioners frequently "skip levels" (yueji) of the bureaucratic hierarchy in attempting to locate higher-level officials who might

\(^{239}\) Zhu Jiangang, Not Against the State, Just Protecting the Residents' Interests: A Residents Movement in a Shanghai Neighborhood, 5 PERSPECTIVES 25, 30 (2004).

\(^{240}\) Shi Jingtao, Peasants in Upstream Effort to Halt Dam, S. CHINA MORN. POST, Jan. 4, 2005, at 10.

\(^{241}\) For a good summary of Chinese petitioner tactics, see Xi Chen, Chinese Petitioners' Tactics and Their Efficacy 14-25 (2005) (draft manuscript, on file with the author). Among others, these include kneeling, blocking traffic, assaulting opponents, self-inflicting injuries, and displaying corpses. Id.

\(^{242}\) Thireau & Hua Linshian, supra note 232, at 92.

\(^{243}\) Id. at 99.

\(^{244}\) Id.

\(^{245}\) Id. at 98.

\(^{246}\) As noted by O'Brien and Li, "[Petitioning] does not appear to be an effective way to express displeasure with a national policy or with ordinary state-sanctioned revenue collection; rather it is a tool primarily used to combat illegal local impositions and unauthorized 'local policies' (tu zhengce), and to ensure that village leaders act according to official norms and implement state measures that benefit villagers." O'Brien & Li, supra note 24, at 759.

\(^{247}\) C.E.C.C. Staff Roundtable, supra note 27 (written statement of Professor Kevin O'Brien, University of California, Berkeley).
favor their cause. Petitioners also often direct their petitions to multiple higher-level organs in their search. These efforts often represent a form of "venue shopping," seeking the support of any higher-level bureau willing to lend support, with casual regard for jurisdictional lines. One recent survey of petitioners in Beijing found that the average number of central government bureaus visited by petitioners was six, and the maximum eighteen. Petitioners also sometimes employ extreme behavior to attract official attention, including self-mutilation or suicide.

Petitioners use the law as a component of their efforts to attract higher-level attention. Petitioners often cite violations of recent laws and regulations as a means of soliciting higher-level support against local officials perceived as having violated these norms. This has become increasingly true as economic development has led more rural residents into contact with the wider world, giving them increased opportunities to "discover" central laws and regulations which local authorities have concealed.

This use, however, does not necessarily indicate a well-developed commitment on the part of petitioners to law per se or to formal legal institutions. Petitioners may equally well employ speeches of higher leaders or Party pronouncements as support for their actions. "Lawsuits under the Administrative Litigation Law are often 'preceded, accompanied, or followed' by collective petitions." Litigants sometimes employ mass petitioning techniques taken directly from imperial practices to convince courts to accept their complaints. O'Brien and Li note one case of "dozens of villagers kneeling before a county judge when they submitted their complaint concerning financial burdens." Lawsuits are but another tool petitioners use rather than a distinct alternative to petitioning. Petitioners find the law useful in their overall efforts to portray themselves as loyal supporters of the central legal system.

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248 See O'Brien & Li, supra note 24, at 778 (citing statistics more than sixty percent of one group of rural petitioners skip at least one level of government in the petitioning process). These efforts are not restricted to the modern era; see Ocko, supra note 36, at 306.

249 O'Brien, supra note 78, at 57. Zhang and Li accurately note the "difficult and embarrassing" situation that such "yueji" appeals pose to central authorities. On the one hand, central authorities find them a useful tool to combat bureaucracy and receive accurate information on local conditions. On the other, excessive use quickly overloads higher authorities and leads to social disorder in government centers. Zhang Youzhi & Li Shiyuan, "Yi fa zhi fang" yu wo guo xin fang zhi de gai ge ["Petitioning According to Law" and Reform of the Chinese Xinfang System], 6 HUNAN SHE HUI KE XUE [HUNAN SOCIAL SCIENCE] 63, 65 (2002).

250 Yu Jianrong, supra note 79, at 213. Among others, groups visited include the national xinfang bureau, National People's Congress, Supreme People's Court, Central Discipline Committee, Public Security Bureau, Supreme People's Procuratorate, Ministry of Land and Resources, Ministry of Agriculture, Ministry of Civil Affairs. Id.

251 See, e.g., Hu Jie, supra note 6; Liu & Kuhn, supra note 6. For an earlier example, see Ocko, supra note 36, at 294.

252 See Lianjiang Li, Elections and Popular Resistance in China, 15 CHINA INFO. 1, 3 (2001).

253 O'Brien & Li, supra note 24, at 763; O'Brien, supra note 78, at 55.


255 2004 C.E.C.C. ANN. REP., supra note 131, at 74 (citing O'Brien & Li, supra note 19, at 77).

256 O'Brien & Li, supra note 19, at 82. For a discussion of petitioner tactics, see generally Xi Chen, supra note 241.
government, struggling against recalcitrant local authorities. This is consistent with central government use of the xinfang system as a check on the principal-agent problem confronting them on levels of local government.

Recent observers have noted a shift away from the above tactics, common in the 1980s and 1990s. Rather than simply attempting to circumvent obstructionist local officials, groups of petitioners are increasingly employing direct action techniques to force local government officials to the negotiating table. “Although protest organizers still cite central policies” in their petition efforts, “[t]his increasingly direct form of rightful resistance doesn’t depend on high-level intercession, but on skilled rabble-rousers and the popular pressure they can muster.” Limits still exist to the use of these tactics. Petitioners still do not seek to challenge central authorities directly. Nor do these tactics necessarily indicate a development towards rule of law norms. If anything, petitioners employing such tactics seek on-the-spot resolution of their grievances in a highly confrontational setting, with dozens of their supporters and onlookers encircling the local officials opposing them.

3. Social Mobilization

Chinese petitioners also attempt to mobilize large numbers of aggrieved individuals to put additional pressure on local officials to address their grievances. This can take the form of a collective, or mass, petition (jiti shangfang). Mass petitions may spring from a variety of group concerns: excessive taxation, mistreatment at the hands of a village cadre, or land seizures. As O’Brien and Li note, “[m]ost rural [mass petitions] are formal, written complaints physically carried by a group of villagers to higher levels (usually the township or county town).” With the rise of the Internet, China has also begun to experience the development of online petitioning. In 2004, approximately two thousand individuals signed a collective petition requesting the release of Du Daobin, an internet essayist arrested after calling for greater freedom in Hong Kong and calling on the Party to cease using subversion laws to punish critics of the government.

The role of leaders of mass petitions is critical. Assembling large numbers of petitioners helps insulate them from reprisals and increases the likelihood of a favorable government response. Mass petition leaders must engage in complex political maneuvering to maintain the size and cohesiveness of the mass petition movement. Some employ peaceful appeals and

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258 C.E.C.C. Staff Roundtable, supra note 27 (written statement of Professor Kevin O’Brien, University of California, Berkeley).
259 Id. Petitioners appear to use these mediative tactics first, before progressing to more aggressive direct action. For analogous historical examples, see Guangyuan Zhou, supra note 47, at 432 (describing a process of petitioning legally first, then associating with clans to mount a military challenge to government authorities).
260 C.E.C.C. Staff Roundtable, supra note 27 (written statement of Professor Kevin O’Brien, University of California, Berkeley).
261 O’Brien & Li, supra note 24, at 758.
263 O’Brien & Li, supra note 24, at 774.
dissemination of relevant laws and regulations. Others use violence and intimidation, including "mislead[ing] illiterate villagers about the topic of a complaint" or "brib[ing] families to participate in a tractor procession to a county office." Government officials targeted by collective petitions combat them in a variety of ways, including intimidation of potential participants, slandering petition leaders, and beatings or detentions of petitioners.

Given the above dynamic, it is not surprising that mass petition leaders are often male, reasonably well-educated, and middle-aged or younger. Many often are veterans, presumably with some organizational experience gained from their military service. They are often drawn to participate in petitions for a mix of reasons, including personal resentment of mistreatment suffered at the hands of cadres and broader social and ethical concerns of justice. Personal ambition also plays a role. Some petition leaders seek to replace the cadres they oppose.

4. Lack of Finality

A fourth distinct characteristic of petitioning behavior is the absence of any clear finality to the process. Petition efforts often drag on for years with limited results. Cai notes one case of petitioning lasting forty-three years. Groups of petitioners, such as migrant workers seeking back wages, may pool resources to support a group of representatives in the local county town for petitioning efforts lasting up to five years. Petitions may originate as complaints regarding the corruption of local officials, shift to grievances regarding the fairness of local elections when those leaders stand for office and then change character into protests against the detention or criminal sentences of petition leaders. Even if petitioners successfully prompt higher-level intervention in a local dispute, the nature of the petition may simply shift to whether local leaders actually carry out the enforcement of central directives. Since continued petitioning is always an option, decisions as to whether to continue petitioning (and on what level) often depend on an analysis of the relative costs and benefits. Naturally, it is also possible for petitioners

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264 Id. at 775.
265 Id. at 772–73, 779.
266 Id. at 768.
267 Id. at 768–69.
268 This often gives local officials an opportunity to co-opt petition leaders by offering them positions of authority in local administration. For one such recent example, see Joseph Kahn, China Crushes Peasant Protest, Turning Three Friends Into Enemies, N.Y. TIMES, Oct. 13, 2004, A1.
270 Cai Yongshun, supra note 19, at 446.
271 Su Huiping, Lao dong ju bu guan, xin fang ju tui wei, xian zheng fu bu li hui [The Labor Bureau Won’t Handle it, the Xinfang Bureau Passes the Responsibility, the County Government Ignores it] XIN HUA MEI RI DIAN XUN [XINHUA DAILY TELEGRAPH], Dec. 27, 2003.
273 Ying Xing, supra note 17, at 63.
(particularly petition leaders) to become psychologically identified with their cause, hindering objective evaluation of the merits.

B. Official Use of the Xinfang System

Citizen petitioning tactics discussed above do not take place in a vacuum. They are affected by government responses. Two important structural factors shape these responses: the xinfang bureaus themselves and Party-operated xinfang responsibility systems.

1. Xinfang Bureaus: Organization and Structure

As discussed earlier, xinfang bureaus are multipurpose tools of governance. They attempt to resolve individual and collective grievances (overlapping with judicial organs in this function), coordinate with police and other authorities in negotiating with or suppressing mass petition movements, and play an important role in funneling information to leadership figures.

Both the national xinfang bureau and its provincial counterparts are joint Party-government organs. They are responsible for handling petitions to both the government and Party at a particular administrative level. For example, the national xinfang bureau handles petitions directed to both the State Council as well as the Central Committee. Some provincial xinfang bureaus have an even more expanded scope of authority. For example, the Shaanxi provincial xinfang bureau has three different subunits, which are responsible for handling petitions to the provincial government, Party committee, and LPC, respectively.

Xinfang bureaus typically have multiple subdivisions. Regulations governing the organization of the national xinfang bureau designate six divisions: (1) a main office handling clerical work, (2) a division handling letters, (3) a division handling visits, (4) a research office tasked with analyzing trends and drafting regulations and laws, (5) an administrative and finance division (responsible partly for security arrangements), and (6) a personnel office. The internal organization of provincial xinfang bureaus appears to generally replicate the national model, with some variations. For example, Henan provincial regulations establish a “negotiation and contacting group” responsible for handling mass petitions (particularly those seeking to...
reach Beijing) and an "urging and investigation group" responsible for ensuring that relevant authorities take action upon particular petitions that higher authorities have designated for resolution.\footnote{278}{Henan Prov. Party Cent. Comm. & Prov. Gov't Notice, supra note 274, at arts. 2(1)–2(6). The national xinfang bureau appears to divide these functions among other divisions. See Notice of the Office of the Communist Party Central Comm. & St. Council Notice, supra note 274, arts. 2(2)–2(3). From the standpoint of understanding the institutional role of xinfang bureaus, it might be useful to analyze the personnel allocation of various xinfang bureaus and the administrative rank of their directors in comparison to other agencies. These comparisons often indicate how central officials view the relative importance of different bureaucratic organs. For example, the regulations governing the internal organization of the Henan provincial xinfang bureau specify a personnel allotment (bianzhi) of sixty-two led by one bureau director (juzhang), three deputy directors (fu juzhang), twenty-two division chiefs (chuji lingdao), and including one deputy Party secretary (jiguan dangwei zhuangshi fushuji). In comparison, the Henan provincial drug and food safety bureau has a personnel allotment of seventy-seven, with one bureau director, four deputy directors, twenty-seven department chiefs, and one deputy Party secretary. Henan Sheng ren min zheng fu ban gong ting guan yu yin fa "Henan Sheng shi pin yao pin jian du guan li ju zhu yao zhi ze nei she ji gou he ren yuan bian zhi gui ding" de tong zhi [Notice of the Office of the Henan Prov. Gov't Regarding the Issuance of the "Regulations on the Organization of Responsibilities, Internal Structure, and Personnel Allotment of the Henan Prov. Food and Drug Administration"], (Apr. 28, 2004), available at http://www.law-lib.com/law/law_view.asp?id=86589. According to the website of the Henan High People's Court, the court has a personnel allotment of 356, with one court president (yuanzhang), five vice presidents (fu yuanzhang), and sixty division chiefs. Henan Sheng fa yuan zu zhi ji gou [Organization of the Henan Prov. Court] (issued Jan. 16, 2003), http://hnfy.chinacourt.org. Assuming size and bureaucratic rank can serve as a rough proxy for administrative influence, this would suggest that xinfang bureaus enjoy a level of authority generally comparable to many government agencies. However, it also suggests that their direct influence over the courts may be more limited and dependent on obtaining the support of higher-level officials.}{280}{Henan Prov. Party Cent. Comm. & Prov. Gov't Notice, supra note 274, at arts. 1(1)–1(3); Baoji xin fang ju de jie shao, [Introduction to the Baoji City Xinfang Bureau], http://www.bjbbc.com/company/23/xinfang (last visited Dec. 31, 2004).}{281}{Compare Communist Party Central Comm. & St. Council Notice, supra note 274, at arts. 1(1)–1(7) with 2005 Nat'l Xinfang Regs, supra note 77, arts. 1–3.}

Consistent with the multipurpose nature of xinfang bureaus, internal regulations delegate to them a wide range of work responsibilities. State Council and Central Committee directives charge the national xinfang bureau with (1) handling petitions for both organs, ensuring the smooth operation of xinfang channels, timely reporting on important petitions, and performing general analysis on petition trends; (2) assuming responsibility for handling particular petitions designated by the State Council and Central Committee for resolution and ensuring that central decisions as to their resolution are carried out; and (3) handling the disposition of both mass petitions to Beijing and other extreme or sudden xinfang incidents.\footnote{279}{Communist Party Cent. Comm. & St. Council Notice, supra note 274, at arts. 1(1)–1(3).} Provincial and local xinfang bureaus operate under similar directives.\footnote{280}{Communist Party Cent. Comm. & St. Council Notice, supra note 274, at arts. 1(1)–1(7) with 2005 Nat'l Xinfang Regs, supra note 77, arts. 1–3.}

The above work responsibilities conflict with the general thrust of the national and provincial xinfang regulations discussed in Part III. First, xinfang regulations purport to establish a system for the fair and equal resolution of all incoming citizen grievances. However, the work responsibilities actually assigned to the xinfang bureaus emphasize the oversight of information on overall trends and particularly destabilizing cases to leadership figures, rather than the equitable resolution of all petitions.\footnote{281}{Compare Communist Party Cent. Comm. & St. Council Notice, supra note 274, at arts. 1(1)–1(7) with 2005 Nat'l Xinfang Regs, supra note 77, arts. 1–3.} Second, xinfang bureaus are expected to handle particular petitions that higher leaders have designated for resolution (presumably because of political calculations), rather than...
impartially evaluating the merits of each case.\textsuperscript{282} Third, despite the restrictions of national and provincial \textit{xinfang} regulations concerning collective petitions, internal directives to \textit{xinfang} bureaus explicitly direct the bureaus' attention to the resolution of mass petitions and other forms of extreme behavior.

2. An Example of a Mass Petition: Faxi County

A concrete example of mass petitioning efforts may help illustrate the complex web of citizen petitioning efforts and government responses.\textsuperscript{283}

As mentioned in the introduction, \textit{supra}, in the autumn of 1996, residents of Faxi village, Shaanxi province, began to suspect their village Party secretary of skimming village finances (and their taxes) for his own purposes. Anonymous posters accusing him of crimes began to circulate in the village, while the Party secretary himself utilized the village public address system to criticize his opponents. Heated tensions led dozens of villagers to mount multiple trips to township authorities, petitioning for investigation of village finances and impeachment of the Party secretary. Township authorities caved in. They relieved the village Party secretary of his post, and allowed the election of fifteen village representatives to represent village interests in an inspection of local finances.\textsuperscript{284}

Perhaps in an effort to reassert control over village affairs, township authorities intervened in village committee elections held at the end of 1996. Election day was marked with allegations of vote-rigging in favor of candidates favored by township authorities. Popular anger resulted in mild incidents of violence. Township authorities subsequently decided that Faxi village lacked the ability to exercise local autonomous governance functions in accordance with the Organic Law on Villager Committees and instead designated village committee leaders themselves.\textsuperscript{285}

Amid these tensions, village representatives investigating local finances discovered evidence of significant financial transgressions on the part of the former Party secretary. Villagers compiled this information into written form and delivered it to township officials. After a lengthy delay, township Party officials finally issued their response in mid-1998, giving the former Party secretary a disciplinary warning and light fine.\textsuperscript{286}

Dissatisfied, the village finance representatives and other residents continued their petitioning efforts. In 1998, this resulted in the dispatch of county procuratorate officials to investigate allegations of misconduct. Again, Faxi villagers were dissatisfied with the results. In the fall of 1998, Faxi petitioners increased the tempo of their petitioning activities. With the participation of village finance representatives, Faxi petitioners mounted a 120-person mass petition to the Shaanxi provincial \textit{xinfang} bureau to request a


\textsuperscript{284} Wang Zhihuan & Bian Jiang, \textit{supra} note 272, at 28–29.

\textsuperscript{285} \textit{Id.} at 29.

\textsuperscript{286} \textit{Id.}
complete investigation of village finances. As with the first mass petition to township authorities, the arrival of large numbers of petitioners sparked a government response. County government officials dispatched a seven-person work team comprised of members of the Party committee, the *xinfang* bureau, and the land bureau, among others, to investigate the complaints raised by the Faxi petitioners.\(^{287}\)

Adding further fuel to the brewing conflict, county officials intervened yet again in elections for village Party officials at the end of 1998. In apparent violation of Party regulations barring the appointment of individuals under administrative discipline, the fallen village Party secretary won reappointment to his former post in local elections that county and township authorities directly supervised. At this point, accumulated electoral and financial grievances led to an outbreak of widespread protests. Petitioners successfully blocked township road construction projects and disrupted the holding of local LPC elections.\(^{288}\)

Government response, if not swift, was direct.\(^{289}\) After the suppression of the disturbances, at least ten Faxi villagers were detained or arrested on the orders of county authorities. Authorities particularly targeted the village finance representatives, who appear to have played a leading role in organizing village petitioning efforts. In the summer of 2000, the county trial court convicted three of these leaders on a variety of charges, including inciting social disorder and interrupting the ordinary operations of Party and government organs. Sentences ranged from six months to four years in prison.\(^{290}\)

While the defendants pursued formal appeals of the criminal charges, Faxi villagers commenced petitioning on their behalf. Petitioners located a local delegate to the NPC from Baoji (the urban government with administrative authority over Faxi, the township, and the county) and successfully convinced her to begin an independent investigation of their grievances. Convinced of the validity of their complaints, she began to circulate appeals to Party and government authorities. In addition, internal reports to government authorities by state television and print outlets repeatedly carried reports about the problems Faxi villagers faced. These reports garnered high-level attention. With the approval of the provincial Party secretary and governor, Party authorities designated a work team comprised of both Baoji city and county-level Party officials to conduct further inspection of Faxi county affairs.\(^{291}\)

After a massive investigation involving interviews with 427 individuals, including both villagers and large numbers of township and village officials, the work team issued a 588-page report in the summer of 2001. The conclusion: Faxi village suffered from multiple failures in governance.

\(^{287}\) Id.

\(^{288}\) Id.

\(^{289}\) Details as to the precise nature of the social disturbances and their immediate handling by local authorities are somewhat vague. It appears that the arrests of the petition leaders took place almost a year after the outbreak of the disturbances. Id.

\(^{290}\) Id. at 29-30.

\(^{291}\) Id. at 30.
including a general lack of openness in village affairs, a tendency for a few leaders to decide key issues without seeking the participation of (or even informing) residents, and a failure of township and county officials to thoroughly investigate grievances raised. These failures permitted individual grievances to mushroom into mass petitions. Naturally, local county officials were extremely unwilling to accept the report's conclusion, which cast doubt on their handling of the petitioning incidents.292

Despite local opposition, the work report received the support of core provincial officials, who issued their approval of its content in August 2001. They directed local officials to quickly resolve village grievances to restore stability. Concurrently, the Baoji Intermediate People's Court, which was handling the criminal appeal of the Faxi petition leaders, submitted a qingshi (advisory opinion) request to the provincial Higher People's Court (HPC), requesting guidance on how to dispose of the case.293 Consistent with the HPC response of "not guilty," the intermediate court reversed the trial court's criminal sentences of the Faxi petition leaders in October 2001.

In November 2001, the county Party secretary expressly visited Faxi village to apologize to the assembled residents for official handling of citizen grievances. Rather than ending the struggles between authorities and villagers, this apology appears to have merely set the stage for another round of mass petitioning. Perceiving the apology to be both insincere and insufficient to address the underlying grievances giving rise to the mass petitioning efforts, 731 Faxi villagers submitted a signed open letter to the county Party committee. Specific requests included: annulment of the election results for the village Party leadership, dissolution of the village committee leadership, review of police detention of Faxi petitioners, provision of financial compensation, continuation of the work of the village representatives in reviewing local finances, and review of final work report content with which Faxi villagers disagreed.294

While the details of the Faxi example end here, they accurately illustrate the core components of Chinese mass petitioning efforts. The first component is social mobilization. As the Faxi mass petition continued, it increased in scale, drawing in larger and larger numbers of petitioners. The second component is the generalization of grievances. Rather than focusing on discrete harms, the claims in the Faxi mass petition snowballed. Petitioners' initial suspicions of corruption involving village leadership merged with complaints involving the electoral process, and then drew in popular dissatisfaction regarding the criminal sentence of the petition leaders.

The third component is the pursuit of discretionary higher-level intervention to overturn decisions of local authorities. Faxi villagers did not focus their petitioning efforts on a single governmental organ, such as the courts. Rather, they pursued a broad strategy aimed at garnering attention and support from multiple higher-level Party and government organs. These included Party committees, provincial xinfang bureaus, NPC delegates, and the

292 Id.
293 Id. For a general discussion of qingshi practices, see 2004 C.E.C.C. ANN. REP., supra note 131, at 80–81.
294 Wang Zhihuan & Bian Jiang, supra note 272, at 28.
procuratorate, among others. In large part, this strategy was underpinned by the perception (a correct one) that all of these organs possessed some ability to affect the disposition of village grievances by raising the issue to the attention of core leadership figures. Formal legal decisions do not appear to have been exempt from this intervention. The intermediate court overturned the formal criminal court sentence of the Faxi petition leaders following a political evaluation of provincial Party leaders as to the correctness of the local government response.

The Faxi example also illustrates the fourth core component of Chinese mass petitioning efforts: their lack of finality. Because higher authorities can always intervene in ongoing grievances, repetitive appeals make sense. Assuming their resources are not exhausted, Faxi villagers can always organize yet another drive to a higher level of the government bureaucracy in an effort to counter unfavorable local decisions.

The above example provides an illustration of how individual Chinese petitioning efforts unfold. To understand the background in which they exist, one must examine an additional factor: xinfang responsibility systems.

3. Xinfang Responsibility Systems

Chinese authorities use responsibility systems to evaluate the performance of, and discipline, local officials. These systems set specific performance targets for local cadres to meet. These targets vary according to specific policy priorities and can include a wide range of economic and political goals. Top township leaders, such as Party secretaries and heads of government, are held personally responsible for ensuring that their entire jurisdiction meets set economic development goals, birth control quotas, and social order statistics.295 If leaders meet these goals, they are rewarded. Failure to meet these goals results in adverse career consequences. This is particularly true for “priority targets,” such as social order and birth control, where failure can cancel out positive work performance in other fields.296

Some local responsibility systems explicitly include citizen petitioning within social order targets.297 Others have specific xinfang responsibility systems (xinfang zeren zhuijiu zhi, xinfang gongzuo zeren zhi), which hold subprovincial bureau leaders responsible to provincial Party and government officials, and township and subcounty bureaus responsible to county officials.298 Disciplinary measures include a wide range of sanctions affecting


296 Edin, supra note 295, at 39–40. Rewards and punishments are doled out to both individual leaders as well as entire local administrations. Id. at 45–47. On responsibility systems, see also Kevin O’Brien, Selective Policy Implementation in Rural China, 173 COMP. POL. 167, 172–76 (1999).

297 Edin, supra note 295, at 43-44.

career prospects, such as formal criticism, warnings, suspension (jiemian), a temporary bar on promotions or transfers, and, in the extreme, expulsion from the Party and criminal sanctions.299

*Xinfang* responsibility systems apply the above punishments for a wide range of administrative behavior. Actions for which officials may be disciplined include misusing their office, falsifying *xinfang* reports to higher officials, failing to execute directives issued from above,300 beating petitioners or withholding their petitioning documents,301 and failing to report to the scene of a mass petition and remove petitioners.302

However, *xinfang* responsibility systems have a critical common thread: they discipline officials for the mere *occurrence* of mass petitions, in addition to the precise actions listed above.303 To use terms more familiar to Western legal scholars, responsibility systems impose strict liability on government officials for mass petitioning behavior of individuals under their jurisdiction, regardless of the precise nature of the petition. For example, Zhuhai city government rules provide that subordinate (district and county) Party and government heads bear responsibility for the collective petitions of residents within their administrative areas that reach Zhuhai authorities. Heads of state-owned enterprises bear similar responsibility for the collective petitions of their employees. Officials bear responsibility for the simple occurrence of a collective petition, failure to promptly remove petitioners from Zhuhai, and inability to resolve the underlying grievances (if this failure results in yet another collective petition).304 Other local *xinfang* responsibility systems similarly place responsibility upon relevant Party heads or government bureau chiefs for the occurrence of citizen mass petitioning to higher levels of government.305

*Xinfang* responsibility systems are strongly paternalistic. By holding officials strictly liable for any and all instances of collective petitioning behavior in their administrative region, the Zhuhai regulations described above essentially view residents of outlying counties as wards of county officials and

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299 Id. at art. 3; Changzhi Shi xin fang ze ren zhi jiu zan xing ban fa [Changzhi City Temporary Measures on Xinfang Responsibility] art. 6, available at http://www.changzhi.gov.cn/200407/article/03-09/2568.htm (last visited Jan. 30, 2006).

300 Changzhi City Temporary Measures on Xinfang Responsibility, *supra* note 299, at arts. 9(4), 10(2), 10(6).


303 Other scholars have noted this point as well. *See* Edin, *supra* note 295, at 40, 43-44.

304 *See* Zhuhai Notice, *supra* note 302, at art 3(2).

305 Yunxi Xian xin fang gong zuo ze ren zhui jiu zhi [Yunxi County Xinfang Responsibility System], arts. 2-4, 11(2), (on file with the author); Qingdao Rules, *supra* note 301, at arts. 2, 5-7.
employees of state-owned enterprises as wards of their employers. County officials and employers bear total responsibility for mass petitions, regardless of whether the specific grievances are land disputes, excessive taxation, clan conflicts, or abusive local cadres.\footnote{Interestingly, the Zhuhai regulations cited above treat collective grievances of urban Zhuhai residents or self-employed individuals in an entirely different manner from residents of outlying counties or state-owned enterprises, providing that “in the case of collective petitions to the city Party or government of masses from a joint venture, private enterprise, or self-employed individuals or average city residents, the determination of who will bear responsibility will be made by the xinfang bureau in accordance with the nature of the grievance expressed.” Zhuhai Notice, supra note 302, at art. 3(2). This might illustrate an important rule-of-law transition: As economic development leads to the disassociation of individuals from collective units, it is no longer feasible to view them as “belonging” to a particular county or a state-owned enterprise to which responsibility may be assigned. As a result, the state must begin to address their grievances individually, depending on their nature.}

_Xinfang_ responsibility systems generally do not simply link punishment to the legal merit of the grievances expressed in a mass petition; they also base sanctions on the number of people involved, the number and frequency of such incidents, the seriousness of the consequences (i.e., deaths), and the level of the government hierarchy to which they reach. For example, the Anhui provincial (Party and government) _xinfang_ responsibility system imposes formal criticism on officials for “petitions in accordance with law, regulation, or policy, which are handled incorrectly or not in time and lead to a mass petition (of fifty or more people to the provincial capital or twenty or more to Beijing) and remain for more than forty-eight hours at central or provincial government agencies.”\footnote{Anhui Responsibility System, supra note 298, at art. 4(3).} In contrast, mass petitions of one hundred people or more to the provincial capital (or thirty to Beijing) result in suspension (jiemian).\footnote{Id. at art. 6(2).} A failure to meet designated targets results in similar disciplinary measures. Local officials who fail to close out eighty percent of _xinfang_ cases specially designated by higher authorities in a particular term, or ninety-five percent on an annual basis, face formal criticism. Local officials in an area listed as a provincial “major _xinfang_ area” for one, two, or three years receive varying degrees of criticism or suspension.\footnote{Id. at arts. 4(7), 5(1), 6(1).} While the Anhui responsibility system contains language limiting disciplinary punishment to those mass petitions grounded in “law, regulation or policy,” other systems discipline officials for any mass petitions at all, regardless of their underlying merit.\footnote{See, e.g., Qingdao Rules, supra note 301, at art. 5(1) (giving formal warning and criticism to lower-level leaders for mass petition movements that reach city Party and government offices), art. 7(3) (placing on suspension lower-level leaders for mass petition movements that reach Beijing or the provincial capital and “create a bad impression”); Yuxi County Xinfang Responsibility System, supra note 305, at arts. 11(2), 12(5) (giving formal warnings and criticism to officials for any mass petitions to the city, provincial, or national governments).}

While responsibility systems often allow county, city, and provincial _xinfang_ bureaus to make suggestions regarding the application of punitive measures, final decisions generally require approval of higher-level Party and government authorities. For example, one system permits the municipal _xinfang_ bureau itself to make recommendations regarding the criticism and warning of government officials, but the system also requires the approval of the “_xinfang_ leadership group” before the recommendations can take effect.
With regard to more serious punishments, the recommendation itself must come from the “xinfang leadership group” and be reported to the relevant Party committee before taking effect.\(^3\)

Recent events suggest that Chinese leaders have decided to strengthen both the use of xinfang responsibility systems and their linkage with public security forces. New national xinfang regulations issued in January 2005 require each level of government to implement a xinfang responsibility system.\(^3\) During the summer of 2005, both the official media campaign surrounding the implementation of the new regulations and new public security regulations strongly emphasized the role of the police in handling citizen petitions.\(^3\)

C. Analysis

As odd as it might seem at first glance, the fact that xinfang responsibility systems assign liability to local leaders for all occurrences of collective petitioning is not without rationale. Politically, it accurately reflects local politics in many rural Chinese counties, which are often characterized by a simple binary division of power between rulers and ruled. If a particular local official essentially holds all power, compelling him to bear all responsibility for collective grievances has some logical merit. Philosophically, this is entirely consistent with traditional Confucian principles, which teach that the presence or lack of social order is directly related to the moral qualities of the ruler.\(^3\) Administratively, such systems may be effective methods of internally organizing an autocratic state, creating clean organizational lines of command to allow central officials to control their local agents.\(^3\)

Despite the above rationale for xinfang responsibility systems, they have many negative consequences. First, they encourage active, sometimes violent, suppression of dissent. Xinfang responsibility systems attempt to maintain stability by holding mass petitioning behavior to a minimum. Party and government leaders, in no uncertain terms, risk their job security when they fail to adequately check mass petitions. While this may prompt some officials to conscientiously resolve grievances raised in mass petitions through available, legitimate channels, it encourages other officials to simply suppress citizen petitioning efforts.\(^3\) Local officials use a variety of means to

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\(^3\) Changzhi City Temporary Measures on Xinfang Responsibility, supra note 300, at art. 15. Similar provisions exist in other responsibility systems as well. See, e.g., the corresponding Qingdao Rules, supra note 301, at art. 9.

\(^3\) 2005 Nat’l Xinfang Regs., supra note 77, at art. 7. Regarding the new elements of the 2005 xinfang regulations, see supra note 97 and accompanying text.


\(^3\) See, e.g., MENCIUS, LI LOU, SHANG ch. 20, translated in 1 CHINESE CLASSICS: CHINESE ENGLISH SERIES 153 (D. C. Lau trans., 1984) (stating “Yi zheng jun er guo ding yi” [“Simply by rectifying the prince one can put the state on a firm basis”]).

\(^3\) See Edin, supra note 295, at 43-44.

\(^3\) Yu Jianrong, supra note 79, at 216. This is also explicitly referenced in government speeches. E.g., Shi wei fu mi shu zhang, xin fang ju zhang Qiu Jianqiu tong zhi zai shi wei ban gong zuo hui y
accomplish this. One Chinese survey of rural conditions (banned by central authorities after it attracted significant public attention) detailed one township’s efforts to stave off a potential collective petition by interrogating peasants seeking to purchase railway tickets to Beijing and barring those perceived to be petitioners.317 International non-governmental organizations have also documented the efforts of both local and national Chinese officials to violently suppress petitioners, despite explicit prohibitions in some xinfang responsibility systems against doing so.318 These are direct results of the incentive structures established by xinfang responsibility systems, which discipline officials not according to their ability to resolve problems according to law, but rather for their ability to maintain social order.

Second, these systems stymie official Chinese efforts to establish the rule of law. For some local Chinese officials, internal personnel criteria hold more weight than any transparent, universal set of legal norms that the central authorities might establish.319 As O’Brien notes, responsibility systems, the end of rectification campaigns, and the institution of personnel management systems that make local cadres responsible only to their immediate superiors, have “increased cadre insulation from ordinary villagers.”320 This has encouraged selective policy implementation among local cadres, who focus their efforts on meeting the targets set under responsibility systems (particularly priority targets and easily quantifiable ones), rather than broader, more vague, central directives.321 Many laws and legal norms fall within this latter category of things that are ignored.322

Responsibility systems also impact the development of the rule of law by affecting citizens’ relationship with legal norms and institutions. Chinese citizens lack independent judicial channels to protect their rights set out in law. Political channels remain tightly controlled by the Communist Party.323 Ordinary citizen opinion is rarely made a determinative part of the formal

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319 As Chinese observers have noted, this creates a fundamental conflict of interest for local authorities, in which petitioners’ legal rights are all too easily sacrificed for officials’ own career advancement. Zhang Youzhi & Li Shiyan, supra note 249, at 65.

320 O’Brien, supra note 296, at 171.

321 Id. at 173-76. Interesting further study might be carried out on the similarity of these policies with analogous ones pursued under other autocratic regimes, such as Stakhanovism in the USSR.

322 Only if they are “translated” into targets set under responsibility systems do they directly impact cadre behavior. However, even when Chinese authorities do this, they are relying on the expression of only selected legal norms, via internal personnel evaluation systems—in other words, the rule of the Party rather than the rule of law.

cadre evaluation process. 324 Given these constraints and the sway responsibility systems hold over local cadre behavior, citizens' activism to protect their rights is not being channeled into formal legal channels, but rather into efforts such as mass petitions, which stand a better chance of triggering an official response.325

Conflict between internal administrative demands and formal legal norms is not unique to China. In the spring of 2005, American media reported on problems generated by internal quotas faced by U.S. Army recruiters to produce two new recruits a month. Finding this quota increasingly difficult to meet, recruiters engaged in document falsification and other improprieties in order to register unqualified applicants.326 Unlike China, however, not all American government officials are managed like military recruiters. Rather, democratic, political, and independent judicial channels exist that permit bottom-up checks on the actions of key government officials. Top-down internal administrative demands on particular U.S. officials are somewhat counter-balanced by these other channels, which often are the focus of citizen activism.

Third, xinfang responsibility systems establish incentive systems that reward larger and better-organized collective petition movements directed at progressively higher levels of the Chinese bureaucracy. On the surface, this may seem paradoxical, since the xinfang regulations discussed above explicitly limit the size of petitioner groups. In imposing heavier and heavier disciplinary punishments for local officials based on the number of petitioners and whether they express their grievances at the county, however, provincial, or national levels, xinfang responsibility systems incentivize expanded petition activity. Some responsibility systems go one step further and explicitly accord progressively better treatment for petitioners and closer hearing of their grievances depending on their numbers.327 Petitioners can consequently place increased pressure on local officials by expanding the size or scope of their petitioning activity.328

These incentives associated with xinfang responsibility systems may explain the evolution, noted by observers, of Chinese petitioning efforts towards larger and better-organized activities.329 Indeed, in a statistical study of Chinese petitioner tactics, Chen found that the probability of a substantial official Chinese response (such as the creation of a work team to analyze the

324 O'Brien, supra note 296, at 174–75.
325 Chinese petitioners are conscious of the impact of their actions. 88.5% of Beijing petitioners interviewed in a recent survey indicated that their petitioning efforts in the capital were directed at "increasing pressure on local government officials in order to resolve problems." Yu Jianrong, supra note 79, at 215.
327 See Anhui Responsibility System, supra note 298, at art. 1(2) (providing that progressively senior Party and government officials arrive and handle mass petition movements depending on whether the size of the group is 5–15, 15–50, or 50 or more individuals) & 2(1) (providing that relevant Party and government officials arrive at the scene of a collective petition movement (as opposed to individual petitioners) within five minutes if the officials are in the main government building, and thirty minutes if outside the main government building but within the city).
328 Ying Xing, supra note 17, at 58, 62–63, 65.
329 Id; C.E.C.C. Staff Roundtable, supra note 27 (written statement of Professor Kevin O'Brien, University of California, Berkeley).
problem, or a meeting between high-level officials and petitioners) increased with the number of petitioners, the level of government at which collective petitions are directed, and the extent to which petitioners use public and disruptive tactics. Given this, there should logically be an evolutionary tendency towards expanded citizen petitioning activity over time. As noted in a subsequent section, available statistics indicate this is the case. The Chinese state's own dispute resolution system may be sowing the seeds of greater and greater social instability.

Incentives established by the xinfang institutions may be responsible for other characteristics of Chinese petitioning behavior as well. Contrary to popular conceptions, petitioner generalization of grievances and citation of non-legal bases in support of their petitions does not represent a lack of legal consciousness. Nor does it reflect a misunderstanding of the "game rules." Rather, in generalizing grievances beyond specific legal violations, petitioners are attempting to "politicize" their problems, raising their profiles to such an extent that xinfang officials feel compelled to trigger high level leadership involvement. By broadening their grievances, identifying the legal harm as "both [to] the workers and [to] the state whose decisions are not obeyed," and attempting to cast individual officials as corrupt miscreants, petitioners are undertaking to depict their problems in precisely the form that is necessary to generate elite involvement. In contrast, the more narrowly the issue can be drawn, the more technically legalistic the problem, and the more it focuses on the problems of a single citizen, the less likely it is to trigger a xinfang response.

Expanded petitioning behavior plays an important tripwire function for Chinese leaders. In a large bureaucratic machine with limited resources, leadership involvement is not likely to be triggered by individual complainants, but only by those who can successfully link their problems with given officials, threaten social destabilization, or otherwise depict their individual problem as somehow particularly deserving or acute in the face of thousands of others. Lorentzen's work, aptly titled "Regularized Rioting: Informational Mechanisms in an Authoritarian State," provides an economic model suggesting that expanded petitioning activity serves as a useful "alarm system" for authoritarian rulers, allowing them to identify and address those social grievances raised by the most potentially revolutionary elements of society, while ignoring others.

This tripwire role of xinfang institutions may also be responsible for the bureaucratic delay and repeated citizen petitioning associated with the process. Bureaucratic delay effectively imposes additional costs (time, energy, and money) on petitioners seeking to pursue their complaints. Petitioners with less serious problems, or who bring grievances only affecting a few individuals, will presumably be more likely to let their claims fall by the wayside. Petitioners who persist are consequently more likely to represent

331 Thireau & Hua Linshan, supra note 232, at 99.
333 Ying Xing, supra note 17, at 63.
those with the potential for serious social consequences. These are precisely those that xinfang officials are expected to identify. Delay can thus act as a bureaucratic sieve, assisting xinfang officials to identify those particular grievances needing immediate response.\textsuperscript{334} However, this may also generate a self-sustaining momentum, as relatively minor problems gradually snowball into larger ones through lack of attention and increasing anger on the part of dissatisfied petitioners.

**Conclusion**

Chinese petitioning practices follow an internally consistent, if somewhat fluid, set of core principles in their efforts to resolve particular grievances. These principles may appear inconsistent with legal norms, but are a direct response to incentives established by xinfang responsibility systems. Citizen action and official response create a mutually reinforcing cycle that explains many of the common characteristics of Chinese petitioning, including the trend towards larger, more organized petition activities.

**VI. STATISTICS AND TRENDS**

Chinese authorities employ xinfang statistics to monitor the performance of individual officials and keep tabs on social problems. For this reason, statistical information is sensitive. Analysis of xinfang trends is rendered problematic by a lack of openness regarding relevant statistics and the inherent unreliability of those that do exist. With these caveats in mind, some relevant statistics have emerged in academic sources and the Chinese press. These provide a partial illustration of the evolving nature of the xinfang system.

Levels of petitioning activity vary over time. Analysis of xinfang cases from the 1950s to the 1990s reveals spikes of petitioning activity in periods of relative political liberalization. Luerhmann's analysis of the average number of petitions received by twenty-two county xinfang bureaus found significant increases in the late 1950s, with the Hundred Flowers Movement, and in the early 1960s, after the subsiding of the Great Leap Forward. An explosion of petitioning activity occurred after the reforms of 1978–79 and the rectification of grievances accumulated during the Cultural Revolution.\textsuperscript{335} China currently appears to be experiencing another such spike in petitioning activity. According to Zhou Zhanshun, director of the national xinfang bureau, the State Bureau of Letters and Calls, the absolute number of petitions received annually has increased regularly since 1993.\textsuperscript{336} Cai notes a dramatic increase...
in the petitions-to-population ratios in five different provinces from 1990 to 1999.\textsuperscript{337}

Given the \textit{xinfang} system's role as a general purpose governance tool allowing authorities to study and address citizen grievances, it is not surprising that petitions presented via the \textit{xinfang} system reflect contemporary social problems. In 1982, estimates suggested that approximately eighty percent of all petitions sought to redress grievances stemming from the Cultural Revolution. These figures appear to have declined to thirty percent by 1986.\textsuperscript{338} By the 1990s, the focus of most petitions appears to have shifted to taxation issues.\textsuperscript{339} In 2004, according to sources in the Chinese Academy of Social Sciences, the number of petitions protesting land issues surpassed that of petitions involving taxation.\textsuperscript{340} Given the tendency for citizen petitions to snowball, however, many reflect multiple grievances.\textsuperscript{341}

Although petitioners express high confidence in central government and Party leaders (and correspondingly low faith in local officials), the actual petitioning process leaves them embittered. According to a recent survey of 632 petitioners in Beijing, 37.6\% expressed a "very high regard" for top-level central Party and government leaders, while 77.6\% expressed a "very low regard" for local government officials. Of petitioners surveyed who had just arrived in Beijing, 94.6\% agreed with the statement, "Central authorities welcome peasant petitions." Only 7.1\% and 1.8\%, respectively, agreed with the statements, "Central officials fear peasant petitions" and "Central officials beat petitioners and retaliate against them." Among petitioners who had spent a week or more in Beijing, however, only 39.3\% believed central authorities welcomed peasant petitioners, while 58.9\% and 44.7\%, respectively, asserted that central leaders feared petitioners or retaliated against them.\textsuperscript{342}

Petitions to \textit{xinfang} offices are generally brought by poor, less-educated individuals. According to one survey of Shenzhen labor disputes, petitions to the \textit{xinfang} offices of the municipal labor bureau were primarily brought by manual laborers, specifically migrants, with an average (mean) monthly wage of 578 yuan. In contrast, litigants in the formal labor arbitration proceedings run by the same bureau were significantly better off, with an average (mean) monthly wage of 1444 yuan. Similarly, the study found that "[w]orkers in state-owned enterprises were more inclined to lodge complaints with an arbitration committee . . . ."\textsuperscript{343} This suggests more formal dispute

\textsuperscript{337} Cai Yongshun, \textit{supra} note 19, at 433. In Zhejiang, the number of petitions per 10,000 citizens increased from 54.5 to 94.6 between 1990 and 1999, and from 6.9 to 154.3 in Jilin.

\textsuperscript{338} Luehrmann, \textit{supra} note 19, at 855 (citing Huang Yasheng, \textit{Administrative Monitoring in China}, 143 \textit{CHINA Q.} 828, 834 (1995)).

\textsuperscript{339} One survey of 184 petitions in the period from 1998 to 1999 suggests that approximately 64\% of all petitions related to excessive tax burdens, 51\% to various problems regarding land/property issues, and 30\% to illegal use of force. As the numbers suggest, many petitions reflected multiple problems. Zhao Shukai, \textit{Shang fang shi jian he xin fang ti xi [Petitioning Incidents and the Xinfang System], SAN NONG ZHONGGUO [RURAL CHINA]} (2003), available at http://www.ccrs.org.cn/NEWSgl/ReadNews.asp?NewsID=5777.

\textsuperscript{340} Yu Jianrong, \textit{supra} note 79, at 215 tbl.3.

\textsuperscript{341} \textit{Id.}

\textsuperscript{342} \textit{Id.} at 213–14.

\textsuperscript{343} Thireau & Hua Linshan, \textit{supra} note 232, at 89.
resolution institutions remain primarily the province of the wealthier and more educated. 344

The total number of petitions presented each year in China is staggering. According to the director of the national xinfang bureau, the State Bureau for Letters and Calls, letters and visits to Party and government xinfang bureaus at the county level and higher totaled 8,640,040 for the first nine months of 2002, corresponding with an annual rate of 11.5 million per year. 345 These figures dwarf those for the number of cases handled by the court system, which amounted to about six million in 2004. Similar discrepancies exist within the judiciary itself as well. In 2004, the Supreme People’s Court handled 147,665 petitions, compared with 2923 formal appeals. 346

One of the most interesting questions that statistics might help answer is the extent to which the development of formal legal channels is (or is not) displacing more traditional petitioning ones. Some of the most interesting statistical comparisons might involve comprehensive analysis of the total petitions received in given administrative areas by particular institutions, the content of such petitions, and corresponding trends in court cases. Such work might help definitively determine whether growth in legally cognizable injuries is actually being funneled into xinfang channels or formal legal ones. Unfortunately, this sort of data is unavailable to this author. Other data suggest, however, that traditional petitioning practices are not withering in the face of growing formal legal institutions, but are actually gaining new force.

First, academic work on the resolution of peasant grievances in rural China suggests that rural residents are unlikely to turn to formal legal channels to resolve their grievances. In a 2002 study of roughly three thousand households in fifty-five Chinese villages, Michaelson found that “out of 4,757 grievances, in only 90 (less than 2 percent) was either a lawyer, court, or some other office of the judicial system (sifa ban, sifa bumen, or sifa jigou) approached.” 347 Villagers are more likely to turn to village leaders, informal relations, and government administrative organs to resolve their grievances. Michelson’s analysis of parties’ satisfaction with the outcomes of their grievances reveals that “formal legal channels are not only unpopular numerically, but also deliver wildly unpopular results. [F]ormal legal channels are more likely than any other category of [outside assistance] to yield disappointing outcomes.” 348 To be sure, these findings represent more of a snapshot in time, rather than probative evidence whether aggrieved Chinese parties are any more likely to use formal legal channels or petitioning channels

344 This does not mean, however, that the xinfang system is only used by rural residents. According to one Chinese source, peasants comprise only half of all Chinese petitioners. Ying Xing, supra note 17, at 59.
345 Interview with Zhou Zhanshun, supra note 12.
346 2005 SPC WORK REPORT, supra note 13. The quoted number also includes requests for rehearing (zaishen), review of death penalty decisions (sixing fuhe) and enforcement (zhixing) cases.
347 Michelson, supra note 16, at 26. Studies on the United States have found that approximately ten percent of U.S. grievances involve lawyers. Survey data from Beijing suggest that ten percent of “disputes” end up in court. Id. This suggests a somewhat greater importance of formal legal institutions in Chinese urban areas. 2004 C.E.C.C. ANN. REP., supra note 131.
348 Michelson, supra note 16, at tbl.7.
than in the past. They suggest, however, the existence of generally high levels of popular dissatisfaction with formal legal channels.

Second, data on trends within the Chinese court system suggest that petitioning remains an extremely popular method of accessing even judicial organs. Table 1 charts the total numbers of cases and petitions (laixin laifang) received by the Chinese court system for the period 1990 to 2001, according to an official Chinese government compilation of judicial statistics.

![Table 1](image)

The total number of petitions exceeds the total number of court cases in every single year during the period surveyed. Moreover, the ratio of petitions to court cases (although narrowing for a few years in the mid-1990s) appears generally unchanged between 1990 and 2001. Breaking court petitions into their constituent parts, letters (xin) and visits (fang), provides another interesting comparison. In-person visits to courts constituted roughly

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349 ZHONGGUO FA LU NIAN JIAN [LAW YEARBOOK OF CHINA] (2002) (covering the years 1990–2001). Such statistics should be considered carefully, as Chinese statistics are often unreliable. Here, it is uncertain precisely how the statistical yearbooks are defining letters and visits (xinfang) to the courts, their content, and the extent to which they may or may not overlap with cases formally filed. Citation of these sources is intended to be suggestive, rather than conclusive, and perhaps stimulate others to engage in further research.

350 Data from the 1980s suggests an even more significant imbalance between petitions and filed court cases. For example, the 1987 Yearbook reports roughly two million filed cases in 1986 as opposed to over nine million petitions. Compare ZHONGGUO FA LU NIAN JIAN [LAW YEARBOOK OF CHINA], 884–84 tbls.3, 4 & 5 (1987) with id. at 884 tbl.6. As with the other statistics, precise definitions of the terms and standards used are unavailable. This data is not included in the above table because it appears even less reliable than that given above. For example, the figures for 1986 indicate that 4,336,191 in-person petitions were received at all levels of Chinese courts, and that every single one was successfully closed out during the year. Id. at 884 tbl.6.

351 Unfortunately, China Law Yearbook data is unavailable from 2002 to the present. The annual Supreme People’s Court work reports are an alternative source of statistics. Differences in reporting categories from year to year make this a somewhat less persuasive source of statistics. From 1999 to 2004, the SPC statistics of xinfang petitions to court cases for the entire judiciary are as follows: 1999, 10.69 million petitions, 5.692 million cases (first instance, or yishen); ZUI GAO REN MIN FA YUAN 2000 NIAN GONG ZUO BAO GAO [2000 SUP. PEOPLE’S CT. WORK REPORT] (2000); 2000, 9.39 million petitions, 5.35 million cases (yishen); ZUI GAO REN MIN FA YUAN 2001 NIAN GONG ZUO BAO GAO [2001 SUP. PEOPLE’S CT. WORK REPORT] (2001); 2001, no statistics on xinfang petitions given, 5.928 million cases (of all kinds, or gelei); 2002 SPC WORK REPORT, supra note 13; 2002, multiyear statistics instead of annual, see supra note 13 and accompanying text; 2003, 3.97 million petitions, 5.69 million cases (gelei); 2004 SPC WORK REPORT, supra note 13; 2004, 4.22 million petitions, 7.873 million cases (including roughly 2 million zhixing (executed) cases). 2005 SPC WORK REPORT, supra note 13. One interesting question for further research is whether the apparent drop in total petitions to the Chinese judiciary reflects a change in petitioner practices, Chinese court procedures, statistical reporting, or some other factor.
58% of all petitions in 1990, rising steadily throughout the 1990s to almost 78% in 2001.352 This trend is not limited to citizen petitioning of courts. In-person visits to the national xinfang bureau nearly doubled between the first three months of 2003 and 2004, while letters increased by only 20.2%.353 To the extent that physical (rather than written) petitioning indicates a higher level of petitioner involvement, these statistics illustrate increasingly committed and mobilized petitioning practices.354

Third, the relative lack of success of the Chinese Administrative Litigation Law to draw significant numbers of citizen grievances to the court system also suggests that traditional petitioning practices may serve as a substitute for formal legal channels. Other scholars have already noted the generally low numbers of administrative law cases, the fact that the total number of administrative cases has experienced a relative plateau since the mid-1990s, and the fact that many of these cases are withdrawn by the parties.355 These factors point to the general disuse of administrative legal channels. Still other research suggests the extent to which xinfang channels provide a direct substitute for administrative law ones. According to research by one Chinese Henan county court official on a particular set of xinfang cases, both the total number of petitions, as well as the number of petitions for which administrative lawsuits might be brought, nearly doubled between 1999 and 2003. In contrast, the number of administrative lawsuits remained roughly equal throughout.356 As one Chinese scholar has noted, the advantages of xinfang appeals over administrative litigation and administrative reconsideration channels include lower (financial) cost, the ability to launch repetitive appeals, greater likelihood of breaking through networks of local influence, and the ability to pursue appeals consecutively with (and even after) mediation efforts.357
Fourth, the overall rise in Chinese petitioning activity reflects the increased use of more mobilized, extreme, mass petitioning tactics. Cai has noted the rapid growth of mass petitioning generally throughout the 1990s.\textsuperscript{358} Other figures suggest that the total number of mass petitions to county-level and higher Party and government institutions nearly tripled from 1995 to 2000.\textsuperscript{359} Between 2002 and 2003, mass petitions to the national xinfang bureau increased by over forty percent.\textsuperscript{360} Local authorities appear to be experiencing similar trends. Figures provided by one NPC delegate indicate that mass petitions in a particular Hubei city roughly doubled in terms of the total number of incidents and petitioners involved from 1999 to 2003.\textsuperscript{361} The number of petitioners involved in mass petitions represented over seventy percent of total petitioners.\textsuperscript{362} One Chinese study has found that the rise in mass petitions has meant that the numbers of petitioners involved in mass petitions as a percentage of total petitioners is rapidly increasing, since the total numbers of letters and in-person visits by individual petitioners has remained relatively stable. This percentage has risen dramatically over the past few years, from 59.8\% in 1998, to 66.3\% in 1999, 71.2\% in 2000, and 75.6\% in 2001.\textsuperscript{363} According to one American academic, "[b]y the early 21st century, social unrest [i.e., large-scale petition movements] had become a normal feature of Chinese society."\textsuperscript{364}

Fifth, the increase in petitioning is not spread evenly throughout the Chinese bureaucracy.\textsuperscript{365} It is increasingly focused on higher levels of government. In 2003, the total number of petitions to the national xinfang bureau increased by fourteen percent over the previous year. Provincial and local bureaus registered minimal changes. Similarly, petitions to national level government agencies rose by forty-six percent as compared to the previous

\begin{thebibliography}{9}
\bibitem{cai} Cai Yongshun, \textit{supra} note 19, at 425, 441. In Henan province alone, the incidence of collective petitions nearly tripled between 1992 and 1999. \textit{Id.} at 434.
\bibitem{xiao} Xiao Tangbiao, \textit{Er shi yu lai da lu nong cun de zheng zhi sen ding zhuang kuang—Yi nong min xing dong de bian hua wei shi jiao [The Situation of Political Stability in Twenty Mainland Village —A Look at Peasant Movements]}, \textit{21 SHI JI [21ST CENTURY]}, April 2003, at 51–60, available at http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=2440. Despite the title, the article contains national statistics. Mass petitions to county-level and higher Party and government organs increased by multiples of 2.8 and 2.6, respectively, from 1995 to 2000, with further 7.2\% and 11.7\% increases from 2000 to 2001.\textsuperscript{363} According to this study, the largest mass petition to Beijing during the period surveyed numbered over eight hundred individuals. \textit{Id.}
\bibitem{yu} Yu Jianrong, \textit{supra} note 79, at 216. Yu Jianrong, \textit{supra} note 79, at 216. According to this study, the largest mass petition to Beijing during the period surveyed numbered over eight hundred individuals. \textit{Id.}
\bibitem{bernst} Bernstein, \textit{supra} note 283, at 1.
\bibitem{nim} Increases in mass petitioning efforts are not spread evenly across the country. As observers have noted, the central agricultural belt of China, in contrast to the wealthy coastal areas or impoverished western ones, has experienced the greatest surge in mass petitions. Kevin O'Brien, \textit{Collective Action in the Chinese Countryside}, 48 CHINA J. 139, 143–44 (2002).
\end{thebibliography}
year, while provincial and local agencies experienced smaller increases. In 2004, the Supreme People’s Court registered a 23.6% increase in petitions over 2003, while petitions to all lower courts increased by only 6.2%.

Sixth, research suggests a degree of professionalization among petitioners. According to one Beijing study of petitioners, they tend to be male, between thirty-five and sixty years old, and often have a middle school (junior high) degree. The same study also noted significant differences in petitioning practices. Approximately half of the interviewees had prepared documents, had some ability to recount their story in an organized fashion, and had some grasp of laws or regulations to back up their claims. A small minority lacked any prepared materials, relying instead on their emotions and a personal sense of injustice in conducting petitions. Finally, approximately one third of the interviewees represented a polished petitioner “elite.” These individuals exhibited confidence in their claims, had prior experience with the petitioning process, could fluidly recount their cases, and had a thorough grasp of relevant laws and regulations, often to the point of having committed them to memory.

As the author of the above study noted, “the increase in the incidence of petitioning, the complexity of the process, and the length of time required to pursue one’s petitions are helping create a group of ‘able petitioners’ skilled at representing peasant interests.” This petitioning “elite” appears to include individuals who are not only able to articulate their own grievances, but are also capable of leading mass petition movements. These leaders represent not only their own individual grievances, but also collective grievances borne by a group of workers, or by a particular village or county. In some cases, aggrieved groups seek out these leaders to tap their expertise. Most importantly, these individuals possess the ability to organize groups of petitioners to carry out mass petitions. Many have served in the military. These petition leaders are tough, psychologically wrapped up in their causes,


366 Yu Jianrong, supra note 79, at 212.
368 This has been noted in recent media reporting as well. Edward Cody, In Chinese Uprisings, Peasants Find New Allies, WASH. POST, Nov. 26, 2005, at A1.
369 Zhao Shukai, supra note 339.
370 Id. Increasingly competitive local elections have, in some cases, generated leaders of collective petitions who use the petitioning process as a means to wring concessions from higher government officials and solidify their political position at home. Lianjiang Li, supra note 252, at 4–5. Survey data suggest that villages with contested elections are more likely to generate petitioning activity (specifically, “appeals,” in Li’s language) than those without. Id.
371 C.E.C.C. Staff Roundtable, supra note 27, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:95346.wais (oral testimony of Professor Kevin O’Brien, University of California, Berkeley); Bernstein, supra note 364, at 11–12 (noting one example of a county-wide petitioning organization with leadership skilled in covert operational tactics).
372 Yu Jianrong, supra note 79, at 214.
374 O’Brien & Lianjiang Li, supra note 24, at 772–73; Zhao Shukai, supra note 339.
375 C.E.C.C. Staff Roundtable, supra note 27 (written statement of Professor Kevin O’Brien, University of California, Berkeley); O’Brien & Lianjiang Li, supra note 24, at 768.
and increasingly willing to use confrontational tactics. These include a multitude of techniques, ranging from the mobilization of hundreds of people to apply pressure on government officials in tense negotiation sessions, to large-scale blockades of construction projects, to coordinated suicide threats by large groups of petitioners.

Conclusion

Based on what limited statistics are available, the low level of trust in formal legal channels and the presence of well-established petitioning channels appear to have allowed the flourishing of Chinese petitioning practices alongside (and even inside) modern legal institutions. Petitioning appears to be increasingly organized and well led. It also seems to be directed at increasingly higher levels of the Chinese bureaucracy. Such developments suggest that citizens may be resorting to increasingly professional, highly mobilized mass petitions rather than formal legal channels as a means to resolve their grievances.

VII. WESTERN HISTORICAL PRECEDENTS

This Article argues that the xinfang system and its historical analogues function as a governance tool to support the personal rule of the emperor and Party leaders. This creates tensions with norms and institutions that attempt to base themselves on law. How, then, does a system change from a rule of man to a rule of law?

Naturally, the most effective way to answer this question would be to conduct a thorough historical analysis of the development of legal institutions in a wide range of systems, including Japan, South Korea, and Taiwan. Limitations in background, language, and space prevent the inclusion of such analysis in this Article.

A tentative analytical attempt to answer the above question can be made by studying the development of Western European legal institutions. Despite differing from imperial or Communist Chinese institutions in many ways, medieval English and French monarchies also merged much administrative and judicial power together in the person of a single sovereign. Medieval European petitioners sought to trigger the personal involvement of the monarch in the resolution of their grievances through an extended process of supplication. As with their modern Chinese counterparts, medieval English petitioners engaged in repeated efforts to gain the ear of the king, often

376 C.E.C.C. Staff Roundtable, supra note 27 (written statement of Professor Kevin O’Brien, University of California, Berkeley).


378 Law and petitioning have deep historical links. The supplicative component of pleading and petitioning accurately reflects an earlier historical period when judicial and administrative authority were more firmly welded in a single sovereign. See generally GEOFFREY KOZEL, BEGGING PARDON AND FAVOR (1992) (explaining the language and practice of medieval petitioning in Western Europe, and its links to religious and legal norms). This historical heritage is still evident in the linguistic roots of the core judicial term “to plead,” which can be traced back to the thirteenth and fourteenth centuries in both its legal meaning of, “[to raise or prosecute a suit or action ... to litigate,” and in the more general meaning of, “to make ... a supplication; to beg, entreat.” OXFORD ENGLISH DICTIONARY 1026–27 (2d ed. 1989). Note that the definitions include a common element of appealing to a higher power, including spiritual entreaties to God.
pursuing him for years around the English countryside in search of an audience.379

Within the last several hundred years, however, law became divorced from the person of the monarch in both England and France. Specialized legal institutions enjoying a degree of independence from the administrative state had assumed the responsibility for adjudicating the merits of many grievances. How did this happen? This Part argues that the relative sociopolitical diversity of medieval England and France played a crucial role in leading the monarchs to cede a degree of power to judicial institutions separate from the person of the monarch himself.

A. England

Early English institutions of local government strongly resembled corresponding Chinese institutions in their linkage of judicial and administrative power. English sheriffs are one example. Sheriffs emerged in the tenth and eleventh centuries as representatives of a unified Anglo-Saxon kingdom at the county level.380 Their duties included judicial and administrative responsibilities, one of which was the collection of taxes.381 At least twice a year, the sheriff presided over the shire-moot, a local assembly that combined judicial, legislative, and administrative functions, and to which aggrieved citizens could address their pleas.382 Other local assemblies and entities also served judicial functions. For example, individual feudal lords held court for the peasants residing on their manors.383 Similarly, urban boroughs held regular assemblies to provide justice for the merchants and to resolve their disputes.384

After the Norman conquest of England in 1066, the gradual accumulation of political and economic power in the hands of the sheriffs began to shift the institution. In some cases, the position of sheriff was purchased by wealthy local landowners. Some attempted to make the position a hereditary one passed on within local noble families.385 The concentration of administrative power and nearly unlimited legal jurisdiction in the hands of the sheriffs created a potent political threat to the power of the monarch.386 Tension between the monarch and the sheriffs was continuous. Nearly a dozen sheriffs were purged in 1129 under Henry I.387 The monarch “so thoroughly distrusted the sheriffs... that constant reductions of their jurisdiction were made.”388 Dissatisfaction with the sheriffs’ power was not limited to the

381 J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 19 (1st ed. 1971).
382 J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 7 (4th ed. 2002).
383 Id. at 8–9.
384 Id. at 7.
386 Id. at 14; PLUCKNETT, supra note 380, at 93.
387 BAKER, supra note 381, at 15.
388 PLUCKNETT, supra note 380, at 93.
monarch alone. The concentration of power in the hands of the sheriff equally threatened the interests of lesser nobles within the shire.389

The English crown consequently made multiple efforts to reduce the legal jurisdiction of the sheriffs and shift the focus of citizen petitioning to central institutions. In the mid-eleventh century, the English monarchy developed the institution of the justiciar, a trusted delegate of the king’s own court empowered to handle both the judicial and administrative matters of state at either the national or local level. Although a useful tool to counteract the locally based power of the sheriffs, the concentration of judicial and administrative authority in the justiciars also posed a political threat to the power of the monarch, and were discontinued after the mid-thirteenth century.390

A separate practice, which emerged at roughly the same time, was to dispatch traveling justices on an ad hoc basis from the monarch’s court to the localities to supervise the work of the sheriffs. These did not necessarily constitute courts of law. Indeed, the visit of a “general eyre” to a particular shire involved not only the hearing of individual citizen petitions, but also a massive review of all administrative, financial, and judicial matters of the local government. They represented less a legal review of particular cases and more a temporary, total displacement of local government by central control. The provision of justice also proved financially profitable, generating large fines and seizures to the Crown directly, rather than to the sheriff. The cost and social disruption caused by the holding of general eyres generated extreme public opposition, leading to their elimination by the mid-fourteenth century.391

Public dissatisfaction with the eyres appears to have resulted in Henry II’s 1178 designation of a group of judges to remain resident in Westminster, rather than perambulate through the country. No distinction between the judges who went on circuit and those who remained behind was made initially. However, perhaps because of their separation from the first-hand political imbroglios of the general eyres, judges resident in Westminster gradually emerged as professional judges of law (rather than administrative supervisors) during the early thirteenth century. This, in turn, led to a more fixed locus for the presentation of petitions to the king. Rather than pursue the king himself throughout the realm, petitioners seeking justice could present them to a specialized, fixed judicial apparatus separated from the financial and administrative functions of the eyre.392

Apart from royal interests in administrative efficiency and political control, the founding of the English judicial system also embodied an element

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389 Indeed, as discussed below, one of the major demands imposed upon the king (and inscribed into the Magna Carta) during the barons’ revolt of 1215 was the express limitation on the judicial power of the sheriff.

390 Baker, supra note 382, at 15.

391 Id. at 14–16. The institution of medieval English general eyres bears an intriguing similarity to the work team investigations conducted, for example, by Shaanxi provincial authorities in handling the Faxi mass petition discussed earlier. Both operated as nothing less than a total review of local governance.

392 Id. at 18–20. The judges who accompanied the king on circuit gradually evolved into the King’s Bench, a court with primarily criminal and appellate jurisdiction. See id. at 39–47.
of a compromise with the nobility. As mentioned earlier, nobles opposed the concentration of judicial power in the hands of the sheriffs and felt burdened by the need to appeal directly to the king in person. The barons' revolt in 1215 against the enfeebled rule of King John compelled the monarchy to make key concessions to the nobility. In particular, the nobles forced the monarchy to issue the Magna Carta, which actually confirmed certain of Henry II's judicial reforms. The charter required that "common pleas shall not follow the [king's] court, but should instead be held in some certain place." With this development, the institution that would evolve into the Court of Common Pleas became separated from the person of the king himself and fixed permanently in Westminster. In addition, the Magna Carta formalized prior royal checks on the judicial power of the sheriffs, forbidding them from holding pleas of the Crown. As Biancalana notes, "[s]trong but limited royal power which recognized [the nobles'] legitimate interests enhanced their real power." The development of English courts represented an extension of royal authority, but one which occurred with the overt approval of the nobles, who sought to direct the extension of this power into fixed channels.

Central efforts to employ royal courts as instruments of national unity also led to an expansion of authority over local and ecclesiastical courts. As mentioned earlier, numerous borough and manorial courts existed in medieval England, independent of the control of the sheriff. Because of this independence, they were largely unaffected by the early court reforms which aimed at reducing the power of the sheriff. However, by the fifteenth and sixteenth centuries, the growth of the common law courts began to gradually eat into their jurisdiction. This trend was encouraged by the common practice of the King's Bench to upset municipal court judgments for technical reasons, perhaps with the aim of asserting control over the valuable revenue source represented by the urban mercantile courts and their docket of debt cases.

Royal support for the extension of common law jurisdiction led to clashes with ecclesiastical courts. Since the twelfth century, these had existed as an entirely parallel legal structure within England, with the papal courts in Rome at its apex. Naturally, this posed a challenge to the unrestricted power of the English kings. From early struggles over the criminal liability of the clergy in the mid-twelfth century, most notably in the Thomas Becket affair, church-state tension eventually resulted in a broad compromise between jurisdiction of secular and ecclesiastical courts in the late thirteenth and early fourteenth centuries. Ecclesiastical courts were given jurisdiction over marital and moral issues, the royal courts responsibility for most criminal and property cases. The English Crown's break with Rome in the sixteenth century led to a
yet further assumption of jurisdiction by the royal courts at the expense of ecclesiastical courts. 399

The seeds of the English national judiciary thus lie in the simultaneous efforts of the Crown to expand its authority, check the power of the sheriffs, and sap the jurisdictional authority of competing institutions, and that of the English nobility to limit the expanded power of the monarch to defined channels. These conflicting tensions created the need for institutional compromise to allow both sides to meet their goals. This in turn led to the creation of a judiciary with a degree of separation from the person of the monarch.

B. France

French legal developments resembled those in England. Prior to the twelfth century, the Capetian monarchy relied on a cadre of local officials, the prevôts, to handle military, financial, and judicial tasks for the Crown in a particular region. 400 As with their English counterparts, the sheriffs, the prevôts posed multiple problems for French monarchs. First, the prevôts commonly engaged in tax farming, often bringing them under the sway of local landowners. 401 Second, by the eleventh century, many prevôts had succeeded in making their offices hereditary, presenting a challenge to the power of the monarch. 402 This gradually led to the emergence of a second institution during the twelfth century, that of the baili. Unlike the locally rooted prevôts, the baili were salaried knights dispatched on a roving basis by the monarch to oversee operations of the prevôts and hear complaints as to their behavior. In this role, they resembled the itinerant justices of the English grand eyres. 403

While the dispatch of royal bailis to the provinces was an increase in centralized judicial control, royal jurisdiction remained tenuous over much of the land. 404 Jurisdictional disputes between the agents of the monarch and those of the local lords or towns remained rife. 405 Following the annexation of the southern province of Languedoc to the French Crown in the thirteenth century, the town consuls of Toulouse refused to cooperate with the Crown representative, excluding him from criminal trials and barring appeals to him from the city courts. 406 Disputes such as these gradually gave rise to legal institutions with a more attenuated relationship with the Crown. The conflict in Toulouse reached a negotiated resolution only with the French monarch’s creation of a common court for the city, composed of the town consuls, but presided over by the Crown representative. 407

Similar tensions plagued relations between the baili and the nobles. The latter were frequently unwilling to submit to review of their actions by the

399 Id. at 126–32.
400 HARDING, supra note 397, at 51.
403 HARDING, supra note 397, at 117–19; France, supra note 401, at 466.
404 JAMES GIVEN, STATE AND SOCIETY IN MEDIEVAL EUROPE 83 (1990).
405 Id. at 80–88.
406 Id. at 83.
407 Id.
monarch's direct representatives. This led in the mid-thirteenth century to the gradual development of Parlement, a designated royal household court in which complaints to the king were heard.\textsuperscript{408} Importantly, while the bailli presided over these courts, other nobles and members of the clergy, who might be expected to have a degree of impartiality in disputes between the nobility (or commoners) and the bailli, also participated.\textsuperscript{409} Involvement of the bailli created tension, for it was precisely the decision of the bailli that was frequently under appeal. This challenge to the impartiality of royal justice led to the gradual curtailment of bailli participation in Parlement until 1296, when they were totally forbidden to serve as members.\textsuperscript{410}

The administrative-judicial compromise embodied in the creation of Parlement made possible the foundation of the modern French state. Parlement's oversight of the king's representatives enabled the monarch to address the fundamental principal-agent problem in governance. As Harding notes, "the king's feudal jurisdiction was reinforced by the Parlement's supervision of the activities of the baillis . . . [T]his judicial procedures were simultaneously the administrative channels without which the king's government could have done nothing."\textsuperscript{411} Like its English counterparts, the Courts of Common Pleas and the King's Bench, Parlement evolved into a high court of justice for the land.\textsuperscript{412} As in England, the French courts also succeeded in gradually expanding their jurisdiction at the expense of other judicial entities. By the end of the fifteenth century, the Parlement in Paris had asserted its authority to review complaints against ecclesiastical judges.\textsuperscript{413}

Unlike its English judicial counterparts, Parlement also developed a more clearly political role, which arose from its responsibility to record royal enactments. Originally a purely notarial function, Parlement's political role gradually evolved into formalized powers to review, challenge, and delay any proposed legislation by the monarch.\textsuperscript{414} In pre-Revolutionary France, Parlement emerged as the "chief institutional opponent of royal arbitrariness," even under the absolutist rule of Louis XIV.\textsuperscript{415} As in England, legal institutions created out of political compromise between the French royalty and

\textsuperscript{408} Parlement here refers to the Parlement of Paris, the oldest and most powerful of the judicial bodies. Additional conquests of territory for the French Crown led to the creation of multiple provincial parlements with analogous powers and responsibilities. SHENNAN, supra note 402, at 83–84.

\textsuperscript{409} HARDING, supra note 397, at 163–64.

\textsuperscript{410} Id. at 123–24. The disappearance of the king's direct administrative officers from Parlement was followed in the subsequent centuries by the gradual expansion of its membership to include members of the lesser nobility and, ultimately, commoners with experience in law. SHENNAN, supra note 402, at 110–48.

\textsuperscript{411} HARDING, supra note 397, at 165, 167.

\textsuperscript{412} Although increasingly independent with the passage of time, the position of the French Parlement as the highest judicial court in the land was not unchallenged. Other royal courts vied with it for influence. SHENNAN, supra note 402, at 79–81.

\textsuperscript{413} Id. at 82.

\textsuperscript{414} Id. at 3–4.

\textsuperscript{415} Id. at 4.
n nobility laid the foundation for the future development of independent judicial and legislative institutions.416

Conclusion

Modern English and French courts (as well as their parliamentary precursors) developed as institutions of compromise in struggles between central and local power during the Middle Ages.417 As with Chinese emperors, medieval Western European monarchs faced a basic principal-agent governance problem. Absent sophisticated royal tools to manage local elites such as the sheriffs and prevôts, the concentration of taxation, political, and judicial authority in their hands offered wide scope for local abuses and the potential for organized political opposition to central rule. This problem was exacerbated in Western Europe by the lack of anything resembling the imperial Chinese bureaucracy, which gave the central government at least partial control over local magistrates through the examination and performance review systems.

English and French monarchs initially attempted to address this problem by simply increasing top-down controls over local officials and stripping their judicial authority through the use of top-down measures, such as general eyres and bailli. This, however, encountered opposition from the nobility. Unchecked royal power threatened their interests.

Judicial institutions, separated from the person of the monarch, emerged as the answer to this principal-agent problem. In their effort to check the local power and abuses of sheriffs and prevôts, the English and French crowns developed judicial institutions to which the monarch himself ceded a degree of control. The nobility supported the emergence of these institutions, viewing them as important checks on the power of the monarch and his local agents. As a result, judicial power was gradually separated from administrative power for the purpose of extending central rule first over local officials, and later, over alternate jurisdictions such as ecclesiastical institutions.

Imperial China, a more centralized state, faced different pressures. No independent nobility or bourgeoisie existed to press for the development of independent judicial institutions as a check on the power of the emperor or his local agents, nor did the imperial bureaucracy feel the need to develop them. Imperial bureaucratic controls such as examination and performance review already gave central Chinese rulers a degree of control over the magistrates. Judicial power and law consequently remained but a subset of the emperor's overall personal authority to govern.

416 Although severely reduced during the reign of Louis XIV, medieval rights embodied in the institution of Parlement became a core aspect of demands against royalty made during the French Revolution.

VIII. ANALYSIS

A. Xinfang Governance Role Overlaps and Conflicts with Formal Legal Institutions

Modern Chinese petitioning practices and xinfang institutions are not new. They are directly linked to prior imperial and post-1949 predecessors. Xinfang institutions and their predecessors merge administrative and judicial roles commonly separated in Western political and legal systems. Xinfang bureaus channel information to leadership figures, help check the performance of local officials, disseminate propaganda, and assist in resolving (or repressing) grievances that threaten social stability. The xinfang system is a multipurpose governance tool employed by an authoritarian, bureaucratic regime to rule China.

Xinfang institutions also serve multiple roles for petitioners. They provide an arena for limited citizen political participation in an otherwise closed system. They also serve as channels for petitioners to seek recourse for violations of their rights. In the absence of open political and legal channels, petitioning is one of the main methods by which Chinese citizens challenge and participate in the official decisions that affect their lives.418

Petitioning practices and institutions form a coherent background upon which modern post-1979 legal institutions have been superimposed. Modern legal institutions have not eradicated or replaced petitioning institutions. Xinfang bureaus continue to be the target of vigorous citizen petitioning, often regarding legally cognizable grievances. Formal Chinese legal institutions are saturated with elements of traditional petitioning norms and practices.419

Although xinfang and formal legal institutions overlap functionally, their goals conflict in two important ways. First, the xinfang system disciplines officials based on the scale of petitioning incidents and the seriousness of the social instability they generate. The xinfang system reacts to the external manifestations and consequences of particular petitions, not merely their underlying legal merit. Second, the xinfang system relies on resolving individual grievances by attracting the attention of high Party officials to resolve particularly serious problems. It is a tripwire device designed to trigger political intervention in particular cases, not a means of assuring justice in accordance with universal legal norms. Simply put, the xinfang system is based on the rule of man (ren zhi), rather than the rule of law (fa zhi).

B. A Cycle of Destabilization?

Chinese xinfang institutions support a destabilizing cycle of citizen petitioning. First, they encourage the politicization of individual legal

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418 Cai Yongshun, supra note 19, at 427–31. This phenomenon is not unique to China. Cai notes that the former Soviet Union and the socialist countries of Eastern Europe also maintained petitioning institutions. This is suggestive of a general link between authoritarianism and petitioning practices.

419 As one Chongqing court official phrased it, “the existence of the xinfang system provides a legitimate means for other forces to interfere with judicial independence.” Li Hongjin, She su xinfang wen ti yan jiu, [Research Into the Problem of Legally-Based Petitions], CHINA COURT NET, July 12, 2005, http://www.chinacourt.org/public/detail.php?id=169052. The overlap between xinfang institutions and formal legal institutions also suggests that they may be an interesting subject of research and cooperation for foreign observers and nongovernmental organizations interested in developing the rule of law in China.
grievances. *Xinfang* institutions encourage disgruntled petitioners to recast individual legal injuries into broader, more generalized grievances in an effort to compel higher authorities to address them. As one Chinese scholar has noted, citizen use of *xinfang* channels diverts cases out of formal legal channels, leading to disuse of legal mechanisms such as the Administrative Litigation Law and weakening the authority of the judiciary.420

Second, *xinfang* institutions create incentive systems that encourage the escalation of citizen petitioning efforts. *Xinfang* responsibility systems reward the large-scale mobilization of protestors in mass petition movements by making it more likely their goals will be met. This incentive system supports an evolutionary spiral of petitions, encouraging them to grow larger, more professional, and increasingly directed at higher-level government organs.421 At the same time, *xinfang* responsibility systems encourage local officials to expend greater and greater resources repressing collective petitions in order to protect their own job security. This inherent tension fosters destabilizing social behavior on the part of both local officials and citizen petitioners.

A recent survey of the *xinfang* system sponsored by top Chinese leadership figures and conducted by the Chinese Academy of Social Sciences in the fall of 2004 reached similar conclusions.422 According to Yu Jianrong, the *xinfang* system "leads all forms of problems and conflicts to concentrate at the top levels of the government."423 *Xinfang* incentives have led to a rise in mass petitions as citizens increasingly use social mobilization to protect their rights. This trend, in turn, has "provided fertile soil for the rapid growth of political radicalism among petitioners."424 The survey asked 632 petitioners in Beijing "what will you do if you are dissatisfied with the results of your petitioning?"425 Of the respondents, 70.2 percent answered "organize the masses to negotiate directly with the government," while 53.6 percent chose "do something to frighten the cadres."426

Other academics who have studied the *xinfang* system have reached different conclusions. For Cai, "the [*xinfang*] system helps maintain social

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420 Yu Jianrong, supra note 79, at 214–15. Cai argues the contrary, that citizen petitioning "contribute[s] to political development in China by prompting the government to strengthen the legal institutions." Cai Yongshun, supra note 19, at 449–50. This assertion has some truth, as an escalating spiral of mass petitions does force central Chinese leaders to at least consider political and legal reform. However, it overlooks the extent to which citizen petitioning and official responses (such as the increased use of *xinfang* responsibility systems) undermine the authority of Chinese legal institutions in practice.

421 If an evolutionary spiral exists between Chinese bureaucratic practices of handling grievances and social instability, it raises interesting historical questions. For example, are the cyclical outbreaks of internal unrest under the two thousand years of Chinese imperial rule in any way connected to mass petitioning movements? To what extent did the leaders of earlier Chinese revolutionary movements acquire organizational and leadership skills through the process of leading increasingly large mass petition movements against authorities?

422 The content of the report appears to have been released only in 2005. Some details appeared in early media reports in the fall of 2004. See Zhao Ling, Guo nei shou fen xin fang bao gao huo gao ceng zhong shi [China's First Report on Xinfang Work Receives High-Level Attention], NaN FANG ZHOU MO [SOUTHERN WEEKEND], Nov. 4, 2004.

423 Yu Jianrong, supra note 79, at 212.

424 Id. at 216–17.

425 Id.

426 Id.
stability by preventing resentful citizens from resorting to extreme means, because it can partly accommodate their needs." Cai contends that the system functions as a "safety valve" for tensions at the local levels, allowing central authorities to selectively intervene in and resolve particular problems. For Lorentzen, mass petitions function as an "alarm system" for central authorities that helps maintain political stability by calling attention to misbehavior of particular local officials.

This Article argues that, while Cai and Lorentzen accurately identify the short-term function of the xinfang system and citizen petitioning in prompting central intervention, their analyses fail to focus on the destructive long-term effect of the xinfang incentive system on both state and society. People learn to "work the system." If mobilizing mass petitions is a more effective way to resolve grievances than resorting to other channels, then citizens will not only mount mass petitions, but will also gradually become better at organizing and carrying them out. Formal legal channels may lose legitimacy as citizens opt for other means to resolve their grievances. Because of limited time and resources, central institutions can only respond to a fraction of petitions. This limitation may be generating a "ratcheting up" effect, as state institutions become immune to small petitions, and petitioners effectively compete with each other to trigger the limited attention of the central government through increasingly large mass petitions.

C. Comparison with U.S. Institutions

Practices analogous to Chinese petitioning do exist in other countries, including the United States. As anyone who has worked in constituent services for a U.S. legislator can attest, the United States does not lack for aggrieved citizens who repeatedly phone to prompt political representatives to intervene in their particular disputes. Individual U.S. legal cases can snowball into larger political issues as well, as illustrated by the public reaction to court verdicts in cases of police brutality against African-Americans in Los Angeles or any number of ongoing abortion cases. Aggrieved citizens in the United States use generalized appeals and increased social mobilization to press the political system to respond to their demands. U.S. legislators and politicians respond to such organized citizen pressure, sometimes making efforts to intervene in ongoing legal matters.

Despite these similarities, critical differences exist between the U.S. and Chinese political and legal institutions. First, many of the political roles played by the Chinese xinfang system are fulfilled by open democratic participation in the United States. The rights of individuals to select their own representatives, to publish their opinions, and to openly organize political associations limit the need for the government to designate particular channels to funnel shared citizen opinions to top leaders. Second, an independent

427 Cai Yongshun, supra note 19, at 448.
428 Id. at 448–49.
429 Lorentzen, supra note 332, at 1.
431 Lorentzen, supra note 332, at 3; see Cai Yongshun, supra note 19, at 431.
judiciary helps handle many individual grievances. Political leaders simply do not (and cannot) involve themselves in many legal issues.

These institutional differences encourage different citizen practices. The presence of independent U.S. judicial institutions creates incentives for many (but not all) social grievances to become depoliticized, particularized, and pursued in the absence of social mobilization—the reverse of the petitioning behavior encouraged by xinfang institutions. Most U.S. plaintiffs would rather show up at court with a single good lawyer than with several hundred raucous supporters. Open democratic political participation means that citizens do not need to seek higher-level discretionary involvement for many collective grievances. In many cases, citizens can organize themselves to vote out corrupt local officials, instead of attempting to gain the ear of central leaders.

In short, the authoritarian control of the Chinese political and legal systems exercised by the Communist Party breeds petitioning behavior. When intervention by higher-level officials in particular disputes is always a possibility, no matter how remote, then repeated, increasingly large citizen petitioning of higher-level authorities may be rational behavior. When citizens cannot rely on independent judicial channels and open political participation to protect their rights, then legal and political disputes collapse into one and are swept towards xinfang channels.

D. The Rule of Law or a Modernized Form of Traditional Petitioning?

The persistence of petitioning practices and xinfang institutions, even within formal Chinese legal institutions, raises the question: To what extent do modern Chinese legal trends actually represent entirely new developments, as opposed to adaptations of traditional petitioning methods?

The constitutionalism movement in China is a case in point. Some observers portray the increased use of constitutional language and rhetoric in citizen efforts to combat government power as a groundbreaking step in the development of the rule of law in China. To be sure, these Chinese legal activists employ new tools, including internet petitions and legal appeals to the court system. But are these actions substantively different from peasant use of the Party's No. 1 Directive on the reduction of the agricultural tax burden in their mass petitions to local township authorities?

Activist Chinese intellectuals who mount challenges to official action believe the answer is "yes." But both traditional petitioners and modern constitutionalists share significant similarities in their reliance on generalized, repeated appeals to a variety of institutions and their attempts to prompt discretionary leadership involvement to achieve their demands. Both use social mobilization as a tactic to coerce concessions out of recalcitrant authorities. In rural areas, this takes the form of thousands of petitioners beating drums and delivering handwritten petitions to township cadres. Urban legal reformers use mass internet petitions, favorable media commentary, and faxed petitions to the NPC. In both cases, the precise legal merits of their

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433 Interview with anonymous Chinese lawyer (2005) (name withheld to protect source).
grievances are but one part of a general effort to gain leadership attention and compel action. Further, the nature and merit of their legal challenges are secondary to their ability to mobilize other citizens, the media, and the Internet to pressure the authorities in support of their goals.

This Article does not argue that the heightened citizen use of legal or constitutional rhetoric to limit government action is useless or undesirable. Rather, such developments may simply represent an incremental evolution of prior petitioning practices instead of a complete break with the past. The development of a modern court structure and the passage of laws such as the Administrative Litigation Law may be creating yet another locale for the pursuit of traditional petitioning practices. Rule of law institutions may be merging with traditional Chinese petitioning institutions, instead of displacing them. Rather than indicating the emergence of Western-style rule of law, China may be experiencing the evolution of a modernized version of the traditional petitioning process, perhaps enlarged in scope and range, but still recognizably the same.434

E. Are the Rule of Law and Political Liberalization Inseparable in China?

Many Chinese leaders believe that perfecting formal legal institutions can address the problems associated with xinfang institutions without carrying out accompanying political reforms. For them, persistent citizen use of the xinfang system merely reflects the weaknesses of judicial institutions and a lack of legal understanding on the part of Chinese citizens. Raising the legal consciousness of the population and reforming the courts, the theory goes, will naturally lead to an appeasement of popular grievances and a withering away of the xinfang system.435

This author disagrees. The xinfang system plays a key role in allowing social mobilization and participation in an otherwise closed political system. Chinese citizens use it because they understand how the “rules of the game” actually work and because Chinese leaders provide them with no better

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434 The 2003 Sun Zhigang incident provides an example of this process. The death of a young designer, Sun Zhigang, at the hands of Guangzhou police in 2003 ignited a national media outcry. Legal reformers submitted a petition to the state prosecutor requesting the investigation of Sun’s death. A second group of reformers petitioned the NPC, arguing against the constitutionality of the custody and repatriation (C&R) system, the detention system under which Sun had been held at the time of his death. Although the NPC did not formally act on the second petition, the State Council abolished the C&R system in the fall of 2003, in a move that was widely seen as a concession by Chinese leaders to the public pressure generated by Sun’s death. 2004 C.E.C.C. ANN. REP., supra note 131, at 18. A well-respected Chinese lawyer active in progressive legal reforms, including the Sun Zhigang controversy, has noted that citizen activities in the Sun Zhigang case constituted a new form of “public interest litigation” (gong yi susong). However, he expressly characterized these activities as a “movement” (yun dong) aimed at forcing concessions from authorities through the judicious use of public pressure, rather than a precise legal challenge. Interview with anonymous Chinese lawyer, supra note 433.

435 For example, at a recent State Council conference on improving xinfang work, Politburo member and minister of public security Zhou Yongkang called for an “increase in legal education and a strengthening of legal consciousness” as a step towards encouraging petitioners to raise their grievances in accordance with the law and maintain social stability. Guo wu yuan zhuo kai jia qiang gai jin xin fang gong zuo zhuang ti hui yi, [State Council Opens Conference Onon Strengthening and Improving Xinfang Work], CHINACOURT NET, Nov. 4, 2005., http://www.chinacourt.org/public/detail.php?id=184220. The head of the Supreme People’s Court has identified the reduction of xinfang petitions to the judiciary as one goal of Chinese court reform. Zui gao fa yuan ti chu 6 xiang cuo shi jia qiang shen pan gong zuo jian du [The Supreme People’s Court Proposes Six Measures to Strengthen Trial Supervision Work], XIN HUA, Oct. 25., 2005., http://news.xinhuanet.com/politics/2005-10/25/content_3683034.htm.
recourse. The steady rise in mass petitioning behavior not only reflects citizen complaints about the actions of individual officials in carrying out policy decisions, such as the construction of major hydroelectric projects, but also indicates a growing collective demand for participation in the process of drafting these policies in the first place. No amount of judicial reform, absent other reforms, will be sufficient to address this need.

Political pluralism may be a necessary condition in the shift from the rule of man to rule of law. It may support the development of independent institutions capable of handling many of the grievances currently brought through the xinfang system. In both England and France, medieval political diversity stimulated the beginnings of independent judicial institutions and the separation of judicial power from the in personam power of the monarch. Judicial institutions emerged from feudal petitioning institutions as part of a political compromise between the monarchy and nobility, each seeking to constrain the power of the other.

In contrast, xinfang institutions and practices emerged in an authoritarian Chinese system reliant on top-down performance reviews and examinations to manage local elites. The bureaucratic personnel system functionally served the role of an independent legal system for the purpose of handling relations between magistrates and the imperial court. Absent pressures from an independent nobility, judicial authority simply remained part of an undifferentiated authority to govern that was fixed in the person of the emperor himself. Given this merger of judicial and administrative functions, any effort to reform the judicial functions of the system necessarily called into question imperial governance more generally. For example, magistrate efforts to develop independent judicial practices, such as permitting officials to reject meritless complaints and insert their own opinions as to how particular petitions should be resolved, risked corrupting the imperial flow of information and weakening the emperor's ability to intervene in particular cases. As a result, these were strangled in the cradle by a central authority determined to maintain its grip on the tools of governance.

Reformers who would seek to improve the xinfang system without handling the core issue of political control would be well advised to bear these historical precedents in mind. Serious reform to the xinfang system requires addressing the fact that petitioning institutions serve as an authoritarian governance tool to support Party rule. Xinfang reform, and the move toward rule of law, requires addressing basic questions of political liberalization.

F. Failure of the Chinese Government to Pursue Needed Reforms

Chinese authorities are not unaware of the problems associated with the xinfang system. In 2004, the Chinese Academy of Social Sciences (CASS) conducted an internal study (commissioned by the State Council) of the

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See supra note 58 and accompanying text.

437 Naturally, support for this point would be rendered even stronger if further research could demonstrate a link between political pluralism and establishment of the rule of law in other societies, such as Taiwan, Korea, and Japan. At least one expert has drawn a link between greater political pluralism in South Korea and subsequent democratic, but not necessarily legal, reforms. Law in Political Transitions: Lessons from East Asia and the Road Ahead for China, Hearing Before the Cong.-Exec. Comm'n on China, supra note 432, at 37–39 (written statement of John K. Ohnesorge, Professor of Law, University of Wisconsin School of Law).
xinfang system, as part of central efforts to reform it. The report noted many of the institutional problems associated with the xinfang system discussed above. It presented reform proposals to Chinese leadership aimed at weakening the power of xinfang institutions, eliminating xinfang responsibility systems, removing the responsibility of local governments to "retrieve" petitioners who reach Beijing, and gradually shifting responsibility for handling petitions to local peoples' congresses.\textsuperscript{438} To strengthen the judiciary, the proposals aimed at reducing the xinfang system's power to redress citizen rights while shifting the role of the xinfang system as a locus for citizen political participation to LPCs.\textsuperscript{439}

Chinese leaders appear to have decided to strengthen many of the core characteristics of the xinfang system in response to mounting problems, rather than embarking on more sweeping political and legal reforms.\textsuperscript{440} The 2005 national xinfang regulations reject the changes proposed in the CASS study. While they purport to bring the xinfang system closer to formal legal norms, they reinforce traditional xinfang practices through more formalized reporting requirements and the strengthened use of top-down disciplinary measures.\textsuperscript{441}

Recent developments offer a vivid illustration of central policy choices. During the summer of 2005, Chinese authorities mounted implementation campaigns for the new xinfang regulations, stressing centralized handling of petitions under the leadership of the public security forces.\textsuperscript{442} In December 2005, the general offices of the Communist Party Central Committee and the State Council jointly issued an opinion calling for the strengthening of responsibility systems directed at "core leaders" (yibashou) at each level of the Party and government hierarchy.\textsuperscript{443}

The decision to strengthen elements of the xinfang system risks exacerbating existing social unrest. The xinfang system, and authoritarian polity it serves, channels social activism into increasingly well-organized mass petitions. This system does not breed a cadre of legal professionals that coolly

\textsuperscript{438} Yu Jianrong, supra note 79, at 218; Zhao Ling, supra note 15. Other scholars have issued similar calls. See Zhang Youzhi & Li Shiyuan, supra note 249, at 65-66 (2002).

\textsuperscript{439} Yu Jianrong, supra note 79, at 218.

\textsuperscript{440} Similar tendencies towards strengthening traditional aspects of the petitioning system can be seen in a range of academic proposals for reform as well. See Li Xiaoding, Shang fang gai you fa lu lai bao zhang he gui fan, [Petitioning Should Be Protected and Regulated Under Law], MIN ZHU YU FA ZHI SHI BAO [DEMOCRACY AND RULE OF LAW], May 27, 2004 (on file with author); see also Zhao Donghui, supra note 269 (proposing 1) the creation of a Party supervisory apparatus for xinfang work, and 2) standardizing the xinfang system by charging a Party vice secretary at each level of government with the responsibility of running the xinfang bureau).

\textsuperscript{441} A similar tendency to revert to traditional xinfang practices is evident in the recent creation of a twenty-eight-bureau consultative committee to facilitate the handling of petitions to the central government. Zhong yang jian li chu li xin fang wen ti lian xi hui yi zh i du [Central Government Establishes Joint Conference Mechanism to Handle Petitioning Problems], XIN JING BAO [BEIJING NEWS], Dec. 3, 2004 (on file with author).

\textsuperscript{442} Shen Lutao, Guo qu 3 ge yue gong an jiguang jie jue qun zhong xinfang wen ti 16.3 wan qi [In The the Past Three Months, Public Security Organs Have Resolved 163,000 Xinfang Problems from the Masses], REN MIN WANG [PEOPLE'S NET], Aug. 18, 2005, http://legal.people.com.cn/GB/42735/3626816.html.

resort to the formal legal system to resolve their problems. Nor does it encourage the development of civil and political institutions that might aid in the gradual evolution of China’s political and legal system. Rather, it encourages the seeds of social instability that Chinese leaders seek to avoid.