

# Dear Lawyer Bao: Everyday Problems, Legal Advice, and State Power in China

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*This article presents findings from a content analysis of all 460 "Dear Lawyer Bao" (DLB) legal advice columns published in its ten-year history (1989–98) in the Beijing Evening News. While much sociolegal research has focused on the exercise of power in the legal process through the control of meaning in verbal, private face-to-face interactions, this article reveals similar meaning-making processes at play in publicly disseminated writing where the audience is far larger, the potential impact far wider, and the role of the state far greater. Lawyer Bao's popular image as valiant defender of ordinary people in trouble obscured and thus enhanced both the degree to which he was beholden to the state and the effectiveness with which he did the bidding of the state against the interests of the very letter-writers he purported to help. His ultimate allegiance to the state is reflected in two empirical patterns. First, the temporal distribution of problem topics featured in the DLB column corresponds less to shifts in public sentiment or objective popular needs and more to legislation, policy shifts, and political campaigns. Second, whether Lawyer Bao legitimized or delegitimized letter-writers' claims was determined primarily by the extent to which state interests were at stake in the problem at hand. Lawyer Bao tended to delegitimize labor grievances, housing demolition grievances, collective grievances of any kind, and other claims construed as potentially destabilizing or of challenge to state priorities. Keywords: Chinese law, lawyers, legal consciousness, legal culture, media frames.*

For ten years newspaper readers in Beijing engaged the state by engaging Lawyer Bao, a legal advice columnist in the *Beijing Evening News* (*BEN*). In its ten-year history between 1989 and 1998, the Dear Lawyer Bao (DLB) column served as a weekly forum for the articulation of everyday grievances directed not only against other individuals but also against state actors, state organizations, and state policies. In a context in which legal institutions have been rebuilt largely from scratch since 1979 (Alford 1999; Lubman 1999; Peerenboom 2002), Lawyer Bao's official mandate was to educate ordinary people about China's rapidly developing legal system and to encourage its use.

How has the Chinese state endeavored to adapt to such a rapidly transforming institutional environment in which the expansion and popular mobilization of the legal system poses a potential challenge to the political supremacy of the Chinese Communist Party (CCP)? We will see that meaning-making efforts in the mass media are an important part of the state's strategy. Results I present in this article of a content analysis of all 460 DLB columns contribute to three interrelated research literatures. First, this article contributes to sociolegal research on how lawyers exercise power through the control of legal meaning (Cain 1979; Hosticka 1979; Kritzer 1998; Mather, McEwen, and Maiman 2001; Mather and Yngvesson 1980–81; Michelson 2006; Rosenthal 1974; Sarat and Felstiner 1995). The DLB

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columns demonstrate that not only the *professional* power of lawyers but the *political* power of the state, too, is advanced through efforts to control legal meaning and the definition of legal reality.

Second, this article contributes to sociological research on the role of media frames both in the social construction of social problems (Beckett 1996; Benson and Saguy 2005; Ferree et al. 2002; Gamson and Modigliani 1989; Perrin 2005) and in the reproduction of state power (Altheide 2002, 2006; Gitlin 1980; Glassner 1999; Herman and Chomsky 1988). By virtue of its greater popular exposure through newspapers and other mass media, *public* legal advice has a wider and more politically significant impact than *private* legal advice. Language enhances and obscures awareness of legal rights, it legitimizes and delegitimizes popular claims, and it thus facilitates and denies access to justice. While the existing research on the uses and abuses of “law talk,” as a means of controlling the situation and exercising power, focuses on verbal discourse in private face-to-face interactions, written discourse publicly disseminated in the mass media amplifies meaning-making dynamics at play in private settings.

Third, by identifying the state as a key performer and beneficiary of “boundary work” (Gieryn 1999; Lamont 2000), the DLB columns also build on and extend sociological research on the social construction of boundaries. Lawyer Bao performed boundary work on behalf of the state through his discursive efforts to define the scope of the law, through his use of language to define the sorts of everyday problems that can and cannot legitimately avail themselves of legal remedies. In his efforts to demarcate the boundaries of law, Lawyer Bao defined claims against state interests as unlawful and illegitimate, and in so doing helped defend the boundaries of state power. Lawyer Bao, in the service of the state, both educated and miseducated readers about the boundaries of law.

Two empirical patterns emerge from the content analysis of DLB columns: First, we will see that the *BEN*, like newspapers everywhere, exercised gatekeeping authority (Perrin 2005; Wahl-Jorgensen 2001): Problem types were carefully selected for public consumption. Lawyer Bao’s shifting choices of topics to publish was less a function of their shifting *popular* salience and more a function of their shifting *political* salience. Second, we will see that, more often than not, when responding to queries about disputes with state organizations, Lawyer Bao negated the legal legitimacy of letter-writers’ claims. In particular, Lawyer Bao tended to delegitimize labor grievances, housing demolition complaints, and collective grievances of any kind.

In an introductory article accompanying the inaugural DLB column on January 5, 1989, Song Xi, the column’s editor wrote:

As society advances toward a system of law, every citizen needs to strengthen his or her conception of the legal system, raise his or her legal awareness, and know the law, understand the law, adhere to the law, and use the law . . . This special-topic page should . . . [tell] readers in a variety of ways what kinds of actions are lawful and unlawful and how to use the weapon of the law to protect themselves (p. 2).

However, the very matter of “what kinds of actions are lawful and unlawful” and of how ordinary people should “use the weapon of the law to protect themselves” cannot be transparently inferred from the law on the books, but is instead more fruitfully understood as constitutive of—and socially constructed through—the discursive struggles of interested actors (Ewick and Silbey 1998; Yngvesson 1993). As Steven Lukes ([1974] 2005) argued over thirty years ago, the exercise of power through the manipulation of meaning—by shaping perceptions of injuries, grievances, and the appropriateness of channels of redress—is both more effective and more nefarious than the exercise of power through coercion or bureaucratic fiat. Not only is language often the weapon of choice in hotly-contested struggles over the meaning of a “legal problem” and “legal reality,” but the state is often an active participant in these discursive struggles that constitute law (Bourdieu 1987, 1991). Insofar as the state’s role in popular legal meaning-making processes is magnified in authoritarian contexts, the

case of China helps bring into sharper focus forces that are less prominent—but nonetheless at work to varying degrees—in the liberal democratic cases that are the basis of most of the existing research on lawyers, legal consciousness, media frames, and boundary work.

### **Institutional Change, Popular Resistance, and Legal Advice**

The DLB column must be read in the context of China's tumultuous transition away from socialism. They show clashing principles and clashing systems of rights and entitlements. They show an urban population socialized to expect cradle-to-grave welfare and protection. These expectations were often articulated as rights, such as the right to public education and health care, the right to lifetime employment, the right to public housing, and the right to a retirement pension. In the wake of the dismantling of Maoist institutions ongoing since the 1980s, and with them their ideological underpinnings, the DLB columns reveal how these socialist entitlements are under assault by new market principles emphasizing individual responsibility, self-reliance, and transactional relationships. In short, the DLB columns reflect the Durkheimian themes of weakening traditional norms and social controls under rapid social change and of the concomitant turn to new solutions, including the law. They fit the narrative of the "the oven bird's song": a lament of the breakdown of primordial relationships and of the rise of impersonal legal institutions, "a nostalgic yearning for the older world view now shattered beyond repair" (Engel 1984:579). They reflect a growing reliance on outside authorities (including newspapers and the law) to fill what is popularly articulated as a normative and moral void left in the wake of the collapse of close-knit neighborhoods, workplace paternalism, durable social relationships, and strong families under the relentless pressures of economic reform and globalization.

In such a context of institutional transformation, the very definition of a legitimate grievance is ambiguous, fluid, and contested. Contemporary China thus bears all the hallmarks of "contradictory institutional logics" (Friedland and Alford 1991), "normative ambiguity" (Smelser 1962), or "unsettled cultural times" (Swidler 1986). Moreover, the multiplicity of options available to disgruntled individuals and the contested legitimacy of these competing channels of dispute resolution are the hallmarks of legal pluralism (Galanter 1981; Merry 1988). The DLB columns reflect an urgent groping for clarity under conditions of uncertainty. They concern issues at the core of human life in most parts of the world, including property ownership, rights of residence, obligations to family members, and losing and finding work. Letter-writers frequently asked: "Is this reasonable?" "What does the law stipulate?" "Does the law contain any relevant provisions?" "Does the law permit this?" "Is this correct?" "Is this behavior lawful?" "Can this situation be resolved through legal channels?" "How can we use legal measures to protect our rights and interests?"

Letters to newspapers anywhere in time and place afford a view both of efforts to assert claims and of efforts to strip such claims of their legitimacy. Newspaper advice columns are a public cultural space in which ordinary people and state actors use competing sets of vocabularies—or discourses—to define reality in a manner consistent with their interests, values, and taken-for-granted assumptions about the social world. As a vehicle of meaning making and as a site of meaning making, newspaper advice columns can be empowering and disempowering, they can enhance and deprive access to justice, and they can be cognitively liberating and cognitively obfuscating.

Newspaper advice columns everywhere provide guidance to people navigating new and unfamiliar terrain. In a context of social dislocation, social transplantation, or social transformation, newspaper columns provide a channel not only for the acquisition of practical advice, but also for the expression of complaints, grievances, and heartache (Lewis 1998; Metzker 1971, 1981). But letters to the editor are of special significance in the socialist context. The *People's Daily* handled between 60,000 and 70,000 letters per month in 1979 and

1980, many of which were compiled into daily and special digests for the consumption of government leaders (Shi 1997:64; Whyte and Parish 1984:297). In 1980, the same year it resumed publication after being shut down during the Cultural Revolution (1966–76), the *BEN* received about 9,000 letters per month (Whyte and Parish 1984:297). Later in the 1980s, between 30,000 and 50,000 “readers’ letters” (*duzhe lai xin*) were processed monthly by the *People’s Daily* (Hood 1994:41). The top Soviet newspapers, meanwhile, were receiving about 40,000 letters per month in the late 1970s and early 1980s (Riordan and Bridger 1992:2–3).

In the socialist context, newspaper “mailboxes” are a safety valve for releasing steam; they allow ordinary people to attack government bureaucrats and party leaders without threatening either the regime or the party (Inkeles 1958:209, 217–8; Inkeles and Geiger 1952, 1953; Whyte and Parish 1984:297, note 37). At the same time, letters to newspapers are an important barometer of public opinion and a source of information for government leaders about popular complaints (Nathan 1985:154). But newspapers are also responsible for taking the initiative to investigate and redress many problems reported by citizens. Public ombudsman is a well-known role played by newspapers in the socialist context (Chu and Chu 1981:84–5; Hood 1994:40–1; Inkeles 1958:209–12; Riordan and Brigger 1992:4; Whyte and Parish 1984:297). Newspapers in China served and continue to serve this function. Aggrieved individuals, often in groups, continue to throng to media outlets in the hopes of an opportunity to publicize their alleged injustices (Bernstein and Lü 2003:177–8, 185; O’Brien and Li 2006). It is often through their written appeals to the media that petitioners resist the state organizations, state actors, and state policies they perceive as unfair and unrightful.

By educating readers about Chinese law, the DLB column supported China’s ongoing “legal popularization” (*pu fa*) campaign (see Troyer 1989). In all 460 columns, Lawyer Bao explicitly cited 169 specific legal statutes (bodies of law, regulations, administrative measures and provisions, government notices and circulars, legal opinions, and so on). In 88 percent of columns, he explicitly cited at least one such legal statute or opinion. In over half (53 percent) he cited only one legal statute, but in many (26 percent) he cited two, and in several (8 percent) he cited three or more (and in the remaining 12 percent he cited none).

Lawyer Bao helped reshape, adapt, and update the socialist-era newspaper “mailbox” to serve new needs. In so doing he helped spawn a popular genre of public legal advice that has become a ubiquitous feature of newspapers across China. Similar legal advice columns are found not only in major national newspapers like the *People’s Daily*, the *Legal Daily*, the *Liberation Daily*, and the *Farmers’ Daily*, and not only in major national magazines like *Democracy and Legal System* (see Davis and Lu 2003 and Liu 2007), but also in popular local newspapers including the *Yangcheng Evening News* (in Guangzhou), the *Jin Evening News* (in Tianjin), and the *New Evening News* (in Harbin).<sup>1</sup>

Throughout the analysis that follows I cite DLB columns by their dates of publication (in day/month/year format).

### Who is Lawyer Bao?

The final DLB column in its original question-and-answer format was published on August 13, 1998, 493 weeks, or precisely nine and a half years after its debut on January 5, 1989. In this period of time, Lawyer Bao made 460 appearances, each on a Thursday. Commencing on August 20, 1998, the format of the column changed to a court case summary followed by Lawyer Bao’s explanation of the judgment, and the name of the column was

1. I have also encountered legal advice columns in the *Gansu Daily* (in Lanzhou, Gansu Province), the *Chengde Daily* (in Chengde, Hebei Province), the *Meizhou Daily* (in Meizhou, Guangdong Province), the *Yingtian Daily* (in Yingtian, Jiangxi Province), the *Yulin Daily* (in Yulin, Guangxi Province), and the *Enshi Daily* (in Enshi, Hubei Province).

changed to reflect its new format: “Lawyer Bao’s Selection and Discussion” (*Bao Lüshi Dian Ping*). The end of the DLB column’s mailbox format coincides with the departure of Song Xi, the editor who gave birth to and nurtured Lawyer Bao for the first ten years of his life. In mid-1998, Song Xi was promoted to the position of deputy editor-in-chief of the *Beijing Morning Post* (the inaugural edition of which was published on July 20, 1998), a new sister newspaper established by the owner of the *BEN*, viz, the Beijing Daily News Group, which also owns the *Beijing Daily*, the official newspaper of the Beijing Municipal Committee of the CCP. As often happens with leadership changes in China (see Cai 2004), Song’s successor changed Lawyer Bao’s image. Lawyer Bao retired altogether on January 1, 2004. The official announcement of his retirement states that, after 15 years and 780 weeks, the DLB column “completed its historical mission and is bidding farewell to its readers” (Huo 2003).

Through his years of service to the public, Lawyer Bao also provided valuable service to the *BEN*, to the state, and to the CCP. Lawyer Bao seamlessly balanced the new commercial needs and the enduring political needs of Chinese newspapers in the transition from socialism. Infotainment—lurid tales of premarital sex, out-of-wedlock pregnancies, marital infidelity, and grisly crimes packaged under the legitimizing cover of public education—has allowed newspapers like the *BEN* to satisfy its economic needs while simultaneously satisfying the political needs of the state. In the 1990s, as Chinese newspapers became more bottom-line oriented in the face of intensifying competition and fiscal reform, content in the crime and justice tabloid genre, among other sensational and sleazy genres, became increasingly prominent (Kinkley 2000; McCormick 2002–2003; Zha 1995; Zhao 1998, 2002).

But Lawyer Bao was also of enormous service to the law firms using his name. Practicing lawyers took responsibility for the DLB column on a pro bono basis in exchange for the advertising value of a small banner printed in the column containing their legal advice “hotline” (*re xian*) telephone numbers. Their work for the *BEN* fueled their legal practice. The letters, phone calls, and visits that supplied grist for the DLB mill was also the basis of their professional livelihood. At first the Beijing Number One Legal Service Office of Chongwen District—which represented itself publicly as the “*BEN*’s Dear Lawyer Bao Law Firm”—was solely responsible for the DLB column. The firm’s lawyers were conscripted to man the hotline telephones and face-to-face consultation rooms. In exchange for this mandatory service, they were given first dibs on the prospective clients with whom they spoke. They also cherry-picked cases from the stacks of letters that arrived weekly to Lawyer Bao.

A survey I conducted in the summer of 2000 of almost 500 lawyers in 131 law firms in Beijing captures the sheer extent to which legal work at the DLB Law Firm revolved around the hotline consultation service. Responses to a battery of eleven questions about sources of clients show that here, more than in other law firms, the hotline structured legal practice. Whereas “telephone hotline” was the most important source of clients among the 17 lawyers in the DLB Law Firm who completed survey questionnaires, it was only the seventh most important source of clients in the sample as a whole (Michelson 2003:195). Whereas 88 percent of the respondents in the DLB Law Firm reported finding “some” or “most” of their clients through a telephone hotline, only 9 percent of the remaining 433 lawyers in the sample reported this level of dependence on telephone hotlines.<sup>2</sup>

In 1994, after the workload exceeded what this firm could handle alone, the Huiyuan Law Firm helped absorb the spillover. Although it is impossible to reconstruct an exact number, we can be sure there were at least a few dozen lawyers in these two law firms who shared the Lawyer Bao *nom de plume* between 1989 and 1998. In less than five and a half

2. This difference is highly statistically significant,  $\chi^2 = 93.1$  (d.f. = 1),  $p < .001$ . After changing its name to “Baocheng” in 1995, this law firm changed its name again in 1999 to “Baoding.” Name changes notwithstanding, little had changed by the summer of 2000 when I conducted the survey: Baoding was still writing DLB columns and the work of its lawyers was still organized around its hotline consultation service.

years the two law firms reportedly received and answered 1,259 letters and 37,439 telephone queries (Song 1995:304).

The popular impact of the DLB column was enhanced by its widespread exposure. With a circulation of 800,000 in the mid-1990s (UN 1995:62–3), the *BEN* broke the one-million mark in the year 2000 (Ouyang 2003). Of these, a huge proportion is sold on the street at the ubiquitous news stalls that have become a hallmark of Beijing street life. According to Zhao (1998:130), over 400,000 copies of the *BEN* were sold daily on the street in the early 1990s. Although it does not enjoy the highest newspaper circulation in China, or even in Beijing, its revenues surpass every newspaper in Beijing with the exception of the *Beijing Youth Daily* (Century Perspective Market Research 2001; Ouyang 2003).

The two law firms working under his name capitalized on the name recognition of Lawyer Bao. Even though he was not a real lawyer, in surveys conducted of the general population of Beijing in 1994 and 1998, Lawyer Bao emerged as the lawyer with the second-highest name recognition. Lawyer Tao (Tao Jiwei), the director of the so-called “Lawyer Bao Law Firm,” was the third most well-known lawyer. Finally, even though it was not a real law firm, the Lawyer Bao Law Firm was the most widely recognized law firm in Beijing (Horizon 1998:part 4).<sup>3</sup>

But his name recognition was also facilitated by the deep cultural resonance of his namesake, Judge Bao, an eleventh-century champion of ordinary people in trouble. The name Lawyer Bao conjures up an image of the eulogized imperial magistrate, Bao Zheng (999–1062 A.D.), often referred to variously as Judge Bao, Magistrate Bao, and Lord Bao (in Chinese also variously called “Bao Qingtian” and “Bao Gong”). A senior government official serving in Henan Province’s City of Kaifeng in the mid-eleventh century during the Northern Song Dynasty (960–1127 A.D.), Judge Bao, through his many years of upholding justice on behalf of the weak and the poor, even when doing so sometimes meant challenging the supreme authority of the emperor, has become an enduring symbol of impartial justice, righteousness, and clean government. Literary, theatrical, and operatic genres based on Judge Bao’s heroic exploits have flourished over the centuries to this day (see Blader 1998).

However, the strength of Judge Bao’s historical legacy as “knight-errant” for the common people was a double-edged sword for readers of the DLB column: It not only empowered people with legal knowledge, but also helped obscure the extent to which he did the bidding of the state against the interests of the very people he purported to help. The cultural connotations invoked by his name rendered the political “boundary work” performed by Lawyer Bao opaque and therefore all the more effective. Owing to his embeddedness in the state and the political constraints on his work, Lawyer Bao’s ability to empower readers, especially in disputes with state interests, was severely circumscribed. As both a lawyer and a newspaper column, Lawyer Bao was in a double bind: Chinese lawyers (Alford 2002; Cai and Yang 2005; Michelson 2007) and Chinese newspapers (Cody 2006; Lin 2006; McCormick 2002–2003) both remain beholden to state interests. Lawyer Bao’s dual role was a double whammy. The strings to which he was attached, the strings that guided his pen, were political hamstrings. To the extent that he empowered people, he did so selectively according to political considerations. As we see in the following sections, he tended to select letters that fit the state’s immediate goals, interests, and needs.

3. In 2003, a real “Lawyer Bao Law Firm” emerged in Beijing. This firm promotes itself as the rightful descendent of the DLB column. However, none of the lawyers registered in this firm was ever registered in either of the two firms responsible for the DLB column. The emergence of a law firm with this name is ironic because in 1994 the Beijing Number One Legal Service Office of Chongwen District tried unsuccessfully to change its name officially to the Lawyer Bao Law Firm. At the time, the Beijing Bureau of Justice decided that “Lawyer Bao” could not be used in the name of a law firm name. Consequently, the law firm instead changed its name to the “Baocheng Law Firm.”

## What Are The Letters About?

While most of the readers' letters published in the DLB column were reproduced from real queries, some were composites the lawyers responsible for the column created from particularly salient themes or representative problems that emerged from the thousands of phone calls, letters, and visits they received. The distribution of topic categories in Table 1 shows a wide spectrum of everyday troubles experienced by and on the minds of ordinary people everywhere.<sup>4</sup> Almost one third of all letters concerned marriage, family, and divorce. They include accidents with or in automobiles, "slip and fall" cases, product liability, and other matters that are grist for tort mills everywhere in the world. They include queries about petty crimes such as assault and burglary. They include a wide array of economic disputes over debt, contracts, and other commercial obligations.

Although many of the everyday troubles brought to Lawyer Bao appear universal, the more unique building blocks of Chinese society are also prominently featured in the DLB column. Many problems, even those with no intrinsic bearing on work, concern the workplace. Known as the *danwei*, short for *gongzuo danwei* or "work unit," the archetypal socialist workplace was an urban state-owned organization such as a factory, a government agency, a hospital, a university, or some other kind of public organization. Multifunctionality (it was a place of employment as well as a place of residence and consumption) and embeddedness in the state and party bureaucracy (it was charged with educating its employees about and implementing and enforcing state policy) were defining properties of the *danwei* (see Bian 1994, Henderson and Cohen 1984, Lü and Perry 1997, and Walder 1986). Schools sometimes had their own hospitals (7/4/96). Indeed, large factories often had their own schools.

Table 1 shows that about 11 percent of all DLB columns directly concerned work and workplace grievances. However, the specter of the *danwei* was inescapable, crosscutting every domain of life, even those unrelated to work. Marriage required *danwei* permission (10/1/92). Divorce required *danwei* permission (6/8/89, 9/12/91, and 1/2/92; but this requirement was rescinded in 2003). Childbirth required *danwei* permission (4/26/90, 9/10/92, and 10/1/92), and compliance with family planning policies was rewarded by the *danwei* (7/16/92, 8/19/93, and 10/19/89). To visit parents living in other cities required *danwei* permission (3/18/93 and 3/26/98). Food staples were provided by the *danwei* in the form of ration tickets (6/28/90 and 4/30/92). *Danweis* were landlords (11/12/92, 2/11/93, 6/16/94, 4/20/95, and 5/4/95). *Danweis* were both figuratively and literally "paternalistic": When no other relatives were available to assume custodial duties, *danweis* became the official guardians of the children of employees who died or were incarcerated (5/30/91, 5/6/93, and 5/14/98). Children of employees also inherited their parents' jobs (4/30/92). Owing to the paternalistic character of the *danwei*, it should not be surprising that many letter-writers indicated having already sought (unsuccessfully) the help of their *danweis*—and that Lawyer Bao often sent people to their *danweis*—for the resolution of problems totally unrelated to work (1/10/91, 1/31/91, 5/30/91, 11/5/92, 5/6/93, 12/2/93, 8/4/94, and 5/14/98). As we will see, when responding to queries concerning *danwei*-related grievances, Lawyer Bao typically deferred to the interests of the *danwei*.

4. Because, *ipso facto*, multifaceted and multidimensional problems span topic categories, no classification system can be perfect. Housing problems frequently stemmed from inheritance or family division. Housing problems also emerged out of divorce. Breaches of contract were sometimes with respect to housing. Finally, given that housing was typically controlled by work units, housing problems were sometimes defined as work related. Similarly, some of the problems classified as money or price issues could have defensibly been placed in the consumer rights category. Some of the columns defined as "portraiture rights" could have been defined as "copyrights." Many of the corruption cases classified as "criminal matters" were related to work and could have been classified as "work" problems. Conversely, some problems in the "work" category were about the treatment of ex-convicts and criminal suspects awaiting trial and thus could have been classified as "criminal matters." Ultimately my coding decisions were governed by what struck me as the dominant or most prominent issue at hand.

**Table 1 • Distribution of All DLB Columns by Topic Category**

<i>Topic Category</i>	<i>N</i>	<i>Percent</i>
1. Marriage and family		
A. Marriage procedures, marital problems, and courtship	20	4.3
B. Filial piety and family care responsibilities	19	4.1
C. Hukou and status identification	14	3.0
D. Inheritance and family division	24	5.2
E. Family planning	10	2.2
Subtotal	87	18.8
2. Divorce		
A. Divorce laws and procedures	21	4.6
B. Child custody and support	17	3.7
C. Property division in divorce	17	3.7
Subtotal	55	12.0
3. Housing and neighbors		
A. Ownership and purchase	20	4.3
B. Rentals, renovations, and occupancy rights	14	3.0
C. Building demolition and resident relocation	7	1.5
D. Neighbors	15	3.3
Subtotal	56	12.1
4. Torts and movable property		
A. Privacy	9	2.0
B. Gifts and findings	7	1.5
C. Consumer rights	20	4.3
D. Slander and harassment (including libel, defamation, threats, harassment, "reputation rights," "portraiture rights")	13	2.8
E. Personal injury and wrongful death	25	5.4
F. Personal property theft, damage, and loss	13	2.8
Subtotal	87	18.8
5. Business and financial institutions		
A. Debt, money, prices, and banking	41	8.9
B. Contract disputes and commercial responsibilities	31	6.7
C. Intellectual property rights (copyrights, trademarks, and patents)	16	3.5
Subtotal	88	19.1
6. Work		
A. Formal scope of danwei authority and activity	11	2.4
B. Abuses of danwei authority	11	2.4
C. Labor rights and protections on the books	15	3.3
D. Danwei responsibilities to employees	13	2.8
Subtotal	50	10.9
7. Criminal matters		
A. Corruption	14	3.0
B. Police	3	0.7
C. Other criminal matters	20	4.3
Subtotal	37	8.0
Grand total	460	99.7

Note: The grand total does not equal 100.0 owing to rounding error.

Another cornerstone socialist institution prominently featured in the DLB column is population control. Family planning policies were and remain of obvious everyday salience in China. At the same time, they provoked and continue to provoke popular resistance (9/10/92 and 12/10/92; see White 2003, 2006). Population control takes the form not only of fertility control, but also of migration control. *Hukou*, translated literally as “household population,” refers to the system by which households and their members were registered as either rural residents (peasants) or urban residents (workers) and tied to their place of registration in order to help the state control rural-urban migration (see Wang 2004). It is translated alternately as “household registration system” and “residency permit system.” Because it limits villagers’ access to resources and opportunities enjoyed by urban residents, the hukou system has been characterized as caste-like and likened to apartheid. At the same time, however, the scale of popular resistance against hukou restrictions is reflected in China’s “floating population” of 150 million. Like the danwei, the hukou, too, crosscuts almost all domains of life: marriage, divorce, and adoption procedures, for example, must be carried out in the officially registered residential location (i.e., the location of the hukou) of one of the involved parties (1/18/90, 8/1/91, 10/24/91, 11/7/91, 1/9/92, 1/30/92, 7/16/92, 10/21/93, 1/20/94, 5/13/93, and 1/2/97).

Since 1985, the hukou system has been supplemented by the residential status identification card (*shenfen zheng*), alternately translated as “resident identity card” and “citizen identity card.” This nationally computerized photo identification card is easily and frequently verified by police personnel, often via spot checks (6/10/93). Beyond establishing the identity of an individual in the same way as a driver’s license in the United States, the residential status identification also establishes the officially registered residential location of the bearer (4/9/92, 6/25/92, 10/1/92, 3/11/93, 5/2/94, 4/13/95, 9/28/95, and 1/2/97), and is thus an essential instrument of government population control.

Danweis and population control policies are complementary institutions working in tandem in the service of state interests and state needs; they are tools of government administration. As we will see later in this article, because protecting danwei interests and the institutions of population control are paramount state priorities, Lawyer Bao did his best to defuse potential popular challenges to the danwei, family planning, the hukou system, and residential status identification. His position on crime control and housing demolition was equally unambiguous.

In general, the DLB columns are less an objective reflection of the shifting tide of popular sentiment than they are an objective reflection of shifting political currents. Officially published crime rates, for example, tell us more about the timing of political campaigns and police crackdowns than they do about shifts in the objective incidence of crime breaking (Manion 1998).

If they were distributed equally over the column’s ten-year period, each year would account for roughly 10 percent of all DLB columns in a given topic category (8 percent in 1989, 7 percent in 1998, and 10 to 12 percent in intervening years). As we will see, they are not evenly distributed over time, but exhibit sharp peaks and deep gullies that correspond to policy shifts and political campaigns. But this is not to say that shifting public sentiment was entirely irrelevant. To be sure, *popular* salience and *political* salience are not mutually exclusive. If the same state policy shifts that dictated column topics also produced and reflected real-life grievances, it follows that shifts in column topics must, at least to some measure, correspond empirically to shifts in real-life grievances. For example, the number of households in Beijing relocated due to housing demolition peaked in 1993 before waning in the late 1990s and rebounding again in 2000 (Zhan 2003). This 1993 peak is reflected the DLB columns: Three out all seven demolition columns ever published appeared in 1994; the remaining four were spread over 1993, 1995, 1996, and 1997.

On the whole, however, the vicissitudes of problem topics correspond more closely to the vicissitudes of legislation, policy shifts, and political campaigns. For example, the dramatic reduction in attention to marriage, family, and divorce cannot be plausibly explained in terms of a shift in public sentiment. Columns classified in the marriage, family, and divorce categories

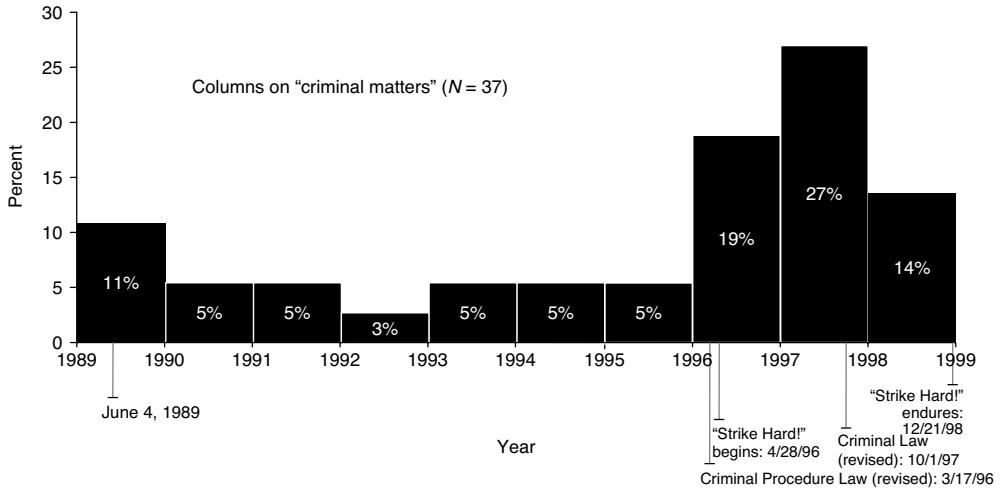
(i.e., in the first two categories in Table 1), dropped precipitously and steadily from over 50 percent of all columns in 1989 and 1990, respectively, to less than 10 percent of all columns in 1997 and 1998, respectively. If shifts in objective public sentiment drove shifts in the composition of the DLB columns, it would be more reasonable to expect the opposite pattern: Insofar as the crude divorce rate increased steadily by almost 70 percent between 1988 and 1997 (Wang 2001:186), marriage and divorce problems should have been of increasing popular salience. Instead, columns in this topic category were displaced by columns in more politically salient topic categories. Problem topics are associated with key state-building moments; their timing reflects the timing of state efforts and state priorities. As an instrument of political education, the DLB column promoted state efforts to build a legal system. As part of his effort to shape public legal culture and individual legal consciousness, Lawyer Bao showcased laws and their official purposes as they were produced.

I will illustrate the politically determined character of the DLB columns with three examples. First, the timing of columns related to criminal matters corresponds to high-profile crime-control campaigns. The first spike in crime-related problems appears in 1989 in the immediate wake of the events surrounding Tiananmen Square (see figure 1). Like the rest of the media (Faison 1999), Lawyer Bao's support of the regime was unequivocal following June 4. Like other Chinese lawyers at the time, under pressure to contribute to the official effort to prosecute the "rioters" and "hooligans" of 1989 (Michelson 2003:91–2), Lawyer Bao publicly legitimized the government crackdown. On June 29, 1989, instead of his usual question-and-answer column, Lawyer Bao published a commentary titled, "What is the Crime of Agitation through Counter-Revolutionary Propaganda?" Similarly, on July 6, 1989, he published a commentary titled, "The Crime of Organizing an Armed Counter-Revolutionary Rebellion." And on August 10, 1989 he published a commentary titled, "What is the Crime of Looting Firearms and Ammunition?"<sup>5</sup>

After this small but conspicuous spike, Lawyer Bao's focus turned away from criminal matters until 1996, when it suddenly spiked again, this time far more dramatically than it had in 1989. Whereas between 1990 and 1995, criminal matters never accounted for more than 5 percent of all columns, criminal matters accounted for 15 percent, 21 percent, and 16 percent of all columns in 1996, 1997, and 1998, respectively. At the same time, whereas columns of all types published in the three years between 1996 and 1998 accounted for 28 percent of all columns ever published, crime-related columns published in the three years between 1996 and 1998 accounted for 60 percent of all crime-related columns ever published in the full ten-year period. What happened in this period of time? On April 28, 1996, the second national anti-crime campaign known as "Strike Hard" (*Yan Da*, translated as "Stern Blows" by Tanner 2000) was launched (Richburg 1996; 6/20/96). (On the first Strike Hard campaign of 1983, see Tanner 1999). Just as they were in 1989, lawyers were mobilized in support of the state's crime-control efforts throughout the Strike Hard campaign (Michelson 2003:98, 106). On December 21, 1998, more than two years after its launch, Luo Gan, the Politburo member charged with its implementation, announced that the Strike Hard campaign would continue into 1999 (Xinhua News Agency 1998). The spike in crime-related DLB columns corresponded not only to the Strike Hard campaign, but also to the passage of the revised Criminal Procedure Law in 1996 and the revised Criminal Law in 1997. Figure 1 depicts the distribution of crime-related DLB columns over time and the events that spurred their publication.

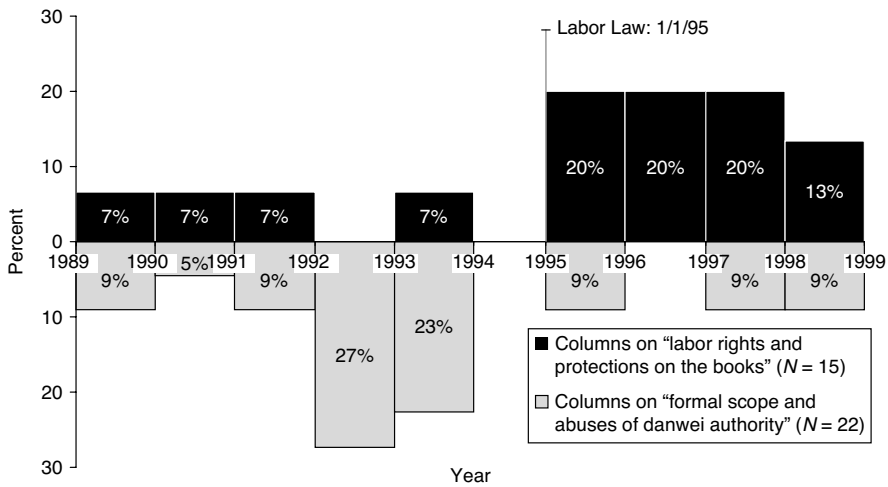
Second, the timing of Lawyer Bao's attention to labor issues corresponds to a flurry of legislation and policy regulations enacted between 1993 and 1996 in a context of draconian reform measures in the state industrial sector that swelled the ranks of laid-off workers, temporary workers, and contract workers (Lee 1999; Gallagher 2005:105–13). Figure 2 shows 1995 to be a watershed in the kinds of labor issues published in the DLB column.

5. According to a statement issued by the People's Liberation Army on the morning of June 4, 1989: "A few soldiers were burned to death and guns and ammunition were looted" (Ash 1989:689).



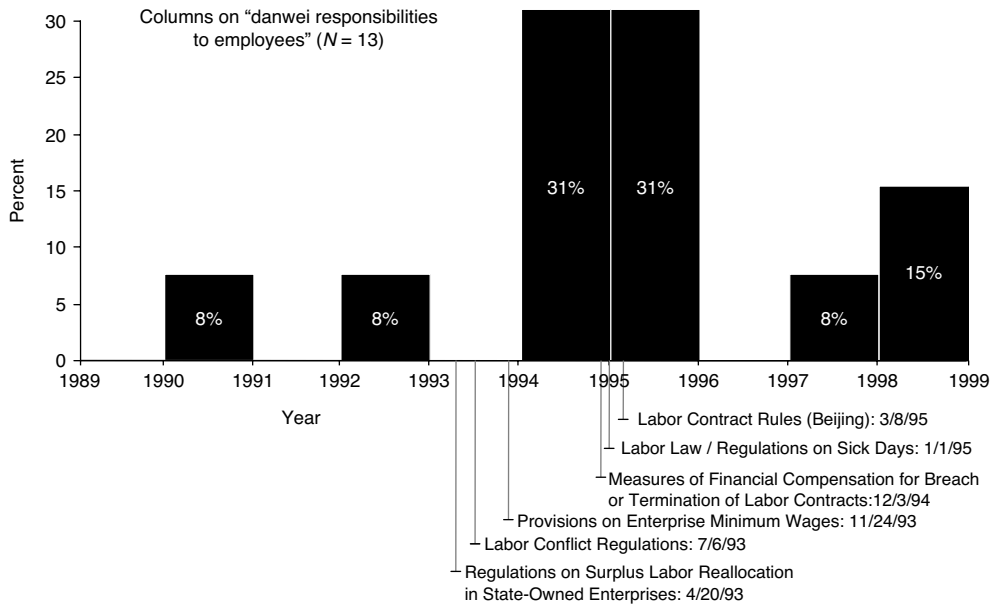
Note: Category 7 in Table 1. Bars total 99 percent owing to rounding error.

**Figure 1 • Timeline of DLB Columns on Criminal Matters and Relevant Political and Lawmaking Events**



Note: Categories 6A, 6B, and 6C in Table 1. The top set of bars totals 101 percent owing to rounding error.

**Figure 2 • Timeline of Selected DLB Columns on Work and Relevant Lawmaking Event**



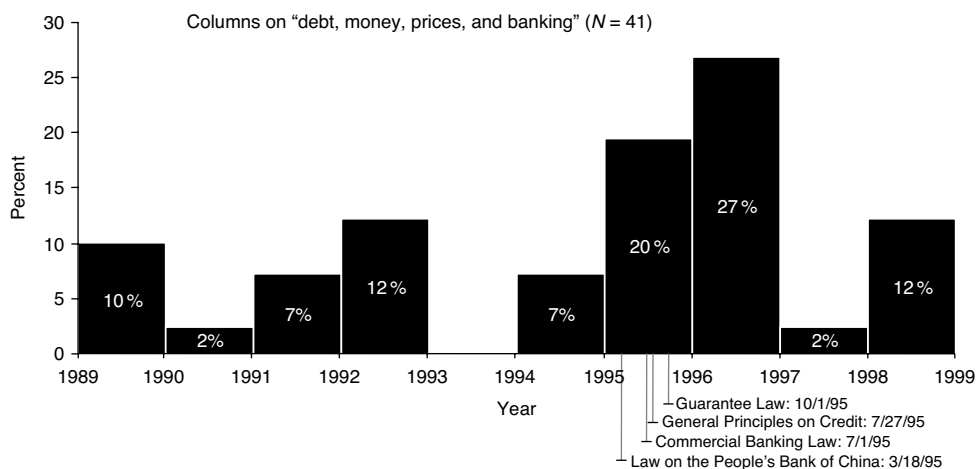
Note: Category 6D in Table 1. Bars total 101 percent owing to rounding error.

**Figure 3 • Timeline of Remaining DLB Columns on Work and Relevant Lawmaking Events**

Complaints about abuses of danwei authority are concentrated in the years prior to 1995. Whereas columns of all types published in the five years between 1989 and 1993 accounted for 51 percent of all columns ever published, columns concerning abuses of danwei authority published between 1989 and 1993 accounted for 73 percent of all columns in this category ever published in the full ten-year period. Following the enactment of the 1995 Labor Law, however, Lawyer Bao turned his focus to labor rights and protections on the books. Whereas columns of all types published in the three years between 1995 and 1997 accounted for 31 percent of all columns ever published, 60 percent of all columns extolling labor rights and protections on the books were concentrated in the three years between 1995 and 1997. Figure 3 contains a more comprehensive array of labor statutes, all but one of which emerged in 1993 and 1994. Of all DLB columns classified in the category of danwei responsibilities to employees, 62 percent were published in these two years, whereas only 22 percent of all columns ever published were published in these two years.

Third, the peaked attention to business and economic institutions in 1995–96 reflects the desperate efforts of Zhu Rongji—China’s economic tsar throughout the 1990s<sup>6</sup> and China’s premiere from 1998 to 2003—to bring order to the financial sector. The 1995–96 spike in DLB columns related to debt and banking corresponds precisely to a flurry of legislative activity in this area. As we can see in Figure 4, whereas 21 percent of all columns ever published appeared in 1995 and 1996, 47 percent of all columns classified in the “debt, money, prices, and banking” category are concentrated in these two years. Problems related to contract disputes exhibit the same pattern: Whereas 10 percent of all columns

6. More specifically, throughout most of the 1990s, Zhu Rongji served as vice premiere of the State Council to work specifically on the economy and on finance portfolios. He concurrently served as the president of the People’s Bank of China.



Note: Category 5A in Table 1. Bars total 99% owing to rounding error.

**Figure 4 • Timeline of Selected DLB Columns on Business and Financial Institutions and Relevant Lawmaking Events**

ever published appeared in 1995, 29 percent of all columns classified as “contract disputes and commercial responsibilities” were published in 1995. As a final indication of the politically-driven spike in columns related to economic matters, whereas 19 percent of all columns published over the full ten years of the DLB column were classified in the “business and financial institutions” category, 40 percent and 38 percent of all columns published in 1995 and 1996, respectively, belonged to this category.

### What Did Letter-Writers Want?

More than anything else, letter-writers asked informational questions or requested technical clarification about laws, regulations, and policies. Many pursued monetary compensation for losses sustained in injuries, accidents, and other infringements. Some sought to restore their good names in the face of allegedly false accusations. Others hoped to remedy broken relationships with kin and neighbors. But they also advanced material claims based on socialist expectations that were incongruent with formal legal provisions and with the needs of economic reform. Theoretically grounded in the work of Michel Foucault, Sally Engle Merry’s (1990) classic analytical framework from her research on the drama of lower courts in a small New England town can be usefully applied to the question of how and why aggrieved individuals in China try to “get justice and get even.” In this framework, law is constituted through the struggle over naming the problem, over defining the problem as one that merits a legal solution, some other kind of solution, or no solution at all. Legal reality is ephemeral and elusive, often shifting over time; it is not immutably fixed to the law on the books, but is constituted by the interactions and struggles of the involved parties. The categories used to name a problem vary greatly across different sets of actors in different contexts. Lawyers and laid-off factory workers, for example, interpret problems through different cognitive and normative filters and express their competing interpretations with different sets of vocabularies. These sets of vocabularies are *discourses* used to talk about problems, to name events and persons, and to explain actions and relationships. To the actor invoking it, a discourse

seems natural and inevitable; it is a theory of the social world, embodying taken-for-granted assumptions and expectations about rights and entitlements. In short, the legal process is constituted by competing efforts to frame and label, to impose one or another category of meaning on the particular matter at hand.

The same event, person, action, and so forth can be named and interpreted in very different ways. The naming of an action or event within a particular discourse, thus interpreting the event's meaning and assessing the motives behind it, is therefore an act of power. Each naming points to a solution . . . The ability to name and interpret is therefore a central feature of the power exercised by those who handle problems . . . Since names are part of discourses, the contest over naming is largely a contest over which discourse will be applied to the problem at hand. Critical to the power of any participant is his or her ability to determine the reigning discourse (Merry 1990:111).

Merry (1990) identifies three dominant discourses in the lower courts she studied: (1) rights and law, (2) fairness and morality, and (3) therapy and help. The first discourse, the legal discourse, is invoked to articulate notions of rights in terms of general legal concepts and of specific legal provisions. The moral discourse is the language of responsibilities and duties attached to social relationships, and is invoked to articulate and advance taken-for-granted relational expectations, implicit understandings of what it means to be a good son, a good neighbor, and so on. The final discourse, the therapeutic discourse, attributes problems to individual illness or psychological weakness, and advocates help and support over punitive action.

All three discourses emerge in high relief in the DLB columns. But this analytical approach is not limited to the three discourses she identifies in her data from New England. Rather, Merry (1990:111–2) is very open to the possibility of additional discourses in different contexts. Indeed, a fourth discourse emerges conspicuously from the DLB columns: the discourse of danwei paternalism, the system of lifetime employment, and cradle-to-grave social security and welfare benefits, the system that became a taken-for-granted expectation, a set of entitlements accorded to the urban socialist citizen, and one that is very much under assault by the market reforms and the restructuring and privatization of state-owned industry. The system of state protections and entitlements (enjoyed by urban residents) that, drawing on James Scott (1976), has been labeled the “Maoist moral economy” (Hurst 2004:103; Lee 1999:62; Perry 1999:317–25; Solinger 2004:53) and the “socialist social contract” (Tang and Parish 2000:3) was a *bona fide* law-like system of rights. According to János Kornai (1992), once it is achieved in the socialist context, full employment “becomes an ‘acquired right’ of the workers, a status quo that the classical system cannot and does not wish to reverse. Thenceforth full employment is laid down as a guaranteed right . . . This is an actual, not just a nominally proclaimed right” (p. 210). Similarly, Andrew Walder (1986) writes that “China’s industrial labor force . . . is divided into several status groups, each of which has its own publicly defined rights to income, job tenure, social security, labor insurance, and housing and residence—each of which, in other words, is *legally entitled* to a distinctive style of life” (p. 40, emphasis added).

Thus, the backdrop to many letters to Lawyer Bao is the dismantling of the socialist welfare system, the decline of the large, state-owned danwei’s socialist paternalism. They contain poignant reactions to perceived violations of the socialist expectation of: job security (4/22/93, 6/24/93, 9/22/94, 10/2/97, and 3/20/97), full health care and medical benefits (12/26/91, 4/6/95, 12/12/96, and 6/12/97), retirement and severance pensions (8/9/90, 11/4/93, 7/14/94, and 5/22/97), good wages paid on time (1/7/93, 12/1/94, 1/18/96, and 4/3/97), the right to extra paid vacation time in order to return home to visit family (3/18/93 and 3/26/98), and the right to receive single-child pension payments (10/19/89 and 7/16/92).

Letter-writers tended to express their socialist welfare claims as legal claims. Ordinary people strategically articulated as “legal rights” the bundle of basic social entitlements and protections—such as education, health care, lifetime employment, and housing—popularly understood as “socialist rights.” Letter-writers’ shift from a discourse of socialist state paternalism

to a discourse of state law can also be theorized in terms of “frame alignment processes,” particularly of the “frame transformation” variety (Snow et al. 1986), or in terms of “boundary-spanning claims” (O’Brien and Li 2006). Shifting between discourses—justifying and framing socialist claims in legal terms—in encounters with lawyers makes *prima facie* good tactical sense. Maudlin nostalgia for a bygone era of a caring, paternalistic state, or vitriolic claims that the state has reneged on its socialist obligations, are not only precisely the forms of discourse lawyers are most likely to balk at (Michelson 2006), but are also the very forms of discourse least likely to be printed in Chinese newspapers owing to well-known political controls on the media (Cody 2006; Lin 2006; McCormick 2002–2003). Furthermore, evidence from other contexts shows that translation from one language of rights into the language of law is a common feature of legal mobilization (Cain 1979; Mather and Yngvesson 1980–81; Merry 1990). In comparative perspective, legal pluralism supplies the discursive material for such translation strategies: In their efforts to resist traditional or customary forms of social control and when appeals to nonlegal authority fail, people often turn to state law (Benda-Beckmann 2001:50).

As we saw, some letter-writers had already approached the courts. But because the courts rebuffed or disappointed them (sometimes because of enforcement problems, e.g., 12/15/94), they approached Lawyer Bao for help. As we will see next, however, Lawyer Bao continued to rebuff and disappoint them.

## How Did Lawyer Bao Respond to Popular Claims?

### *Framing and Translating Problems*

When approaching the courts for help, the ordinary people Merry (1990) observed in New England often invoked legal discourse in strategic efforts to maximize the court’s likelihood of intervening on their behalf. In a twist of tragic irony, however, many plaintiffs found themselves rebuffed by the courts, turned away for bringing matters beyond the scope of the law, matters defined by court clerks as moral violations more appropriately handled informally, or as personality defects more appropriately handled through psychotherapy. Court clerks effectively delegatized many problems by stripping them of their legal meaning and, in so doing, effectively denied complainants access to formal legal solutions. In other words, just as aggrieved individuals approaching the legal system translated their problems into legal claims from the nonlegal languages of fairness and morality and of therapy and help, court clerks, too, used the same strategy in the opposite way: They deflected everyday problems away from the nonlegal system by translating them from the language of law into the language of morality or psychology.

In the DLB columns, too, we see aggressive and assertive ordinary people using the law as an instrument of resistance. Some resisted laws, such as provisions in the Marriage Law stipulating a minimum age of 22 for men and 20 for women (6/14/90 and 4/9/92) and prohibiting cousin marriage (3/22/90). Some resisted the assault of market reform on their socialist entitlements. However, as Turk (1976) might put it, although ordinary people used the law as a weapon in their acts of resistance, they were outgunned by the weapon of the law Lawyer Bao wielded on behalf of the state. Letter-writers’ efforts to advance rightful claims were less effective than Lawyer Bao’s efforts to strip them of their legal legitimacy in part because of an asymmetry in knowledge about law and legal practice and in part because of the obfuscatory strength of Lawyer Bao’s popular image as a latter-day manifestation of Judge Bao.

Lawyer Bao was not an equal-opportunity assassin of rightful claims. He did not indiscriminately defend state actors. Even throughout the Mao years, in the interests of defending the institutional order as a whole, it was common and legitimate for newspapers to rebuke

"bad apples" in the state and in the CCP. However, more often than not, Lawyer Bao denied the legal legitimacy of individual letter-writer's claims when they challenged the prerogatives and interests of state organizations. His motive for doing so is not hard to understand: The lawyers writing in his name were constrained by political limits both on legal practice and on the mass media. As we have seen, the *BEN* supplied their bread and butter. Their ability to make a legal living demanded playing not only by legal rules, but also by the political rules governing the Chinese media.

Lawyer Bao's selective discouragement emerges in clear relief from an analysis of how his responses vary according to the nature of the claim. I coded each of Lawyer Bao's 460 letters as (1) empowering, (2) factual, or (3) disempowering. An "empowering" response is defined as the explicit presence of either of the following two elements: (1) an indication that the courts or "the law" more generally will uphold the complainant's claim or (2) encouragement to mobilize the law by hiring a lawyer, filing a lawsuit in court, approaching the police, or approaching the procuracy. A "factual" response is defined as a technical explication or interpretation of relevant legal provisions presented in at least one of the following manners: (1) neutrally, (2) without reference to a specific query, (3) without attributing fault, or (4) without passing judgment on the legal merit of the complainant's claim. Finally, a "disempowering" response is defined as the explicit presence of at least one of the following elements: (1) an attribution of fault to the complainant, (2) an effort to (re)define the problem as one outside the scope of the law, for example, by asserting that the complainant's claim deserves no legal protection or more legitimately falls under danwei jurisdiction, or (3) an exhortation to the letter-writer that she "lump" her individual grievance in support of the greater good advanced by the national reforms.<sup>7</sup>

Overall, only 9 percent of Lawyer Bao's responses were disempowering. The remaining 91 percent of his responses were split almost evenly between empowering and factual. When Lawyer Bao supplied empowering responses, by the very definition of empowering, he invariably invoked the discourse of rights and law. But what discourse did Lawyer Bao invoke when he supplied disempowering responses? He invoked all three discourses identified by Merry (1990). First, he invoked the discourse of rights and law. In many of his disempowering responses, Lawyer Bao cited legal statutes to demonstrate their inapplicability:<sup>8</sup>

Where a disagreement emerges in carrying out these provisions, it should be resolved through the administrative system; the courts will not take this kind of case (12/20/90).

The law does not constitute this type of behavior a criminal offense, and there are no provisions on how to punish this kind of behavior. Normally, administrative leaders carry out education through criticism (12/27/90).

The law has no provisions on dealing with wage adjustments of those out on bail awaiting trial; this is an administrative measure (3/5/92).<sup>9</sup>

Second, Lawyer Bao invoked the discourse of fairness and morality:

Your son-in-law's having extramarital relations is immoral behavior. In the face of such behavior, counseling work should be carried out through the Mediation Committee in his danwei organization, Street Office, or Residents' Committee in order that he recognize that his behavior is wrong,

7. Among all 460 letters from Lawyer Bao, only 24 satisfied both "empowering" and "disempowering" criteria. These columns were classified as "disempowering."

8. The proportion of empowering, factual, and disempowering responses in which at least one legal statute was explicitly cited was 94 percent, 84 percent, and 76 percent, respectively, differences that are highly statistically significant ( $\chi^2 = 15.4$  [d.f. = 2],  $p < .001$ ). At the same time, the average number of legal statutes cited in empowering, factual, and disempowering responses was 1.5, 1.2, and 1.1, respectively. The difference of means between empowering and disempowering responses is statistically significant ( $t = 2.1$  [d.f. = 247],  $p = .035$ , two-tailed test).

9. In the interests of saving space, throughout this article I never quote more than three illustrative examples.

break off all contact with the third party, and restore a wonderful household. Because an extramarital affair is considered a violation of morality and not a violation of the law, you cannot resolve this problem through judicial means (10/12/89; also see 3/8/90).

Whether or not relations between a daughter-in-law and her mother-in-law are bound by legal rights and duties is not clearly stipulated in Chinese law . . . [F]rom the standpoint of both the law and society's morals, the daughter-in-law should take care of the mother-in-law. It is a way of supporting an elderly person in place of the husband who is not in the household, and, at the same time, it is a way of paying back the elderly person for many years of support and care. This has legal, logical, and sentimental significance. You have to admit that there is good reason here (3/7/91).

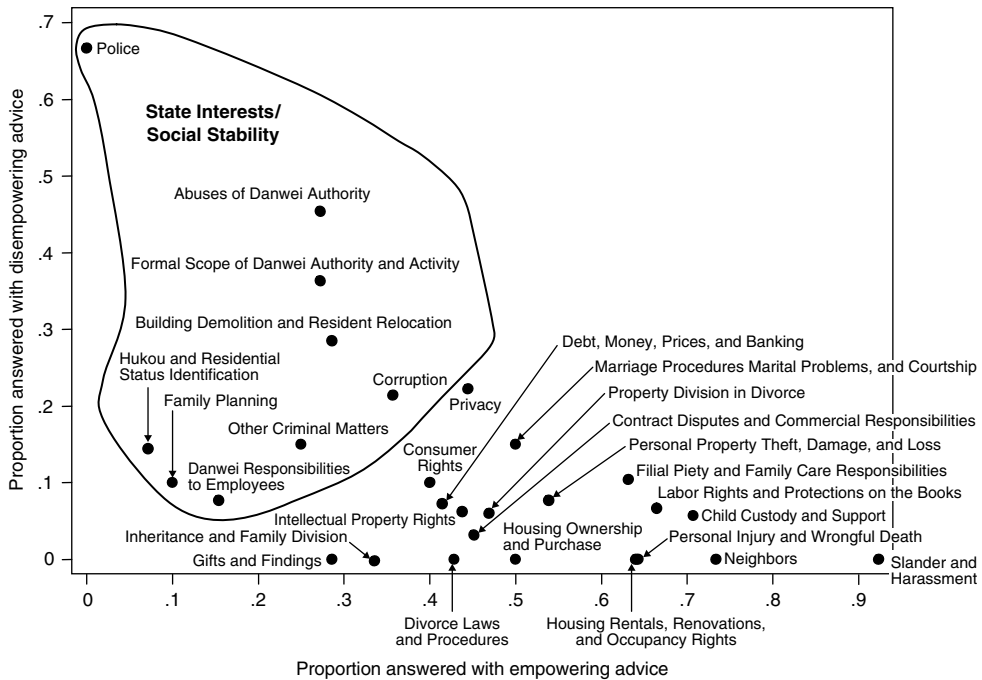
Of course, according to the traditional virtues of Chinese people, under normal conditions one should care for and help the elderly (6/1/95).

Third, although it was far less prominent than the other two discourses, Lawyer Bao also invoked the discourse of therapy and help in his response to a query about sexual abuse at the workplace (also see Erwin 2000:154 and Tanner 1994:5–7):

As a young woman who only recently entered society, you lack experience at handling matters . . . After the first sexual encounter you should have immediately filed a report exposing this crime to a judicial organ. But since you have a weak personality, relations continued after the first time, even to the point of living together for eight months, getting pregnant, and having an abortion. Therefore, responsibility does not fall entirely on one side (1/31/91).

Lawyer Bao's responses also contain a fourth discourse. In his disempowering responses of discouragement, Lawyer Bao often articulated a discourse of deference to state organizations. In several of the examples listed above of the "rights and law" discourse he invoked to discourage legal mobilization, Lawyer Bao explicitly deferred to "administrative" solutions. This can also be thought of as a discourse of scolding the letter-writer for presuming to defy state interests, a discourse aimed at reminding the reader that the state knows best, that its wisdom and benevolence should not be questioned, and that it should be unconditionally supported. Behind Lawyer Bao's discourse of supporting the state was the ubiquitous official discourse of social stability. Lawyer Bao's mandate was in line with the state's paramount goal of preserving social stability by resolving and containing popular grievances and complaints, by defusing potential unrest, and by cracking down on crime. In support of the well-known official principle of "stability above all" (O'Brien and Li 2006:12, 60; also translated as "stability overrides everything" [Tanner 2000:94]), Lawyer Bao's job included discouraging collective organization and mobilization. Charged with advancing the interests of the state, even when doing so demands that they misinform the people whose interests they ostensibly represent, Chinese lawyers and Chinese newspapers exhibit reluctance to take action that could be perceived by higher authorities as endangering social and political stability, as supporting the efforts of recalcitrant citizens to challenge the prerogatives of state organizations. As a result, when faced with disputes of political significance, lawyers and newspapers tend to adopt rhetorical strategies that delegitimize "rightful resistance" and discourage "rightful resisters" from pursuing legal remedies.

In Figure 5, I identify the topic categories (the same topic categories presented in Table 1) least likely to provoke empowering responses and most likely to provoke disempowering responses. Topic categories in the left half of the scatterplot are negatively associated with empowering advice and topic categories in the top half of the scatterplot are positively associated with disempowering responses. Topic categories toward the left half and toward the top half are those containing the kinds of problems political leaders perceive as potentially destabilizing and fear could galvanize popular protest. Population control institutions, including hukou and family planning, are associated with extremely low levels of empowerment. Labor grievances, crime-related matters, and housing demolition problems are associated both with low levels of empowerment and with high levels of disempowerment.



Note:  $N = 460$  columns in all 28 topic categories presented in Table 1.  $R = -.563$ ,  $p = .002$ .

**Figure 5 • Scatterplot of Two Types of Discourse in Lawyer Bao's Written Responses**

The clear message conveyed by Lawyer Bao in his responses to questions concerning labor strife, housing demolition, and crime control is, “don’t even think about mounting a legal challenge.”

Table 2 affords a more detailed examination of these politically sensitive topic categories. Among the 15 queries about “labor rights and protections on the books” that helped Lawyer Bao showcase the 1995 Labor Law (see Figure 2), ten received empowering responses and only one received a disempowering response. As Table 2 shows, however, labor-related queries in other categories received far less empowering and far more disempowering responses. Questions concerning other labor grievances, criminal matters, and housing demolition were between two and three times more likely than the average to receive disempowering responses and between one-third and one-half less likely than average to receive empowering responses. Of all 61 letters that explicitly identified a state organization as the source of the grievance or as an adversary in the conflict in question, 45 fall into one these four topic categories. The remaining 16 concerning conflicts with state organizations (“other disputes with state organizations” in Table 2) provoked a similar distribution of responses from Lawyer Bao: one-quarter were disempowering (2.8 times more than average) and less than one-third were empowering (almost one-third less than average). Put another way, 61 percent of all disempowering responses were accounted for by these five topic categories (i.e., the five categories listed in Table 2). While more than one out of five responses in these five topic categories was disempowering, less than one out of 20 responses in all remaining topic categories was disempowering. Next we take a closer look at Lawyer Bao’s responses to politically sensitive queries.

**Table 2 • Lawyer Bao's Response Discourse by Selected Topic Category and Adversary**

Topic Category	Discourse in Lawyer Bao's Response				N
	Empowering	Factual	Disempowering	Total	
	Percent				
Labor rights and protections on the books (6C)	66.7	26.7	6.7	100.1	15
Other labor grievances (6A, 6B, 6D)	22.9	48.6	28.6	100.1	35
Criminal matters (7)	27.0	51.4	21.6	100.0	37
Building demolition and resident relocation (3C)	28.6	42.9	28.6	100.1	7
Other disputes with state organizations	31.3	43.8	25.0	100.1	16
<b>Average of above five categories</b>	<b>31.8</b>	<b>45.5</b>	<b>22.7</b>	<b>100.0</b>	<b>110</b>
All other problems	49.4	46.0	4.6	100.0	350
Total	45.2	45.9	8.9	100.0	460

Note: Numbers in parentheses correspond to topic categories in Table 1. Five categories plus "all other problems,"  $\chi^2 = 49.2$  (d.f. = 10),  $p < .001$ ; top five categories combined plus "all other problems,"  $\chi^2 = 36.7$  (d.f. = 2),  $p < .001$ .

### *Labor Problems*

Because empowering angry, contentious workers might be construed as fueling labor insurgency (Blecher 2002; Cai 2002; Chan 2001; Chen 2006; Hurst 2004; Hurst and O'Brien 2002; Kernan 1999; Lee 2000a, 2000b, 2002; Solinger 2002, 2004; Weston 2000, 2004) and further jeopardizing stability, Lawyer Bao, in his responses to labor complaints, reinterpreted socialist entitlements from a legal perspective. In many cases, Lawyer Bao denied any legal basis for the taken-for-granted socialist entitlement in question, thereby defusing the validity of the advice-seeker's claim. Lawyer Bao even implied a therapeutic discourse to challenge the discourse of socialist paternalism, implicitly redefining the labor problem as an anachronistic psychological holdover, a dependency complex preventing the individual in question from being a fully productive citizen in the context of a privatizing market economy (6/24/93; see Zhu 1998).

To be sure, consistent with research suggesting the state encourages aggrieved workers to "use the law as your weapon!" (Gallagher 2005), Lawyer Bao supplied overwhelmingly empowering discourse when citing the 1995 Labor Law (6/8/95, 6/15/95, 11/14/96, 12/12/96, 3/20/97, 4/3/97, 5/22/97, and 7/23/98). (In these eight columns, Lawyer Bao explicitly cited Articles 1, 2, 4, 17, 19, 29, 48, 70, and 72 of the Labor Law.)<sup>10</sup> However, in other labor-related columns he was far more discouraging to the letter-writer and far more supportive of the danwei:

you should make the matter known to the factory's party organization as well as of the head office of the Party Committee for Discipline Inspection, finding an appropriate solution via administrative channels and party disciplinary organs (2/7/91).

currently in some enterprises there indeed exist extremely large numbers of bloodsuckers eating away at public and private property and materials. In order to safeguard against this extremely large number of thieves and rigorously administer public property, among many enterprises there are . . . administrative measures against criminal activities. These methods must be publicized by the factory and be supported energetically and carried out by the entire work force willingly of their own accord (1/23/92).

10. While Lawyer Bao rhetorically supported labor rights, in practice Chinese lawyers screen out such cases (Michelson 2006). In other words, Lawyer Bao empowered people in ways that actual lawyers typically do not.

Regarding your older sister's plight described in your letter, under current circumstances, she can continue to explain her difficulty to her enterprise leaders and demand they try their best to reallocate her internally. At the same time she may consider the overall situation, reflect on the fact that the state and enterprises are also all having difficulties, do some mental preparation, go through recuperation and medical recovery, restore her health, and look for new work or continue working under the help and support of her danwei (6/24/93).

### ***Criminal Problems***

Crime control is perhaps the most intuitive example of the imperative to support high-priority state policies, state campaigns, and the public security personnel charged with their implementation and enforcement:

according to the situation you described in your letter, I think the three policemen were carrying out their lawful patrol duties. The demands stemming from this kind of work require checking the resident identity cards of people coming and going. This gives little cause for criticism. Regarding the inspection work of the police, you and any other citizen should show some understanding and give some cooperation (6/10/93).

I should remind your friend to be aware of the following: "If individuals who commit bribery actively confess and cooperate before litigation is pursued by prosecutors, they may receive more lenient punishments or avoid criminal punishment" (11/28/96).

From your individual standpoint, although at the time you paid a lot of money for its purchase [an air gun], and although it's a treasured item, from the overall situation of social order, you should hand it in to public security authorities as soon as possible. If you persist in your refusal to hand it in, you will pay a very severe penalty when it is discovered (12/26/96).

### ***Housing Demolition Problems***

Just as he tended not to empower aggrieved workers, Lawyer Bao tended not to empower angry, contentious residents whose homes were slated for demolition or had already been demolished. Here, as elsewhere, the risks associated with failing to "get with the program" are grave and palpable. Lawyers were reminded of these risks when Zheng Enchong—a lawyer in Shanghai who, even after the state revoked his lawyer's license in 2001, continued to provide legal counsel to residents whose homes had been demolished—was arrested in 2003 and sentenced to three years in prison (Davis and Lin 2004; Lynch 2003). On June 5, 2006, he was released but put under house arrest for an additional year (Salvadove 2006).

Looking only at the crude topic categories in Table 1, Lawyer Bao's responses to housing problems were more empowering than his responses to any of the other six topic categories. Whereas he offered empowering advice in 45 percent of all columns, 57 percent of his responses to queries classified in the housing category were empowering. But, within the general "housing" category, housing demolition stands out as a conspicuous exception; it is an extreme outlier. Lawyer Bao's reluctance to support popular resistance against official demolition and relocation policies emerges in stark relief. As we saw in Table 2, compared to his responses to other kinds of problems, in his responses to housing demolition queries, Lawyer Bao was less likely to be empowering and more likely to be disempowering. Thus, when housing demolition problems are removed from the general "housing" category, the rate at which Lawyer Bao supplied empowering advice increases to 61 percent. Lawyer Bao exhibited deference to state authority in the face of housing demolition and relocation matters by rhetorically denying the legal legitimacy of the advice-seeker's problem and by reaffirming the obligation to support state goals:

The Beijing West Railway Station is a key construction project for the state and the city of Beijing; this is not an ordinary construction project of the municipal government. I hope you work hard to

persuade your father. That he is not happy is understandable, but he needs to see the importance of the overall picture and comply with the needs of urban construction. Within the stipulated move-out deadline, please complete your task of moving out (12/9/93).

As one being relocated, you should see things from the overall situation, comply with the needs of urban construction, and completely move out within the stipulated time limit (4/14/94).

### *Collective Problems*

Although they are few in number, the pattern with respect to Lawyer Bao's responses to collective complaints is entirely consistent with a more general effort to avoid, contain, and quell collective petitions (Bernstein and Lü 2003:183; O'Brien and Li 2006). Indeed, the 2006 Guidance Opinions on Lawyers Accepting Mass Cases further limits the willingness and ability of Chinese lawyers to accept collective cases (Kahn 2006). In three out of the five columns concerning collective petitions, Lawyer Bao's response is unambiguously disempowering.<sup>11</sup> One letter concerned a complaint about the Beijing Telephone Bureau's failure to install telephone lines in a neighborhood within the agreed-upon time period because of a dispute over installation fees. The letter-writer argued on behalf of all telephone consumers that, after a price hike, consumers who had already paid their installation fees should not be charged the difference retroactively but rather should be grandfathered into the original fee. The letter-writer then asked Lawyer Bao for advice on how consumers should "collectively file suit against the Telephone Bureau with the Beijing Economic Court." Lawyer Bao responded as follows:

The price system used in installing telephone lines within the city is part of the state price system. According to the Economic Contract Law and other related laws, when these prices are adjusted, they are fixed according to the actual costs of installing the telephone lines. At the present time, there exists a supply and demand imbalance with telephone lines in the city, an imbalance that can be resolved step by step in the process of national construction. Beijing has not established an Economic Court. According to provisions in the Organic Law of the People's Courts, the courts will not hear this kind of dispute (2/21/91).

According to legal scholars I consulted at the Chinese Academy of Social Sciences' Institute of Law, Lawyer Bao's response was factually incorrect. The courts at the time did have jurisdiction over economic disputes of this sort and were authorized to hear cases against the Telephone Bureau.

The second letter was written on behalf of villagers who signed "family planning contracts" stipulating fines for exceeding birth limits. Because some villagers felt that breaching the terms of the contract was "well worth the price," the village government "decided to terminate the contracts, demanded that all peasant who had signed contracts undergo sterilization surgery within one month, and decided that those who failed to do so were to be coerced." When the letter-writer questioned the legality of the village government's actions, Lawyer Bao explained that, unlike parties to civil contracts, parties to administrative contracts "are not equal, but rather the relationship is one of administrator and administered" and that the "purpose of the contract is to realize the government administrative organ's goal."

The government administrative side of an administrative contract enjoys special rights in order to realize government administrative goals. The government administrative side has sole authority to change or terminate an administrative contract. Therefore, in order to fulfill family planning policies

11. Although the number of collective complaints is small, a test of the difference between the 60 percent rate at which Lawyer Bao supplied disempowering advice among the five collective complaints and the 8 percent rate at which he supplied disempowering advice among all remaining letters is nonetheless highly statistically significant ( $\chi^2 = 16.5$  [d.f. = 2],  $p < .001$ ).

and control the phenomenon of birth limits being exceeded, the village government's unilaterally terminating the contract was not unlawful (12/10/92).

The third letter, signed by "all the students in Class X," described how, after students neglected to lock the door and shut the lights, school security personnel staged a burglary of "students' wallets, bus passes, identification cards, and other belongings" and of a color television to scare students into being more vigilant about security. Although Lawyer Bao agreed that this "lesson" was excessive, he did not suggest legal action and instead urged the students to "give the school's relevant departments some understanding" (5/9/91).

In the remaining two collective letters, Lawyer Bao's response is not obviously disempowering. In a letter questioning the legality of a request from the local residents' committee (the lowest level of civil administration in urban China) that all residents register their valuable household items "such as telephones, VCRs, stereos, cameras, and bicycles," Lawyer Bao matter-of-factly stated that the residents' committee lacked the authority to make such a request, but stopped short of discussing legal options. Instead, he wrote, "If, in order to meet public security needs, the committee obtains the consent of the households, it may use other methods that are in line with state law. In this way good intentions may reach good outcomes" (8/15/91). Finally, a letter signed by "Zhao Lili and 60 residents" concerned the legality of constructing an office building immediately adjacent to two residential buildings. Lawyer Bao agreed that if "the office building is to be separated from two residential buildings by 6.0 and 6.8 meters respectively, then the project is in violation of applicable Beijing municipal regulations" and informed the letter-writer that she had the right to file a lawsuit if the construction company did not heed her demand to increase the distance separating the buildings (8/23/90).

### Implications and Conclusions

A question of central interest to observers of contemporary China is whether legal change is a harbinger of—or a catalyst for—deeper institutional change empowering individuals, promoting legal-rational bureaucratic organization, and limiting state power. Scholars continue to debate whether the revival and expansion of the legal system is a Frankenstein's monster that will bring an end to its maker or is instead serving to buttress and reproduce the power of its maker, the CCP (Gilley 2004; Guthrie 1999, 2006; Johnson 2004; Peerenboom 2002; Yang 2004). On the one hand, the legal system may help undo the CCP by institutionalizing limits to its powers or by processing, legitimizing, upholding, and redressing popular grievances against its agents (Diamant, Lubman, and O'Brien 2005). On the other hand, the legal system may strengthen the CCP by enhancing the popular legitimacy of its rule while obscuring the enduring subordination of law to politics and the enduring use of law as an instrument of political administration (Jones 1999).

My goal in this article has not been to adjudicate the debate over the broader institutional consequences of legal reform. Rather, my more limited goal has been to focus empirical scrutiny on the state's concrete efforts to keep a leash on the legal system. Despite disagreements on the consequences of legal change in China, there appears to be some consensus that the CCP is *trying* to maintain control over the legal system (Alford 1995, 2002; Cohen 1997; Liu 2006; Lubman 1999; Potter 1994, 1999, 2004; Woo 1999). However, this consensus notwithstanding, there has been surprisingly little research on micro-level meaning-making processes serving to limit the ability of ordinary people to challenge state interests. In this article I have tried to help fill this gap.

By defining the boundaries of law through the manipulation of meaning, through popular education and popular miseducation, and through the supply of information and misinformation, Lawyer Bao served to protect state interests and reproduce political power. In Pierre Bourdieu's theoretical terminology, Lawyer Bao, by representing legal boundaries that

privilege state interests as the prevailing “doxa,” the natural and proper order of the social world, did “symbolic violence,” produced “misrecognition,” and helped reinforce the political status quo (Bourdieu and Passeron 1990). In his elaboration and clarification of Marx’s concept of “false consciousness,” Steven Lukes ([1974] 2005) writes that “*the power to mislead*” includes “censorship and disinformation” as well as “the ‘naturalization’ of what could be otherwise and the misrecognition of the sources of desire and belief” (p. 148, emphasis in original). Ironically, Lawyer Bao’s efforts to this end—be they purposeful or unreflexive—were enhanced by his symbolic self-representation as a latter-day Judge Bao, a champion of the powerless. Yet the DLB columns also show that letter-writers were not always passive subjects, hapless citizens in the face of an omnipotent state, but rather exercised agency in their efforts to resist state organizations and state policy.

The DLB columns underscore the need to place politics and the state more squarely in research on legal culture and legal consciousness. By scrutinizing the role of state discourse—both popular discourse about the state and official discourse from the state—in the formation and reproduction of law’s boundaries, this article has also helped fill a gap in earlier research on jurisdictional boundary-making processes in which the state is of little interest or significance (Abbott 1988, 1995; Gieryn 1999). If law is embedded in and constitutive of shared, taken-for-granted, everyday norms and cultural understandings, it is also embedded in and constitutive of popular consciousness of the state. From a bottom-up perspective, the DLB columns show that popular legal claims against the state are fueled by popular expectations of socialist protections and benefits provided by the state.

From a top-down perspective, I have presented two empirical indications of the political logic of Lawyer Bao’s “boundary work.” First, I have shown that the temporal distribution of popular claims published in the DLB column corresponds to legislative efforts, policy shifts, and political campaigns orchestrated by the highest levels of the state more than it does to shifts in grassroots sentiment or objective popular needs. Second, throughout the history of the DLB column, Lawyer Bao’s imperative to preserve social stability and the political supremacy of the CCP trumped his officially professed mandate to assess objectively the legal merit of letter-writers’ claims. As I have argued elsewhere, “the boundaries of ‘legal merit’ are flexible and malleable” (Michelson 2006:5). While lawyers everywhere are selective about cases they support and pursue (or reject), and while journalists everywhere are selective about the stories they investigate and report (or ignore), Chinese lawyers and Chinese journalists more prominently discriminate according to *political* considerations. In most contexts, including China, *economics* is an important operative logic driving screening decisions: Labor cases, for example, are unappealing to lawyers because of their low fee potential (Kritzer 2004; Michelson 2006). Economic disincentives often encourage lawyers to “cool out” their clients by concealing or obscuring viable legal options that may exist on the books (Blumberg 1967). But in China, *politics* represents an additional operative logic: Just as the media remains beholden to state interests, political disincentives to advocate against state interests, too, remain palpable in the Chinese bar. As we have seen, Lawyer Bao used legal discourse in an effort to “cool out” letter-writers advancing legal claims against the state, to discourage people from challenging state interests and priorities.

For ten years Lawyer Bao worked to balance competing and contradictory needs: the political needs of the CCP, the commercial needs of newspapers, and the justice needs of aggrieved individuals. On the one hand, my research strongly suggests that Lawyer Bao privileged the needs of the CCP and the needs of newspapers over the needs of individuals. On the other hand, however, my research also suggests that, by supporting the state’s campaign to popularize the law, Lawyer Bao—intentionally or unintentionally—helped empower people by equipping them with legitimate tools of resistance. Legal knowledge and legal discourse are double-edged swords (Alford 1993). Cutting one way they are weapons used by the CCP to shore up its political monopoly. Cutting the other way they are weapons used by ordinary people to challenge state prerogatives. By teaching people the language of the law,

Lawyer Bao helped arm ordinary people—and his counterparts in newspapers elsewhere in China continue to help arm ordinary people—with the weapon of the law. By all appearances an unintended consequence of the popularization of law is the popular use of the language of the state to mount popular challenges against the state. As an agent of legal popularization, Lawyer Bao—wittingly or unwittingly—supplied politically legitimate discursive ammunition for politically illegitimate acts of popular resistance and contention that social scientists conceptualize as “rightful resistance” (O’Brien and Li 2006) and “consentful contention” (Straughn 2005).

As they did during the socialist era, people in China continue to advance their complaints to and through the media. An important difference from past practices, however, is that people appealing to the media often frame their complaints and their claims for redress in politically legitimate legal discourse that does not appear to threaten official CCP ideology and values. Indeed, the DLB columns show that letter-writers used legal discourse to frame their resistance against family planning enforcement, industrial layoffs, and housing demolition.

Two recent and well-publicized issues and the popular responses they provoked suggest that the articulation of legal discourse can be an effective strategy of resistance. First, public outcry over the beating death of Sun Zhigang in 2003 at the hands of local police in Guangzhou was galvanized by media exposure and framed in legal terms to challenge the constitutionality of a form of police detention commonly used to control unauthorized internal migration (Hand 2006). Indeed, the series of events that culminated in his violent death began with precisely the kind of routine police spot-check of residential status identification about which a reader complained to Lawyer Bao—and which Lawyer Bao defended in his response—ten years earlier (6/10/93, see p. 51 above). Second, public outcry over the economic plight of Chinese peasants at the hands of predatory local government officials imposing heavy tax burdens was framed to and by the media as a legal challenge to excessive rural taxation (Johnson 2004; O’Brien and Li 2006; Tang 2005). In both cases, “rightful resisters” saw their hopes realized in the form of substantive institutional change. In 2003, the State Council, in a meeting led by Premier Wen Jiabao, abolished the police practice of “custody and repatriation” (Hand 2006:128). In 2004, Premier Wen Jiabao announced the beginning of universal agricultural tax relief. By 2006, agricultural taxes had been completely abolished nationwide (Kennedy 2007).

Only time will tell if, by popularizing legal knowledge and discourse, the CCP is sowing the seeds of its own demise. In the meantime, however, what can be concluded with certainty is that the Chinese media in general, and Chinese newspaper “mailboxes” in particular, have become sites in which official and popular articulations of legal reality are contested (Liebman 2005). Given the high political stakes in these discursive struggles over the definition of social problems and their remedies, we should not be surprised that the political forces that animated the DLB column throughout the 1990s show few signs of waning either in the contemporary Chinese media or in the contemporary Chinese legal profession.

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