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Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People's Republic of China

Keith Hand

UC Hastings College of the Law, handk@uchastings.edu

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Using Law for a Righteous Purpose:  
The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People’s Republic of China

KEITH J. HAND*

The Chinese government’s rule of law campaign has created greater awareness of legal issues and generated bottom-up pressure for legal change. This dynamic was highlighted in April 2003, when Chinese media reports on the death of a young man named Sun Zhigang while in police custody sparked a public outcry. This public pressure, coupled with a groundbreaking citizen legal challenge, eventually prompted China’s State Council to dismantle a controversial form of administrative detention called “custody and repatriation.” The Sun Zhigang incident demonstrated that by leveraging a wave of media coverage and public opinion in a case of mass concern, co-opting laws and official rule of law rhetoric, formulating a technical, well-grounded legal appeal within the system, and focusing on modest legal reform goals that did not challenge fundamental state or Party interests, lawyers could successfully accelerate legal reform without triggering the type of damaging backlash directed against other, more politicized citizen actions. Although reformers failed in their secondary goal of creating a precedent for National People’s Congress annulment of an administrative regulation, their efforts had broad impacts in promoting the development of constitutionalism, generating political pressure for law enforcement reforms, creating an enhanced sense of citizen empowerment, and providing a

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* Senior Fellow, The China Law Center, Yale Law School and Visiting Scholar, Beijing University Law School; former Senior Counsel, Congressional-Executive Commission on China, Washington, D.C. I would like to thank John Balzano, Jennifer Choo, Michael Dowdle, Fu Hualing, Paul Gewirtz, Jonas Grinnhed, Bruce Hand, Jamie Horsley, Walter Hutchens, Maggie Lewis, Benjamin Lieberman, Ethan Michaelson, Carl Minzner, Eva Pils, and Wang Qinghua for their detailed and valuable comments on this article. I would also like to thank Yale Law School, Boalt Hall, and Cornell Law School for invitations to present this research. These events provided valuable opportunities for feedback and discussion. Finally, special thanks go to the editors and staff of the Columbia Journal of Transnational Law for their outstanding suggestions and editing work. I am responsible for all errors and omissions. Portions of this paper draw on meetings and discussions with Chinese rights lawyers from 2003–06. Due to the sensitive nature of the issues involved, where such discussions are cited, the names of the participants have been omitted to protect their confidentiality.

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refined model for law-based citizen rights actions. Legal activists have successfully applied similar moderate legal strategies in some subsequent cases, while more aggressive, politicized tactics have prompted negative state responses. Overall, the citizen action strategies refined in the Sun Zhigang incident have provided legal reformers with one path forward for promoting modest but meaningful legal reform in China. Recent government efforts to control the scope and potential impact of some citizen initiatives will provide a key test of the degree to which this reform model is sustainable in the near-term.

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I. INTRODUCTION

Over the past decade, China’s leaders have promoted the rule of law in an effort to rein in local governments, provide a stable environment for economic development, and enhance the legitimacy of the Chinese Communist Party (the “Party”) and the state. This campaign, carried out in large part through official media, has created greater awareness of legal issues on the part of average citizens and generated bottom-up pressures for legal and political reform. As scholars of China have demonstrated, increasingly rights-conscious

1. RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 60–61 (2002). Discussion of rule of law concepts emerged in China early in the reform era. But rule of law discourse gained significant momentum after the Party officially endorsed the concept of “rule[ing] according to law and establish[ing] socialist rule of law” in the mid-1990s. Id.

Chinese citizens are using central government laws and legal rhetoric as tools in their efforts to address local grievances. In her recent book *From Comrade to Citizen*, Merle Goldman describes how burgeoning rights consciousness in China has coalesced into a citizen movement that is linking intellectuals and other social strata and leveraging the rhetoric of law to demand political rights from the state. As Goldman argues, this movement is redefining notions of Chinese citizenship. At the same time, many of these citizen actions (for example, the Tiananmen Mothers Campaign, the Peace Charter Movement, and efforts to establish the China Democracy Party) have been met with government disregard, harassment, and even repression.

While efforts to leverage the law to press for political reform have often met with limited success, over the past three years, legal reformers have applied a moderate citizen action strategy grounded in law to accelerate several system-wide legal reforms. The defining event in this series of reform initiatives took place in 2003, when legal reformers responded to the death of a young man in police custody by calling for the repeal of a controversial form of administrative detention called “custody and repatriation” (C&R). The death of Sun Zhigang, reported widely in the Chinese media after an initial local cover-up, sparked a national outcry. Public pressure, coupled with a groundbreaking legal petition, eventually prompted China’s State Council to dismantle the C&R system and inspired new strategies for law-based citizen rights action. The Sun Zhigang incident demonstrated that by leveraging a wave of media coverage in a case of mass concern, co-opting laws and official rule of law rhetoric, formulating a technical, well-grounded legal petition within the sys-

3. See, e.g., KEVIN J. O'BRIEN & LIANGJIAN LI, RIGHTFUL RESISTANCE IN RURAL CHINA, 5–9, 67–93 (2006); Liebman, supra note 2; Gallagher, supra note 2 (arguing that as knowledge of the law increases, a corresponding sense of disappointment and frustration with the law in practice may also develop).

4. MERLE GOLDMAN, FROM COMRADE TO CITIZEN (2005).

5. For the purposes of this paper, the term “citizen action” refers not only to formal legal action in courts, but also to a broader range of citizen efforts to exercise or uphold legal and political rights including petitioning, discussion and debate on the Internet and in the media, demonstrations, etc. The Tiananmen Mother's Campaign is a movement led by the families of citizens killed in the 1989 demonstrations. Participants have staged demonstrations, issued public appeals to the central government, and opened contacts with international media and rights organizations to call for an accounting of deaths in 1989, a reassessment of the 1989 demonstrations, and broader political reforms. The Peace Charter Movement was an unofficial, grassroots movement of disestablished intellectuals in the mid-1990s that used group petitions to push for a reassessment of the 1989 demonstrations, a multiparty system, and other democratic reforms. In the late 1990s, activists across China launched an effort to register the China Democracy Party. The Chinese government has ignored, harassed, or detained citizens involved in this effort, and in some cases has sentenced them to long prison terms for subversion or other crimes. Id. at 68–94, 161–82. Goldman argues that many attempts to use public space to press for political rights have been short-lived, particularly when undertaken by groups, rather than individuals. Id. at 20.
tem, and focusing on modest legal reform goals that did not challenge fundamental state or Party interests, legal reformers could work within China’s authoritarian system to accelerate legal reform without triggering the type of damaging backlash directed against other, more “politicized” rights actions. While English-language discussions of the Sun Zhigang incident have focused on the critical role of the media and the Internet in generating public pressure for the repeal of C&R, less attention has been paid to the important role of these legal reformers, their strategies, and the broader impacts of a case that Chinese observers characterized as a “milestone” and a “critical juncture” for the rule of law in China.

This Article examines in detail the Sun Zhigang incident and the evolving forms of citizen action it highlights. Overall, it argues that the moderate legal strategy adopted in the Sun Zhigang incident has provided reformers with an effective channel for promoting modest but meaningful legal reform within the constraints of China’s authoritarian system. Part Two provides a narrative of the Sun Zhigang incident. Part Three examines the social, political, and legal factors that contributed to the State Council’s decision to repeal the C&R system and the law-based citizen action strategy that legal reformers applied to press for this reform. Part Four demonstrates that the efforts of legal reformers in the Sun Zhigang incident had impacts beyond the repeal of C&R by promoting the development of constitutionalism, contributing to political pressure for law enforcement reforms, creating an enhanced sense of citizen empowerment in China, and inspiring refined models for law-based citizen rights action. Part Five analyzes the application of similar strategies in several subsequent cases and addresses the issue of when citizen rights actions are likely to result in state acquiescence and adaptation, rather than repression. It shows that reformers who have applied moderate legal strategies such as those in the Sun Zhigang incident have generated a similar reform dynamic in some subsequent cases. In contrast,

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6. For the purposes of this article, “politicized” right actions refer generally to rights actions that involve explicit demands for political reform or address sensitive political issues, efforts to establish political organizations, or acts such as street demonstrations or hunger strikes, as opposed to rights actions involving moderate calls for legal reform within existing legal channels.

legal reformers who have directly challenged fundamental state or Party interests by focusing on particularly sensitive political issues, adopting radical tactics, or becoming involved in collective lawsuits or local unrest have been less successful at promoting legal reform. Part Six discusses several implications of the Sun Zhigang incident and subsequent cases for China’s legal reform process and examines recent government efforts to curtail the scope and potential impact of some citizen rights actions. It argues that the moderate citizen action strategies refined in the Sun Zhigang incident have provided legal reformers with an effective model for interacting with the state on legal reform issues that is neither cooperative nor completely adversarial and that lays important foundations for broader future reform. Recent government efforts to control the scope and potential impact of such citizen initiatives will provide a key test of the degree to which this citizen action model is sustainable in the near-term.

II. NARRATIVE OF THE SUN ZHIGANG INCIDENT

A. The Detention and Death of Sun Zhigang

As the National People’s Congress anointed Hu Jintao as President and Wen Jiabao as Premier in the spring of 2003, a set of events that would grip the country began to unfold in southern China. In early 2003, a twenty-seven-year-old man named Sun Zhigang traveled to Guangzhou to begin work for a clothing company. Sun was from a poor family in Hubei Province. Having graduated from the Wuhan Technical Institute a short time before, he had moved to the coast to pursue a life that many rural Chinese undoubtedly would have envied. In mid-March, Sun was stopped by police outside of a local Internet café. Although Sun had a valid identification card, a place of residence in Guangzhou, and a registered work unit, he had not yet obtained a temporary residence permit and was not carrying his identification card that evening. As a result, he was taken to a lo-

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cal police substation on the suspicion that he was an illegal migrant. Although Sun’s roommate arrived at the substation several hours later with Sun’s identification card and money for “bail,” the police refused to release him. Instead, they held him overnight and transferred him to a Guangzhou C&R center the next day.

Under China’s residence registration (hukou) system, the Chinese government has tightly controlled internal migration between urban and rural areas for decades. C&R was a controversial form of administrative detention closely connected to those controls. While some form of C&R had existed in China since the 1950s, the system in place at the time of Sun’s detention was formally established by a 1982 State Council regulation (the “C&R Measures”). The C&R Measures gave civil affairs and public security bureaus virtually unchecked power to detain urban beggars and vagrants and to repatriate them forcibly to their place of registered residence. Although this regulation was designed primarily as a relief measure to be administered by civil affairs bureaus, it was also intended to “protect urban social order.” In practice, public security officials implemented the regulation as a coercive measure to manage the flow of migrant workers and undesirables into China’s urban centers. Official Chinese sources report that from 2001 to 2003, at least one million people were detained annually in more than 700 C&R centers. Human Rights in China reported that there were 3.2 million detentions in over 800 C&R centers across China in 2000. According to Chinese sources, a majority of those detained in the C&R system were migrants, while only fifteen percent required the social relief the system was originally designed to provide.

Both international human rights groups and Chinese sources

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13. Yun Xiang, supra note 8, at 23, 24; Yan Xiaohu, Shourong zhidu ruogan wenti de fali fenxi [Legal Analysis on Several Issues with Custody and Repatriation], FAXÜE [LEGAL SCI.], No. 7, 2003, at 14.
14. Yun Xiang, supra note 8, at 18.
15. Siew Ying Leu, Crime and Banishment, S. CHINA MORNING POST, June 17, 2003 (citing HUMAN RIGHTS IN CHINA).
documented pervasive corruption and abuse in the C&R system. Local police often profited from the system by unlawfully detaining migrants and other individuals and extorting fees from their families, or keeping individuals in detention for long periods and subjecting them to forced labor.\textsuperscript{17} Abysmal living conditions, beatings, sexual abuse, and deaths in the centers were also problems.\textsuperscript{18} Because of such widespread abuses, the C&R system had long been a subject of extensive criticism.\textsuperscript{19}

According to official records, Sun was transferred from the C&R center to an affiliated medical clinic on the evening of March 18. On March 20, a clinic employee informed Sun’s friend that Sun had died suddenly of complications from heart disease. However, Sun’s body showed signs of abuse, and an autopsy performed nearly a month later found that he had died of injuries and internal bleeding caused by blunt trauma.\textsuperscript{20} Efforts by Sun’s devastated parents to obtain information about their son’s death were repeatedly stonewalled by local officials, and lawyers fearful of challenging the local government refused to take up their case.\textsuperscript{21} Desperate for answers, Sun’s family members finally posted their story and a petition letter on the Internet and turned to the \textit{Southern Metropolitan Daily}, a relatively

\textsuperscript{17} Human Rights in China, supra note 10, at 6–10; Yun Xiang, supra note 8, at 23; Chen Feng, Women gao shourong jiu shi yao gao qian [We Engage in Custody and Repatriation to Make Money], Nanfang Dushibao [S. Metropolitan Daily], June 19, 2003; Nie Longyun, “Sun Zhigang shijian” yu weixian shencha zhidu [The “Sun Zhigang Incident” and China’s Constitutional Review System], Liaowang Zoukan [Outlook Wkly.], June 2, 2003.


\textsuperscript{20} Police documents later obtained by the media indicated that Sun was healthy when police detained him. Fong Tak-ho, Seeking Answers to a Death in Detention, S. China Morning Post, May 2, 2003.

progressive Guangzhou newspaper, for help. 22

On April 25, after conducting an exhaustive investigation and overcoming significant external obstacles, the Southern Metropolitan News published a detailed report on the death of Sun Zhigang that raised a number of disturbing issues about Sun’s detention and concerns about a cover-up. 23 It also cited local Guangzhou regulations to demonstrate that Sun should not have been detained in the C&R center once his friend had produced Sun’s identification card. 24 An aggressive editorial accompanying the report concluded that Sun clearly had died after being beaten in custody and criticized authorities for the improper death. 25 It implored readers to recognize that the tragedy could have happened to anyone. “In the state apparatus of a great country, who is not a nobody? . . . Who is not an ordinary citizen?” 26

B. Reaction to Sun’s Death

The report on Sun’s death inflamed public opinion. Although Party authorities in Guangdong banned local media from publishing further reports on the case, 27 Xinhua, the People’s Daily, and other major state-run media outlets quickly picked up the story, which soon became a fixture in daily headlines. 28 The case captured the attention


23. Liebman, supra note 2, at 82 (citing Guangdong Sun Zhigang an dashi ji [Chronicle of Events in the Sun Zhigang Case], DONGFANG WANG [E. NET], June 9, 2003, at 371).

24. For the Guangdong regulations effective at the time, see Guangdong sheng shourong qiansong guanli guiding [Guangdong Provisions on the Administration of Custody and Repatriation] (promulgated Jan. 25, 2002), arts. 9, 11. Guangdong Province legislators interviewed by Southern Metropolitan Daily reporters confirmed that Sun should not have been transferred to C&R, and that the lack of a temporary residence permit was not a basis for C&R under the regulations. Wang Lei & Xiang Xiaohua, supra note 8.


26. Yi ge 27 sui de daxue biyesheng zhis yiqi le women de guanzhu, supra note 25.

27. Liebman, supra note 2, at 83.

28. See, e.g., Yi daxue biyesheng yin wu zanzhu in 00 bing zao duda zhis [A University Graduate Is Detained Because He Did Not Have a Temporary Residence Card and Is Beaten to Death], NANFANG DUSHIBAO [S. METROPOLITAN DAILY], available in XINHUA, Apr. 25, 2003; Wu zanzhu in beshouong san ri hou siwang, daxue shengming sang Guangzhou [Dead Three Days After Being Detained For Not Having a Temporary Residence Permit: A University Student’s Life is Lost in Guangzhou], BEIJING QINGNIAN BAO [BEIJING YOUTH DAILY], Apr. 26, 2003.
of Chinese society, and waves of protest filled online chat rooms.\textsuperscript{29} Commentary on the case included not only statements of outrage over Sun’s death and demands for punishment, but also broader complaints about the C&R system and pervasive abuses of power by law enforcement officials.\textsuperscript{30} Even the \textit{Study Times}, a publication of the Central Party School, stressed that “the case should not be muddled through by dealing with it as an isolated incident” and called for improvements to the legal system to avoid such abuses in the future.\textsuperscript{31} The incident also sparked further reporting on abuses in the C&R system.\textsuperscript{32}

Chinese legal reformers played a key role in this public discourse. Through Internet forums, conferences, and statements to the media, lawyers and legal scholars discussed Sun’s death and the legal problems it represented, lending legitimacy to public outrage over the incident.\textsuperscript{33} More importantly, they filed several groundbreaking le-

\textsuperscript{29} Many sources discuss the online reaction to the case. See, e.g., Liebman, supra note 2, at 82; Lin Chufang & Zhao Ling, \textit{Glories and Dreams of Online Public Opinion}, \textit{NANFANG ZHOUMO [S. WEEKEND]}, June 5, 2003, available at FBIS; Yun Xiang, supra note 8, at 20; \textit{You Don’t Need a Temporary Residence Permit in Heaven}, supra note 8 (noting popular reaction and a Sun Zhigang memorial website that was established on the evening of Apr. 25); Teng Biao, \textit{Sun Zhigang shijian: zhishi, meijie ye quanli} [The Sun Zhigang Incident: Knowledge, Media, and Rights] (Oct. 25, 2004) (unpublished manuscript, on file with the author); Pan, supra note 22.

\textsuperscript{30} See, e.g., Yun Xiang, supra note 8, at 20; Leu Siew Ying, \textit{Death in Custody Blamed on Clinic Patients}, \textit{S. CHINA MORNING POST}, May 9, 2003; \textit{Rough Justice, CHINA DAILY}, June 4, 2003 (citing Professor Liu Lizi); \textit{Shanzhu laizi zhengque de zifa sixiang [Good Deeds Come From Correct Law Enforcement Thinking]}, \textit{NANFANG RIBAO [S. DAILY]}, Aug. 12, 2003. A survey of 200,000 "netizens" by a domestic website revealed that the top social issue of concern to respondents was “to tighten the restraint on and supervision over the use of power.” Ch’iu Feng, \textit{A New Wave of Political Reform in China}, \textit{KUANG CHIAO CHING [WIDE ANGLE]}, Apr. 15, 2003, available at FBIS.

\textsuperscript{31} Pan Zhou, \textit{What Problems Are Exposed by the Sun Zhigang Case}, \textit{XUEXI SHIBAO [STUDY TIMES]}, May 26, 2003, available at FBIS.

\textsuperscript{32} See, e.g., Chen Feng, supra note 17; \textit{You Don’t Need a Temporary Residence Permit in Heaven}, supra note 8; Sun Zhigang’s Case Receives Widespread Attention, \textit{Ta Kung Pao}, June 12, 2003, available at FBIS. See also supra notes 17–19.

\textsuperscript{33} See, e.g., Cui Li, \textit{Wu falü zhuanjia tijing dui shourong qiansong zhidu qidong tebie diaocha chengxu [Five Legal Scholars Propose Initiating a Special Investigative Procedure into the Custody and Repatriation System]}, \textit{CHINANEWS.COM}, May 28, 2003 (noting academic conference in Beijing on May 21); He Weifang; cong Sun Zhigang shijian kan zhongguo fazhi fazhan [He Weifang: Viewing China’s Rule of Law Development From the Sun Zhigang Case], \textit{QIANGGUO LUNTAN [PEOPLE’S DAILY STRONG COUNTRY FORUM]}, June 6, 2003 (transcript of online chat with He Weifang); Yun Xiang, supra note 8, at 23 (noting Beijing conferences on May 21 and June 14); Deng Shaoling, \textit{Sun Zhigang an yu weixian shencha xueshu yantaohui zongshu [The Sun Zhigang Case and Constitutional Review: Summary of an Academic Symposium]}, \textit{ZHONGGUO FAXUE [CHINA LEGAL SCI.],} No. 4, 2003. In early June, the Constitutional and Human Rights Committee of the Beijing Lawyers Association also held a seminar to discuss the case. Zhang Xiantang & Zhang Fan, \textit{Fanxi Sun Zhigang an yishen falü kunjing, daiyi efa yao taichu xianfa [Rethinking the Difficult Legal Predicament of The First Instance Trial of the Sun Zhigang Case: To Strike at an Evil Law, the Constitution Must Be Lifted Up]}, \textit{ZHONGGUO JINGJI SHIBAO [CHINA ECON. TIMES]},
legal petitions. On May 14, three young legal scholars named Xu Zhiyong, Teng Biao, and Yu Jiang submitted a formal petition to the Standing Committee of the National People’s Congress (NPCSC) challenging the legality and constitutionality of the C&R Measures (the “Review Petition”). The brief, technical petition called on the NPCSC to review the C&R Measures and argued that the Measures conflicted with the PRC Constitution and two national laws, the Legislation Law and the Administrative Punishment Law.

On May 22, a different group of five prominent legal scholars submitted a second petition to the NPCSC (the “Investigation Petition”). The Investigation Petition called for a special commission of investigation to look into the handling of the Sun Zhigang case and the implementation of the C&R system. The drafters of the Investigation Petition acted in part out of concern that the local investigation into Sun’s death may have involved a cover-up. Like the Review Petition, it carefully cited legal provisions. The voices of these five well-established legal scholars bolstered the legitimacy of the Review Petition and helped maintain public focus on the incident.

Chinese legal reformers viewed the controversy over Sun Zhigang’s death as an opportunity both to challenge the C&R system and to establish a precedent for constitutional review in China. Un-
der the PRC Constitution and the Legislation Law, the NPCSC, rather than China's judiciary, has the power to invalidate laws and regulations that conflict with the Constitution.\textsuperscript{40} In practice, however, the NPCSC has not actively exercised this power, leaving Chinese citizens without a functional mechanism of constitutional review.\textsuperscript{41} Legal scholars hoped that by filing the Review Petition, they would breathe life into this mechanism.\textsuperscript{42} "This is not aimed just at the Sun Zhigang case," said Xu Zhiyong. "We are concerned about the system itself. A mechanism for reviewing violations of the Constitution should be established and initiated in order to root out abuses and innovate continually."\textsuperscript{43} Scholars expressed strong support for the Review Petition and concluded that its filing was as significant as the Sun Zhigang case itself.\textsuperscript{44}

Both petitions received significant attention in the Chinese media. The drafters of the Review Petition, recognizing that their proposal would have little impact if it were not publicized, coordinated with national media and carefully timed the submission of the document to maximize media coverage.\textsuperscript{45} On May 16, the China Youth Daily published a supportive article on the Review Petition, noting the legal arguments and motivations of the scholars and hailing their decision to make use of the Legislation Law to propose re-

\textsuperscript{40} XIAN FA art. 67; Legislation Law, supra note 36, art. 88(2).


\textsuperscript{42} WANG ZHENMIN, supra note 8, at 162. As Professor Wang notes, the Sun Zhigang incident was the first case in which the issue of constitutional review had been raised since the Supreme People’s Court had authorized a provincial high court to cite a constitutional provision in a 2001 case involving the right to education. It was therefore viewed as an important test case.

\textsuperscript{43} Cui Li, San gongmin shangshu renda jianyi dai shourong banfa jinxing weixian shenchao [Three Citizens Submit an Appeal to the National People’s Congress Proposing that the NPC Conduct Constitutional Review of the Custody and Repatriation Measures], ZHONGGUO QINGNIAN BAO [CHINA YOUTH DAILY], May 16, 2003, available at RENMIN WANG [PEOPLE’S NET].

\textsuperscript{44} Guanzhu Sun Zhigang anjian yi yi zhongda [Attention to Sun Zhigang Case Has Important Implications], JINGJI GUANCHA [ECON. OBSERVER], May 26, 2003 (citing the comments of Jiang Ping, Professor at the Chinese University of Politics and Law); WANG ZHENMIN, supra note 8, at 159.

\textsuperscript{45} According to Teng, the scholars timed their petition to hit a lull in reporting on the SARS crisis but did not want to wait too long for fear of losing the momentum of public opinion behind the case. Teng Biao, supra note 29. Interestingly, at least one China Youth Daily reporter attended a June meeting of lawyers and legal scholars on the significance of the case. Zhang Xiantang & Zhang Fan, supra note 33.
view of the C&R Measures.\textsuperscript{46} Newspapers across China reprinted the \textit{China Youth Daily} story and published other articles casting the Review Petition in a positive light.\textsuperscript{47} The Investigation Petition also received positive coverage.\textsuperscript{48} By late May, the NPCSC publicly acknowledged receipt of the Review Petition and indicated that it was considering the document.\textsuperscript{49}

In May, central government leaders took steps to address the public outcry over Sun’s death. According to Chinese accounts, senior leaders alerted by the media reports took personal charge of the case, ordered Guangdong authorities to conduct a thorough investigation into Sun’s death, and dispatched a special working group to Guangdong to supervise the investigation.\textsuperscript{50} The public response reportedly created extreme pressure to crack the case.\textsuperscript{51} By mid-May, authorities acknowledged that Sun had been wrongfully detained and announced that they had arrested thirteen suspects, including eight patients at the C&R clinic who were charged with beating Sun, and five employees of the clinic who were accused of inciting the beating.\textsuperscript{52}

\textbf{C. Punishment of Sun’s Attackers}

With Sun’s alleged attackers in custody, authorities moved aggressively to bring the case to trial. On June 5, the trial of twelve defendants charged with beating or inciting the beating of Sun Zhi-gang opened in the Guangzhou Intermediate People’s Court.\textsuperscript{53} According to published accounts of the courtroom testimony, clinic

\begin{itemize}
\item \textsuperscript{46} Cui Li, supra note 43.
\item \textsuperscript{47} Teng Biao, The Sun Zhigang Incident, supra note 29. For examples of other articles, see Cao Lin, \textit{Feichang zeren weihu xianfa quanwei [Special Responsibility to Uphold the Authority of the Constitution]}, GUANGMING RIBAO [GUANGMING DAILY], June 6, 2003; Attention to Sun Zhigang Case Has Important Implications, supra note 44; Editorial, Two Difficulties with the Custody and Repatriation System. Constitutional Review Possible, supra note 19.
\item \textsuperscript{48} See, e.g., Cui Li, supra note 33; Cao Lin, supra note 47.
\item \textsuperscript{49} Nie Longyun, supra note 17; Cui Li, supra note 43. It is unclear whether the Standing Committee ever formally acknowledged receipt of the Investigation Petition.
\item \textsuperscript{50} Fan Zhou, supra note 31; Lin Wei, The Public Trial of Sun Zhigang’s Case Will Be Held on 5 June, ZHONGGUO QINGNIAN BAO [CHINA YOUTH DAILY], June 4, 2003, available at FBIS.
\item \textsuperscript{51} Lin Chufang & Zhao Ling, supra note 29.
\item \textsuperscript{52} Sun Zhigang zhisí jingdong zhongyang, 13 ming xianyiren quanbu bei jibu guan [The Death of Sun Zhigang Disturbs the Center, 13 Suspects Are All Seized and Brought to Justice], XINHUANET, May 13, 2003.
\item \textsuperscript{53} Security for the trial was tight, and courtroom access was restricted to Sun’s family, lawyers, and a small number of approved reporters. See You Don’t Need a Temporary Residence Permit in Heaven, supra note 8. These restrictions caused some to question the fairness of the trial. WANG LEI, supra note 8, at 152.
\end{itemize}
guards were angered that Sun screamed for help when relatives of other detainees visited the clinic and ordered eight detainees to beat him as punishment. Within days, all twelve defendants were convicted and given sentences ranging from three years’ imprisonment to death.\footnote{Twelve People Sentenced for Beating Death of a Young Man, XINHUA GEN. NEWS SERVICE, June 10, 2003, available at FBIS [hereinafter Twelve People Sentenced]. The Guangzhou High People’s Court rejected the appeals of all twelve defendants on June 27. Court Reaches Final Decision on Sun Zhigang Case, XINHUA GEN. NEWS SERVICE, June 27, 2003, available at FBIS. On the same day, Qiao Yanqin, one of the guards at the clinic, was executed. Man Executed in China for Role in Brutal Killing of Migrant Worker, AGENCE FRANCE PRESSE, June 28, 2003.} In two separate trials, an additional six public security officers were convicted of dereliction of duty and sentenced to prison terms ranging from two to three years.\footnote{Twelve People Sentenced, supra note 54.} Twenty-three other officials received administrative punishments.\footnote{WANG LEI, supra note 8, at 151.}

Although Chinese authorities declared that these convictions resolved the case, many commentators viewed the trials as a whitewash, and doubts remained that all of those responsible for Sun’s death had been punished. Scholars expressed misgivings about the haste of the investigation and concern about a cover-up, noting that public security personnel suspected of involvement in the case had actually participated in the investigation.\footnote{Shen Kui, supra note 38; Xiao Han, Guanyu Sun Zhigang an ji xiangguan wenti de wudian sikao [Five Reflections on the Sun Zhigang Case and Related Issues], June 11, 2003 (Internet posting on file with author); Investigation Petition, supra note 19. According to Benjamin Liebman, even the People’s Daily observed that important facts about the case had not been made public. Liebman, supra note 2, at 85.} Xiao Han, a signatory of the Investigation Petition, warned of an injustice within an injustice.\footnote{Xiao Han, supra note 57. Xiao concludes that “[s]ome people had manufactured an even larger civil rights crime to cover up the prior crime.” Id.} Testimony given at the trial only intensified such concerns. Although prosecutors reportedly produced a videotape of the beating, several of the defendants claimed that Sun had been beaten badly before he arrived at the clinic.\footnote{You Don’t Need a Temporary Residence Permit in Heaven, supra note 8.} Moreover, the trial and conviction of Sun’s alleged attackers did not quiet public complaints about law enforcement abuses, the treatment of migrants, and the legality of the C&R system that were raised after Sun’s death.

D. Repeal of China’s C&R System and Government Efforts to Bring Closure to the Sun Zhigang Incident

With the trial of Sun’s attackers over, authorities moved to address the broader concerns that the incident raised. In mid-June
2003, Guangdong Communist Party leaders held a two-day meeting to study the Sun Zhigang incident."

On June 16, officials of the State Council Legal Affairs Office met with several prominent legal scholars to review a set of draft regulations to replace the C&R Measures. Two days later, official media reported that the State Council, at an executive meeting chaired by Premier Wen Jiabao, had approved a new regulation called the “Measures on the Administration of Aid to Indigent Vagrants and Beggars” (“Aid Measures”) to replace the C&R Measures. The new measures directed civil affairs bureaus to establish voluntary aid stations to “provide aid to indigent vagrants and beggars and safeguard their basic subsistence rights and interests.” The Aid Measures made civil affairs bureaus, not public security, responsible for administering the aid system and prohibited forced commitments and repatriations. The China Youth Daily acknowledged that the repeal of C&R would increase the number of urban migrants and pose challenges for city administrators, but argued that there are better ways than C&R to deal with such problems. A spokesman for the National People’s Congress (NPC) noted that the C&R system was beyond repair and that police could use the Criminal Law or Security Administration Punishment Regulations to deal with problems such as migrant crime.

Many PRC commentators reacted to the repeal of the C&R Measures with euphoria. Xiao Han declared that the day of the decision would be “entered into the history books.” In an emotional

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61. Zhao Ling & Shen Ying, Liu qi jiuzu banfa juece guocheng [Policymaking Process for the Aid Measures for Vagrants and Beggars], NANFANG ZHOUCHU [S. WEEKEND], June 26, 2003. This group of scholars, led by Ying Songnian, did not include any signatories of either the Review Petition or the Investigation Petition.
63. Aid Measures, supra note 62, arts. 1, 10, 14.
64. The Aid Measures provide only that personnel of public security and other relevant administrative organs may “inform” indigents that they may seek help from aid stations. Id. art. 5.
65. Chai Ruisheng, The Shift from Detention to Assistance Demonstrates the Government’s Responsibility Toward People, ZHONGGUO QINGNIAN BAO [CHINA YOUTH DAILY], June 20, 2003, available at FBIS.
66. Nie Longyun, supra note 17.
editorial that reflected the sentiments of many in China, the *Southern Metropolitan Daily* proclaimed:

We believe that when those who are concerned about the system of custody and repatriation hear the news, they will be gratified and may even cry. We also believe that Sun Zhigang will be comforted in death. The central government’s swift adoption of this decision in less than two months—from April 25, when this newspaper reported on the Sun Zhigang incident—to yesterday, June 18—is indeed worthy of commendation because it embodies a highly pragmatic and responsible spirit. Feeling gratified, we would also like to express our thanks . . . Sun Zhigang has become a symbol, a symbol that stands for citizen rights. We believe that this symbol will forever be engraved deeply in the minds of citizens. The Sun Zhigang incident has become a milestone, a milestone in the history of citizen rights. We believe that this milestone will always remind us to cherish and strive for every right to which our citizens are entitled and to promote political civilization, the rule of law, and social progress in China.68

*Xinhua* hailed the reform as a “great leap forward” for human rights,69 while the *People’s Daily* characterized the decision as a demonstration of the government’s “responsiveness to public opinion.”70 The *China Youth Daily* bid “good bye” to “detention and repatriation” and concluded that “[the reform] demonstrates our government is a responsible one and a highly efficient government in the service of the people.”71

While expressing vindication and a sense of empowerment, some scholars also sounded notes of caution. Xu Zhiyong, representing the view of many observers, expressed disappointment that the

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68. Zi Yue, Yongyuan gaobie Sun Zhigang beiju [Bid an Eternal Farewell to the Sun Zhigang Tragedy], *NANFANG DUSHIBAO [S. METROPOLITAN DAILY]*, June 19, 2003, available at http://www.nanfangdaily.com.cn/ds/20030619/sp/20030619010120.asp. This article was reprinted on the *People’s Daily* Web site. Scholars exhibited similar emotion in reacting to the news of the reform.


groundbreaking process of constitutional scrutiny by the NPCSC had been sidelined. 72 Observers also warned that the repeal of the C&R Measures was just the start of the reform process, that a web of local C&R rules would need to be revised, and that actual implementation of the new regulations would be the true test of progress. 73 Finally, some commentators, while welcoming the Aid Measures, argued that China’s hukou system and pervasive abuse of the law by police, not the C&R Measures themselves, were the real problems that caused Sun Zhigang’s death. 74

As the government implemented the new system and instituted a series of additional law enforcement reforms, it also adopted countermeasures to bring closure to the Sun Zhigang incident. In late July, the Ministry of Civil Affairs released implementing rules for the Aid Measures, and local governments began the process of implementing the new aid system by repealing local C&R regulations and transforming C&R centers into “aid stations.” 75 At the same time, authorities moved to re-assert control over public discourse by banning further reporting on Sun Zhigang, suppressing a petition challenging China’s Re-Education Through Labor System, temporarily restricting public discussion of constitutional reform in the media and in academic conferences, and closing several Web sites that had been

73. Chai Ruisheng, supra note 65; China Vows to Look After Vagrants and Beggars, supra note 69; Wu Lanyou, Making Sure Aiding Does Not Turn into Housing, ZHONGGUO QINGNIAN BAO [CHINA YOUTH DAILY], June 23, 2003, available at FBIS. Teng Biao noted that while the new regulation would be an improvement, “we need to be sure that [it] does not have other elements that make it just as bad.” John Pomfret, China Voids Rule on Jailing Vagrants, WASH. POST, June 19, 2003, at A22.
74. See, e.g., Yan Xiaohu, supra note 13, at 14; Zhou Wei, Gongmin renshen ziyou de xianfa baohu [Constitutional Protection of Citizens’ Personal Freedom], FAXUE [LEGAL SCI.], No. 7, 2003, at 10; Jiang Dehai, supra note 18; Zhang Xiantang & Zhang Fan, supra note 33; Xiao Han, supra note 67.
major forums for discussing Sun Zhigang's death. In early 2004, authorities in Guangdong detained several editors of the Southern Metropolitan Daily and charged two with economic crimes in what was widely believed to be retribution for aggressive reporting on China's Severe Acute Respiratory Syndrome (SARS) crisis, the Sun Zhigang incident, and other issues. On a broader scale, the government has been engaged in a three-year campaign to "rectify" the media and tighten controls over reporters, newspapers, the Internet, and public intellectuals. Although these government actions were a response to numerous events, only one of which was the Sun Zhigang incident, they demonstrate the state's ability to respond to reform pressures and its determination to maintain control over the events that unfolded in 2003.

III. ANALYSIS OF FACTORS LEADING TO THE REPEAL OF THE C&R MEASURES

In the Sun Zhigang incident, a confluence of events and circumstances created conditions favorable to a positive reform outcome. An examination of these factors holds lessons for those trying to understand the dynamics of citizen activism in China and the conditions under which legal reformers may be able to generate a dynamic similar to that in the Sun Zhigang incident in the future. Such an analysis points to the importance not only of a moderate and focused legal strategy, but also political conditions, media coverage, and government policy flexibility.

76. Teng Biao, supra note 29; John Pomfret, China Orders Halt to Debate on Reforms, WASH. POST, Aug. 27, 2003, at A1. In one press conference, the Vice-Minister of Public Security thanked the Chinese media on behalf of the MPS and Minister of Public Security Zhou Yongkang for exposing the Sun Zhigang case. He noted that the circulars had been issued to police officials nationwide for all to learn from the case, even as this crackdown was unfolding. Sun Zhigang shijian chili shi jianjue yansu de [The Handling of the Sun Zhigang Incident Is Firm and Serious], NANFANG RIBAO [S. DAILY], Aug. 8, 2003, available at http://news.sina.com.cn/c/2003-08-08/1643531005.shtml.

77. Teng Biao, supra note 29; Pan, supra note 22.

78. Goldman, supra note 4, at 224–27; CONG.-EXECUTIVE COMM’N ON CHINA, 2005 ANNUAL REPORT 55–67 (Oct. 11, 2005) [hereinafter CECC 2005 ANNUAL REPORT]. Hong Kong’s Tai Yang Pao, reporting on the start of the media crackdown in 2003, tied it to reports on SARS and Sun Zhigang. CPC Central Committee Propaganda Rectifies the Media with an Iron Hand, TAI YANG PAO, June 19, 2003, available at FBIS.

79. As scholars of China have demonstrated, challenges to the state may pry open space for reform, but they can also elicit countermeasures. Neil J. Diament et al., Law and Society in the People’s Republic of China, in ENGAGING THE LAW IN CHINA 12 (Neil J. Diament et al. eds., 2005).
A. Political Conditions Related to China's Leadership Succession and the SARS Crisis Put the Government on the Defensive

The Sun Zhigang incident took place against the backdrop of a politically tense leadership transition in China and the upheaval of the SARS crisis. In November 2002, Hu Jintao succeeded Jiang Zemin as Party General Secretary.\(^{80}\) Four months later, Hu succeeded Jiang as State President, and Wen Jiabao replaced Zhu Rongji as Premier of the State Council, China's highest administrative organ.\(^{81}\) While Jiang stepped down from the two top leadership positions, he retained the post of chairman of the Central Military Commission and placed his allies in a majority of the positions on an expanded Party Politburo Standing Committee.\(^{82}\) These events left Hu's status and authority relative to Jiang unsettled and generated speculation that the two leaders were engaged in a power struggle.\(^{83}\) As they assumed their new posts, Hu and Wen launched a number of initiatives to assist marginalized groups in Chinese society, including the rural poor and migrant laborers.\(^{84}\) They also emphasized reform themes of governing for the people, stressed greater government transparency and openness, and took steps to promote understanding and implementation of the PRC Constitution.\(^{85}\) Many commentators

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85. Joseph Frewsmith, China's Response to SARS, China Leadership Monitor, Summer 2003, at 8; Cheng Li, The New Bipartisanship Within the Communist Party, 49 Orbis 387, 387–88, 393–95 (2003); H. Lyman Miller, The Hu-Wen Leadership at Six Months, China Leadership Monitor, Fall 2003, at 3–4. For examples of these efforts, see Hu Jintao: Lingdao gandan quan weimin sanyang, qing weimin suoxi, li weimin suomou [Hu Jintao: Leading Cadres Use Power for the People, Connect with the Sentiments of the People, and Pursue the Interests of the People], Zhongguo Xinwen Wang [Chinanews.com], Feb. 18, 2003; Renzhen guanche shiliu da jingshen, wei tuixin nongcun xiaokang jianshe er fendou [Seriously Implement the Spirit of the Sixteenth Party Congress and Struggle to Push Forward the Building of a Healthy Countryside], Renmin Ribao [People's Daily], Feb. 8, 2003; Hu Jintao qiangdiao jinyibu shuli xianfa yishi yu quanwei
interpreted these moves as part of a careful effort by Hu and Wen to
differentiate themselves from Jiang and to consolidate their power
during the political transition. 86

The SARS crisis of early 2003 brought these leadership
dynamics into sharper relief. In late 2002, a mysterious respiratory ill-
ness began infecting people in southern China. By March 2003, the
disease had spread to more than 20 countries, infecting over 3,000
people and killing 144. 87 For weeks, Chinese officials, fearful of the
economic and political repercussions of the outbreak, maintained that
the disease was under control. 88 In April 2003, however, in the face
growing hysteria and both international and domestic pressure, the
government reversed course. Senior leaders acknowledged that the
government had not accurately reported the number of SARS cases,
publicly apologized, and fired two senior officials for their roles in
the alleged cover-up. 89 Although these revelations posed a severe
challenge to the government and Party, 90 the crisis also presented a
political opportunity for Hu and Wen. Chinese media stressed that

86. See, e.g., Willy Wo-Lap Lam, Hu Jintao Earns His Place as Role Model,
CNN.COM, Jan. 28, 2003; Vivien Pik-kwan Chan, Hu Uses Constitution to Tighten Grip on
Power, S. CHINA MORNING POST, Jan. 20, 2003, available at FBIS; Nailene Chou West, New
Leadership Ushers in New Deal, S. CHINA MORNING POST, June 27, 2003; Miller, supra note
85, at 3–4, 6; After the Detention and Death of Sun Zhigang: Prisons and Detention in
China, Roundtable Before the Cong.-Executive Comm’n on China, 108th Cong. 6 (testimony
of Murray Scot Tanner, Senior Political Scientist, Rand Corp.).

87. John Pomfret, Beijing Said to Conceal Extent of Disease: Officials Try to Protect
City’s Reputation as World Health Agency Widens Probe, WASH. POST, Apr. 16, 2003, at
A18.

88. Reports at the time suggested that senior leaders, fearful of making an
announcement that would tarnish the National People’s Congress meeting in March and
damage the economy, initially ignored the outbreak and hoped it would go away. John
Pomfret, Outbreak Gave China’s Hu an Opening: President Responded to Pressure Inside

89. Id.; John Pomfret, Epidemic Is a ‘Test’ for China’s Leadership, WASH. POST, Apr.

90. The hysteria and disruption caused by SARS and the severity of the political
backlash from the cover-up led some commentators to characterize the epidemic as
“[China’s] 9/11” and “the Chinese Communist Party’s Chernobyl.” Erik Eckholm, Possible
Next Patient: The Chinese Leadership, N.Y. TIMES, Apr. 25, 2003, at A20 (referring to
SARS as “the Chinese Communist Party’s Chernobyl”); Erik Eckholm, Rude Awakening: SARS Shakes Complacent Mood of China and Spotlights Shortcomings in Its System, N.Y.
for a Chinese newsweekly as calling SARS “our country’s 9/11”). In assessing the political
and economic impact of the crisis, analysts also drew comparisons with the Tiananmen
Square protests and the Asian financial crisis. John Pomfret, China Orders End to SARS
Coverup, WASH. POST, Apr. 19, 2003, at A8 (noting comparisons to the Tiananmen Square
protests); Pomfret, supra note 87 (noting comparisons to the Asian financial crisis).
the extent of SARS had been hidden from top authorities, and the new leaders launched a media blitz on their efforts to fight the disease, emphasizing the need for accurate and timely reporting. These public actions reinforced themes of openness that Hu and Wen had been trying to project during the leadership transition and gave the leaders a high-profile opportunity to demonstrate their leadership and to contrast themselves with Jiang (who had come across as aloof during the crisis).

The leadership transition and the SARS crisis created political conditions conducive to a reform victory in the Sun Zhigang incident. Controversy over the Chinese government’s initial failure to disclose the extent of SARS put the government on the defensive and raised the political risks associated with any sustained effort to suppress information about the Sun Zhigang incident once the story broke. The SARS controversy prompted calls for greater transparency and stronger media supervision of the government and led to a period of relative media openness in the spring of 2003. Because of its focus on the SARS crisis, the Central Propaganda Department also had fewer resources to monitor and supervise the Sun Zhigang story. Together, these factors made it easier for the media to report aggressively on Sun’s death and, in turn, to fuel public pressure to solve the case and address problems in the C&R system.

The decision to repeal the C&R Measures also provided Hu and Wen with an opportunity to reinforce their populist credentials and the government’s story on the SARS debacle. Despite reports that the central government had been aware that SARS was a problem in China, official Chinese accounts suggested that lack of coordination among departments and the absence of effective information reporting mechanisms had kept senior leaders in the dark about the extent of the epidemic. According to these accounts, when Hu and

91. Erik Eckholm, China Admits Underreporting Its SARS Cases, N.Y. TIMES, Apr. 21, 2003, at A1; Pomfret, supra note 90.
92. James Mulvenon, The Crucible of Tragedy: SARS, the Ming 361 Accident, and Chinese Party-Army Relations, CHINA LEADERSHIP MONITOR, Fall 2003, at 3; Fewsmith, supra note 85, at 7; Pomfret, supra note 90.
94. The government’s anxiety about the potential impact of any further blown cover-ups was demonstrated in early May, when it took the unprecedented step of disclosing details about a military disaster—the accidental sinking of a Chinese submarine and the death of the seventy sailors aboard. Mulvenon, supra note 92, at 1.
95. Liebman, supra note 2, at 88.
96. Eckholm, supra note 91 (quoting the Deputy Health Minister’s explanation that “accurate figures have not been reported to high authorities in a timely manner”); A Hard
Wen became aware of the problem, they ordered full reporting on the SARS crisis and fired two senior officials in “a demonstration of the new leadership’s resolve to act differently,” thereby winning “trust at home and abroad.”97 By taking quick steps to investigate the Sun Zhigang case and repeal the C&R Measures, Hu and Wen were able to demonstrate their decisiveness in another setting and bolster official claims about their response to the SARS crisis.98 Such action reinforced the governance themes that the new leaders had emphasized as they worked to consolidate their power in early 2003.99

B. The Chinese Media and Internet Users Aggressively Publicized Information and Discussion About Sun Zhigang’s Death and the C&R System

Together, traditional media outlets and the Internet played a critical role in the reform outcome in the Sun Zhigang incident. Since the 1990s, Chinese media have become increasingly commercialized and have expanded reporting on the legal system and local corruption.100 The aggressive reporting on the Sun Zhigang case and the scholar petitions illustrated these trends and turned Sun’s death into a case of national concern that could be leveraged to promote system-wide reform. Teng Biao, a signatory of the Review Petition, candidly acknowledged that the Southern Metropolitan Daily’s report on the Sun Zhigang case “caused this ‘incident’ to occur. If Sun Zhigang’s death had not been made public . . . there would have been no way for it to become an important event in China’s rule of law.”101 Xiao Han noted that the media played a “major” role in the case, both by breaking the story and by providing a forum for commentary, and praised the media for serving as a “voice for justice.”102

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97. China’s New Leadership Wins Trust, supra note 70; A Hard Won Victory, supra note 96.
98. Chinese media tied the two events together, citing both as demonstrations of the new government’s responsiveness to public opinion. See supra notes 70 & 71. See also Guo Junwang, Guanyu Sun Zhigang anjian de falü sikao [Legal Reflections on the Sun Zhigang Case], Falü Shixiang Wang [LAW THINKER.COM], Oct. 14, 2004.
99. See supra Section II(A).
100. Liebman, supra note 2, at 9, 12, 30, 57–58, 111–12. Liebman notes that these trends reflect both changes in state policy and a growing sense of moral duty on the part of many journalists.
101. Teng Biao, supra note 29.
102. Xiao Han, supra note 57. Xiao specifically commended the Southern Metropolitan Daily, Southern Weekly, China Youth Daily, Legal Daily, Workers Daily, and 21st Century Business Herald for their roles in the Sun Zhigang case. For similar comments on the importance of the media in the case, see Guo Junwang, supra note 98, Liebman, supra note
media exposure clearly created conditions conducive to the success of legal reform efforts.

The Internet amplified and expanded the dissemination of information and public discussion of the Sun Zhigang incident. At a time when mobility had been slowed by fears of SARS, legal reformers relied heavily on the Internet to communicate about the case and develop a reform strategy. More importantly, the Internet provided a medium through which information about the case could be distributed rapidly and it fueled a powerful tide of public opinion. Observers noted that online discussion of the case and C&R was much more open and difficult to control than discussion in traditional news media. Internet chat rooms and bulletin boards provided ordinary citizens with online assembly points through which they could publicly express their anger over Sun’s death, relate their own stories about C&R and police abuse, and recognize that others shared their views. Legal intellectuals made extensive use of the Internet to publish commentaries on the incident, lending legitimacy to the voices of average “netizens.” These mutually reinforcing exchanges created a sense of empowerment and forged a public consensus on the Sun Zhigang incident that made it easier to overcome political obstacles in the case. Internet opinion in turn drove the agenda of traditional media, creating pressures for information disclosure and more aggressive reporting. In the words of Teng Biao, “the persistent concern on the Internet became a major moral force.” Teng and his co-petitioners could leverage this national force without having to engage in direct political organization them-

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2, at 87; Cai Dingjian, supra note 7, at 11, 15.
103. Teng Biao, supra note 29.
104. Id.; Xiao Qiang, supra note 22.
106. Xiao Qiang, supra note 22. For example, Xiao Han published numerous commentaries on the case in May and June. See, e.g., Xiao Han, *Bu zhengchang de siifa, Sun Zhigang an pingluan zhi shiyi [Abnormal Administration of Justice, Sun Zhigang Case Commentary Eleven]*, ZHONGPING WANG [CHINA REVIEW.COM], June 9, 2003, available at http://www.china-review.com/everyday/everyday-72.htm; Xiao Han, supra note 67. “Netizen” is a term that has emerged in China in recent years to describe citizens who follow and comment on issues of public concern on the Internet.
107. Teng Biao, supra note 29; Lin Chufang & Zhao Ling, supra note 29; Editorial: Two Difficulties with the Custody and Repatriation System, Constitutional Review Possible, supra note 19. Xu Zhangrun, a law professor at Qinghua University, expressed optimism that there would be changes to C&R “because the legality of this system is being challenged not only by intellectuals, but also by the public.” Siew Ying Leu, supra note 15.
108. Xiao Qiang, supra note 22.
selves, an act that authorities would likely have perceived as a more overt threat. The efforts of scholars to time their petitions to maximize media coverage, and Chinese government’s efforts to clamp down on the media and Internet chat rooms in the wake of the Sun Zhigang incident, demonstrate the critical role that the traditional media and the Internet both played.110

C. Sun Zhigang Was an Ideal Figure to Crystallize Concerns About the C&R System and Law Enforcement Abuses Generally

Sun Zhigang was an ideal figure to capture public attention, particularly that of urban elites, and focus it on abuses in the C&R system. As some commentators noted with concern, detainees had died in C&R centers before without such public controversy, and the tragedy may never have come to light if Sun had been a farmer or a migrant worker.111 In contrast, Sun was a young, male university graduate who came from a poor family in a rural part of Hubei Province.112 Sun had graduated and traveled to prosperous Guangzhou to pursue a professional career. In short, he was fulfilling the dream of many rural Chinese families when he was unlawfully detained and died in official custody. Chinese media focused on Sun’s status as a university graduate and published emotional photographs and descriptions of his devastated family.113 Sun’s death drew attention to the fact that not only poor peasants, but also educated urbanites, were at risk from police abuse.114 These characteristics helped to crystallize concerns about the law enforcement practices that led to Sun’s death and mobilize urban intellectuals to challenge C&R.

110. For scholarly efforts to maximize the media impact of their petitions, see supra Section II(B). For government efforts to clamp down on the media, see supra Section II(D).
111. See, e.g., Rough Justice, supra note 30; Deng Shao, supra note 33; Zhang Xiantang & Zhang Fan, supra note 33.
112. Follow up on a Student’s Death in a Custody Center, supra note 21; Fong Tak-ho, supra note 20.
113. See, e.g., Sun Zhigang zhi si, shui lai faze? [The Death of Sun Zhigang: Who Is Responsible?], SANLJAN SHENSHUO ZHOUKAN [SANLJAN LIFE WKLY.], June 16, 2003. One publication noted that the case had moved the hearts of thousands of parents. You Don’t Need a Temporary Residence Permit in Heaven, supra note 8.
114. Pomfret, supra note 73; Zi Yue, supra note 25. Constitutional law scholar Wang Zhenmin notes that the incident caused scholars to pay more attention to the rights of “little people” because “if the rights of others can be arbitrarily infringed upon, then everyone’s rights . . . can also be violated.” WANG ZHENMIN, supra note 8, at 165–66.
D. Reformers Presented a Compelling Legal Argument

The authors of the Review Petition made three legal arguments of varying strength to support their conclusion that the C&R Measures were unlawful. The first argument was that the Measures violated Articles 8 and 9 of the Legislation Law. Article 8 provides, "The following affairs shall only be governed by law: . . . (5) coercive measures (qiangzhi cuoshi) and penalties (chufa) involving the deprivation of the political rights or personal freedom of citizens."\(^\text{115}\) Article 9 provides that the NPC or the NPCSC may authorize the State Council to formulate administrative regulations on the matters listed in Article 8 "except for matters concerning criminal offences and their punishment, coercive measures and punishments involving the deprivation of the political rights or personal freedom of citizens, and the judicial system."\(^\text{116}\) Although the Legislation Law does not include a definition of "coercive measures," the term is understood in China to refer to any state act that temporarily restricts the personal freedom or property of a citizen.\(^\text{117}\) The C&R Measures and related implementing rules—both administrative regulations passed by the State Council or its subordinate entities—contained coercive provisions.\(^\text{118}\) As an administrative regulation that restricted the personal

\(^{115}\) Legislation Law, supra note 36, art. 8.

\(^{116}\) Id. art. 9. Laura Paler notes that the NPC added this provision to the Legislation Law shortly before the law's passage as part of an effort to assert its primacy over a body of legislation critical to human rights protection. Laura Paler, China's Legislation Law and the Making of a More Orderly and Representative Legislative System, 182 CHINA Q. 301, 309 (June 2005).

\(^{117}\) The NPC website, for example, has this understanding of "coercive measures" in its definition of an "administrative coercive measure." Zhang Hong, Xingzheng qiangzhi lielu [Brief Theory on Administrative Coercion], ZHONGGUO RENDA WANG [CHINA NATIONAL PEOPLE'S CONGRESS NET], Dec. 29, 2005. China's draft "Administrative Coercion Law" reportedly defines an administrative coercive measure as including any "temporary restriction on the personal freedom of citizens." Shi Guosheng, Xingzheng qiangzhi fa caoan shouqi tijing guanwuzuo ren da changweihui shenzi [Draft Law on Administrative Coercion Submitted for Deliberation by the National People's Congress for the First Time], RENMIN WANG [PEOPLE'S NET], Dec. 25, 2005.

\(^{118}\) The C&R Measures provided that subjects of C&R "must" submit to C&R and required C&R stations to send them back to their place of registered residence. C&R Measures, supra note 11, arts. 5, 6. The implementing rules provided that subjects of C&R must remain in custody pending repatriation. Detailed Implementing Rules, supra note 75, art. 13. Although the C&R Measures were issued before the passage of the Legislation Law, the Legislation Law contains no provision limiting its applicability to subsequently issued laws and regulations and in fact specifies that in the event of a conflict of law, national laws take precedence over administrative regulations, and newer laws take precedence over older laws. Legislation Law, supra note 36, arts. 79, 83. Jiang Ping concludes that after the passage of the Legislation Law, any administrative regulation that conflicted with the law and that was not changed within a reasonable time should be considered unlawful. Sun Zhigang anjian shifou hui yinfu shouli weixian shencha [Whether or Not the Sun Zhigang Case Will Trigger the First Constitutional Review], LINGDAO JUECE XINXI ZHOUKAN [LEADERSHIP POL'Y NEWS WkL.Y.], June 20, 2003, at 3.
freedom of citizens, the C&R Measures were thus a clear violation of the Legislation Law, a position adopted by many Chinese legal scholars who analyzed the issue.\textsuperscript{119}

The second argument in the Review Petition was that the C&R Measures violated Article 37 of the PRC Constitution. This argument was subject to two interpretations and was more controversial than that regarding the Legislation Law.\textsuperscript{120} Article 37 of the Constitution provides:

The freedom of the citizens of the PRC is inviolable. No citizen may be arrested except with the approval or by a decision of a people’s procuratorate or by a decision of a people’s court, and arrests must only be made by a public security organ. Unlawful deprivation or restriction of citizens’ personal freedom by detention or other means is prohibited, and unlawful search of the person of citizens is prohibited.\textsuperscript{121}

Some commentators concluded that because the C&R Measures were “unlawful” under the Legislation Law, the Measures technically violated Article 37.\textsuperscript{122} However, others seized on the fact that this technical violation rested on the Legislation Law to argue that while the Measures might violate national law, they should not be characterized as “unconstitutional.”\textsuperscript{123} Still other scholars argued that C&R was by its nature a constitutionally impermissible violation of the personal freedom of citizens.\textsuperscript{124} Of the two constitutional in-

\textsuperscript{119} See, e.g., He Weifang, supra note 33; Yan Xiaohu, supra note 13, at 14; Tong Zhiwei, Ziyu, chengxu, guize—Sun Zhigang an de fali sikao [Freedom, Procedure, and Rules—Reflections on Legal Issues in the Sun Zhigang Case], FAXUE [LEGAL SCI.], No. 7, 2003, at 6; Guo Junwang, supra note 98.

\textsuperscript{120} See, e.g., Deng Shaoling, supra note 33 (discussing scholars who argued both for and against the constitutionality of the measures). The drafters of the Review Petition did not specify which interpretation they were relying on.

\textsuperscript{121} XIAN FA art. 37.

\textsuperscript{122} See, e.g., Yan Xiaohu, supra note 13, at 14; Tong Zhiwei, supra note 119.

\textsuperscript{123} Jiang Dehai, supra note 18, at 16-17; Gu Gongyun, You Sun Zhigang anjian yinchu de ruogan wenti [Several Problems Raised by the Sun Zhigang Case], FAXUE [LEGAL SCI.], No. 7, 2003, at 23. See also Ma Ling, Sun Zhigang an de qishi: weixian shencha haishi weifa shencha [Enlightenment on the Sun Zhigang Case: Constitutional Review or Legislative Review?], GUOJI XINGZHENG XUEYUAN XUEBAO [J. NAT’L C. ADMIN.], Nov. 1, 2005, at 79-82 (arguing that “constitutional review” applies only to legislation, not to administrative regulations and acts); WANG ZHENMIN, supra note 8, 164-65 (noting that although the C&R Measures may have violated the Constitution, they directly violated the Legislation Law, and that therefore it is “not quite correct” to refer to the Sun Zhigang incident as a case of constitutional review).

\textsuperscript{124} Supporters of this interpretation relied on broader arguments that the spirit of the Constitution placed an inherent limit on state coercive measures, or that in the absence of a constitutional provision limiting the freedom of residence, the state could not restrict this freedom. Tong Zhiwei, supra note 119; Guo Junwang, supra note 98; WANG LEI, supra note 8, at 146-47; Qiao Xinxheng, supra note 18.
terpretations, the argument regarding C&R’s technical inconsistency with the Legislative Law seems more compelling, as the broader substantive arguments can be challenged by reference to other provisions of the Constitution.  

The final and weakest of the three arguments was that the C&R Measures violated the PRC Administrative Punishment Law (APL). Article 9 of the APL provides that “Administrative punishments involving the restriction of personal freedom shall only be established by law.” While the C&R Measures may have been applied as a kind of punishment in practice, they were not intended as such, but instead were designed primarily as a social welfare measure. Chinese academics have debated whether various forms of administrative detention, including C&R, qualify as “administrative punishments,” and whether the APL applies to such measures. The limited persuasiveness of this third argument is evident in discussions of the Review Petitions cited herein, most of which either ignore the APL argument or, in the case of one paper, explicitly dismiss it.

While the legal arguments against C&R that were based on the APL and inherent constitutional limits on state coercive powers were debatable, the argument that the C&R Measures violated the Legislation Law (and, in turn, Article 37 of the Constitution) was compelling. The NPC might have corrected this legal infirmity by providing a basis for the C&R system in national law. However, given political pressures related to the Sun Zhigang incident, the length of time it would have taken to draft and enact a national law, and other factors discussed in this Section, such a legislative remedy, may have been viewed as impractical.

125. In practice, even the substantive rights clearly enumerated in China’s Constitution are not enforceable in the absence of concrete implementing legislation. Moreover, the rights and freedoms listed in China’s Constitution are limited by Article 51, which states that citizen rights may not conflict with the interests of the state, society, or collective. Finally, the express language of Article 37 itself indicates that the right to personal freedom may be limited, as long as such limitations are established by lawful means.


127. C&R Measures, supra note 11, art. 1. See also Jiang Dehai, supra note 18, at 16–17; Yun Xiang, supra note 8, at 24.


129. Jiang Dehai, supra note 18, at 16–17 (concluding in a footnote that C&R is not an administrative punishment).

130. The NPC meets only once a year, in March, and national laws passed by NPCSC are typically subject to at least three deliberations, a process that can last as long as two
E. The Review Petition Created an Institutional Conflict and a Possible Precedent that the Government Was Anxious to Avoid

The Review Petition created a potential institutional conflict between the NPC and the State Council. In theory, the NPC is the supreme organ of state power in China and has the power both to supervise the PRC Constitution and to annul regulations that conflict with the Constitution or national law. In practice, the NPC has never publicly struck down a standing State Council regulation, and the State Council has played a significant role in China’s lawmaker process. Although the Legislation Law was in part an attempt to rationalize the balance of power between these two institutions, the drafting of this law generated significant debate and negotiations between them. In the context of such institutional tensions, the Review Petition created a politically awkward conflict between the State Council and the NPC. Rather than engage in a constitutional process that could undermine the State Council’s authority in the public’s eyes, the two institutions conducted behind-the-scenes consultations to find an acceptable outcome consistent with the existing power structure. The reasonable solution, other than taking the politically risky step of ignoring the Review Petition, was for the State Council simply to repeal the C&R Measures. This decision relieved pressure on the NPCSC, which lacked procedures for handling such petitions but faced a tide of public opinion on the Sun case that called for a timely response.

In addition, an NPCSC decision to cancel the C&R Measures would have created a review precedent that would threaten other administrative measures. Re-education through Labor (RTL), another form of administrative detention created by administrative regulation,
rather than by national law, is vulnerable to the same legal arguments reformers made against the C&R Measures in the Review Petition.\textsuperscript{137} Moreover, if the government had accepted the arguments on personal freedom in the Review Petition, citizens could have used this precedent to challenge China’s temporary residence permit (\textit{hukou}) system and other administrative control mechanisms.\textsuperscript{138} According to constitutional law scholar Tong Zhiwei, the government was concerned that a review decision by the NPCSC would have a domino effect and encourage citizens to mount legal assaults on RTL and other rules that authorities depend on more heavily than C&R.\textsuperscript{139} Such concern was evident in official media coverage of the State Council’s decision to repeal C&R, which justified the decision on the basis of social changes in China and avoided discussion of constitutional review and the scholar petitions.\textsuperscript{140} By repealing the C&R Measures itself, the State Council avoided such an outcome.

\textbf{F. There Was Government Policy Flexibility on the Issue of Reforming C&R}

Chinese sources suggest that the government had contemplated reform of the C&R system before news of Sun Zhigang’s death broke. As noted in Section Two, the system had long been a target for criticism. Officials and scholars contend that the State Council had been discussing reform of C&R for nearly a decade, and had initiated legislative work on the issue several years before the

\textsuperscript{137} See supra Section III(D). Under China’s RTL system, public security officials have the power to sentence individuals to up to three years of administrative detention and labor, with the possibility of a one-year extension. Veron Mei-Ying Hung, \textit{Improving Human Rights in China: Should Re-education Through Labor Be Abolished?}, 41 COLUM. J. TRANSNAT’L L. 303, 315–17. The legal basis for the system is a series of administrative regulations passed by the State Council. Some argue, however, that NPC resolutions in 1957 and 1979 provide a basis for RTL in “law.” \textit{Id.} (citing a Chinese legal scholar who argues that RTL is a “quasi” law).

\textsuperscript{138} An analysis in the 21st Century Business Herald argued that if C&R were found unconstitutional, the \textit{hukou} system and other public security systems would have to be reformed. \textit{Editorial: Two Difficulties with the Custody and Repatriation System, Constitutional Review Possible, supra} note 19. Xiao Han, one of the signatories of the Investigation Petition, had already argued in a public Internet posting that not only C&R, but also RTL, the Security Administration Punishment Regulations, the temporary residence permit system, and the \textit{hukou} system were all unconstitutional and would need to be abolished or reformed. Xiao Han, supra note 57.

\textsuperscript{139} Tong Zhiwei, supra note 119, at 6; Teng Biao, supra note 29.

\textsuperscript{140} Teng Biao, supra note 29. See also \textit{China Adopts Draft Regulation on Vagrants, Beggars, XINHUA GEN. NEWS SERVICE, June} 18, 2003. Teng Biao notes that a June 23 episode of the popular CCTV program “Focus” that was devoted to the repeal of C&R avoided discussion of the two scholar petitions and the issue of constitutiona! review. Teng Biao, supra note 29.
Sun Zhiping incident. Reform initiatives reportedly included an experimental program in Tianjin Municipality that prohibited the forced detention of migrants and vagrants and instead directed them to voluntary aid shelters.

As Hu and Wen launched their populist publicity campaign in early 2003, discussion of C&R reform continued. In January 2003, the State Council issued a directive calling on administrative departments to manage the migrant labor force more effectively, address the problem of wage arrears, and abolish "unreasonable" restrictions and fees on migrants who enter the cities for work. The directive stressed that "the scope of the [C&R] regulation must not be expanded to include migrant laborers, and, even more importantly, migrant laborers must not be forcefully repatriated and arbitrarily detained for inspection." In March, Huang Jingjun, a member of the Chinese People's Political Consultative Conference, submitted a proposal calling for a legal basis for the C&R system and the strict handling of any illegal actions by officials administering the system. According to Xinhua, Huang argued that the C&R system had departed from its original purpose as a relief measure and was being used to restrict migration, leading to infringements on the rights of migrant workers. As these reports indicate, senior officials recognized that the system was being abused and that there was a need for reform. Although evidence suggests that the government was not actively considering repeal of the C&R Measures prior to Sun Zhiping's death, the fact that senior officials were already discussing C&R reform probably facilitated the decision to abolish it as public pressure on the issue mounted.

G. Legal Intellectuals Worked Effectively within the System by Casting Their Reform Efforts as Consistent with Leadership Goals and Using Existing Legal Mechanisms

As noted in Section III(A), Hu Jintao placed strong emphasis

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141. Zhao Ling & Shen Ying, supra note 61.
142. Pomfret, supra note 73 (citing "Chinese legal sources"); China Vows to Look After Vagrants and Beggars, supra note 69.
144. Id.
145. See, e.g., Zhongxie weiyuan jianyan: shourong yisong buneng chengwei duifu mingong de shouduan [CPPCC Committee Member Advises: Custody and Repatriation Cannot Be a Tool Against Migrants], XINHUANET, Mar. 5, 2003.
146. Id.
on the supremacy of the PRC Constitution in late 2002 and the first half of 2003. On December 4, 2002, Hu used his first public appearance after becoming Party General Secretary to celebrate the twentieth anniversary of the 1982 Constitution.\textsuperscript{147} In his speech, Hu called for education both “to improve the consciousness of observing the Constitution among the whole people, especially the leading officials and functionaries of state organs” and to ensure that the “broad masses” know the Constitution is a “legal weapon for safeguarding citizen rights.” Noting that both institutional deficiencies and the low quality of some official personnel had led to “some unpleasant phenomena such as failures to observe or strictly enforce laws,” Hu also stressed that the NPC and its Standing Committee should “shoulder the duty to supervise the implementation of the cardinal law in practice, and \textit{firmly rectify acts that violate the Constitution}.”\textsuperscript{148} This and other rhetoric on the Constitution opened the door to spirited discussion of constitutionalism and constitutional enforcement in China in the first half of 2003.\textsuperscript{149}

Reformers challenging the C&R system used these rhetorical themes and existing legal mechanisms to their advantage. In the Review Petition, the three scholars intentionally relied on a very technical, legal argument, rather than emotional appeals, to avoid politicizing their challenge to the C&R Measures.\textsuperscript{150} Interestingly, the petition does not mention the Sun Zhigang case at all. As Teng Biao notes, “[i]t was not an appeal, but an exercise of citizen petition rights granted by the Constitution and the Legislation Law. It was not a protest, but citizens carrying out the practice of law within the cracks in the system.”\textsuperscript{151} By invoking the citizen petition mechanism clearly provided for in the Legislation Law and making a rational and technical argument that the regulations were unlawful, the three

\textsuperscript{147} Hu Jintao Stressed Progressively Establishing Constitutional Consciousness and Authority, \textit{supra} note 85.

\textsuperscript{148} \textit{Id.} (emphasis added). Several weeks after this speech, Hu stressed similar themes when he made the Constitution the subject of the first Politburo Standing Committee study session under his leadership. Zhai Wei, \textit{supra} note 85.


\textsuperscript{150} Jujiao weixian shencha diyi xuan’an [\textit{Focusing on the First Unsettled Case of Constitutional Review}], \textit{NANFANG ZHUMO [S. WEEKEND]}, May 22, 2003 (quoting Xu Zhiyong); Teng Biao, \textit{supra} note 19.

\textsuperscript{151} Teng Biao, \textit{supra} note 19.
scholars were using the law as a weapon to protect citizen rights and calling on the NPCSC to exercise its constitutional supervisory function, just as Hu Jintao had instructed. The were also acting to protect the interests of disadvantaged groups (migrants and the poor) that the new leaders had promised to assist. Commentary and editorials in the China Youth Daily and other progressive media supported this effort by reporting favorably on the scholars' effort, emphasizing the lawfulness of their action, and drawing specific parallels between the Review Petition and stated goals of the leadership.

The Investigation Petition employed a similar strategy. It invoked legal mechanisms provided under Chinese law, citing both Article 71 of the Constitution, which empowers the NPC and its Standing Committee to appoint commissions of inquiry to investigate specific issues, and the Rules of Procedure of the NPC Standing Committee, which provide for the organization of such special committees. The petition also drew directly on government rhetoric. In requesting an NPC investigation, the authors specifically cited Hu Jintao's December 2002 speech and a speech by NPC Standing Committee Chairman Wu Bangguo, which emphasized the need for the NPCSC to exercise its supervisory function. They also noted longstanding concerns about abuses in the C&R system and cited rhetoric from the Sixteenth Party Congress, arguing that a special investigation commission in the Sun case would, "without a doubt, be a solid stride forward on the road to developing socialist democracy and building socialist political civilization." Failure to address the problem would "surely have an effect on the image of the Party and government and be a factor in increasing social instability." Although the Investigation Petition was ignored by the NPC, it arguably created further pressure for the government to take action and made the implicit message in the Review Petition—that the reformers were challenging C&R in an effort to promote stated reform goals of the leadership—more explicit.

The legal reformers active in the Sun Zhigang incident calculated that by working within the system and relying on technical legal

152. Cai Dingjian notes that the government's emphasis on constitutionalism provided legal reformers with an opportunity to push their reform initiative. Cai Dingjian, supra note 7, at 15.

153. See supra Section II(A).

154. See, e.g., Cui Li, supra note 43; Guanzhu Sun Zhigang an, weihu gongmin quanli [Pay Attention to the Sun Zhigang Case, Uphold Citizen Rights], NANFANG DUSHIBAO [S. METROPOLITAN DAILY], June 6, 2003. In comments on May 21 publicized in the Chinese media, legal scholar Jiang Ping stressed that "we vigorously admire and support their act. They are lawfully using the means and weapons that the law provides to them, not for their own interest, but to defend respect for the whole country's law." Cui Li, supra note 33.
challenges, they were more likely to achieve a positive result and avoid a political backlash. "I have respect for those who raised human rights issues in the past," said Xu Zhiyong. "But now we hope to work in a constructive way within the space afforded by the legal system. Concrete but gradual change—that is what most Chinese people want."\footnote{155} He Weifang expressed a similar sentiment:

We particularly stressed making a careful legal argument according to the relevant procedures in the petition. We believe that the many problems that emerge in today’s China cannot be solved through violence, and cannot be solved through other really emotional methods . . . In reality, we have slowly come to the strong feeling that the psychology or act of emotionally seeking change often results in an inability to effect change in society for a long time.\footnote{156}

Other comments on the strategy for challenging the C&R regulations drew an explicit line to lessons learned after the failed 1989 Tiananmen protests. He Weifang noted:

In the 1980’s, people thought you could use passion to change things . . . Intellectuals today are more realistic and realize that lasting, real changes will depend on the slow, steady transformation of the culture and institutions. For this moment and this era, this is the most effective approach.\footnote{157}

As these comments suggest, the authors wanted to avoid a confrontation with the Party and to achieve modest but meaningful reform that they could build on in the future. They felt they could do so by making use of space within the system—namely, exiting legal mechanisms and the cover provided by official rule of law rhetoric—to promote their reform agendas.\footnote{158} Moreover, instead of becoming directly involved in investigating the Sun Zhigang case, a strategy that could have placed them at odds with local officials in Guangdong, the scholars who challenged C&R worked at a more abstract level, leveraging public discussion of the incident to call for broader legal reform. One Party publication explicitly endorsed the approach of these scholars, praising them for “taking the path of citizen peti-

\footnote{155. Erik Eckholm, Petitioners Urge China to Enforce Legal Rights, N.Y. TIMES, June 2, 2003, at A1.}
\footnote{156. He Weifang: Using the Sun Zhigang Incident to View Rule of Law Development, supra note 33.}
\footnote{157. Eckholm, supra note 155.}
\footnote{158. For a discussion of expanding “public space” in post-Mao China, see Goldman, supra note 4, at 16–21.}
tions to participate in politics” and for playing a crucial role in “solving problems within the constitutional framework” by “guiding society to use rational, legal methods through which to express indignation.” 159

The efforts of these legal scholars were critical to the reform outcome in the Sun Zhigang incident. Legal reformers could not have achieved their goals in the absence of aggressive media reporting and the tide of public opinion it produced. However, without the directed efforts of the reformers, the government may have been able to assuage public anger by quickly punishing those responsible for Sun’s death or implementing superficial reforms to C&R. The legal petitions and public arguments of legal reformers provided legitimacy and power to the voices of average citizens and channeled public outrage into a defined, well-grounded legal challenge. 160

H. Summary

The Sun Zhigang involved a combination of political and legal factors favorable to a positive reform outcome. Some factors, such as the political environment created by the SARS crisis and succession politics, were unique to 2003. Others, such as public opinion pressure generated by media coverage and a focused legal challenge drawing on official rhetoric, might be replicated in the future. Given the opaque nature of leadership decisionmaking in China, we cannot know for certain which, if any, of the factors described here were indispensable to the outcome. However, it does seem clear that Hu and Wen could not easily ignore the Review Petition. Hu had called for the government to use its power for the people and to implement the Constitution. Official media had already publicized Huang Jingjun’s conclusion that the C&R regulations lacked a legal basis, and, as indicated by reports in early 2003, senior leaders were aware of widespread abuses in the system. Disregarding the Review Petition and leaving the C&R regulations in place would have put Hu and Wen in the untenable position of backing away from the themes they tied to their leadership at a time when government credibility had already been weakened by the SARS debacle. 161 Conversely, by deciding to

159. Cao Lin, supra note 47.

160. As one migrant worker told New York Times correspondent Erik Eckholm, “I don’t know what the Constitution says, but we all know that this system just isn’t right.” Eckholm, supra note 155. The scholar petitions gave legal form to these sentiments.

161. A May 26 article in the Study Times emphasized this dynamic by concluding, “General Secretary Hu Jintao has also exhorted all civil servants to ‘use their power for the people, feel solicitous for them, and seek interests for them.’ The case of Sun Zhigang has once again alarmed us with bloody facts that we urgently need to take a substantive step
repeal C&R, Hu and Wen were able to extract significant propaganda value from the Sun Zhigang incident that arguably benefited them in the uncertain early days of the 2002–03 leadership transition.\textsuperscript{162} In the end, the factors discussed here arguably narrowed the range of practical responses to the Sun Zhigang incident and gave senior leaders an interest in responding to the scholars’ challenge with adaptation and system reform, rather than repression. Furthermore, regardless of whether the Review Petition was in fact the crucial factor in the repeal of C&R, Chinese citizens perceived it as having such an impact. As discussed in Section Four, the apparent success of the citizen challenge to C&R breathed new life into discussions of constitutionalism in China and encouraged legal reformers to try to capture a similar dynamic in subsequent cases.

IV. THE SUN ZHIGANG INCIDENT: IMPACTS ON CONSTITUTIONAL DEVELOPMENT, LAW ENFORCEMENT, AND CITIZEN ACTION IN CHINA

The Sun Zhigang incident not only led to the repeal of C&R, but also had broader impacts on legal reform in China. The incident established a precedent for the acceptance of constitutional petitions, promoted constitutional consciousness and citizen empowerment, generated pressure for an ongoing series of law enforcement reforms, and inspired strategies for law-based citizen rights action. Few if any of the reform developments discussed here should be attributed solely to the Sun Zhigang incident. Nor, however, should the impact of this well-publicized and dramatic reform victory be underestimated. The Sun Zhigang incident is best viewed as an important catalyst for reforms that were already under discussion to varying degrees when Sun’s death came to light, and as an event with symbolic significance that inspired legal activists. In this way, the Sun Zhigang incident had impacts beyond the repeal of C&R and it laid a foundation for future reform.

A. Constitutional Development

The drafters of the Review Petition hoped that by publicly ex-

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\textsuperscript{162} Such political calculation on the part of senior Chinese leaders would not be without precedent. In 1978–79, Deng Xiaoping allowed the Democracy Wall movement to continue for nearly a year in part because the movement was useful to him as he struggled for power following the death of Mao Zedong. \textit{Goldman, supra} note 4, at 31.
ercising their right to call on the NPCSC to annul the C&R Measures, they would create a precedent for NPCSC review. They did not achieve this goal. Some Chinese scholars concluded that the failure of the NPCSC to exercise its review powers made the Sun Zhigang incident less significant for rule of law development in China than it otherwise would have been.163 Others expressed concern that the result would bring an end to citizen efforts to initiate NPCSC review.164 The latter concern turned out to be unfounded and, despite the fact that the NPCSC failed to act, the Sun Zhigang incident had a positive and significant impact on constitutional development in China. From a long-term perspective, the incident clarified the rights of citizens to petition the NPCSC, accelerated the creation of embryonic institutions and procedures within the NPCSC to review such petitions, and raised public consciousness of the Constitution and constitutional review.

The fact that the Review Petition was filed and formally accepted by the NPCSC was a step forward for China’s constitutional development. The filing of the Review Petition was widely reported to be the first time that citizens had formally exercised their right under Article 90 of the Legislation Law to call for NPCSC review of the constitutionality of a regulation.165 NPC officials not only publicly acknowledged that the NPC had received and was considering the Review Petition, but also emphasized the importance of constitutional review and the NPC’s review function.166 The following year, NPC officials again publicly confirmed that citizens could exercise the petition right,167 and China’s state-run legal press encouraged citizens to use the Constitution as a weapon to protect their rights.168

Such statements placed an official stamp on the effort of scholars to exercise an important legal right and legitimized arguments that the NPCSC should carry out its supervisory role in prac-

163. Tong Zhiwei, supra note 119, at 6.
164. Teng Biao, supra note 132 (citing a comment by scholar Ying Songnian in the China Youth Daily).
165. See, e.g., Cui Li, Xianfa xuejia huyu jianli woguo weixian shencha jizhi [Constitutional Scholars Call For Establishment of China’s Constitutional Review Mechanism], ZHONGGUO QINGNIAN BAO [CHINA YOUTH DAILY], May 21, 2003, available at RENMIN WANG [PEOPLE’S NET]; WANG ZHENMIN, supra note 8, at 157, 159; Pay Attention to the Sun Zhigang Case, Uphold Citizen Rights, supra note 154.
166. Nie Longyun, supra note 17.
tice. By clarifying the citizen petition right under Article 90, the Review Petition opened the door for the filing and acceptance of future review petitions.

The Sun Zhigang incident also intensified public discussion of constitutionalism and added a new dimension to the dialogue by focusing attention on the issue of constitutional review. Interviews with the drafters of the Review Petition indicate that even these three highly-educated legal scholars were initially unaware of the Legislation Law petition right and “discovered” it with excitement after several weeks of discussion and research on the Sun Zhigang case. In reporting the Review Petition, mainstream Chinese media explained the petition right and stressed that the mechanism was a tool that not only legal experts, but also ordinary citizens, should use. As the China Youth Daily explained:

[The Petition] does not simply derive from their background as intellectuals, their sense of responsibility and courage. More importantly, they are exercising the sacred right that the law gives to citizens of the republic. To advance the country’s rule of law is by no means only a matter for the government, lawmakers, or legal scholars. The progress of rule of law requires every ounce of strength of all of us citizens.

Such reports undoubtedly exposed many citizens to the concept of constitutional review for the first time. Reformers viewed this contribution as critical, noting that only citizen pressure and real-life precedents could activate China’s dormant constitutional review pro-

169. A Procuratorial Daily commentator acknowledged that such NPC statements did not present any new information about the law, but argued that they were nonetheless significant because constitutional review is a sensitive issue in China and such official statements are an important affirmation of the petition right. Li Shuming, Pinglu: Renhe gongmin dou keyi qing weixian shencha de fazhi yi [Commentary: The Rule of Law Significance of “All Citizens May Call for Constitutional Review”], ZHENGYI WANG [JUSTICE NET], Dec. 8, 2004.

170. Focusing on the First Unsettled Case of Constitutional Review, supra note 150.

171. See, e.g., Gongmin, ni you quan zhuanggao weifa zhi “fa” [Citizens, You Have the Power to File Suit on Unlawful “Laws”], NANFANG DUSHIBAO [S. METROPOLITAN DAILY], May 29, 2003; Attention to Sun Zhigang Case Has Important Implications, supra note 44; Cui Li, supra note 43; Focusing on the First Unsettled Case of Constitutional Review, supra note 150.

172. Cui Li, supra note 43.

173. Teng Biao, supra note 41. The journal Law and Life concluded that the Sun case “brought our attention to the citizens’ right to petition and government review of unconstitutional action.” Chen Jieren, Chinese Lawyers Save the Flag of the Constitution and Human Rights, FAŁO YU SHENGHUO [LAW & LIFE], Dec. 2004 (translation on file with author). See also Zhang Xiantang & Zhang Fan, supra note 33 (noting that many did not understand what purpose the Constitution served).
In part as a result of such discussion, the incident had a profound impact on constitutional awareness in China. Scholars expressed confidence that the incident was a critical juncture in China's constitutional development and had enhanced citizen rights consciousness.\textsuperscript{175} Even the \textit{Guangming Daily}, a Party publication, opined that the Review Petition demonstrated that "the supreme authority of the Constitution is carved into the hearts of every citizen at the moment," and that the Sun Zhigang case was "an opportunity for an intellectual movement to actively protect the Constitution that is gradually rising in Chinese society . . ."\textsuperscript{176} Citizens immediately began translating this knowledge into activism, filing numerous petitions with the NPCSC on topics ranging from RTL and urban demolitions to employment discrimination and injury compensation in the years following the Sun Zhigang incident.\textsuperscript{177} Officials at the All China Lawyers Association (ACLA)\textsuperscript{178} also cited the Sun Zhigang case as one of several events in 2003 that inspired the establishment of the ACLA's "Constitution and Human Rights" committee and a new push to use legal aid cases to raise constitutional issues in the courts.\textsuperscript{179}

The Sun Zhigang incident, and the surge of public interest in the Constitution that it generated, also appear to have accelerated NPCSC efforts to develop specific constitutional review procedures. When the Review Petition was filed, numerous legal experts criticized the NPCSC because it had no procedures or departments for handling and replying to citizen review petitions.\textsuperscript{180} At the time, an

\textsuperscript{174} Focusing on the First Unsettled case of Constitutional Review, supra note 150 (citing Cai Dingjian and Du Gangjiang); Teng Biao, supra note 41.

\textsuperscript{175} Deng Shaoling, supra note 33; Lin Laifan, supra note 41, at 90–91; \textsc{Wang Zhenmin}, supra note 8, at 155; Teng Biao noted that discussion of the Constitution was "spreading like wildfire" and predicted that new challenges to unconstitutional laws would be forthcoming. Teng Biao, supra note 132.

\textsuperscript{176} Cao Lin, supra note 47. The report also noted the important role that legal experts were playing in advancing constitutional protections.

\textsuperscript{177} Teng Biao states that more than twenty petitions were filed in the year after the Sun Zhigang case. Teng Biao, supra note 41. Wang Zhenmin notes that in the wake of the Sun Zhigang case, the number of review petitions has continually increased. \textsc{Wang Zhenmin}, supra note 8, at 167. For reports on recent petitions, see \textit{Shìfù suìyào “qiángzhì hùnjiàn” fálì fāguī guīyóu [Are Mandatory “Marriage Checks” Required or Not? Provisions of Law and Regulations Not Unified]}, \textsc{Jiancha ribao [Procuratorial Daily]}, Aug. 3, 2005; \textit{Renshen sunhai peichang “tóngmíng bu tōngjia” kǎowén fálì gòngqíng [Different Values for Different Lives in Personal Injury Compensation Twists Legal Fairness]}, \textsc{Sichuan zàixiàn [Sichuan Online]}, Apr. 21, 2006. See also Sections V(A) and (D).

\textsuperscript{178} The ACLA is China’s national bar association. It operates under the direction of the Ministry of Justice.

\textsuperscript{179} Chen Jieren, supra note 173.

\textsuperscript{180} See, e.g., Attention to Sun Zhigang Case Has Important Implications, supra note 44; You Don’t Need a Temporary Residence Permit in Heaven, supra note 8; Deng Shaoling,
NPC official acknowledged this problem and expressed confidence that the Sun Zhigang incident and related discussion would push China's rule of law process forward.\textsuperscript{181} In June 2004, the NPCSCC announced that it had established a new administrative office to review legislative conflicts and related citizen petitions and make recommendations to the NPCSC.\textsuperscript{182} The \textit{China Daily} tied this reform to the Sun Zhigang case and characterized it as response to "mounting public demand that [the NPC] rectify its constitutional oversight."\textsuperscript{183} In December 2005, the NPCSC took a further step, issuing two regulations that set out detailed procedures for handling petitions for NPCSC review of regulations and judicial interpretations.\textsuperscript{184} Articles on the procedures reprinted on the NPC and \textit{Guangming Daily} Web sites connected this reform to the Sun Zhigang case as well, calling on readers to remember "Sun Zhigang's epitaph."\textsuperscript{185}

These institutional reforms fall short of establishing an independent and transparent constitutional review mechanism. The new procedures cover only challenges to regulations and judicial interpretations, not national laws, and review of citizen petitions is discretionary.\textsuperscript{186} Moreover, the review process remains opaque. Neither

\textsuperscript{181} Nie Longyun, \textit{supra} note 17.

\textsuperscript{182} \textit{Wo guo shouxian chengli zhuannen jijou jinxing fagui weixian shencha} [\textit{China for the First Time Establishes a Special Mechanism to Engage in Constitutional Review of Laws and Regulations}], \textsc{Xin Jing Bao} [\textit{Beijing News}], June 19, 2004, \textit{available at Nanfang Wang} [S. Net].


\textsuperscript{184} For a detailed review of the new procedures, see \textit{Guanguo renda mingque weixian shencha chengxu} [\textit{NPC Standing Committee Clarifies Constitutional Review Procedure}], \textsc{Xin Jing Bao} [\textit{Beijing News}], Dec. 20, 2005.


the text of the review procedures, nor any decision or recommendation of the NPCSC based on a request for review, appear to have been made readily available to the public.\textsuperscript{187} The limited nature of these reforms suggests that they are part of a leadership effort to demonstrate progress on the issue of constitutional review while staving off demands for more robust constitutional enforcement mechanisms and maintaining tight control over constitutional claims.\textsuperscript{188} Nevertheless, they represent small steps forward. The NPC has now legitimized the citizen petition right in practice and cannot simply ignore such petitions because it does not have functioning review procedures. The establishment of the review mechanism and the official recognition that it can and should be used provide expanded space for future citizen legal challenges. References to the Sun Zhigang incident in discussions of these reforms demonstrate that the incident was a factor in pushing them forward.

B. Law Enforcement Reform Initiatives

i. Repeal of C&R in Practice

The Sun Zhigang case also catalyzed a series of law enforcement reform initiatives. The first and most obvious was the dismantling of C&R. Since the system was abolished, there have been isolated reports of problems in transforming C&R into a system of voluntary aid shelters. For example, a 2005 exposé in the \textit{China Youth Daily} documented the continued use of forced repatriations in one Jiangxi Province county.\textsuperscript{189} Local officials interviewed by \textit{China Youth Daily} reporters complained that they lacked the funds to establish aid centers and suggested that similar abuses were occurring in

\textsuperscript{187} Despite the wave of publicity that accompanied the announcement of the new procedures, the author has been able to identify only one obscure Internet source for the full text of the procedures and has been unable to locate any published NPCSC on a review petition.

\textsuperscript{188} Official statements in December 2004 confirmed the citizen right to petition the NPCSC, but also stated that China would neither establish a constitutional court nor allow judicial review of constitutional issues. \textit{Wo guo you renda jiandu xianfa shishi, xianfu reng buneng chengwei susong genzhu [China Will Implement the Constitution with Legislative Supervision, The Constitution Still Cannot Constitute a Basis for Litigation]}, \textit{Renmin Wang [People's Net]}, Dec. 2, 2004.

\textsuperscript{189} Tu Chaohua, \textit{Wei zhengdu shiyrong, 7 ming liulangren bei paosong huangye [For Urban Beautification, 7 Indigents Are Abandoned in the Wilderness]}, \textit{Zhongguo Qingshi Bao [China Youth Daily]}, June 7, 2005; Li Qing & Chen Xiuci, \textit{Chongyi paosong liulang qitaor renyuan baochu xin neirong, xian yu xian hu qian jingcheng qiangzhui [News Comes Out in the Chongyi Vagrant Abandonment, Secret Rule to Send Back and Forth Between Counties]}, \textit{Fazhi Ribao [Legal Daily]}, June 15, 2005.
nearby counties. Chinese authorities also continue to pick up petitioners and indigents in security sweeps during sensitive political events such as the annual meeting of the NPC.

Other evidence suggests that the government has implemented the reform with modest success, however. According to the MCA, China established 1026 aid stations and handled 1.1 million aid visits between August 2003 and August 2005. Although it seems likely that police have used other forms of detention to deal with some individuals who formerly would have been subjected to C&R, statistics on criminal cases, administrative public order cases, and RTL cases do not show the significant increases one would expect to see if public security agencies were simply using these forms of detention as wholesale substitutes for C&R. Anecdotal evidence also points to progress in implementing the new rules. Over

190. Id.
192. Han Junjie, Jiachu banfa shishi liangqian, guangguo 111.4 wan ren ci huo jiuzhu [Aid Measures Implemented for Two Years, Aid Received by Persons 1.114 Million Times], ZHONGGUO QINGNIAN BAO [CHINA YOUTH DAILY], Aug. 18, 2005.
193. The numbers of criminal cases accepted in China in each of the years from 2003 and 2005 do not show any significant increase that could be attributed to the repeal of C&R. A ten percent increase in the number of administrative “public order” cases initiated in China between 2003 and 2004 suggests that public security could be handling some former C&R cases under other administrative measures, such as the Security Administration Punishment Regulations (now the Security Administration Punishment Law). However, even if all of the cases contributing to this increase represented cases that authorities would have handled in the C&R system (which is very unlikely given the broad range of offenses in the “public order” category), they would still only constitute about one-sixth of the reported 3.2 million C&R detentions in 2000. Moreover, the number of public order cases has fluctuated regularly between 2001 and 2004—and actually decreased in 2005—suggesting that the repeal of C&R may have been only a small factor in the 2004 increase. See ZHONGGUO FAŁI NIANJIAN [CHINA LAW YEARBOOK] (published annually) (2002 edition reporting 5,713,934 public order cases and 628,996 first instance criminal cases initiated, respectively, in 2001 [at 1238, 1245]; 2003 edition reporting 6,232,350 public order cases and 631,348 first instance criminal cases initiated, respectively, in 2002 [at 1319, 1327]; 2004 edition reporting 5,995,594 public order cases and 632,605 first instance criminal cases initiated, respectively, in 2003 [at 1054, 1061]; 2005 edition reporting 6,647,724 public order cases and 647,541 first instance criminal cases initiated, respectively, in 2004 [at 1065, 1073]). Public security reported that the number of public order cases initiated in 2005 was 6,296,000. Gonganbu tongbao 2005 nian mingjing yingong xisheng fushang qingkuang [Ministry of Public Security Publicizes the Situation of Public Security Police Death and Injuries on Duty in 2005], FAZHI ZAOBAO [LEGAL MORNING NEWS], Feb. 27, 2006. RTL might be another possible replacement for C&R. Although year-by-year statistics on RTL are difficult to obtain, most sources place the number of detainees in the system at between 250,000 to 300,000. CECC 2005 ANNUAL REPORT, supra note 78, at 27 & n.30 (citing multiple sources). The current official figure is around 260,000. Zhongguo laodong jiaoyang zhida jianjie [Brief Introduction to China’s Re-Education Through Labor System], ZHONGGUO PUFA WANG [CHINA LEGAL PUBLICITY]. If these statistics are in the correct range, RTL capacity would have to more than triple to absorb all of the former C&R detentions. This seems highly unlikely. Moreover, such a significant spike in the number of RTL detentions would be difficult for the government to conceal.
the past several years, there have been numerous reports of general increases in the numbers of vagrants in Chinese cities.\textsuperscript{194} These developments, along with police complaints that the repeal of C&R has made it more difficult to deal with vagrancy and migrant crime, indicate that the principle of voluntariness in the new aid measures is being observed in many places.\textsuperscript{195}

To date, early warnings that the repeal of C&R would trigger a backlash against migrants and the implementation of another coercive system had proved unwarranted. Over the past three years, China has continued gradually to relax, rather than to tighten, restrictions on internal migration.\textsuperscript{196} In 2004, officials promised to take steps to deal with the growing vagrancy problem in China’s cities, and some cities have instituted no-begging zones or related restrictions.\textsuperscript{197} An effort to pass a prohibition on begging in Beijing was shelved in part due to a negative public response, however, and the appropriateness and legality of such measures has been the subject of debate in the Chinese media.\textsuperscript{198} More recently, Dr. Zhong Nanshan, a hero of the SARS crisis, publicly called for a reinstatement of C&R in Guangzhou and blamed migrants for the city’s rising crime rate after he was robbed there.\textsuperscript{199} Zhong’s plea attracted national media at-


\textsuperscript{195} After Wuhan instituted no-begging zones in 2005, observers noted that the policy was difficult to implement, because police could not force indigents to visit aid centers. Hu Xinqiao, \textit{Wuhan xixing jingli shenghuo yu ganga [The First Day of Wuhan Enforcing Begging Prohibits Results in Embarrassment]}, FAZHI WANG [LEGALDAILY.COM], June 17, 2005, available at http://www.legaldaily.com.cn/misc/2005-06/17/content_156220.htm. In a discussion with the author, a civil affairs official in one large Chinese city stated that the government felt pressure from the public to address the vagrancy problem, but was constrained by its inability to remove indigents from the streets unless they committed crimes.

\textsuperscript{196} Cong.-Executive Comm’n on China, supra note 9 (noting a trend toward reform of the \textit{hukou} system since the 1990s, but continuing discrimination against migrants); Joseph Kahn, \textit{China to Drop Urbanite-Peasant Legal Differences}, N.Y. TIMES, Nov. 3, 2005, at A4.


\textsuperscript{198} See, e.g., Wang Yi, \textit{Xianzhi qitao yu “jinzhì laidian” [Restrictions on Begging and \textit{“Do Not Call”}]. NANNFANG ZHOUMO [S. WKLY.], Jan. 8, 2004; Nong Fu, \textit{Xingqiquan: qiongren de daode quanli [Begging Rights: The Moral Right of the Poor]}, ZHONGGUO PUFA WANG [CHINA LEGAL PUBLICITY], Feb. 6, 2004; Op-Ed, \textit{Beggars Part of Cityscape, CHINA DAILY}, June 23, 2004 (citing \textit{Beijing News} article supporting the rights of beggars); \textit{Begging Bans Reveal Intolerant Society, supra note 197}.

\textsuperscript{199} Fu Jianfeng, \textit{Shourong feile, chengshi zhian zemme zhua [C&R Abolished, How
tention, and one online survey reported that 60% of respondents expressed support for his position.200 The proposal touched off a fierce public debate, with many legal experts aggressively criticizing Zhong’s idea and questioning the validity of the online survey.201 Commentaries published on some state and Party websites, such as Guangming Net and the Beijing Youth Daily argued that while action should be taken to improve public security, the time for measures like C&R had passed.202 In short, while rural migrants continue to face discrimination in China’s expanding cities,203 the Sun Zhigang incident appears to have resulted in the curtailment of an abusive administrative detention mechanism in practice and sparked new discussion about the rights of migrants and vagrants.

ii. Additional Law Enforcement Reform Initiatives

Law enforcement officials undertook a series of additional reforms in 2003 and 2004, in part in reaction to the Sun Zhigang incident.204 In July, the Chinese government launched a coordinated public relations campaign to highlight new efforts to address problems such as unlawful extended custody, police violence, and other “malignant violations,” which, in the words of Minister of Public Security Zhou Yongkang, “offend the heavens and reason and stir up public indignation.”205 Among the numerous steps taken by law en-

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201. Vivien Cui, Public Calls for Return of Vagrancy Law Attacked, S. CHINA MORNING POST, Aug. 12, 2006. Some critics noted, for example, that Beijing and Shanghai were not experiencing the same security problems, even though they also faced a growing number of migrants. Fu Jianfeng, supra note 199. Others argued that the survey was flawed in part because it only reflected the opinions of Internet users, who are likely to be educated urban residents. How to Analyze and Explain Difficult Security Problems, supra note 200.


203. Helen F. Siu, Grounding Displacement: Uncivil Urban Spaces in Post-Reform South China Am. ETHNOLOGIST (on file with author). See also Pils, supra note 186.

204. Public outrage over the death of a Chengdu infant, who starved after police detained her mother and ignored the mother’s pleas that her child was home alone, also sparked calls for reform. Fu Hualing, Zhou Yongkang and Recent Police Reform in China, 38 AUSTL. & N.Z. J. CRIMINOLOGY 241, 243–44. For a detailed account of the Chengdu case, see John Pomfret, Child’s Death Highlights Problems in Criminal Justice, WASH. POST, July 3, 2003, at A1.

205. Beijing Public Security Authorities Fire 11 Police Officers, CHINA DAILY, Aug. 13,
enforcement agencies, the Ministry of Public Security culled problematic auxiliary police forces, announced a package of thirty reforms to ease certain residence registration rules and make it easier to obtain passports and drivers licenses, and adopted new regulations on the handling of administrative cases that include enhanced protections against torture and other abuses. Law enforcement officials also began to infuse their official statements with a new emphasis on the importance of human rights protection. Arguably, these statements and reforms added momentum to efforts to incorporate an amendment on the protection of human rights into the PRC Constitution in March 2004. More recently, the Ministry of Justice issued new regulations in an effort to curtail abuses such as beating detainees or inciting inmates to do the same in prisons and RTL facilities. Chinese sources tied many of these developments directly or indirectly to the Sun Zhigang incident and have held them up as evidence that government officials are working hard to address the problems that such cases represent.

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2003; Hu Kui & Sun Zhang, A Powerful Drive to Exercise Management Over the Police, NEWS WkLY., Aug. 4, 2003, available at FBIS.


208. A Xinhua report published during the March 2003 NPC session predicted that “property rights” would be elevated as a “basic human right” in China’s Constitution, but made no mention of a general amendment on the protection of human rights. Zhang Yue & Ding Xiguo, supra note 149.


210. See, e.g., Good Deeds Come From Correct Law Enforcement Thinking, supra note 30; Guo Junwang, supra note 98; Xiao Jiao, Human Rights a Direct Priority, CHINA DAILY, Jan. 13, 2004. These broad initiatives seemed unlikely in early 2003. Although Minister of Public Security Zhou Yongkang began implementing “Five Prohibitions” on police misconduct such as drunkenness and gambling in January of that year, the Ministry of Public Security (MPS) was also trumpeting a forty-one percent drop in law enforcement abuses between 2001 and 2002. Hu Kui & Sun Zhang, supra note 205; After the Detention and Death of Sun Zhigang, supra note 86, at 6 (Testimony of Murray Scot Tanner).
C. Empowerment and a Model for Reform Activism

Perhaps the most significant impact of the Sun Zhigang incident was the sense of citizen empowerment that the repeal of the C&R Measures generated. The basic strategies that legal reformers adopted in the Sun Zhigang incident were not new. Since the 1990s, legal aid lawyers in China have attempted to leverage individual cases to promote legal and policy reforms.\textsuperscript{211} However, legal reformers in the Sun Zhigang incident applied such strategies in a more aggressive and public manner and with dramatic impact, successfully challenging a flawed national regulation.\textsuperscript{212} This reform victory energized the citizen rights movement in China and provided a model that has helped reformers refine strategies for bottom-up legal reform.\textsuperscript{213} Chinese citizens exhibited not only hope and exhilaration with the news of the State Council’s decision, but also a new sense of confidence and purpose.\textsuperscript{214} Teng Biao expressed confidence that “millions of individual actors are starting to cast off their fear, using their own methods to dig out freedom.” “People believe,” he concluded, “that using the space permitted for action in the current system, they can . . . expand their freedom and constructively push change in the system.”\textsuperscript{215} Constitutional law scholar Wang Zhenmin remarked that “the push a representative case can give to rule of law can far exceed that of a law itself.”\textsuperscript{216} While reformers failed to activate China’s constitutional enforcement mechanism, they nonetheless demonstrated that ordinary citizens could use the legal system, challenge the center, and achieve a reform victory with system-wide implications. The government’s acquiescence was a dramatic illustra-


\textsuperscript{212} In his study of public interest litigation in China in the 1990s, Liebman notes that university legal aid centers, particularly the Peking University Center, worked to promote specific policy goals through conferences, reports, and other publications. Liebman also describes how legal aid lawyers aggressively challenged local authorities who violated national laws and notes that while lawyers in the 1990s shied away from cases involving challenges to national law, the evolution of legal aid in China suggests a potential for such challenges in the future. \textit{Id}. The Sun Zhigang incident illustrates this evolution.


\textsuperscript{214} Commentators concluded that the case redefined the relationship between scholars and officials and that social power beneficial to China’s constitution had matured. Deng Shaoling, \textit{supra} note 33, at 192 (citing He Weifang and Dong Maoyun).

\textsuperscript{215} Teng Biao, \textit{supra} note 29.

\textsuperscript{216} \textsc{Wang Zhenmin}, \textit{supra} note 8, at 167. He went on to comment that man’s rule of law structure is not only sustained by law, but that great cases are the foundation of this rule of law structure. \textit{Id}. 
ution of the effectiveness of carefully crafted and well-timed citizen rights actions.217

Reformers have leveraged this experience and sense of empowerment to develop and publicize models for citizen action. Inspired by the Sun Zhigang case and other events in 2003, activists have refined strategies for “rights defense” (weiquan) actions.218 Such citizen actions have a number of characteristics. First, they seek to advance system reform not through direct political appeals, but through individual cases that draw attention to issues of broad concern to ordinary citizens. Rights defense actions are necessarily rooted in the “bitter experiences of real life” and on the individual struggles of ordinary citizens to protect their rights. This focus links legal intellectuals with other social strata, a characteristic that can magnify the impact of legal action and help reformers to generate public opinion pressure outside of intellectual elites.219 Second, as characterized by observers and participants in China, such rights actions involve a progressive, measured approach that makes use of “cracks within the system” to push the government in the direction of reform, rather than overt political challenges or demonstrations that could result in Tiananmen-type political backlashes. As part of this strategy, reformers use legal channels and the “superficial legality that the language of ‘human rights’ and ‘rule of law’ has obtained”220 to make reform arguments. Legal reformers refer to such efforts to

217. Cai Dingjian concludes that the Sun Zhigang incident emboldened reformers and inspired a new series of legal challenges. Cai Dingjian, supra note 7, at 15. Right lawyers also describe the Sun Zhigang case as a departure point for the rights defense movement. Interview with Lawyer A (2006).


219. Merle Goldman has observed that in the post-Tiananmen era, public intellectuals have demonstrated a new willingness to join with other social groups to undertake political action, a characteristic that allows them to have greater impact. Public Intellectuals in China, Roundtable Before the Cong.-Executive Comm’n on China, 109th Cong. 24–26 (2005) (written statement of Merle Goldman, Professor Emerita, Boston University).

220. Teng Biao, supra note 29.
breathe life into laws and legal mechanisms that exist only on paper as “using a lie for a righteous purpose” (jiāxi zhènchāng). Legal intellectuals play an important role by focusing public discussion of rights and rights protection and defining and legitimizing legal arguments. Rights defense actions rely on the Internet as a virtual assembly ground and on coordinated action with the Chinese media to enhance citizen consciousness and generate public support for reform.

Legal reformers have also placed new emphasis on the related concept of “impact litigation” (yìngxiàng xìng sūsòng). At a 2005 ACLA conference, leading public interest lawyers met to discuss the concept of impact litigation. They defined such litigation as cases that have broad influence and are of concern to people of different social and regional backgrounds, involve large-scale and persistent violations of citizen rights enshrined in the Constitution and law, have the potential to clarify concepts and strengthen citizen legal consciousness through broad dissemination and public discussion, and that can awaken “dormant” law or accelerate legal innovation. Participants noted that the awakening of citizen rights consciousness, China’s progress in legal reform, and the development of the media and the Internet were all critical foundations for such efforts and cited the Sun Zhigang incident as one of four recent events that inspired renewed discussion of impact litigation. Over the past year, the term “impact litigation” has entered the mainstream lexicon, with state-run media such as Xinhua, the Procuratorial Daily, and the China Youth Daily publishing articles on the November conference and China’s “top ten impact litigation” cases of 2005.

221. Perry Link observes that by abstracting rights issues, lawyers may defend a person who holds a view that is “incorrect” in the eyes of the government without necessarily adopting that view. This allows lawyers to play a more nuanced role than traditional dissidents, who may be involved in a more politicized, “right vs. wrong” struggle with the government. He concludes that the impact of legal appeals in China bears a resemblance to that described by Vaclav Havel in reflections on the experience of Communist Eastern Europe. Havel argued that except in special circumstances, outright resistance is of little use, but that even seemingly futile legal challenges can have merit because post-totalitarian systems rely upon the law and must respond to legal appeals in some way. Id. at 6–7 (testimony of Perry Link, Professor, Princeton University) (citing Vaclav Havel, The Power of the Powerless, in THE POWER OF THE POWERLESS (John Keane ed., 1985)).


223. See, e.g., Wu Ge, Yìngxiàng xìng sūsòng tuidong fazhi jìnbù [Impact Litigation Promotes Rule of Law Progress], ZHÔNGGUÔ QINGNIÀN BÀO [CHINA YOUTH DAILY], JAN. 5, 2006, available at XINHUANET; Wang Ājùn, 2005 niàn zhòngguó shìda yìngxiàng xìng sūsòng [China’s Ten Major Impact Lawsuits of 2005], ZHÔNGGUÔ QINGNIÀN BÀO [CHINA YOUTH DAILY], JAN. 5, 2006. As Benjamin Liebman notes, Chinese legal aid organizations
Such strategies are not just being discussed in academic articles and conferences. Since 2003, a group of "rights defense" lawyers (weiquan lüshi) and impact litigation lawyers has emerged and actively applied the strategies in concrete cases. Lawyers such as Teng Biao, Xu Zhiyong, Xiao Taifu, Pu Zhiqiang, and Gao Zhisheng have moved around the country and become involved in a range of often sensitive cases. Teng Biao notes that ordinary citizens themselves are also engaging in rights defense actions and increasingly are relying on the law and legal channels to challenge rights violations. Rights defense Web sites discuss cases, provide legal materials, and explain legal aid and other practical issues. Although there is no overarching rights defense organization, key figures coordinate and provide mutual support in times of difficulty, and Chinese observers characterize the tide of rights defense actions as a "movement." In December 2005, Hong Kong's Asia Weekly recognized a group of fourteen rights defense lawyers as its persons of the year, noting that these lawyers were using the Constitution and the strength of the Internet to safeguard constitutional rights and advance legal reform.

Lawyers are also actively applying impact litigation strategies. Rights and impact litigation lawyers are not necessarily distinct groups. Both employ similar techniques, and some key players have a foot in each movement. However, while some rights defense lawyers such as Guo Feixiong are pushing the envelope in China's most sensitive cases, lawyers focusing on the impact litigation concept are generally more mainstream and less likely to use legal cases as a

working with foreign groups began using the term impact litigation in the 1990s. Liebman, supra note 211, at 234–35.

224. See Ji Shuoming & Wang Jianmin, supra note 218, and infra Section V.

225. Teng Biao, supra note 218.


227. See examples of Zhu Jiuhu, Guo Feixiong, Chen Guangcheng and Xu Zhiyong discussed infra Section V(E) and accompanying notes.

228. See supra note 218 (citing numerous sources describing rights defense as a "movement"). Veteran dissident Liu Qing concludes that rights defense can be characterized as a "movement" because many people in society are concerned about recent rights defense issues, there is media attention and reporting, and people are openly standing up and volunteering to help others whose rights are violated at risk to themselves. China's Rights Defense Movement (1), supra note 218.

form of political dissent or to pursue overt political goals. As noted above, Chinese public interest lawyers and legal scholars are actively seeking "constitutional cases" to argue in the courts. While courts have yet to accept such constitutional arguments, lawsuits challenging discriminatory official practices have resulted in some positive policy changes. Reformers have expressed hope that rights defense and impact litigation strategies will provide blueprints for system change in China's transition.

V. SUBSEQUENT APPLICATIONS OF LAW-BASED CITIZEN ACTION STRATEGIES

Several cases subsequent to the Sun Zhigang incident provide examples of the practical application of rights defense and impact litigation strategies. An analysis of these cases presents a comparative perspective from which to evaluate the significance of the factors at work in the Sun Zhigang incident and highlights factors that distinguish effective from ineffective citizen rights actions. These examples suggest that when media coverage of individual cases focuses public attention on an issue of mass concern and there is a degree of policy flexibility on the part of the central government, cautious, depoliticized legal challenges or appeals to the law have been effective in accelerating legal reforms. In contrast, when rights lawyers have pursued reform goals that are unrealistic in the current political environment, challenged government authorities on particularly sensitive political issues (such as family planning or village elections), organized collective action, or been associated with local demonstrations or unrest, they have been less successful in using legal cases to promote systemic reform. Although not true of all cases, lawyers who are able to maintain a degree of distance from contentious local disputes and leverage public attention to press for legal reforms at the

230. Wu Ge, director of the All China Lawyers Association Constitution and Human Rights Committee, is an example of a lawyer who probably falls into this category. Zhou Wei, a law professor who has been raising equal protection arguments in employment discrimination cases, is another good example.

231. See infra Section V(A); see also Voices Against Discrimination: Chinese Citizens Challenge Discriminatory Regulations and Practices, 2 CHINA L. & GOVERNANCE REV. 1, 1–9 (June 2004); Chen Chao, Public Opinion Defeats HBV Discrimination, CHINA INTERNET INFORMATION CENTER, Sept. 23, 2004. For a case on public security discrimination, see Raymond Zhou, Henan Stigma Highlights Regional Bias, CHINA DAILY, June 16, 2005, at 5; Li Junde, Quanguo shouliu diyu qishian tiaojie jian, Shenzhen jingfang daoqian [China's First Case of Regional Discrimination Concluded Through Mediation: Shenzhen Police Apologize], XINHUANET, Feb. 8, 2006.

232. Teng Biao, supra note 29; Teng Biao, supra note 19; Wang Xinyou, supra note 222.
central level have been relatively more successful in pushing their agendas forward.

A. Hepatitis B Discrimination Cases

In 2003, two cases and corresponding efforts to challenge pervasive official discrimination in public employment against carriers of the Hepatitis B virus (HBV) illustrated a reform dynamic similar to that in the Sun Zhigang incident. In these cases, legal reformers worked within existing legal channels, carefully cited the Constitution and official rhetoric, and took advantage of public attention on the issue of unreasonable discrimination against HBV carriers to pursue legal challenges against such discrimination. Their efforts created pressures for systemic legal reforms to address the issue of HBV discrimination and arguably established anti-discrimination principles that could be used to challenge other forms of discrimination in the future.

According to Chinese estimates, more than 120 million Chinese citizens (nearly 10% of the population) are HBV carriers. Although many of these carriers have not developed full Hepatitis B infections and are not a threat to those around them, they have been systematically excluded from civil service positions and suffer discrimination in education, marriage, and other areas. In April 2003, a man named Zhou Yichao, who had been denied a civil service position because of his HBV-positive status, entered a government office in Zhejiang Province, killed a local official, and seriously injured another. Although Zhou was eventually sentenced to death in September 2003, the case attracted significant media attention and generated calls for leniency in Zhou’s sentencing. Commentators also debated the appropriateness of the discriminatory hiring practices that led him to commit this desperate act.

Shortly after Zhou Yichao’s trial ended, other Chinese citizens took steps to challenge HBV discrimination through legal channels. In November 2003, a man from Anhui Province named Zhang Xianzhu, who had received the highest score on a provincial civil service examination but was disqualified from public employment

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233.  Chen Chao, supra note 231; Voices Against Discrimination, supra note 231.
234.  Chen Chao, supra note 231; Voices Against Discrimination, supra note 231.
235.  Chen Chao, supra note 231; Voices Against Discrimination, supra note 231.
236.  See, e.g., Chen Qiqiang, Zhejiang daxue xuesheng sharenan yinfa gongzhong dui gongwuyuan luyong biaozhun zhishi [Zhejiang University Student Murder Case Causes Public to Call into Question Civil Service Employment Standards], Fazhi Ribao [Legal Daily], Oct. 27, 2003; Guo Zi, Dismantling Discrimination, China Daily, Mar. 9, 2004.
because of his HBV status, filed a groundbreaking lawsuit challenging the decision of the Wuhu City government to deny him employment.237 Represented by Zhou Wei, a well-known law professor, Zhang argued that such discrimination violated both his right to participate in the affairs of the state (through government employment) and his right to equal protection, enshrined in Articles 2 and 33 of the Constitution, respectively.238 In public statements on the case, Zhou and Zhang evoked rhetoric on human rights from the Sixteenth Party Congress and expressed hope that the case would enable them to promote systemic legal reform to address the problem of HBV discrimination.239

At about the same time, a young lawyer drafted a petition to the NPCSC on the issue of HBV discrimination. The petition challenged the constitutionality of national regulations and corresponding regulations in thirty-one provinces and municipalities that systematically excluded HBV carriers from public employment.240 In addition, the drafters called for a special NPC investigation into HBV discrimination and advocated other legislative and policy measures to address this problem. The petition, which was circulated and discussed on an Internet site devoted to HBV carriers, was eventually signed by more than 1611 citizens and formally submitted to the NPCSC in December 2003.241 Like the Sun Zhigang incident, both the Zhang case and the petition received national media coverage and generated further discussion of a systemic problem.242 Zhou Yichao’s defense lawyer expressed confidence that the government could not ignore calls to deal with difficulties faced by more than ten percent of the population.243 A commentary on the Web site of

237. Voices Against Discrimination, supra note 231, at 6.
238. Id. at 7.
239. 1611 ren qingqiu weixian shencha, huyu xiugai gonggwuyuan zhaokao jinling [1611 People Appeal for Constitutional Review, Call for Amendment of Civil Service Admission Prohibitions], XIN JING BAO [BEIJING NEWS], Nov. 26, 2003. The case was part of a broader effort by Zhou Wei and other lawyers to establish precedents for judicial application of constitutional provisions. Voices Against Discrimination, supra note 231, at 8.
241. 1611 People Appeal for Constitutional Review, supra note 239. An example of one HBV support page can be found at http://www.511511.com/az/3604.aspx.
242. See Voices Against Discrimination, supra note 231, at 7 (noting widespread media coverage and citing numerous stories); 1611 People Appeal for Constitutional Review, supra note 239.
243. 1611 People Appeal for Constitutional Review, supra note 239.
China’s central television network noted that, like the Sun Zhigang case, the Hepatitis B cases had the potential to promote a systemic change that would affect all Chinese citizens, and that the legal strategy pursued by Zhang Xianzhu resembled that pursued in the Sun Zhigang incident.\footnote{244}

The Zhang case ended in a technical but hollow victory for legal reformers. The court overturned the local government decision to disqualify Zhang on the basis of lack of evidence, but it dodged the constitutional issue and declined to order the Wuhu City government to employ him, noting that the position had been filled.\footnote{245} However, the Zhang and Zhou cases, the petition, and related public discussion catalyzed a series of broader legal reforms on HBV discrimination. In the wake of these events, at least six provinces announced that they would no longer exclude non-infectious HBV carriers from public employment.\footnote{246} In August 2004, the NPC passed revisions to the Law on the Prevention and Control of Infectious Diseases that banned discrimination against disease carriers.\footnote{247} In September 2004, the ministries of personnel and health announced a draft of new health standards confirming that HBV carriers who do not show symptoms of the disease are eligible for public employment.\footnote{248} A final version of these regulations became effective in early 2005.\footnote{249} Officials from the Ministry of Personnel noted that they had received petitions in the past on this issue and had been working on modifications to the civil service health standards for some time,\footnote{250} an indication of government policy flexibility. However, the officials noted that public opinion “provided the impetus for the new amendment.”\footnote{251} Although the reform outcome in these cases was less dra-

\begin{footnotes}
\footnote{244} Shehui jilu: yigan qiashi diyian [Social Record: The First Hepatitis B Discrimination Case], CCTV.COM, Jan. 15, 2004.
\footnote{245} Voices Against Discrimination, supra note 231, at 7.
\footnote{246} Alice Yan, Human Lifes Ban on Hiring Hepatitis B Carriers, S. CHINA MORNING POST, Mar. 4, 2004, at 6 (noting that Zhejiang, Guangdong, Jiangxi, and Sichuan Provinces had already lifted similar prohibitions); XINHUA, One More Chinese Province Discontinues Hepatitis Discrimination in Civil Service, May 17, 2004, available at WORLD NEWS CONNECTION.
\footnote{247} Zhonghua renmin gongheguo chuanranbing fangzhi fa [Law on the Prevention and Control of Infectious Diseases] (adopted Aug. 28, 2004), art. 16 (providing that “no work unit or individual may discriminate against persons with an infectious disease, persons who are carriers of viruses, or persons who are suspected of having an infectious disease”).
\footnote{248} Chen Chao, supra note 231.
\footnote{249} See Gongwuyuan luyong tijong tongyong biaozhun (shixing) [Civil Service Employment Physical Examination General Standards (Provisional)] (promulgated Jan. 17, 2005), art. 7.
\footnote{250} Chen Chao, supra note 231. Policy flexibility may have been due in part to the fact that the bans on hiring non-contagious Hepatitis B carriers lacked a reasonable basis; moreover, they were not critical to government or Party authority.
\footnote{251} Id.
\end{footnotes}
matic than the repeal of C&R, it demonstrated that legal reformers could successfully apply citizen action strategies similar to those in the Sun Zhigang incident in a different context.  

B. The Jiahe Incident

A land eviction case in Jiahe County, Hunan Province, provides another example of the reform pressures that well-timed media attention and legal action can help to create. Media coverage of a specific case of injustice in Jiahe focused public attention on corrupt and abusive land seizures, a problem that millions of Chinese citizens face both in the cities and the countryside. Legal reformers leveraged this media attention and, operating under the cover of official rhetoric, worked through legal channels to challenge local government actions. Similar to the Sun Zhigang incident, legal reformers acted with a broader purpose—in this case, addressing the systemic problem of property rights abuses. Although legal action in the Jiahe incident probably played less of a role in ensuing reforms than in the Sun Zhigang and Hepatitis B cases, the lawyers involved arguably helped to keep the case in the news and added legitimacy to critiques of abusive land practices that the case generated.

The case began in 2003, when officials in Jiahe County launched a major local development project.  

253. To make room for the development, authorities evicted residents in Jiahe Town from their homes, promising to compensate them and relocate them to new housing on the outskirts of the city.  

254. In April 2004, local authorities arrested three residents who refused to relocate and charged them with "using violence to resist law enforcement" and "interfering in public affairs."  

255. Several weeks later, Chinese media picked up the

252. The principal drafter of the review petition in the Hepatitis B case tied the two cases together stating that he "believes that opposing Hepatitis B discrimination is like ending the custody and repatriation system and the problem of urban demolitions: it reflects the awakening of the consciousness of Chinese citizens about their rights." Huang Guangming & He Qing, Wo shi yige hanzu, dan wo shi yideng gongmin [I Suffer From Hepatitis B, but I'm Not a Second Class Citizen], NANFANG ZHOUMO [S. WEEKEND], Dec. 25, 2003. Reformer continue to fight Hepatitis B discrimination in the education system and in private companies. Guo Qiang, Hepatitis B Virus Carriers Shunned in China, CHINA DAILY, Oct. 31, 2006.


254. Phan, supra note 253, at 623; Murphy, supra note 253.

255. Phan, supra note 253, at 623.
story. In the context of widespread public anger in both rural and urban China over forced evictions and related land corruption, the "Jiahe eviction incident" became a cause célèbre. A series of critical media reports raised concerns about the legality of the Jiahe development, the small amount paid by the developer for the land (reportedly only 1.3% of the land's market value), the coercive nature of the evictions, and the arrest of the three residents. Media reports also explored the general problem of coercive evictions and development projects that improved the image of local officials at the expense of local residents. Reports on the Jiahe incident raised the issue of property abuses at an awkward time for the government. Senior leaders had been expressing growing concern about unlawful land seizures, and only weeks before the NPC had adopted constitutional amendments that in theory enhanced protections for private property and human rights, to great fanfare in the official press.

The controversy over the Jiahe evictions prompted reform-minded lawyers to become involved in the case. In late May, two lawyers associated with the Qinghua University Center for Constitutional Law and Human Rights, Xiao Taifu and Zhang Yangfu, agreed to assist the families of the three residents who had been arrested and to investigate the Jiahe incident. In interviews with national media, Wu Ge, the head of the Center and a promoter of impact litigation, explained that the Center took the case because it represented a host of longstanding problems and abuses in the urban development

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256. For a general discussion of public anger and social conflicts resulting from land seizures, see CECC 2004 ANNUAL REPORT, supra note 206, at 91–94.

257. See, e.g., Jiahe chajiqian anjian de san yiwen [Three Doubts About the Jiahe Forceful Eviction and Relocation Case], Zhongguo Wang [CHINA NET], May 15, 2004; Di Fang, Concern Grows After Forced Evictions, CHINA DAILY, May 18, 2004, at 3.

258. Murphy, supra note 253; Under No Circumstances Should Methods Harmful to the Interests of the Masses Be Used in Construction, Renmin Ribao [People’s Daily], reprinted in XINHUA DOMESTIC SERVICE, June 4, 2004, available at WORLD NEWS CONNECTION.


process. He also stressed that the Center was providing legal aid in accordance with the law to help citizens protect their lawful property rights. During their investigation, the lawyers uncovered evidence of financial malfeasance in the development project. The lawyers also negotiated with law enforcement authorities for the release of the detained residents and filed formal state compensation claims for wrongful arrests. Shortly afterward, authorities released the three detained residents, admitted error, and paid state compensation.

The Jiahe incident prompted an official investigation and helped to catalyze a series of policy reforms at the central level. After an official inquiry into the incident, a team of national and provincial authorities acknowledged that the local government had abused its power and violated land transfer and eviction procedures. This investigation led to the removal of the county Party secretary and the deputy county head. Shortly after the dismissals, the central government took the first of several steps to address abuses in land transactions and evictions. Official reports on an executive meeting of the State Council held in June 2003 stressed that local governments must strictly control eviction and relocation practices, and warned that officials violating land management rules would be strictly punished. Just over a week later, the State Council issued a new circular designed to strengthen the administration of urban relocation projects. This circular mandated a reduction in the area of land seized in the following year and placed a moratorium on some new land seizures in areas where disputes were concentrated. State media cited the Jiahe case and stressed that the circular was an effort to crack down on corruption and abuse in urban de-
velopement. By the end of the year, the State Council and several ministries passed two more circulars that strengthened sanctions against illegal property development and further tightened supervision over land management. Although these measures did not bring an end to corruption and abuse in property seizures, they led to the closure of many illegal development zones and provided citizens with new resources to counter such problems.

The lead lawyer from the Qinghua legal aid team subsequently used the Jiahe incident to press for additional legal reforms related to property seizures. Shortly after the incident, Xiao Taifu began corresponding with an NPC delegate and Lanzhou professor, Sun Jie, about a legislative solution to address the problems symbolized by Jiahe. Xiao and his law firm drafted a proposal for a new national law on housing demolitions and relocations. The proposal noted that the State Council had issued measures in response to Jiahe, but cleverly drew on the Jiahe controversy and official rhetoric to argue that the administrative regulations were insufficient to protect the rights of evicted residents. In March 2005, Sun Jie publicly announced that she was collecting the delegate signatures required for formal submission of the proposal to the NPC and, in well-publicized interviews, emphasized the gap between existing regulations and constitutional standards. The proposal was signed and

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270. For a description of these subsequent circulars, see Phan, supra note 253, at 624–626. In September 2004, the Supreme People's Procuratorate also announced that it would focus on abuses in land requisitions and urban relocations in a new campaign. Li Pengxiang & Yang Weihan, Quanguo jiancha jiguang jiang zhongdian miaozhun silei duzhi qinguan anjian [National Procuratorate Organs to Emphasize Targeting Four Type of Cases Involving Official Misconduct and Rights Violations], XINHUA.NET, Sept. 28, 2004.
274. The proposal stressed that the 2001 administrative regulations governing demolitions were not in accord with the demands of a market economy and the 2004 constitutional amendments on property rights, and that the proposed law was in the interest of the "people," "social stability," and the "construction of a harmonious society". It called for requiring demolition companies to publicize demolition applications and plans, demolition management departments to divest from demolition companies, and demolitions to be halted while disputes were being resolved through legal channels. Guanyu jinkuai zhiding 'chengshi fangwu chaqian fa' de yian [Proposal on Promulgating an 'Urban Housing Demolition and Relocation Law' as Quickly as Possible], TAIFU LUSHI SHIWUSUO [TAIFU LAW FIRM WEBSITE], Mar. 14, 2006, available at http://taifulaw.com/news/view.asp?id=1327.
formally submitted at the March 2006 NPC session.\textsuperscript{276}

In discussing this effort, Xiao Taifu noted that while lawyers may not be able to participate in politics, they can identify bottlenecks in legal reform and prepare legislative proposals that delegates can in turn submit to the NPC.\textsuperscript{277} Such efforts "give play to a new channel to be used by lawyers, and are promoting a new model for pushing legal reform."\textsuperscript{278} It is too early to tell whether the NPC proposal will bear fruit. Because of the nature of China's legislative process, it can take several years for the NPC to consider such proposals and enact new laws. By making it harder to harness the intense burst of public opinion that surrounds events such as the Jiahe incident, this long legislative process may present some disadvantages to legal reformers such as Xiao and Sun. Nevertheless, together with the initial legal aid effort in Jiahe, the proposal represents a clear application of the type of citizen action strategy adopted in the Sun Zhigang incident.

C. The Nie Shubin and She Xianglin Wrongful Conviction Cases

Two wrongful conviction cases in 2005 (the "wrongful conviction cases") provide a more recent example of the application of law-based citizen action strategies. In this instance, legal scholars leveraged public attention on two well-publicized injustices not by filing formal legal petitions, but by advancing modest legal reform proposals through the media. The incomplete nature of the resulting reforms suggests that focused legal challenges such as those undertaken in the Sun Zhigang incident and Hepatitis B cases may be more effective than legal arguments made in the media. Some of the proposed reforms also require changes to national laws, which, as noted above, involve a long-term process. Nevertheless, the scholars' legal arguments shaped debate over the cases and promoted a response that included systemic change, rather than only punishment for the officials involved or compensation for the wrongfully convicted and their families.

Concern over wrongful convictions in China surfaced in early 2005 when Chinese media reported on two wrongful death sentences. The first case involved the 1994 execution of a man named Nie


\textsuperscript{277} Zhang Fan, supra note 273.

\textsuperscript{278} Id.
Shubin for rape and murder.\textsuperscript{279} In early 2005, a serial killer apprehended in another county admitted to the murder, proving Nie’s innocence. In the second case, a man named She Xianglin was sentenced to death for killing his wife (the sentence was later changed to fifteen years’ imprisonment because of weak evidence).\textsuperscript{280} In 2005, She’s “murdered” wife returned to their village after a ten-year absence. Both cases involved allegations that the convictions were based on confessions extracted through torture. In a response reminiscent of the Sun Zhigang incident, Chinese media reports on the wrongful conviction cases sparked a flood of online indignation and additional reports on similar injustices.\textsuperscript{281} The cases also generated discussion of broader issues. Chinese media, citing legal scholars, published detailed critiques of the criminal justice system and calls for reform.\textsuperscript{282} These critiques pointed to a variety of systemic problems, such as the lack of investigative skill on the part of law enforcement authorities, over-reliance on confessions, inadequate death sentence review procedures, and the lack of effective legal protections against torture and coerced confessions. Some commentators expressed hope that the wrongful conviction cases would catalyze criminal justice reform in the same way that the Sun Zhigang incident led to the repeal of C&R.\textsuperscript{283}

The wrongful conviction cases appear to have generated mo-

\textsuperscript{279} ‘Nie Shubin yuan sha an’ xuaner weijue [‘Nie Shubin Murder Case’ Still Unresolved], \textsc{Nanfang Zhoumo [S. Weekend]}, Mar. 24, 2005.

\textsuperscript{280} Gu Yunyang, She Xianglin sha qi yuanan: yi ge putong zhongguo nongmin jiating de shen yuan zhi ju yu qinghai da jia [The Unjust Case of She Xianglin Murdering His Wife: The Price of Efforts to Seek Redress and Innocence on a Common Chinese Peasant Household], \textsc{Nanfang Dushibao [S. Metropolitan Daily]}, Apr. 5, 2005.

\textsuperscript{281} CECC 2005 \textsc{Annual Report}, supra note 78, at 24 (citing numerous domestic Chinese sources that highlighted the cases).

\textsuperscript{282} See, e.g., Zhanjia jianyi xing fu he she tingzheng huanjie bimian si ji fuhai [Experts Recommend that Establishing Hearings in Death Penalty Reviews and Avoiding Judicial Corruption Are Linked], \textsc{Beijing Qingnian Bao [Beijing Youth Daily]}, Mar. 28, 2005, available at http://news.xinhuanet.com/newscenter/2005-03/27/content_2748277.htm; Tang WeiBin & Li Changzheng, Yuanan shi zemne zaoceng de? Hebei She Xianglin ‘sha qi’ an zhuizong \textquoteleft [How Do Unjust Cases Come About? Following the Trail of Hebei’s She Xianglin ‘Wife Murder’ Case], \textsc{Jiancha Ribao [Procuratorial Daily]}, Apr. 8, 2005; Lushi yanzhong de ‘Nie, ‘She’ liangan: fansi cai neng dailai sifa tizhi de gaishan \textquoteleft [The ‘Nie,’ ‘She’ Cases in Lawyers’ Eyes: Rethinking Necessary Before Judicial System Can Be Improved], \textsc{Xingbian Wang [Criminal Defense Net]}, Apr. 13, 2005; Zhujiao Nie Shubin, She Xianglin an [Focusing on the Nie Shubin, She Xianglin Cases], \textsc{Xingbian Wang [Defense Lawyer Net]}, Apr. 14, 2005; Bie rang zhengyi zheduan le chibang: cong mianan kan xingxun bigong \textquoteleft [Don’t Allow the Wings of Justice to Break: Using Unjust Cases to Look at Confessions Exorted Through Torture], \textsc{Fazhi Ribao [Legal Daily]}, Apr. 22, 2005.

\textsuperscript{283} Focusing on the Nie Shubin, She Xianglin Cases, supra note 282; Jian Da, Renmin pinglu: zhi xiang yuanan shouhaizhe ba qian yuan yu yuan bugou \textquoteleft [People’s Commentary: Just Apologizing to Victims of Unjust Cases Is Not Enough], \textsc{Renmin Wang [People’s Net]}, Apr. 8, 2005.
mentum for some modest legal reforms. In the wake of the cases, the Supreme People’s Court (SPC) issued a notice directing provincial high courts to hold an open hearing of prosecution and defense arguments in most death penalty appeals, rather than simply review a case file. The SPC also accelerated plans to reclaim the power of final review over all death sentences, a reform that adds a third layer of review in most death penalty cases. The government had already demonstrated policy flexibility on the latter issue. The delegation of the power of final review over most death sentences to provincial high courts, the same courts that handle criminal appeals, had long been a subject of debate in China, and as early as March 2004 authorities began discussing proposals to return this power to the SPC in all cases. Chinese scholar Jiang Ping concluded that by pushing reforms to death penalty trial and review procedures forward, the wrongful conviction cases were as influential as the Sun Zhigang incident.

In the spring of 2005, law enforcement and judicial agencies also launched several pilot projects to experiment with strengthened legal protections against torture. Although authorities had pub-
licly recognized that torture was a widespread problem long before news of the wrongful conviction cases broke, the cases helped to forge a consensus among Chinese officials and academics to make the prevention of torture a focus of upcoming amendments to the Criminal Procedure Law (CPL).\textsuperscript{289} The process of amending the CPL is expected to take several years, and police resistance to some experimental measures to prevent torture, such as having defense lawyers present at interrogations, suggests that implementing such protections may be difficult.\textsuperscript{290} However, the wrongful conviction cases appear to have provided reformers with significant momentum in promoting this issue.

D. The Zhang Bin Case

Several months after the repeal of the C&R measures, reformers undertook efforts to dismantle China’s Re-education through Labor (RTL) system. In July 2003, Chinese media reported on the torture death of an RTL inmate named Zhang Bin in Liaoning Province.\textsuperscript{291} In response, a Chinese scholar filed a petition with the NPCCSC challenging the legality of RTL.\textsuperscript{292} In September 2003, six members of the Guangdong People’s Consultative Conference Provincial Committee argued that provincial RTL regulations were unlawful and submitted a proposal calling for Guangdong Province to repeal them.\textsuperscript{293} RTL, like C&R, was established by administrative regulation and is vulnerable to the same legal arguments that were made against C&R in the Review Petition.\textsuperscript{294} Chinese media re-

\textsuperscript{289} CECC 2005 ANNUAL REPORT, supra note 78, at 30.

\textsuperscript{290} Liao Weihua, Duofang tuidong xingsu fishe daxiu, fangfan xingxun bigong cheng gongshi [Many Sides Promote the Ten-Year Major Amendment of the Criminal Procedure Law, Consensus on Guarding Against Confessions Coerced Through Torture], XIN JING BAO [BEIJING NEWS], July 13, 2005. Ministry of Public Security officials, noting public pressure to rein in police brutality, claim to have reduced the rate of abuse through aggressive supervision measures. Jane Cai, Ministry Takes Tough Stand on Police Brutality and Arrest Quotas, S. CHINA MORNING POST, Apr. 19, 2006, at 5.

\textsuperscript{291} Liaoning Reeducation-Through-Labor Center Inmates Torture and Kill Inmate, MING PAO, July 13, 2003 (World News Connection trans.), available at WORLD NEWS CONNECTION.


\textsuperscript{293} GUO GUOSONG, Members of the CPPCC Guangdong Provincial Committee Point Out that the Country’s Re-education Through Labor System Lacks Legal Basis, NANFANG ZHOUMO [S. WEEKEND], Sept. 4, 2003, available at WORLD NEWS CONNECTION.

\textsuperscript{294} See supra notes 115–30 and accompanying text.
ported on both the death of Zhang Bin and the Guangdong proposal, although the level of such reporting did not approach that in the Sun Zhigang incident. According to official reports, senior leaders issued firm and timely instructions in the case and authorities imposed harsh sentences on the alleged perpetrators. In late 2003 and 2004, official media also emphasized government efforts to humanize RTL centers. However, the NPCSC ignored the petition to abolish RTL. Authorities also barred Chinese media from reporting on this petition and warned the scholar not to publicize his efforts.

The Zhang Bin case highlights the importance of government policy flexibility. Unlike in the case of C&R, the government was not flexible on the issue of repealing RTL, which it continues to rely upon as an important mechanism of social control. This lack of flexibility in turn resulted in government efforts to limit media coverage and preempt public pressure for reform. From a short-term perspective, the citizen legal response to Zhang Bin’s death, an effort to capitalize on the momentum of the reform victory in the Sun Zhigang incident, was a failure. The case demonstrates that a strong legal argument may not be sufficient to accelerate reforms when other factors, such as a government predisposition for reform and intense media coverage, are not in place.

From a longer-term perspective, however, challenges to the legality of RTL appear to have contributed to pressures for systemic reform. While RTL remains in force, the government is now considering a national “Law on Correcting Unlawful Acts” to provide a legal basis for the RTL system. The drafting of this national law, an effort that directly addresses the legal arguments in the Sun Zhigang incident and the Zhang Bin case, has opened the door to proposals for

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297. CECC 2004 ANNUAL REPORT, supra note 206, at 17.


299. For government reliance of RTL, see Ma, supra note 292 (citing Chinese legal scholar Zhao Bingzhi).

300. CECC 2005 ANNUAL REPORT, supra note 78, at 28.
modest reforms to the RTL system, such as reducing the maximum RTL sentence from three years to eighteen months, allowing RTL suspects to hire a defense lawyer, and providing for formal RTL hearings and appeals. In February 2006, Xinhua published an extraordinary commentary on RTL acknowledging that the system lacks a legal basis and that current RTL procedures fail to uphold the basic demands of fairness, openness, and justice in the law. Although Chinese leaders ignored calls to repeal RTL in 2003, they apparently feel compelled to respond to the argument that RTL lacks a proper legal basis, cloak the system in legal legitimacy, and make modest changes to address some basic complaints about the system. This long-term response is one indication of the importance the leadership places on maintaining the appearance of legality and illustrates the corresponding power that citizen appeals to the law may have in pushing reform forward.

E. Collective Lawsuits, Politicized Rights Actions, and Negative State Responses

Some rights lawyers, perhaps emboldened by reform successes such as those described above, have undertaken collective lawsuits in sensitive local conflicts and adopted more aggressive rights defense tactics. In many of these cases, lawyers have encountered government repression (particularly from local officials) and have not succeeded in promoting broader legal reforms. Several examples of such citizen actions are described below. These efforts differ in some important respects from the citizen actions in the Sun Zhigang incident and other cases that helped generate pressure for systemic legal change. In the less-successful cases, lawyers were directly involved in collective confrontations with local authorities that could be portrayed as threats to social stability. In contrast, in the

302. Lin Lin, Shixing jin wushinian falü yiju bu chongfen? Laojiao zhidu zao zhiyi [Legal Basis Inadequate After Nearly Fifty Years of Implementation? The Re-education Through Labor System Called in Question], GONGREN RIBAO [WORKERS DAILY], Feb. 20, 2006, reprinted at XINHUA. The commentary specifically noted Article 37 of the Constitution, one of the provisions cited in the Review Petition, in highlighting the unfairness of RTL. “In a day in which we are initiating rule of law and human rights, and establishing a scientific view of development and a harmonious society,” the commentary concluded, “this system bearing the deep mark of history already seems to be outdated, and the time for reform has arrived.” Id. This point bears a strong resemblance to the official justification for repealing C&R.
303. The Hepatitis B case involved a collective petition to the NPCSC, but the petitioners were detached from the case in Anhui and organized to press for a legal reform at
Sun Zhigang incident and some similar cases, lawyers did not represent parties in specific local cases but rather leveraged public anger over those cases to press for legal reforms at the national level. Two cases involved local unrest, particularly sensitive political issues (family planning and village elections), and lawyers whose contacts with foreign media, past or contemporaneous activism, or relatively radical tactics made it easy to label them as troublemakers. In both cases, authorities in Beijing worked to thwart the efforts of lawyers even when they seemed sympathetic to citizen complaints. Finally, none of these incidents generated the same level of state media coverage as the Sun Zhigang incident or other cases that catalyzed legal reforms.\textsuperscript{304}

One case involved a dispute over property confiscations in Shaanxi Province. In July 2003, authorities in Yulin City, Shaanxi seized thousands of privately-held oil fields worth hundreds of millions of dollars.\textsuperscript{305} The seizure affected more than 60,000 investors, who responded by petitioning the government and later filing one of China’s largest class action lawsuits against the Yulin and provincial governments.\textsuperscript{306} Zhu Jiuhu, a leading rights defense lawyer from Beijing, led the legal effort and portrayed the case as a test of new constitutional protections for private property rights.\textsuperscript{307} In July 2005, however, local authorities detained Zhu and several of the lead plaintiffs in the case and charged them with crimes of “illegal assembly” and “assembling crowds to disturb social order.”\textsuperscript{308} Authorities re-

\textsuperscript{304} According to Interfax, authorities issued an order prohibiting reporting on the Taishi incident, and several foreign journalists who attempted to visit Taishi were beaten. \textit{Journalists Beaten During Taishi Investigations, One Man Killed}, INTERFA\textsc{x}, Oct. 9, 2005. Chen Guangcheng noted that state media were reluctant to report on the Yinan County family planning case. Philip P. Pan, \textit{Who Controls the Family?}, \textsc{Wash. Post}, Aug. 27, 2005, at A1. A search of the People’s Net Web site archives reveals only two or three stories on Taishi, and none on Chen Guangcheng’s activism in Shandong. The Shaanxi oil well dispute received more coverage, but not at the level of the Sun Zhigang or Jiahe incidents.


\textsuperscript{306} Guanyu Zhu Jiuhu lushi an de gongkai huyu shu, yifa baozheng lushi zhiyequan, gaishan lushi zhiye huanjing [Letter of Appeal Regarding the Case of Lawyer Zhu Jiuhu, Guarantee the Professional Rights of Lawyers According to Law and Improve the Professional Environment for Lawyers], Aug. 8, 2005, available at D\textsc{ajiuyuan} [hereinafter Letter of Appeal].

\textsuperscript{307} Letter of Appeal, supra note 306; Dickie, supra note 305. Commentators viewed the case a test of the government’s commitment to rule of law and property rights. Josephine Ma, \textit{Lawyer Who Filed Suit in Oil Dispute Released}, \textsc{S. China Morning Post}, Sept. 20, 2005.

\textsuperscript{308} Pan, supra note 305. Other lawyers on Zhu’s team were “harassed” and “threatened”. Letter of Appeal, supra note 306.

leased Zhu on bail in September 2005 after a group of rights lawyers, including Gao Zhisheng, Wu Ge, Teng Biao, and Pu Zhiqiang, launched a derivative rights defense action and published an open letter urging the ACLA to investigate this detention.\footnote{Letter of Appeal, supra note 306. For the release of Zhu Jiuhu, see Chan Sin-Siu, Lawyer Fighting For Oil Investors Gets One-Year Bail, S. CHINA MORNING POST, Sept. 23, 2005.} In the letter, the signatories stressed that Zhu had pursued the case through legal channels, that lawyers who had been retained to defend Zhu had been improperly prohibited from meeting with him in custody, and that the ACLA should more aggressively protect the rights of lawyers.\footnote{Letter of Appeal, supra note 306. The Letter of Appeal notes specifically that Zhu stressed the use of legal channels and that the extra-legal collective petitioning efforts of the investors ceased after he became involved.} Although local authorities eventually released Zhu, the government prohibited him from speaking with the foreign media or leaving Beijing and has effectively prevented him from continuing his law practice.\footnote{Chan Sin-Siu, supra note 309.} Three of the lead plaintiffs in the case have been convicted of criminal offenses.\footnote{Shaanbei youtian an: Feng Bingxian yishen huo xing san nian [Shaanbei Oil Field Case: Feng Bingxian Given Three Years in Prison in First Instance Judgment], 21 SHUI JINGJI BAODAO [21ST CENTURY BUS. HERALD], Jan. 9, 2006. Feng was represented by Mo Shaoping, another prominent rights defense lawyer. Several of Feng's co-investors issued an open letter noting that Feng had encouraged investors to use the law and refrain from behavior that was criminal or would disrupt social order. Cong.-Executive Comm'n on China, Court Sentences Shaanxi Investor Feng Bingxian to Three Years' Imprisonment, CECC VIRTUAL ACADEMY, Jan. 30, 2006.} A second case involved the efforts of a local activist in Yinan County, Shandong Province to challenge unlawful forced sterilizations. In March 2005, family planning officials in Yinan reportedly began conducting coercive abortions and sterilizations to enforce family planning policies.\footnote{Pan, supra note 304. Such actions violated China's National Family Planning Law, which places an emphasis on social incentives in family planning and prohibits violations of the personal rights of citizens. Renkou yu jihua shengyu fa [Population and Family Planning Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2001, effective Sept. 1, 2002), arts. 23–29, 39, 40, 41, 44, 2002 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. L.} In addition to preparing the lawsuit, Chen traveled to Beijing to petition central government officials and enlist the help of legal scholars,
who published an online report on the Yinan abuses. Legal commentators noted that the case was the first collective legal challenge to coercive family planning policies and an important test case for China’s legal system. National officials acknowledged that illegal family planning practices had taken place in Yinan and promised to punish the responsible officials. When Chen evaded local officials and traveled to Beijing to meet with lawyers, officials, and foreign journalists, however, he was captured by Shandong police and forcefully brought back to Yinan, where he was confined to his house and subjected to periodic physical abuse. When three of the rights lawyers, including Xu Zhiyong, Li Subin, and Li Fangping, traveled to Yinan to mediate between Chen and local officials, they were detained and beaten. Villagers, angry over the treatment of Chen and his supporters, have clashed with local police on several occasions. In August 2006, following a closed-door trial and the detention of Chen’s defense lawyers, a local court convicted Chen of damaging property and disrupting traffic and sentenced him to four years and three months in prison. Supporters of Chen characterized the trial as a sham, noting that such crimes would have been difficult for a blind man under house arrest to commit.

A third case involved an election dispute in the village of Taishi, Guangdong Province. In July 2005, villagers in Taishi initiated an action to recall the head of their village committee, whom they accused of corruption, and they later elected a committee of villagers to manage the recall process. On several occasions, confrontations between local township authorities (who supported the committee chief) and the protesting villagers turned violent. In October 2005, the villagers were forced to withdraw their recall petition and Guo Feixiong, a rights lawyer who was advising them, was detained for three months on charges of assembling a crowd to disturb public order. Guo had been involved in other politically sensitive cases and, along with his law partner and fellow rights lawyer Gao Zhisheng, had issued an open letter calling on Hu Jintao to stop persecuting religious believers and Falun Gong adherents. By the time Guo was released from detention in Guangdong, Beijing authorities had suspended his firm’s law license. Guo has been detained on at least three subsequent occasions in connection with his activities, which included a February 2006 hunger strike to protest the government’s treatment of petitioners and human rights activists. After his last detention in September 2006, Guo was formally charged with operating an illegal business. Guangdong Province authorities have publicly branded Guo and other human rights defenders as troublemakers, accusing them of stirring up “mass incidents” and suggesting that foreign subversives are behind the unrest.


327. Philip P. Pan, China Shutters Prominent Lawyer’s Firm, WASH. POST, Nov. 6, 2005, at A15.

328. Id.


in Taishi. \(^{331}\) Subsequent effort by village activities in Taishi to elect candidates to their local people’s congress have been unsuccessful. \(^{332}\)

Gao Zhisheng, who represented Guo during his initial detention in Taishi and himself is one of China’s most outspoken rights defense lawyers, has also run afoul of authorities. Gao was placed under temporary house arrest after he helped organize a hunger strike involving 370 people in more than ten provinces to protest official abuses against human rights defenders. \(^{333}\) After Gao continued to criticize the Party and government, authorities detained him again in August 2006 and later announced that he would be charged with inciting subversion. \(^{334}\)

These politicized cases provide a contrast to the Sun Zhigang incident and subsequent cases in which moderate legal challenges helped to accelerate legal reforms. Lawyers may be seeking these sensitive cases and adopting more aggressive tactics in part because they have been emboldened by the repeal of C&R and other successes, and in part because they are frustrated with the pace of reform and the continuing ineffectiveness of many legal channels in China. \(^{335}\) However, such tactics have led to a growing debate among

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333. Cong.-Executive Comm’n on China, Human Rights Defenders Launch Hunger Strike to Protest Government Oppression, CEEC VIRTUAL ACADEMY, Feb. 28, 2006; Audra Ang, Chinese Activist Lawyer Who Started Hunger Strike Taken Away by Police, ASSOCIATED PRESS, Mar. 4, 2006. Gao and his associates launched the hunger strike with the help of a website. For a detailed discussion of Gao’s struggles, see Eva Pils, Asking the Tiger for His Skin: Rights Activism in China (draft manuscript on file with author).

334. Rights defenders immediately circulated a petition for his release. China Dissidents Press for Lawyer’s Release, REUTERS, Aug. 20, 2006. Gao continued to be outspoken on government and party corruption, the persecution of Falungong and other religious believers, and other issues after his law firm’s license was suspended in late 2005. Prior to his formal detention and arrest, he had been under constant watch and harassment. Joseph Kahn, China Arrests Human Rights Lawyer who Criticized the State, N.Y. TIMES, Oct.15, 2006.

335. Such frustration was highlighted in an open letter issued by rights lawyers Xu Zhiyong, Teng Biao, and Gao Zhisheng in the fall of 2005. Declaring that they have “the same dream of building a harmonious society and rule of law in China,” the lawyers expressed their frustration about several cases of injustice in China, including the Yulin case in Shandong, and complained that “in concordance with cases of injustice, we are facing status quo power and a brutal and unfair legal system in China.” Rule of Law Requires Our Consciousness and Responsibility—An Open Letter to Chinese Representatives in the Congress of the Law of the World (Sept. 8, 2005) (Xiaorong trans.), available at CHINA DIGITAL SPACE.NET. More recently, Guo Feixiong decried the ineffectiveness of legal channels in redressing grievances. Zhongguo weiquan yundong he gongmin shehui de
rights lawyers. 336 While some lawyers argue that rights defense is by its nature political and approve of radical tactics, others have warned that legal reformers should avoid politicizing their activities and have criticized departures from moderate legal strategies. 337 Li Jian, who has run a rights defense Web site since 2003, observes that tactics like hunger strikes intensify rights actions and suggests that with no room for compromise, such "radical" methods could lead to violence. That result, he says, "is exactly what we don't want." 338 Li prefers a law-based approach and concludes that even if such legal actions encounter setbacks, they can still promote reform. 339 Zhang Sizhi, one of China's eldest and most famous defense lawyers, expresses a similar sentiment. Zhang concludes that the system must be reformed with small bursts of well-timed legal pressure: "[t]he system is improving incrementally . . . . If you go too far, you will hurt the chances of legal reform as well as the interests of your client." 340 Such comments echo the sentiments of legal reformers as they explained their moderate legal approach in the Sun Zhigang incident.

Recent events appear to be validating the concerns of these lawyers. In April 2006, Luo Gan, head of the Party Political-Legal Committee, published an article warning that China must "effectively guard against enemy forces and people with ulterior motives who get involved in or use contradictions among the people to manufacture disturbances," including those who use the "pretense of rights defense to engage in sabotage." 341 This statement echoed comments made by Guangdong authorities about Taishi. Shortly afterward, the ACLA issued a new "guidance opinion" on lawyers handling collec-

footnotes:
336. For the divide of opinion among rights lawyers on the tactics to be used in pressing for legal reform generally, see Zhongguo weiquan yundong he gongmin shehui de fazhan (san) [The Development of China's Rights Defense Movement and Civil Society (3)], RADIO FREE ASIA, Sept. 1, 2006 [hereinafter China's Rights Defense Movement (3)]. For a rich discussion of these diverging views, see Pils, supra note 333.
339. Id.
340. Joseph Kahn, Lawyer Takes on China's 'Unwinnable' Cases, INT'L HERALD TRIB., Dec. 12, 2005 (interviewing Zhang Sizhi in the context of an article on Gao Zhisheng). These sentiments have been echoed by some other rights lawyers. Interview with Lawyer B (2006).
tive cases and "major sensitive cases." The opinion requires lawyers to report immediately to local lawyers associations and judicial administrative organs when they take such cases, accept the "supervision and guidance" of these entities, and keep the relevant organs informed when they discover problems that might intensify disputes. It admonishes them to help parties resolve disputes through legal and peaceful channels and prohibits them from encouraging parties to engage in petitioning and other activities that disrupt social order or interfere with the work of state organs. The opinion also directs lawyers to "appropriately grasp" media relations and to "cautiously approach" foreign organizations and media. Local governments in some provinces and municipalities have issued similar regulations. Finally, as discussed above, authorities moved aggressively against a number of rights lawyers in the summer and fall of 2006, convicting and sentencing Chen Guangcheng, detaining Chen's defense lawyers (including Xu Zhiyong), charging Gao Zhisheng and Guo Feixiong with crimes, and intensifying harassment of some other rights lawyers and activists. Legal reformers interpret the ACLA rules and these recent cases as part of an effort to restrict rights defense activities and limit the impact of the growing rights defense movement.

F. Summary

Subsequent cases do not provide a precise formula for deter-

343. Id. arts. 1(3), 2(5), 3. Lawyers associations are also obliged to report to local authorities to discuss such cases.
344. Id. arts. 1(2), 2(4), 3(4).
345. Id. art. 2(5).
346. For a list and links to the texts of similar local regulations in Nantong, Shenyang, Shenzhen, Guangdong, and Henan, see Human Rights in China Trends Bulletin, Setbacks for the Rule of Law, Aug. 28, 2006. For further discussion of some of these regulations, see Weiquan lushi beitao jingzhouch [Rights Defense Lawyers Covered by Control Mechanism], Ming Pao, May 18, 2006; Tang Zimin & Huo Shiming, Shenyang lushi chenghuan mingan anjian xu qingshi [Shenyang Lawyers Must Ask for Instructions in Taking Sensitive Cases], Fazhi ribao [Legal Daily], Apr. 20, 2006; Zhang Jianxin, Henan sifating wei lushi ding "giju" mingan anjian jin chazuo [Henan Judicial Bureau Sets Rule Prohibiting Lawyers from Stirring Things Up in Sensitive Cases], Xinhuajia, Apr. 10, 2006.
347. In addition to the discussion of these convictions and detentions in this Section V(E), see Human Rights in China Trends Bulletin, supra note 346.
mining when strategies such as those applied in the Sun Zhigang incident will be effective. In China’s complex and changing political environment, new cases and incidents involve different combinations of factors. Moreover, given the multiplicity of factors at work and the opaque nature of leadership decision-making in such cases, it is difficult to establish a cause (a law-based citizen action strategy) and effect (movement on specific reforms) relationship with certainty. In some cases, public attention and legal action may be the principal catalysts for reform. In others, such factors may create external pressures useful to reformers within the government as they negotiate with more conservative counterparts over the pace and scope of possible reforms. In some cases, the sequence of citizen rights actions and legal reforms may be entirely coincidental. Indeed, the line between effective and ineffective rights actions is not static, and varies according to political conditions, the sensitivity of the issue in question, the parties and activists involved, and other factors. Nevertheless, the examples discussed here indicate that moderate legal actions can promote positive reform outcomes similar to those in the Sun Zhigang incident and illustrate patterns of interaction between citizens and the state that legal reformers may find useful to consider as they formulate strategies for pushing their agendas forward. Finally, as the ACLA opinion and recent cases suggest, citizen legal initiatives that involve collective action on sensitive issues, demonstrations, unrest, or politicized activities such as hunger strikes are likely to provoke negative state responses, rather than acquiescence, on broader reform issues.

VI. SOME IMPLICATIONS FOR LEGAL REFORM IN CHINA

The Sun Zhigang incident and subsequent citizen actions discussed here reveal some shortcomings in China’s legal institutions. The fact that the Sun Zhigang case was resolved only after media attention inflamed public opinion and senior leaders personally intervened, and the perception that the NPCSC negotiated behind the scenes with the State Council to avoid issuing a public response to the Review Petition, illustrate the continued weakness of formal legal institutions in China. These circumstances also demonstrate the extent to which reform remains dependent on special conditions (such as the politics surrounding China’s leadership transition), media coverage, and the involvement of political elites. While reformers in the Sun Zhigang incident used legal channels and arguments to promote their agendas, in the end it was public pressure, rather than the decision of a court or the NPCSC, that made the reform outcome in the
Sun Zhigang incident possible. A similar dynamic is evident in some of the subsequent citizen rights actions described here. The critical role of the media and Internet in the Sun Zhigang incident and these subsequent cases highlights one potential weakness in such citizen initiatives: to the degree that the government and the Party can effectively control the media, they have an important chokehold to constrain the impact of law-based citizen rights actions. Additionally, public opinion generated by the media can be a double-edged sword.° Media attention helped expose Sun Zhigang’s death and build public support for the Review Petition, but it also created strong public pressures to identify and punish those responsible and may have led to a further injustice in the trial of his alleged killers.

Some may also argue that the reforms resulting from citizen action such as that in the Sun Zhigang incident are a façade. In this view, the central government gives ground on a few issues that it does not view as essential to its control in order to assuage public opinion and create the illusion of legality and reform progress. Such a perspective is not entirely without basis. The petition to repeal C&R in the Sun Zhigang incident did not represent a fundamental challenge to Party-state power, at least on its face, and did not involve local unrest or the kind of collective action that authorities were likely to interpret as a threat to stability. In the wake of the Sun Zhigang incident, Chinese leaders repealed the C&R Measures and took small steps to build up the NPCSC’s constitutional review capacity, but suppressed proposals to abolish RTL and ruled out the possibility of constitutional litigation in the courts. The limited nature of the reforms to China’s constitutional review procedures suggests that the leadership has no immediate intention of opening the door to transparent and independent constitutional review of laws and regulations, much less official actions. Moreover, while praising those who brought Sun’s death to light, the government adopted countermeasures to re-assert control over reform discourse following the incident. National authorities subsequently limited discussion of constitutional reform, and Guangdong authorities even prosecuted editors of the Southern Metropolitan Daily who helped break news about the SARS epidemic and Sun Zhigang’s death.

349. Lieberman, supra note 2, at 41, 97. As Lieberman concludes, the media may be both supporting and subverting the law and the courts.
350. Similarly, public pressure contributed to wrongful convictions of She Xianglin and Nie Shubin.
351. See supra, Section II(E). The government moved to quiet the media after the Jiahe incident as well. In one of the circulars issued after the incident, the State Council noted that “television, broadcast, periodical, Internet, and other media should start from the general situation of social stability” and directed officials to “persist in the correct guidance of public opinion,” “pay attention to the form of information dissemination,” and “guard against
servations could be made about the limited nature of reforms resulting from citizen challenges in the Hepatitis B cases and the Jiahe incident, or the calls for reform of the criminal process after the wrongful conviction cases.

Once pushed in the direction of reforms, central leaders may even see opportunities to co-opt the efforts of reformers. In the Sun Zhigang incident, for example, the decision to repeal C&R gave Hu and Wen a platform to emphasize their populist credentials. In the face of public pressure, the benefits to the government of appearing responsive may outweigh the costs of ceding modest ground to reformers or accelerating legal reforms, particularly when reformers themselves are careful to portray their initiatives as consistent with government interests and rule of law rhetoric. Recent events suggest that China’s leaders are becoming more sophisticated and proactive in their responses to incidents that have generated citizen rights actions. In a year in which it tightened public discourse on most sensitive issues, the central government allowed and even encouraged broad critiques of the criminal justice system after the wrongful conviction cases broke, apparently embracing the view of legal reformers that these were “impact” cases that should lead to legal change. This response kept the central government near the front of the wave of public opinion on the cases, rather than struggling to react to it. As these examples suggest, to the degree citizen rights actions are successful, such successes may result in part because the government, or factions within the government, have identified state or individual interests consistent with allowing such challenges to proceed, or have at least determined that the actions do not threaten fundamental state or Party interests.

The fact that the leadership may be giving ground only in limited areas and using these events for its own purposes should not lead observers to dismiss such law-based citizen actions as insignificant, however. In the current environment, reformers do not have many effective alternatives for promoting legal reform. Unrealistic reform demands, politicized appeals, unauthorized organization and collective action, and demonstrations all hold significant risks for legal reformers and, as some in China have noted, may actually set the reform process back. Law-based citizen rights actions may help to generate only modest legal reforms in the short-term, but they nonetheless have the potential to push such reforms forward at a faster pace than might otherwise be the case, or in areas that might not be totally welcome by the leadership. Furthermore, an overly skeptical

inducing and intensifying contradictions.” Notice on Controlling the Scope of Housing Demolition, supra note 267.
view of the short-term reforms to which such citizen actions contribute overlooks important long-term impacts. As several scholars of Chinese law have argued, legal and constitutional development in China is a dynamic process shaped not only by top-down decision-making, but also by interactions between the government and ordinary citizens. By generating public discussion of legal issues, stimulating new government rhetoric that can be used as further political cover by reformers, establishing precedents, and creating patterns of and expectations for government responsiveness to citizen action, citizen legal challenges can move reform discussions to new levels and build foundations for more dramatic and fundamental change should political conditions be more conducive to such change in the future.

The Sun Zhigang incident illustrates this dynamic in several respects. Discussion by government leaders and state-run media of constitutional enforcement and the rule of law provided a source of (perhaps unintended) legitimacy for the initial scholar demands for review of C&R. However, it was media and Internet coverage of the citizen challenge to C&R, more than the government’s planned and more general rhetoric on constitutionalism, that generated a sense of citizen empowerment and strengthened public consciousness of constitutional rights and enforcement mechanisms. Reformers not only capitalized on official legal rhetoric and existing legal institutions, but created a legal story of their own. This story attracted public attention and, amplified by media and Internet coverage, provided legal intellectuals with an opportunity to disseminate and reinforce messages of their choosing. The government’s response to these pressures in turn generated further publicity on the issue, a flurry of new constitutional petitions, and an expectation that even the review procedures announced in December 2005 were “just the beginning of the establishment of constitutional review.”

352. See Michael Dowdle, Constitutional Poiesis: Courts and Constitutional Development in China Outside of Judicial Review, in CONSTITUTIONALISM AND JUDICIAL POWER IN CHINA (Stephanie Baine & Michael W. Dowdle, eds.) (forthcoming 2007) (arguing that constitutionalism is not simply the product of elite behavior, but of social understanding shaped by the attitudes and expectations of ordinary citizens and that to understand constitutional development in China, we need to look more carefully at how legal institutions interact with citizens and their expectations); Cai Dingjian, supra note 7, at 29 (arguing that constitutionalism is a “compromise” between the government and people, and concluding that citizen appeals for rights and government responses is part of a “dialogue” that helps alleviate social conflicts and drives constitutional development).

353. For one discussion of these long-term impacts, see Zhongguo weiquan yundong he gongmin shehui de fazhan (si) [The Development of China’s Rights Defense Movement and Civil Society (4)], RADIO FREE ASIA, Sept. 5, 2006 [hereinafter China’s Rights Defense Movement (4)].

354. NPC Standing Committee Clarifies Constitutional Review Procedure, supra note
dent, government rule of law rhetoric legitimized a self-reinforcing cycle of citizen action, reform pressures, and further publicity that promoted legal change. This success in turn inspired some of the subsequent citizen initiatives described in this Article.

The incident also illustrates how government rhetoric and legal innovations that may have limited practical impact on an individual level may collectively create space for bottom-up efforts to generate more meaningful reform. The prevailing ideology in China when the C&R measures were passed in 1982 subordinated citizen rights to public power and held that if the government of the people passed laws and regulations for the people, such legal provisions could not be unconstitutional or unlawful.\(^{355}\) Over the course of twenty years of legal reform, however, these concepts have gradually eroded. In 1989 and 1995, the government passed the Administration Litigation Law and the State Compensation Law, respectively, which established the principle that the government could commit unlawful acts and that citizens should have the right to challenge such acts.\(^{356}\) In 1999, a phrase confirming that the government “should administer according to law” was incorporated into the Constitution, further legitimizing the concept of limited government power.\(^{357}\) In 2000, the Legislation Law established the right of citizens to petition the NPCSC for review of regulations that conflict with national law or the Constitution. In late 2002, Hu Jintao launched a publicity campaign on constitutionalism. The practical implementation of each of these concepts and mechanisms can be seen as problematic to varying degrees. Yet collectively, they represent a progression of principles that provided a foundation for, and could be drawn upon to support, the concrete reform challenge in the Sun Zhigang incident. By legitimizing the use of the petition right and accelerating the development of the NPC’s review mechanism, the Sun Zhigang incident pushed this progression of legal reforms up yet another notch. This experience suggests that observers of China’s legal system should not be too quick to dismiss as mere rhetoric reforms such as those described above, or the more recent incorporation of a state guarantee for human rights into the Constitution. Such rhetorical steps infuse official statements and discussions, and, under the right conditions,

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355. *He Weifang*, supra note 33; Zhang Yue & Ding Xigu, *supra* note 149.

356. Zhonghua renmin gongheguo xingzhengfa [Law on Administrative Litigation], (promulgated Apr. 4, 1989), art. 2; Zhonghua renmin gongheguo guojia peichangfa [Law on State Compensation] (promulgated on May 12, 1994), art. 2.

can provide important capital for reform initiatives.\textsuperscript{358}

Finally, the Sun Zhigang incident and subsequent cases demonstrate that legal reformers can successfully leverage laws and state legal rhetoric and promote modest but meaningful system change at the central level. By co-opting official rule of law rhetoric, identifying an issue on which there was some government policy flexibility, crafting a technical legal challenge within existing channels rather than engaging in demonstrations or politicized appeals, and seizing the opportunity presented by a media-driven surge of public opinion, reformers successfully challenged a national regulation without provoking the kind of backlash directed against more politicized challenges to the government. Rather than demanding political reform or organizing political opposition to central or local authorities, legal intellectuals focused on a set of achievable legal reform goals in the repeal of C&R and activation of the NPC's constitutional review function, the latter of which could facilitate political reform in the future. Furthermore, unlike local petitioners, legal reformers in the Sun Zhigang incident did not focus on pressuring progressively higher levels of government to address a specific case of local injustice or abuse, a strategy that may have had few if any broader legal reform impacts. Instead, they crafted a citizen challenge derivative of an individual injustice, framed it as an effort to advance stated government interests, and promoted concrete, system-wide reform. The Hepatitis B case, the Jiahe incident, the wrongful conviction cases, and even to some degree the Zhang Bin case indicate that similar, positive reform results are possible in other contexts.

This strategy has provided legal reformers with one model for interacting with the state on legal reform issues that is neither completely cooperative nor completely adversarial. Many lawyers making use of the rights defense and impact litigation strategies have made the judgment that Tiananmen-style political activism is counterproductive. Yet, they are not content to press for reform merely through academic publications and closed-door consultations, and, when opportunity permits, will leverage public opinion and space provided by laws, legal mechanisms, and official rule of law rhetoric to generate pressure for changes that the government may not have

\textsuperscript{358} Michael Dowdle has identified a similar dynamic in a different context—the adoption of participatory drafting procedures in the NPC and its Legal Affairs Committee. Dowdle argues that such participatory processes evolved out of an accumulation of experience and innovations and, by creating space in which state-corporatist institutions can promote constituent interests more aggressively, are contributing to the emergence of a civil society in China. Michael Dowdle, Of Parliaments, Pragmatism, and the Dynamics of Constitutional Development: The Curious Case of China, 35 N.Y.U. J. INT'L L. & POL., 1, 163–68 (2002).
adopted on its own terms, or at the pace desired by reformers. The government has taken institutional lessons from Tiananmen as well, recognizing, as Murray Scot Tanner suggests, that it must rely more on legal channels, rather than only repression, to address discontent.\textsuperscript{359} With the number of protests in China steadily rising and rights consciousness diffusing beyond intellectual elites, the leadership’s interest in encouraging citizens to use such channels is growing,\textsuperscript{360} a point illustrated by the \textit{Guangming Daily}’s praise for the “rational” and “legal” response of scholars in the Sun Zhigang incident.\textsuperscript{361} At present, the government need not fear destabilizing protests or the formation of opposition parties from this relatively disaggregated group of rights defense and impact litigation lawyers. Moreover, it maintains overall control by pushing back on the most sensitive issues, adopting countermeasures to narrow their scope of action when necessary, and even detaining rights defense lawyers like Gao Zhisheng or Guo Feixiong, who may push the envelope too far. Each side seems to work within a vaguely-defined range of action, pushing the edge when political opportunities permit (in the case of the reformers) or pushing back when perceived political necessities require it (in the case of the government).\textsuperscript{362}

The recent enactments of the ACLA opinion and local regulations on collective and sensitive cases raise new questions about whether the citizen action strategies described in this Article will be sustainable in the near-term. These measures are a clear attempt to control the potential impact of the rights defense actions such as those in Taishi Village or Yulin County. In addition, vague provisions requiring lawyers to avoid disrupting social order and “appropriately grasp” relations with the media might be used to stifle a broader range of law-based citizen rights action. Having consolidated their power, facing shifts in top leadership posts at the Seventeenth Party Congress in 2007, and in the context recent “color revolutions” abroad and growing social unrest at home, China’s leaders appear to have decided that the time has come to push back against China’s rights lawyers, even at the cost of undermining confidence its own rule of law rhetoric.\textsuperscript{363} This tightening is a reminder that

\textsuperscript{359} Murray Scot Tanner, \textit{China Rethinks Unrest}, 27 WASH. Q. 137 (Summer 2004).
\textsuperscript{360} Tanner, supra note 359, at 146–51; GOLDMAN, supra note 4, at 214, 222. At least one Chinese scholar has made similar observations, noting that if citizens choose a path other than constitutional procedures to resolve these legal conflicts, the result would be unrest in the state and society. Wang Lei & Xiang Xiaohua, supra note 8, at 155.
\textsuperscript{361} Cao Lin, supra note 47.
\textsuperscript{362} Legal activists indicate that they can expand and moderate their activities at any time to adapt to political conditions. \textit{China’s Rights Defense Movement (2)}, supra note 335 (citing comments of Guo Feixiong).
\textsuperscript{363} Such a shift would not be without historical precedent. In 1979, after strengthening
while space for citizen action can expand as it did in 2003 and 2004, it can also easily contract, a cycle that has repeated itself through the post-Mao era.  

To assume that the ACLA measures will shut down channels for moderate legal actions such as those in the Sun Zhigang incident may be an overly simplistic interpretation of recent events, however. The ACLA opinion also explicitly recognizes that “the involvement of lawyers in [collective and sensitive] cases helps the government, enterprises, and corresponding sides to behave in accordance with law” and notes that by becoming involved in such cases, lawyers can “raise legal opinions and suggestions” and “help promote judicial and legislative activities” and “administration according to law.” This endorsement, similar to the official rule of law rhetoric seized upon in the Sun Zhigang incident, may provide lawyers with a rhetorical tool that they can use in the future to legitimize their efforts to promote system reform through legal action. Moreover, the ACLA opinion and recent detentions target lawyers directly representing parties in specific collective disputes and sensitive cases. As such, they seem to leave space for the type of citizen rights action that promoted legal change in the Sun Zhigang incident and some subsequent cases, in which lawyers who did not directly represent parties used public attention on these cases to call for broader legal reform.

Indeed, in the midst of the recent tightening, legal scholars filed a petition challenging the constitutionality of a judicial interpretation on injury compensation that discriminates against citizens with rural residence registrations, an effort that appears to have contributed to reform momentum on this issue. While decrying the govern-

his hold on power, and as some Democracy Wall leaders began to challenge Leninist principles and advocate broader political reform, Deng Xiaoping took steps to suppress the movement. GOLDMAN, supra note 4, at 43. Observers have connected the recent tightening of controls over legal activism to leadership concerns about growing social unrest as well as preparations for key Party personnel changes to take place in 2007; Kahn, supra note 348; Buckley, supra note 348.  

365. The opinion also directs ACLA and local lawyers associations to take action to protect lawyers who encounter difficulties. Collective Case Opinion, supra note 342, arts. 1(1), 4(3), 4(5). In his April 2006 Luo Gan noted that that one of the most important issues facing political-legal organs was the “continuing strengthening of the rights consciousness of the masses” and how such organs will “satisfy the masses demands for law that are growing by the day.” Luo Gan, supra note 341, at Section III(3).  

366. Shortly after the ACLA opinion was issued, Zhou Wei filed a petition challenging the constitutionality of a Supreme People’s Court interpretation that instructs courts to determine compensation for injuries in part on the basis of the average income in the place of a victim’s registered residence. The interpretation results in lower damage awards for rural residents. Yu Yiyong, Renshen sunhai peichang “tongming bu tongjia” kaowen falü gongping [Different Value for Different Lives in Personal Injury Compensation Twists Legal Fairness], SICHUAN ZAIXIAN [SICHUAN ONLINE], Apr. 21, 2006. In mid-2006, the Henan High People’s Court issued an opinion that brings compensation standards for some
ment’s recent attempts to narrow space for rights defense activity, lawyers have indicated that there is still room for moderate legal action, and that even in the current, difficult political environment, pressing for reform through legal channels remains the best way to promote broader legal change in China.367

Finally, as discussed above, China’s rights defenders have become involved in more politically sensitive cases and adopted increasingly aggressive tactics since 2003. Viewed in this light, the government’s recent actions, including the enactment of the ACLA opinion and similar local measures, might be interpreted less as a backlash against all law-based citizen action, and more as an effort to contain a perceived escalation and formalize the line that is implicit in the government’s response to the various rights actions described in this Article. This observation is not made to condone such government actions, or to criticize the efforts of Chinese lawyers who are seeking to expand the scope of law-based citizen action in China. In fact, the emergence of the more aggressive tactics that the regulation and recent criminal cases seem to target could help to preserve space for moderate reformers by highlighting the types of activity that disillusioned lawyers may turn to if the government fails to improve the effectiveness of legal channels for resolving disputes. The degree to which reformers are able to advance such arguments and preserve space for moderate legal actions will be a useful test of whether the strategies adopted in the Sun Zhigang incident and subsequent cases will be sustainable in the face of these new controls.

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According to recent reports, Anhui Province, Guangxi Province, and Chongqing Municipality have all adopted similar measures. The Supreme People’s Court is also reportedly accepting suggestions on a revision of its judicial opinion. See Cong.-Executive Comm’n on China, Henan to Use Same Compensation Standards for Urban Residents, Qualified Migrants, CECC VIRTUAL ACADEMY, Aug. 31, 2006. Chongqing gao yuan toulu you guan “tong ming tong jia” zhidaoyi jian yunnian guocheng [Chongqing High Court Reveals Preparation Process of the Guidance Opinion of the “Same Value for Life”], FAZHI RIBAO [LEGAL DAILY], Oct. 26, 2006. A Workers Daily report on the move to revise the SPC interpretation and the reform in Henan stated that the interpretation violated the constitutional clause cited in the petition. Cheng Ming, Huaqiao de bu gong yu shihou de butong [Unfairness in Life and Difference in Death], GONGREN RIBAO [WORKERS DAILY], July 7, 2006, available at RENMIN WANG [PEOPLE’S NET].

367. See, e.g., Buckley, supra note 348 (citing Teng Biao and veteran dissident Liu Xiaobo). See also the comments of Guo Feixiong in China’s Rights Defense Movement (4), supra note 353 (noting that while on the surface the space for rights defense has tightened, lawyers must also recognize that there are reform factions within the police, procuratorate, and courts that share their views and want to push reform forward, and that this is “space” in which they can continue to work). At least three rights lawyers expressed the opinion to the author that the new ACLA opinion would not significantly limit the type of legal appeal undertaken in the Sun Zhigang incident. Interview with Lawyer A (2006); Interview with Lawyer B (2006); Interview with Lawyer C (2006).
VII. CONCLUSION

The reform outcome in the Sun Zhigang incident provided a ray of light in an otherwise challenging period for human rights and legal reform in China. Over the past three years, China’s leaders have tightened controls on expression, the media, and civil society and continued to repress activists and reformers whom they view as threats to their authority. However, the modest legal reforms achieved in the Sun Zhigang incident provided a source of inspiration for legal reformers and demonstrated that they could make use of space in China’s authoritarian system to maintain a modest pace of legal change. Continued government efforts to tighten controls over the media and Internet, the promulgation of new measures restricting the actions of lawyers, and the detention and imprisonment of some rights lawyers may limit efforts to apply and expand such strategies in the near-term. In the long-term, however, to the extent that the Party and the government continue to increase their reliance on the rhetoric of law as a source of legitimacy and on legal institutions to address growing instability, the prospects for law-based citizen rights action are likely to be positive.
APPENDIX

PROPOSAL TO EXAMINE THE “MEASURES FOR THE CUSTODY AND REPATRIATION OF VAGRANTS AND BEGGARS IN CITIES”

To the Standing Committee of the National People’s Congress:

Article 88, Clause 2 of the PRC Legislation Law provides that the Standing Committee of the National People’s Congress has the power to annul administrative regulations that conflict with the Constitution or laws. Article 90, Clause 2 provides that when citizens believe that administrative regulations conflict with the Constitution or laws, they may submit written proposals to the Standing Committee of the National People’s Congress for examination.

We are citizens of the PRC, and we believe that the “Measures for the Custody and Repatriation of Vagrants and Beggars in Cities,” which were promulgated by the State Council on May 12, 1982 and are currently in force, conflict with our country’s Constitution and related laws, and we submit this proposal to carry out an examination of the “Measures for the Custody and Repatriation of Vagrants and Beggars in Cities” specifically to the Standing Committee of the National People’s Congress.

Subject of the Proposal for Examination

Whether or not the “Measures for the Custody and Repatriation of Vagrants and Beggars in Cities” are administrative regulations that “exceed limitations on power” or are “laws at lower levels that conflict with laws at higher levels” under Article 87, Clauses 1 and 2 of the PRC Legislation Law.

Facts and Reasons

Article 6 of the “Measures for the Custody and Repatriation of Vagrants and Beggars in Cities” provides that persons in custody “must” submit to custody and respect the regulations of the custody and repatriation station. This empowers the civil affairs departments and
public security departments to execute compulsory administrative measures against custody and repatriation subjects. In practice, it gives administrative organs the power to take away or restrict the personal freedom of citizens. Article 13 of the detailed implementing regulations for these measures provides, “Custody and repatriation stations must promptly arrange for repatriation. The amount of time that a person in custody must remain at the station waiting for repatriation shall generally not exceed half a month if [the repatriation location is] within the province and one month if outside of the province.” This illustrates that relevant administrative organs can take people who have not broken the law, lock them up in custody shelters, and restrict their personal freedom for half a month, a month, or even longer.

Article 37 of the PRC Constitution provides, “The freedom of the citizens of the PRC is inviolable. No citizen may be arrested except with the approval or by a decision of a people’s procuratorate or by a decision of a people’s court, and arrests must only be made by a public security organ. Unlawful deprivation or restriction of citizens’ personal freedom by detention or other means is prohibited, and unlawful search of the person of citizens is prohibited.” Article 9 of the PRC Administrative Punishment Law provides, “Administrative punishments involving the restriction of personal freedom shall only be established by law.” Articles 8 and 9 of the PRC Legislation Law provide that compulsory measures and punishments that deprive citizens of their political rights or restrict their personal freedom shall only be formulated by law.

On the basis of the provisions of law above, we believe that the State Council does not have the power to formulate administrative regulations that restrict the personal freedom of citizens. Given the promulgation of our country’s Constitution and Legislation Law, the “Measures for the Custody and Repatriation of Vagrants and Beggars in Cities” are administrative regulations promulgated by the State Council that restrict the personal freedom of citizens and conflict with our country’s current Constitution and laws. Under Article 87, Clauses 1 and 2 of the PRC Legislation Law, they are administrative regulations that “exceed limitations on power” and “laws at lower levels that conflict with laws at higher levels,” and they should be amended or annulled.
Therefore, as citizens of the PRC and in accordance with Clause 2, Article 90 of the PRC Legislation Law, we propose that the National People’s Congress Standing Committee examine the “Measures for the Custody and Repatriation of Vagrants and Beggars in Cities.”

May 14, 2003

Yu Jiang, Ph.D. in Law, Law School, Central China University of Science and Technology

Teng Biao, Ph.D. in Law, Law School, Chinese University of Politics and Law

Xu Zhiyong, Ph.D. in Law, Law School, Beijing University of Post and Telecommunications