

# RULE BY LAW

The Politics of Courts  
in Authoritarian Regimes



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CAMBRIDGE

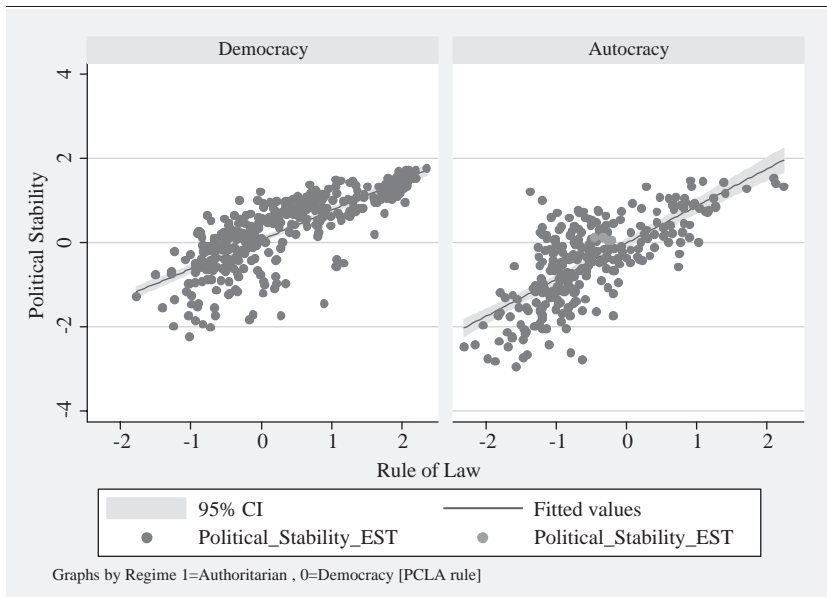


FIGURE 8.1. Rule of law vs. political stability indicators among democracies and autocracies (1994–2002). *Sources:* Global Governance Indicators (2005) and Cheibub and Gandhi (2005). Due to data constraints on regimes, these plots show the results from 1994 to 2002, in two-year increments. The lighter dots represent China.

a meaningful rule of law affects their prospect for survival. Using the global governance indicators (GGI) compiled by Kaufmann, Kraa, and Mastruzzi (2005) and the updated data set on regimes by Cheibub (2004), we find that autocracies that rate highly on the rule-of-law dimension also appear more stable politically (Figure 8.1). It is less clear *how* autocracies successfully introduce reforms that strengthen the rule of law.

The case of the People’s Republic of China since 1978 presents us with a remarkable case in which to unpack the process by which legal innovations are diffused in an authoritarian regime. It is a truism among comparativists that China has never been a democracy, regardless of the specific coding rules that are used to categorize regimes in political science. Therefore, the persistence of authoritarianism in China allows us to rule out any possibility of institutional contamination as occurs when new authoritarian regimes “inherit” legal institutions from the democracy that they overthrow. Historical Chinese regimes may have developed distinctive legal systems (Bernhardt, Huang, and Mark 1994; Huang 2001), but one cannot reasonably claim that Qing, Republican

(Xu 1997), or PRC courts under Mao operated in a manner consistent with modern principles of the rule of law.

The regime's self-proclaimed goal of building the "rule of law" in China (依法治国) is a large-scale social experiment in a "hard" case: formal institutions have been introduced by the state on a social terrain that seems highly unfavorable to the development of the rule of law. The contradiction inherent in the Chinese legal reforms has been widely noted. There is no pretense of judicial independence: judges – who are almost always members of the Communist Party – are appointed by the state and vetted by Party Organization Departments set up within the judiciary that must in practice answer to bureaucratic superiors within local governments (Cohen 1997; Zhao 2003). Rule of law "with Chinese characteristics" requires party control over the judiciary (Lubman 1996; Peerenboom 2002). Though appeals are possible, there is no proper judicial review, and the execution of civil judgments is uncertain (Clarke 1995). Furthermore, information flows are heavily controlled, and social activists and lawyers who engage judicial institutions are routinely harassed, or worse. Going to court – particularly if one challenges state actors or seeks to sue the state – remains a highly charged political affair (Gallagher 2005; O'Brien and Li 2005).

If the Chinese experiment were to succeed under these adverse conditions, we would stand on less precarious ground arguing that authoritarian regimes *can* build something approaching a meaningful rule of law. Indeed, despite the vast shortcomings of the Chinese legal system, the progressive trend is unmistakable: the party is publicly committed to modernizing the legal system and building more autonomous judicial and legal institutions than is typically the case in Leninist regimes (Diamant, Lubman, and O'Brien 2005; Peerenboom 2002; Potter 2003; U.S. Congressional-Executive Commission on China 2002).

This chapter does not seek to argue whether China is or is not a rule-of-law society. A process that has taken centuries to mature in many countries cannot possibly be compressed over a few years, even by elites that are prone to social and institutional engineering. More modestly, my goal is to take Chinese legal institutions as they are perceived and utilized by ordinary Chinese citizens and to specify how and why these seemingly incongruous institutional innovations in an authoritarian regime are taking root, or not. I argue that understanding the initial phase of the diffusion of institutions (here, courts) is a necessary but not a sufficient step to establishing the basic conditions for the development of the rule of law in the long run. The long march toward *fazhi* requires at least courts that are reasonably trustworthy and render meaningful judgments that increase the appeal of the institution among potential adopters.

THE SURVEY ON THE INSTITUTIONALIZATION OF LEGAL  
REFORMS IN CHINA

Quantitative evidence on Chinese legal reforms is scarce. Pioneering empirical work has taken place (Michelson 2002, 2006), but to our knowledge, the national survey on the Institutionalization of Legal Reforms in China (ILRC) is the first national sample of its kind. We collected data on the types and extent of civil, economic, and administrative disputes on a national scale to examine in detail the multiple mechanisms by which grievances evolve.

The survey is based on a multistage stratified sample in which each province, municipality, or autonomous region is taken as a stratum. Within each stratum, counties (or urban districts) were selected at random by PPS. Within each county, two townships (or their street committee counterparts in urban areas) were also selected at random. We used 2000 census data to develop measures of size at the township level. Below townships, a spatial sampling design was used to avoid the problem of coverage errors caused by imprecise household registration lists that exclude internal migrants and temporary residents (Landry and Shen 2005). Thus, the survey provides a solid foundation for testing the validity of prior case study findings and also allows making point predictions and generalizable propositions about the behavior of ordinary citizens. In summary, the sample is conveniently large enough that it captures rare events (such as disputes), conforms to the principle of equal probability selection, and is representative of China's varied geographic, demographic, social, and economic environment. The sampling points (at the township level) are mapped in Figure 8.2.

INSTITUTIONAL DIFFUSION IN AN AUTHORITARIAN SETTING

*Trust*

A great deal of the literature on institutional innovation stresses trustworthiness as a key determinant of the success of institutional innovations, or their failure when it is lacking. If, under conditions that need to be specified, people trust a given institution, they are likely to rely on it should the need arise. If they do not, they will instead turn to reasonable alternatives. Trust is also a condition of these institutions' endurance in the long run (Hetherington 1998; Levi 1999; Levi and Stoker 2000; Ulbig 2002).

In the case of China, many scholars have demonstrated empirically that both interpersonal trust and system-based trust are comparatively high (Inglehart 1997; Shi 2001; Tang and Parish 2000). However, generalized trust may not

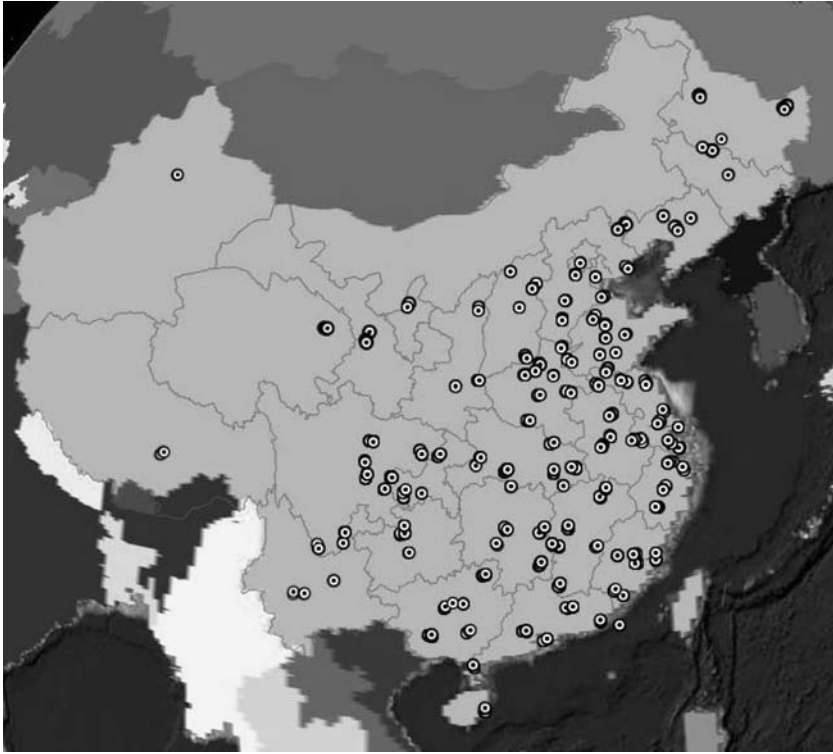


FIGURE 8.2. The ILRC Survey of China (2003–2004). *Note:* Dots represent towns.

be as reliable a predictor of success or failure of a specific institution. Just as trust between individuals can be generalized or particularistic (Uslaner 2002), Jennings (1998) has shown that individual trust in government institutions can be highly differentiated (Levi 1998). Li Lianjiang (2004) has found that rural Chinese exhibit highly differentiated levels of trust regarding central and local institutions.

The ILRC survey results demonstrate that these broad findings also hold with respect to legal institutions. Political correctness probably accounts for the high score of the Communist Party (CCP) in absolute terms, but the CCP provides at least a useful benchmark against which to gauge relevant legal institutions. We find that trust is institution-specific: whereas organizations that are frequently involved in dispute mediation (such as village committees) fared especially poorly, the courts and the procuracy are held in relatively high regard. Furthermore, most respondents trust institutions that are closely

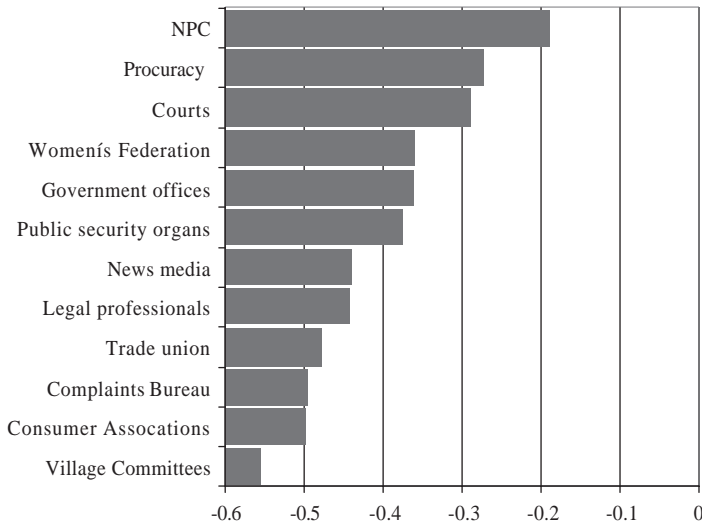


FIGURE 8.3. Relative measures of trust in public and legal institutions. Scores are first-differences from average trust scores for the CCP.

associated with the state to a far greater extent than nonbureaucratic actors: legal professionals are less trusted than public security organs, whereas village committees fare the worst of all institutions listed on the survey instrument (see Figure 8.3).

Popular trust is overwhelmingly tilted in favor of central political and judicial institutions. As a follow-up question to a general measure of trust (for instance, in courts), we asked respondents to reveal whether they trust the Supreme People's Court, the local court, or neither. We also asked them to make similar central/local comparisons of People's Congresses, the Communist Party, and general government agencies. Although party members tend to be more trusting than nonparty members, central institutions enjoy a considerable degree of support in both groups (see Table 8.1).

These high levels of trust in legal institutions bode well for the capacity of Chinese citizens to adopt institutional innovations. If Margaret Levi is correct that "trust is, in fact, a holding word for the phenomenon that enables individuals to take risks" (Levi 1998: 1), the large segment of trusting Chinese citizens must be eager to test legal institutions, especially the courts, even if they have little personal experience in them.

Courts are an institutional novelty in China. Although they have existed throughout the history of the People's Republic, they did not play a significant role in dispute resolution during the Mao era. Their functions expanded in

TABLE 8.1. *Relative trust in central political and judicial institutions, contrasted with local equivalents*

	Non-CCP members	CCP members
Supreme People's Court (vs. local courts or neither)	90.5%	94.9%
National People's Congress (vs. local People's Congress or neither)	90.9%	95.3%
Central CCP organizations (vs. local or neither)	90.7%	95.0%
Central government institutions (vs. local or neither)	90.8%	93.0%

All measures are estimates that account for the design effect.

the 1980s and 1990s with a breathtaking series of reforms, the promulgation of numerous laws and regulations, as well as sheer physical institutional construction. In contrast with the situation in 1978, virtually every Chinese county (or district) now has a functioning court.

The aggregate statistical evidence strongly suggests the diffusion of this institutional innovation: while the act of going to court was virtually unheard of in 1978, the ratio of court users has now reached approximately four per thousand (Figure 8.4). If we make the assumption that citizens use an institution because they trust it, trust in Chinese courts is decidedly on the rise. The changing mechanisms of dispute resolution provide further evidence of the rising popularity of the courts. A much larger proportion of disputes are settled in court rather than being “mediated” in quasi-governmental organizations (*tiaojie weiyuanhui*/调解委员会), as was the norm during the Mao era. Since 2001, the number of civil and administrative cases settled in court has reached about 4.6 million per annum, on par with the number of mediated disputes (Figure 8.5).

Surely, the popularity of the courts cannot be explained by a long record of openness and fairness of Chinese judicial institutions. Nor can we invoke institutional developments that predate the Communist regime to argue that popular trust in courts was acquired before the reform era, and that citizens are eager to use them now that they have the opportunity to do so. Introducing (or reforming) courts may be a necessary component of legal reforms, but the supply side is not a convincing explanation of sustained innovation. State propaganda may persuade citizens to become first-time users of the court system, but if they encounter abuse, corruption, or unfair treatment, disappointed litigants are unlikely to maintain their trust in the institution and adopt it in the

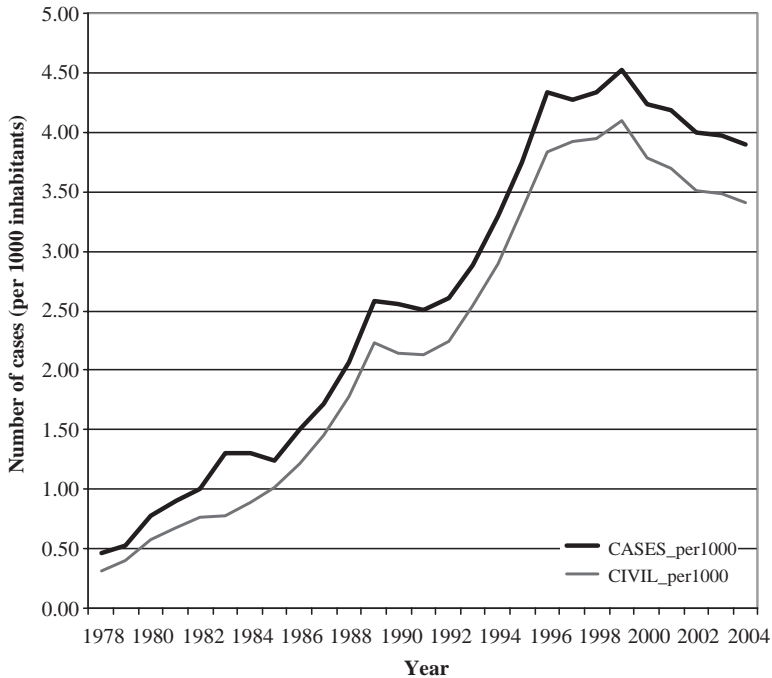


FIGURE 8.4. Number of cases per capita accepted by Chinese courts. *Note:* Computed from *Zhongguo Tongji Nianjian* (multiple years).

long run. Without the trust and tangible benefits of end-users, we would expect the introduction of courts in authoritarian systems to be short-lived. After an initial fad, disillusioned first-time users would not only personally turn to more efficient alternatives but they would also probably discourage relatives, friends, and acquaintances from following their path. Under such conditions, courts should see a steady stream of users only among citizens with small social networks or those who are poorly informed about the practical realities of legal institutions. Over time, the number of court cases would dwindle, leading to the gradual failure of the innovation.

#### *Explaining Institutional Diffusion: Networks*

Social networks are central to theories of diffusion, and the problem of the adoption of institutions like courts in authoritarian regimes can be better understood by examining in detail the social structure of the regimes that innovate. The number of actors, the structure and the density of their networks,



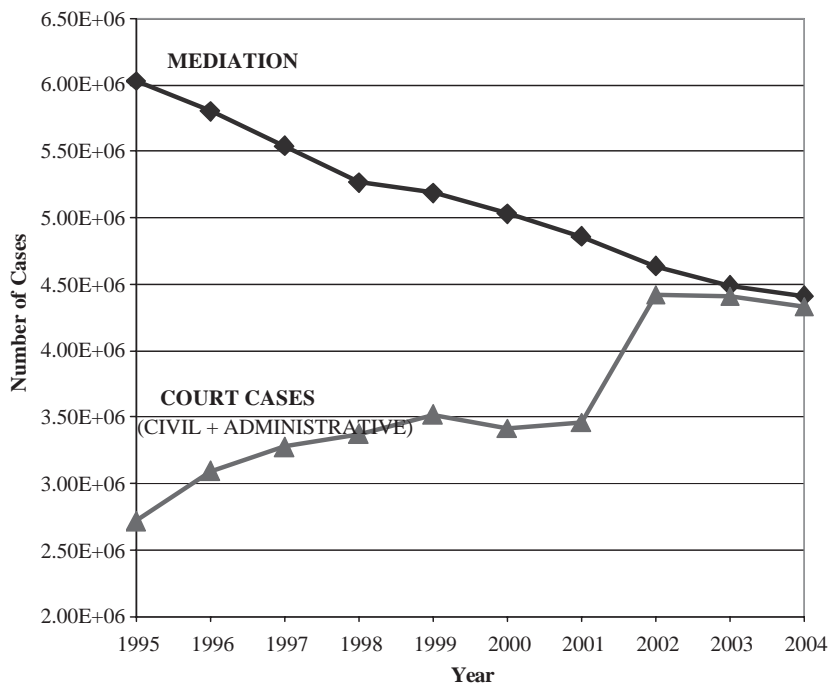


FIGURE 8.5. Evolution of court cases and cases handled by mediation committees. Source: *China Statistical Yearbook* (multiple years).

as well as the distribution of adopter and nonadopters within a network have been used in formal modeling and computer simulations to explain not only the rate of diffusion of innovations but also patterns of partial diffusion within networks (Hägerstrand 1967; Hall 2004; Mahajan and Peterson 1985). Bandwagoning is more likely to occur when potential adopters learn from actual adopters with whom they are networked that an innovation is worthwhile, or not. Computer simulations have uncovered counterintuitive results: even among networks that were seemingly small, the idiosyncrasies of their structure sometimes allow for their rapid diffusion (Abrahamson and Rosenkopf 1997).

Court users in transitional regimes fit this description quite well. In societies where the rule of law is not well developed, the proportion of court users is likely to be very low. Furthermore, in authoritarian regimes that control information flows, rapid diffusion is likely to be concentrated among small clusters of individuals who enjoy privileged access to information. The patterns of diffusion should closely match the ways in which citizens are tied to the

regime, both in terms of individual attributes (for instance, membership in the ruling party) and their social networks (having friends in high places never hurts). Furthermore, when the performance of the courts is uncertain, the ways in which satisfied and dissatisfied users are clustered in the population may have a considerable impact on the behavior of potential adopters.

The role of social networks is especially intriguing given the nature of Chinese society and the structure of the post-Maoist state. Considerable research in anthropology (Kipnis 1997; Ku 2003; Yang 1994), sociology (Bian 1999; Gold, Guthrie, and Wank 2002; Guthrie 1999), economics (Krug 2004; Luo 2000; So and Walker 2006; Wong and Leung 2001), and political science and law (Lee 1997; Oi 1986) has been devoted to the study of *guanxi*, its extent and its impact on individual behavior. If the importance of *guanxi* has indeed endured in the contemporary period, Chinese society should therefore be more prone to the quick adoption (or rejection) of an innovation once it becomes known to members of a tightly knit social network. Dense ties facilitate information flows and the rapid diffusion of the benefits and shortcomings of innovations among connected individuals. In the past few years, we have indeed witnessed extraordinary rates of diffusion of several innovations among Chinese consumers, such as electric appliances, cellular phones, and Internet usage. The same logic applies to institutional diffusion.

When we are concerned with the innovation and the diffusion of an institution, it is more difficult to specify when saturation occurs. Unlike cheap consumer products, courts are not devised for persistent use by most citizens, most of the time. Principles of fairness and the ideas that underpin a rule-of-law society suggest that access to courts ought to be universal, but making the decision to actually go to court is, for most individuals, a rare event. A dispute resolution mechanism is only relevant when a dispute actually occurs, and only a subset of disputes ever reaches the judicial stage. We should not be overly surprised that the process of institutional diffusion is a slow one.

The aggregate statistical data on court cases for China seem to match the S-shaped pattern that theorists of diffusion have identified in other disciplines. During the 1980s and 1990s, the use of judicial institutions grew very rapidly, a reflection not only of rising demand for such institutions within society but also and more prosaically because judicial institutions were a novelty. After the chaos of the Cultural Revolution, existing courts were reopened and new ones were built down at the county level, while a host of innovations (such as the creation of a professional corps of lawyers) and specific laws and regulations facilitated access to the courts. However, the picture seems to have changed since 2000. While “rule-of-law reforms” have continued, the number of judicial cases – both civil and criminal – has reached a plateau of about four cases per thousand inhabitants.

Supply constraints may explain this plateau to some extent: the time-series data presented in Figure 8.4 only reflect cases *accepted* by the courts. Overburdened courts may simply not be able to cope with the demand for the institutions. The state may also limit access to the courts for fear that unbridled access to legal institutions may become politically destabilizing. A third explanation is that social heterogeneity produces idiosyncratic networks that are only conducive to partial diffusion. If access to the courts and initial successes are clustered within a narrow social elite (or specific geographical regions), the lack of connectivity between the beneficiaries of the courts and the general population may have slowed or even interrupted the diffusion process. It is possible that even ordinary citizens with close ties to somebody who was victorious in court will not emulate him or her if they infer that it is the particular characteristics of the winner – and not the choice of institutional venue – that explain the outcome. For instance, nonparty members may believe that only party members can win court cases. If the sole winner of a court case in a given community happens to be a party member, nonmembers do not have enough information to sort out whether party membership or the decision to go to court is the decisive factor in that success. Diffusion would then occur only among party members.

The ILRC sample is uniquely suited to test the impact of small community networks because of its special design. Below the township level, respondents were selected from micro-spatial communities in which all households were interviewed to ensure an equal probability of inclusion (Landry and Shen 2005). Though I aggregate the results by township in this chapter, a sampled township is in fact composed of two “half-square minutes” (equivalent to a natural village) in which clusters of about  $90 \times 90$  meters were drawn. Thus, the probability that respondents know each other is very high.

I hypothesize that two parameters are jointly conducive to rapid institutional diffusion: the trustworthiness of the court and the presence of individuals within small communities who have engaged courts successfully are conducive to the acceptance of the court as the proper dispute resolution venue (see Table 8.2). We cannot directly observe social networks, but it is reasonable to make the assumption that if the community is small enough, its members interact with each other frequently and learn quickly about unusual events. Given its rarity, victory in court certainly qualifies as the kind of news that is likely to spread fast in small communities. Rapid diffusion is likely to occur when a high proportion of satisfied and trusting end-users propagate their behavior through dense social networks.

If only one of these factors is present, the process will be more gradual. If neither is present, we should see little or no diffusion. Note that the absence of diffusion does not imply that the number of court users will not rise: it

TABLE 8.2. *Conditions for institutional diffusion*

		Trustworthiness of the institution	
		Low	High
Density of adopters	High	Gradual diffusion	Rapid diffusion
	Low	No/very slow diffusion	Gradual diffusion

simply means that individuals who use the courts will not be emulated in their communities. However, if individual-level variables that predict this behavior change over time, a greater proportion of the population will still adopt the institution.

### *Community Experiences and Institutional Diffusion*

The ILCR survey allows us to identify respondents in their specific communities who were directly involved in legal disputes, went to court, and are therefore in the position to influence their network based on their experiences with the courts. For each dispute category covered by the instrument – civil, economic, and administrative – we inquired whether the choice to go to court was decisive in the resolution of their dispute. If so, we further asked whether they would be willing to use the same method should a similar dispute occur in the future. We can thus identify the specific communities in which adopters (defined here as past disputants who would use the courts in the future) are present.

Although diffusion theory assumes that “adopters” are local opinion makers, it must be emphasized that these experienced individuals constitute only a small fraction of a community. Using the township as the level of analysis, we encountered very few localities where more than one respondent has actually experienced a dispute that was decisively resolved in court. Furthermore, in the majority of the communities we could not identify any experienced users: we only found 69 townships (out of 200 surveyed) in which civil disputes were resolved in court, 47 for economic disputes, and only 16 for administrative ones (see Table 8.3). As small as these numbers may be, diffusion research suggests that they may have a large impact on the behavior of the community.

The aggregate data suggest that adopters outnumber nonadopters. We estimate that 90 percent of the citizens who have settled an economic dispute in court would do so again, as would 78 percent in the case of civil disputes

TABLE 8.3. *Distribution of actual court users who claim that the court was decisive in the disposition of their dispute*

Dispute category	Would you use the same method again?			Design-based estimated probability of using courts in the future
	Yes	No	No answer	
Civil	72	17	7	.78
Economic	56	6	1	.90
Administrative	9	7	0	.54

(see Table 8.3). The odds are more even among administrative disputants, most likely because the scope and the chances of success in administrative litigation remain limited. Overall, these proportions are consistent with the diffusion hypothesis: very few people ever go to court, but since those who did use the court express the desire to use the institution in the future, they are likely to diffuse their behavior within their social network. This would explain the rising proportion of court users among citizens who are engaged in a legal dispute for the first time.

We can gauge the potential impact of these adopters by comparing the propensity of inexperienced respondents to go to court across communities with varying densities of actual adopters. Specifically, we asked respondents who had not experienced a dispute whether they would be inclined to go to court based on a hypothetical situation presented in a vignette for each dispute category. If the diffusion hypothesis is correct, we should observe a greater propensity to go to court among respondents who happen to live in communities where one (or more) of their neighbors has “adopted” the institution.

The preliminary evidence is again encouraging for the diffusion hypothesis: using townships as the unit of analysis, two of the three simple bivariate regressions show that in townships where residents who have been to court in civil and administrative disputes and are willing to use the institution again, their neighbors who were never engaged in a dispute are more prone to go to court than residents of communities where no one has any experience with courts (see Table 8.4). However, this does not seem to be the case for economic disputants. To be certain of the net impact of these “adopters” on institutional diffusion, we require a fully specified model that captures both the impact of individual characteristics of the respondents and the impact of institution adopters in their community. Such models allow measure proper measures of the magnitude of these diffusion effects.

TABLE 8.4. *Impact on court adopters on the mean propensity to go to court*

	Civil	Economic	Administrative
N	200	200	200
$F(1, 198)$	5.86	0.08	3.85
Model Prob > $F$	0.02	0.78	0.05
	<b>Coef.</b>	<b>Coef.</b>	<b>Coef.</b>
Share of court adopters in township	1.662**	0.345	4.43**
Constant	0.419***	0.492***	0.30***

## INDIVIDUAL CHARACTERISTICS

*Social Networks*

The kind of diffusion that we have considered so far does not account for the more direct and personal ties that citizens may have with legal institutions. The diffusion theory assumes that people learn from the direct experiences of their peers, but social networks can affect behavior in other ways. This is particularly true in authoritarian systems where information flows are controlled and where connections with political and legal institutions of the regime can confer a decisive advantage over those who lack the requisite connections to “work” the system, particularly if a well-connected citizen is engaged in a dispute with a less-connected one. In a society like contemporary China where social relations (*guanxi*) are highly valued (Bian 1997, 1999), these ties are likely to have powerful cognitive and behavioral consequences.

We attempted to capture the density of ties to key political and legal institutions by asking ILRC respondents whether they have regular contact with persons holding jobs in organizations that require (or are likely to result in) specialized legal knowledge (see Table 8.5). Such ties with “experts” may have differentiated impacts depending on the specific problem that respondents encounter: an acquaintance in the official trade union may be helpful in resolving economic disputes, whereas contact with a party cadre may be particularly useful in case of administrative disputes. The point is that well-connected citizens can gain specific knowledge and engage legal institutions more effectively thanks to their social interactions with the political and legal elite in their community. These include party and government cadres, members of People’s Congresses (at any level), employees of the courts or the procuracy, as well as lawyers, legal aid bureau personnel, and trade union officials. Most – but not all – of these professionals are likely to be CCP members.

TABLE 8.5. *Density of social ties with political and legal professionals*

	All respondents	Nongovernment employees	Government employees	CCP members
Party & government leaders	24.7	23.9	71.1	50.1
Court & procuracy cadres	13.9	13.2	53.1	33.5
People's Congress representative	9.5	9.0	41.4	25.0
Labor union cadre	11.6	10.9	48.4	30.3
Legal Aid Bureau officials	4.5	4.0	29.7	12.9
Lawyers	6.9	6.6	29.7	17.2
Any of the above	36.8	36.0	85.9	64.5

All estimates account for the design effect.

Not surprisingly, party members have a considerable networking advantage over ordinary citizens. These ties have even stronger effects among government employees, but even ordinary CCP membership confers a clear advantage. The empirical question is whether 36 percent of ordinary citizens who interact regularly with the political, legal, and administrative elite do in fact capitalize on these ties by gaining greater access to the courts.

### *Political Institutions and the Acquisition of Legal Knowledge*

A successful rule-of-law program requires at minimum a basic understanding of the institutions and norms that help sustain it. Ordinary social actors need not be legal experts, but they must at least have sufficient practical knowledge of the system to know where to turn and what basic choices are available to them when legal issues arise. Superior knowledge and information can also help end-users reduce the transaction costs of using an institution. In the Chinese context, these costs are high because many legal institutions – such as administrative litigation or private law firms – are still a novelty. Learning how to use them effectively while they evolve so rapidly is particularly challenging.

Membership in political institutions like the Youth League and, more important, the Communist Party can help reduce these costs. CCP membership has direct benefits (Bian, Shu, and Logan 2001; Dickson and Rublee 2000; Walder 1995; Walder and Treiman 2000). It confers a competitive edge and offers various shortcuts that facilitate access to valuable information. For example, the policy diffusion process favors party activists because all important

TABLE 8.6. *Items used to test basic legal knowledge*

Item	Estimated % of correct answers
It is illegal to cohabit prior to marriage.	26.04
Our laws explicitly prohibit extramarital affairs.	24.07
Citizens can have permanent land ownership.	42.02
Firms can employ 15-year-old workers.	12.11
All financial contracts signed by both parties are legal.	30.56
A married woman does not have the duty to support her parents.	71.70
Criminal suspects have a right to not answer when questioned by law enforcement agencies.	27.44
Married daughters don't have inheritance rights.	59.08
Courts have a legislative function.	36.80
The procuracy cannot file a civil lawsuit.	25.72
Local governments can put forward suggestions about court decisions.	6.01

Percentages account for the design effect ( $N = 7714$ ).

policy changes are announced through the CCP document system ahead of their dissemination to the general public. Information that is transmitted through party channels is also less likely to be distorted than what is available through the general media. Party members have access to specific media that discuss issues that are otherwise censored and are theoretically reserved to members. Some of these materials have higher levels of classification and are reserved to cadres. Thus, both the timing and the quality of information confer a substantial advantage on CCP members. If they are in conflict with non-members, they can use such information strategically as they seek to resolve their disputes.

To test the proposition that party members are more knowledgeable about the law than ordinary citizens, I relied on an additive knowledge score that is designed to capture the underlying variation in basic legal cognition within the population (Table 8.6). The ILRC survey asked each respondent eleven questions with varying levels of difficulty. This methodology is similar to efforts in public opinion research to measure the political knowledge of mass publics (Zaller 1991).

The indicators are aggregated into a simple additive index that ranges from zero (no correct answers) to eleven (all correct answers). We obtained an index that is very close to a normally distributed variable, with a slight tilt to the left: 262 respondents scored 0, whereas only 2 persons had a perfect score. Design-based estimates clearly show that this score is tied to membership in



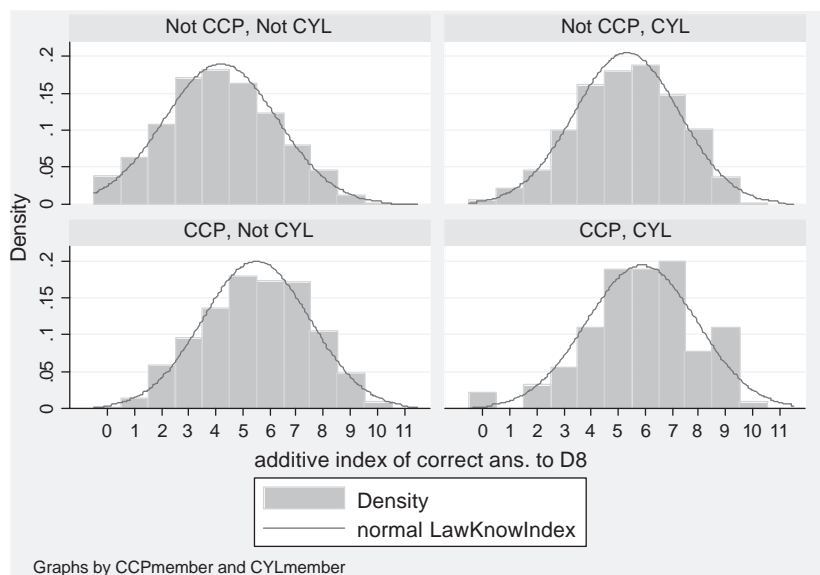


FIGURE 8.6. Distribution of the Basic Legal Knowledge Score, by membership in the CCP and the CYL (0–11 scale).

political institutions (Figure 8.6). Non-CCP members who never joined the Communist Youth League (who represent 80.9 percent of the population) had a mean score of 4.2, in contrast to the elite of CYL members who later joined the CCP (1.1 percent of the population) whose average score was 6.0. Current or past CYL members who never joined the party (11.8 percent of the sample) and party members who never joined the CYL (6.2 percent of the population) had identical knowledge scores of 5.2. To some extent, the diffusion of legal knowledge among CCP members reflects the increasing importance of educational attainment as a criterion for membership. In this sense, membership may not result in additional knowledge after entry. Since legal knowledge and educational attainment are positively correlated, the party's recruitment policy in the 1980s and 1990s that favored the well-educated may have indirectly selected out people with poor working knowledge of the law.<sup>2</sup>

Since many party members are cadres, the command of administrative and political resources gives them a first-hand understanding of the concrete

<sup>2</sup> See Gerber (2000) and Rona-Tas and Gudeva (2001) for the debate about the inherent benefits of membership versus selection effects among members of the Communist Party of the Soviet Union.

operations and shortcomings of the legal system. The CCP is also actively promoting legal awareness to the cadre corps. Most officials must attend training courses in party schools at various levels, where law is becoming an explicit part of the curriculum.<sup>3</sup> These courses target cadres who are either being groomed for future promotion (Zhong 2003) or, having been promoted, are sent for training before actually taking up a new assignment. Cadres who receive legal training in party schools as part of their professional development can easily convert this knowledge for private gains.

Beyond the Communist Party, other political institutions can also help diffuse legal cognition. The CYL is less exclusive than the CCP, but a filtering mechanism similar to the CCP's is also in place in the League (Bian et al. 2001). Education is also a very important criterion for membership: it is now virtually impossible for somebody with a mere primary school education to join the League. Membership in the league exceeds 70 percent in the current cohort of middle- and high-school graduates, a major increase from past generations. The CYL has traditionally been a vehicle of policy diffusion (Ngai 1997), and has been very active in recent efforts to publicize legal reforms in rural areas. CYL members who are mobilized for such campaigns are likely to learn about these reforms, probably better than the public they are supposed to reach.

### *Media Consumption*

Even without access to or connection with political and legal institutions, ordinary citizens can indirectly improve their legal knowledge. In recent years, the government has deployed considerable efforts to spread legal education and information through the media. Television stations carry numerous shows and mini-series depicting all kinds of legal disputes and their resolution. The publishing industry has seen an explosion of handbooks and guides designed to assist ordinary citizens in navigating China's evolving legal system. We observed considerable variation in the level of media consumption, which is now dominated by television. Only 5 percent of the sample claims to never watch it. In contrast, printed media reach a narrower group of wealthier, better educated, and usually urban residents (see Table 8.7).

We anticipate that much of knowledge of the law is acquired through the consumption of media, particularly among the subset of older adults who were not exposed to formal legal education in the school system.

<sup>3</sup> We estimate that 65% of government employees are CCP members, in contrast to 5.9% of the rest of the adult population aged 18–65.

TABLE 8.7. *Frequency of media consumption*

	Newspapers	Magazines	TV	Radio
Often	1,223	615	5,076	874
Sometimes	1,245	1,045	1,394	1,150
Very rarely	1,652	1,587	808	1,637
Never	3,463	4,272	386	3,889

*Education*

Education is another obvious channel through which legal knowledge is acquired. In today's middle and high schools, compulsory politics and civics classes weave new legal concepts into traditional political teaching. The lessons taught (and presumably learned) naturally reflect the priorities of the regime, yet standard politics textbooks are now much more sophisticated than the materials to which older generations were exposed during their youth. Furthermore, the young have a strong incentive to internalize new legal norms, because politics is a required subject on the college entrance examination. Entire generations of Chinese teenagers are now being exposed to a body of knowledge to which their parents simply never had access. In a context where general educational attainment is also rising rapidly, we expect a large generation gap in substantive command of basic legal issues. Our instrument captures this effect well: younger age groups clearly have higher mean scores than older ones (see Table 8.8).

TABLE 8.8. *Legal knowledge score, by age group*

Age group	Estimated mean	SD
18–24	5.2	2.0
25–29	4.9	2.1
30–34	4.5	2.0
35–39	4.4	2.1
40–44	4.5	2.0
45–49	4.2	2.1
50–54	4.1	2.1
55–59	3.9	2.2
60–66	3.9	2.2

All measures are estimates that account for the design effect.

## MULTIVARIATE ANALYSIS

*Modeling the Propensity to Go to Court*

The propensity to go to court is modeled as a probit equation that takes into account the multistage stratified nature of the sample design, and uses probability weights. Separate estimates were computed for each class of disputes that was covered in ILRC project. We asked all respondents whether they had been involved in civil, economic, or governmental disputes in the past twenty years, and whether they chose to go to court to resolve those disputes. The dependent variable is coded 1 if the respondent went to court, and zero otherwise. Those who did not experience disputes were asked to react to a simple vignette and describe the actions they would likely take under such circumstances. This technique is more reliable than asking unstructured questions, particularly since we do not have the problem of cross-cultural comparisons in a single country study (King, Murray, Salomon, and Tandon 2003). The translation of each vignette is provided in Table 8.9. If respondents never encountered a civil (respectively, economic or administrative) dispute, the dependent variable is also coded 1 if they asserted that they would use the courts in their evaluations of the hypothetical civil, economic, and administrative cases presented as vignettes.

The model accounts for the disparity between respondents who actually experienced disputes and those who responded to these hypothetical situations on the left-hand side.

$$prob(Court)_{|d=0} = \Phi(X\beta) + \varepsilon$$

for individuals who did not experience a dispute of type  $d$  and,

$$prob(Court)_{|d=1} = \Phi(X\beta + d) + \varepsilon$$

for individuals who did.

The respondents who answered the “costless” hypothetical questions after a vignette were more likely to state that they would go to court: their expressed preferences were costless. However, disputants who actually chose to go to court face tangible transaction costs. It is not too surprising that all else being equal, their propensity to go to court under such circumstances would be lower. I interpret the magnitude of the coefficients associated with these dispute-specific dummy variables as markers of the transaction costs of going to court.

TABLE 8.9. *Vignettes for hypothetical disputes***Civil Dispute**

C2. *Since you have not had such experiences, let's use a hypothetical case to understand your views. The labor contractor of a construction site has been embezzling the workers' wages, and the workers were denied their demands for payment numerous times. If you were one of the workers, what would you do? Would you take action to settle the dispute, or would you not do anything?*

**Economic Dispute**

C20. *Since you have not had such experiences, let's use a hypothetical case to understand your views. To help a township business through some financial difficulties, a township government borrows 100,000 Yuan from villager Wang Lin. The agreement specifies that this amount should be repaid in two years. But two years go by, and the amount has still not been repaid. If you were Wang Lin, what would you do? Would you take action to settle the dispute, or would you not do anything?*

**Administrative Dispute**

C38. *Since you have not had such experiences, let's use a hypothetical case to understand your views. Zhang Jie is an individual industrial household with a license to set up his stall. But the City Management Department found his stall detrimental to the aesthetics of the city, and thus confiscated his goods and fined him. If you were Zhang Jie, what would you do? Would you take action to settle the dispute, or would you not do anything?*

*Institutional Diffusion*

Since the diffusion hypothesis rests on the impact of two variables (the trustworthiness of courts and the density of adopters in the community), we need to test whether adding these variables to a baseline model actually improves its predictive power and statistical significance. The standard likelihood-ratio (LR) test cannot be performed on probit regressions for complex survey design. We must rely instead on a more indirect approach based on unweighted probits with the same set of independent variables. Furthermore, because of missing data when these two variables “trust in court” are added to the baseline model, we need to further restrict the LR test to the subset of observations that are observed in both the saturated model and the nested model.

Whether we consider civil, economic, or administrative disputes, these LR tests are all consistent with the diffusion hypothesis. The saturated models are always superior to the nested ones. However, the specific significance of the variable that captures the presence of adopters in the community varies by dispute category: it is considerable in the case of civil disputes, less so for economic disputes, and not significant for administrative disputes. Since the coefficients are always positive (in the expected direction) for both variables,

TABLE 8.10. *Probit estimates of going to court in civil, economic, and administrative cases*

	Civil	Economic	Administrative
Number of strata (24)	24	24	24
Number of PSUs (counties)	100	100	100
Number of observations	7160	7160	7160
Estimated population size (millions)	850	850	850
Prob > c	0.0000	0.0000	0.0000
<b>Control for Actual Disputes</b>			
Civil dispute	-0.841	-	-
Economic dispute	-	-0.862	-
Administrative dispute	-	-	-1.062
<b>Human Capital &amp; Information</b>			
Formal education (years)	0.023	0.030	0.020
Legal knowledge score	0.061	0.044	0.056
Television	0.119	0.052	0.076
<b>Political &amp; Social Capital</b>			
CYL member	0.172	0.130	0.005
CCP member	0.229	0.189	0.102
Contact w/ party or gov. cadre	0.055	0.091	0.063
Contact w/ legal or public security official	0.225	0.174	0.162
Contact w/ People's Congress	0.084	0.050	-0.001
Contact w/ lawyer	0.131	0.191	0.017
Contact w/ Legal Aid Bureau	0.038	-0.181	-0.176
Contact w/ labor union	0.030	0.129	0.047