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## **Understanding Public Perceptions of Chinese Law and Legal System: Judicial Experience Matter**

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### **Abstract**

Over the past decade, Chinese law has experienced a considerable number of major reforms, ranging from high-profile constitutional amendments to the implementation of multiple online platforms, which have significantly altered legal practice and the judicial process. While the scholarly debate remains split over whether China is turning away from law or becoming more legalistic, there is little empirical understanding of how Chinese law and legal reforms are perceived by those most affected by it, namely, the Chinese citizens. The present study fills this critical gap by leveraging an original public opinion survey of more than 5,000 Chinese adults to examine their views on issues such as the importance of law and the status of legal development in relation to economic growth. The findings suggest that Chinese citizens with actual experience of the legal system, whether from study, practice, or personal involvement in litigation, hold vastly different views on many of these issues from those without such experience. The findings also suggest that important policy initiatives introduced by the Chinese leadership and the judiciary, such as the emphasis on constructing a socialist rule of law and the potential introduction of some system of case law, may enjoy popular support.

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## Introduction

Writing in 2002, Peerenboom observed the following about the examination of Chinese law:

most of the available accounts of the legal system failed to adequately reflect the changes in the actual role of law in Chinese society. Alarming, the dramatic theoretical shift toward rule of law and its potential political significance attracted little notice in the Western press and academic literature. When the higher profile of rule of law was mentioned, it was generally dismissed as mere rhetoric.<sup>1</sup>

About a decade later, in 2011, China declared that a socialist legal system with Chinese characteristics had been successfully established.<sup>2</sup> This was essentially a reference to the large number of laws passed since the “reform and opening up”, effectively reconstructing a legal system from the chaos and ruins of the Cultural Revolution. The scope of this process included many of the fundamental institutions and branches of any modern legal system, from the re-establishment of the People’s Court and the People’s Procuratorate, to the codification of property law and tort law, and so on. The ensuing years showed little sign of any slow-down in the efforts

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<sup>1</sup>Randall Peerenboom, *China’s Long March toward Rule of Law* (Cambridge University Press, 2002), p.xii.

<sup>2</sup>State Council, “Zhongguo tese shehuizhuyi falü tixi” (*A Socialist System of Laws with Chinese Characteristics*) (27 Oct. 2011), p.1.

of legal reforms,<sup>3</sup> evidenced by substantive amendments to the existing pillars of the legal system, including the Constitution, the criminal, civil, and administrative procedure laws, and the completion of the Civil Code in 2020. Equally importantly, numerous changes to the practice of Chinese law have taken place with minimal traces in the formal legislative agenda, such as the various public-access online platforms providing crucial information in relation to the judicial process.<sup>4</sup>

Around the same time, however, English-language scholarship started to diverge considerably in its assessment of the status and direction of travel of Chinese law, as to whether China is turning “against” law or “towards” law. While China was seen as marching towards rule of law after the turn of the century,<sup>5</sup> the 2010s raised fundamental questions about such a perception. Most notably, Minzner argued that the Chinese leaders were turning against law and international scholarship must examine institutions beyond formal laws and regulations.<sup>6</sup> Others argued that China had turned away from legal institutions because law was seen as destabilizing,<sup>7</sup> or that

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<sup>3</sup> Jacques Delisle, “Law in the China model 2.0: legality, developmentalism and Leninism under Xi Jinping”, *Journal of Contemporary China* 26(103) (2017): 68–84.

<sup>4</sup> Lei Chen, Zhuang Liu, and Yingmao Tang, “Judicial Transparency as Judicial Centralization: Mass Publicity of Court Decisions in China”, *Journal of Contemporary China* 31(137) (2022): 726.

<sup>5</sup> Peerenboom (n 1); Keyuan Zou, *China's Legal Reform: Towards the Rule of Law* (Brill, 2006).

<sup>6</sup> Carl Minzner, “China's Turn Against Law” *American Journal of Comparative Law* 59 (2011): 978–984.

<sup>7</sup> Benjamin Liebman, “A Return to Populist Legality? Historical Legacies and Legal Reform” in *Mao's Invisible Hand: The Political Foundations of Adaptive Governance in China*, ed. E Perry & S Heilmann (Harvard University Asia Center, 2011).

Chinese courts were dependent on the Communist Party, which allowed the Party to arbitrarily determine judicial outcomes.<sup>8</sup>

Some scholars disagreed with such observations in general. Chen argued, based on statistics such as the annual increase in the number of court cases, the amount of legal aid funding, and the numbers of lawyers and law graduates, that “a brave new world has been born for countless Chinese citizens who can use and think about the language and discourses of law and legal concepts”.<sup>9</sup> Zhang and Ginsburg believed that China was actually turning toward law or becoming more “legalistic” in the Xi Jinping era; they also noted that such differences in positions between scholars remained ‘impressionistic’ rather than empirical.<sup>10</sup>

The existence of such polarized opinions may harbour some sort of information disparity between what is reported and discussed by media and scholars outside of China, as originally observed by Peerenboom, and what is influencing the work or lives of Chinese judges, lawyers and citizens on the ground. Crucial in this context is the scarcity of empirical examination of the understanding, knowledge, and perception of law by ordinary Chinese citizens, who are most affected by Chinese law and relevant legal reforms.

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<sup>8</sup>Ling Li, “The Chinese Communist Party and People’s Courts: Judicial Dependence in China”, *American Journal of Comparative Law* 64 (2016): 37–57; Qianfan Zhang, “The communist party leadership and rule of law: a tale of two reforms”, *Journal of Contemporary China* 30(130), (2021): 578–595.

<sup>9</sup>Albert HY Chen, “China’s Long March towards Rule of Law or China’s Turn against Law?”, *Chinese Journal of Comparative Law* 4, (2016): 26–7.

<sup>10</sup>Taisu Zhang and Tom Ginsburg, “China’s Turn toward Law”, *Virginia Journal of International Law* 59(2), (2018): 306–389.

This study aims to address the empirical knowledge gap concerning the perception and understanding of Chinese law and its legal system among the Chinese citizens. To this end, an original survey of 5,201 Chinese citizens was conducted, collecting their views on a range of crucial legal issues. This strategy was not intended to leverage public opinion as a means of arbitrating between competing scholarly arguments, but rather to shed light on how ordinary citizens perceive key aspects of Chinese law, including its concepts, measures, and systems.

Scholarship from democratic societies often outlines two primary channels through which public opinion can shape policy-making: selection and responsiveness.<sup>11</sup> The selection mechanism pertains to the democratic practice of citizens electing leaders who align with their policy preferences, whereas the responsiveness mechanism refers to the incentive leaders have to heed public opinion during their tenure. This is driven by the potential political costs of ignoring the public sentiment.

While the selection mechanism might not be applicable in the Chinese context due to its political structure, the potential for a responsiveness mechanism is plausible. In authoritarian regimes, responsiveness to public opinion can stem from the need to maintain political legitimacy, rather than to mitigate electoral risks. Engaging the

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<sup>11</sup> Michael Tomz, et al., "Public Opinion and Decisions About Military Force in Democracies," *International Organization*, Vol. 74, No. 1 (2020), pp. 119–43.

public in decision-making processes can augment the procedural legitimacy of these regimes. This gives citizens a sense of participation and influence over policy decisions, which can strengthen the government's legitimacy.

Indeed, numerous China scholars have posited that the Chinese government's introduction of various 'input institutions' - like the mayor's mailbox and public consultations - can be seen as efforts to legitimize the ruling party.<sup>12</sup> The National People's Congress of China now routinely solicits public opinions on draft laws. The revised draft of the Public Security Administration Punishment Law, for example, garnered 125,962 opinions from 99,375 users in September 2023.<sup>13</sup> Such platforms enable citizens to voice their concerns and grievances, contributing to the resilience and perceived legitimacy of the Communist Party of China (CPC).

In this context, the findings from the survey can provide critical empirical evidence that lays the groundwork for a deeper exploration of contemporary Chinese law and society. This evidence is instrumental in

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<sup>12</sup> Andrew J. Nathan, "China's Changing of the Guard: Authoritarian Resilience," *Journal of Democracy*, Vol. 14, No. 1 (2003), pp. 6–17; For examples of such institutions in domestic and public policymaking, see Steven J. Balla, "Is Consultation the 'New Normal?': Online Policymaking and Governance Reform in China," *Journal of Chinese Political Science*, Vol. 22, No. 3 (2017), pp. 375–92; Thomas Bernauer, et al., "Could More Civil Society Involvement Increase Public Support for Climate Policy-Making? Evidence from a Survey Experiment in China," *Global Environmental Change*, Vol. 40 (2016), pp. 1–12; Jidong Chen, et al., "Sources of Authoritarian Responsiveness: A Field Experiment in China," *American Journal of Political Science*, Vol. 60, No. 2 (2016), pp. 383–400; Gregory Distelhorst, "The Power of Empty Promises: Quasi-Democratic Institutions and Activism in China," *Comparative Political Studies*, Vol. 50, No. 4 (2017), pp. 464–98; Xiaojun Li, "The Durability of China's Lawmaking Process under Xi Jinping: A Tale of Two Foreign Investment Laws." *Issues & Studies* 57, no. 01 (2021): 2150001.

<sup>13</sup> <http://www.npc.gov.cn/flcaw/more.html>.

understanding the varied perceptions and attitudes of the Chinese populace towards their legal system. In turn, these insights can contribute to more nuanced discussions and analyses of China's legal landscape and its future trajectory.

### **Survey Context and Design**

Compared to the large literature on public opinion about social and economic issues in China, fewer studies have investigated mass attitudes toward law. Part of the reason is the lack of data. As a result, scholars have had to rely on large cross-national surveys such as the World Value Survey<sup>14</sup> and the Asia Barometer Survey,<sup>15</sup> both of which contain questions related to law. One question that appears in almost every wave of these is how much citizens trust the courts and other domestic institutions such as the National People's Congress and the police. Other relevant questions include perceptions of corruption in the courts, and whether the courts can do anything about government leaders breaking the law. While these surveys have yielded valuable insights into public trust in legal authorities from a comparative perspective,<sup>16</sup> researchers are constrained by their limited

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<sup>14</sup>Inglehart and others (eds), "World Values Survey: All Rounds - Country-Pooled Datafile Version" (JD Systems Institute, 2014)

<<https://www.worldvaluessurvey.org/WVSDocumentationWVL.jsp>> [1 Oct. 2022].

<sup>15</sup><http://www.asianbarometer.org/>

<sup>16</sup>E.g. Yung-Lien Lai, Liqun Cao and Jihong Solomon Zhao, "The Impact of Political Entity on Confidence in Legal Authorities: A Comparison between China and Taiwan", *Journal of Criminal Justice* 38(5), (2010): 934-941; Qing Yang and Wenfang Tang, "Exploring the Sources of Institutional Trust in China", *Asian Politics & Policy* 2(3),

scope.

Some large-scale public opinion surveys conducted in China have also included modules on the legal system that are broader and more comprehensive. The most notable example is the 2015 wave of the China General Social Survey (CGSS), which devoted an entire section to the legal system. Boasting 29 questions that covered topics on the implementation of the law, judicial supervision, and the effectiveness of courts, the survey provided rich data on citizens' evaluation of the performance of the legal system. Somewhat surprisingly, so far there has not been much research output drawing on these data, with most published work residing in Chinese journals.<sup>17</sup> It is possible that despite the large number of questions in the CGSS, the survey questionnaire was pre-designed and thus may not be suitable for the kind of research questions that scholars are interested in.

Given the limitations of these off-the-shelf surveys, some researchers have turned to designing their own original surveys. Michelson used a rural household survey on social conflicts and popular strategies in 37 Chinese villages to examine the impact of regional conditions and family resources on recourse to the official justice system.<sup>18</sup> More recently, Wilking

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(2010): 415–436; Yuning Wu, “The Impact of Media on Public Trust in Legal Authorities in China and Taiwan”, *Asian Journal of Criminology* 9(2), (2014): 85–101.

<sup>17</sup>E.g. Li Xiaofei, “Sifa xinren de eryuan jiegou ji qi Zhongguo hanyi” (The Dual Structure of Judicial Trust and Its Implications in China), *Huanqiu falü pinglun (Global Law Review)* (2019): 131.

<sup>18</sup>Ethan Michelson, “Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China”, *American Sociological Review* 72, (2007): 459–485.



and Love conducted a conjoint survey experiment with an urban sample of 2,100 Chinese residents to examine whether instrumental or normative justifications motivate public support for the rule of law in China.<sup>19</sup>

We adopted a similar approach and designed an original survey in China.<sup>20</sup> This survey is the first of its kind after the 2018 constitutional amendments and focuses on two distinguishable but related aspects of the respondent's knowledge and opinion of Chinese law.<sup>21</sup> The first aspect is on the general perception of the importance of law and the status of the legal system. The survey asks about the perceived importance of the law, the differences between the two *fazhi* (two heterographs for “legal system” and “rule of law” in Chinese), and the connection between economic prosperity and development of the law. The second aspect of the survey focuses on support for any principle of case law among the Chinese public.

We administered the survey to 5,201 Chinese adults from November 28 to December 8, 2018. The participants of the survey were randomly drawn from an online panel maintained by a leading marketing research

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<sup>19</sup>Jennifer R Wilking and Gregory J Love, ‘Why the Rule of Law? Experimental Evidence from China’, *Justice System Journal* 41(4), (2020): 360–378.

<sup>20</sup>Given the nature of the study, we partnered with a leading law school in China that helped us navigate the administrative procedures both before and after the implementation of the survey.

<sup>21</sup>We designed the questionnaire conscious of the permissible boundaries set by law, policies and practice. For instance, it would be impractical to ask any question about obviously sensitive and controversial issues, such as whether the respondent supports the removal of a term limit in the Constitution for the President of the People's Republic of China, a move widely seen as extending the personal powers of Xi Jinping. Still, there are many meaningful questions that can be asked of the Chinese public in the area of law, as demonstrated in this survey.

firm in China. With elevated challenges in conducting survey research on the ground,<sup>22</sup> participant recruitment through online panels has become increasingly popular for research across a wide range of topics in China.<sup>23</sup> It is worth noting that the COVID pandemic broke out about 14 months after the survey, which could have changed what people think of law and governance. Nevertheless, the timing of the survey would have captured an invaluable snapshot of what the public think right after major events such as the amendment of the Constitution. This study also remains the latest and largest survey of this kind in the subject area to date, providing a perspective for future comparison where appropriate.

The respondents came from all 32 mainland provinces and municipalities, with an average age of 29.4. 43.8% were male. 71.3% had college or advanced degrees. The median annual income reported by the respondents was between 30,001 and 60,000 Yuan. In addition, 43.5% of the respondents worked in the public sector, followed by private firms (30.9%) and foreign firms or joint ventures (8.4%).

Consistent with existing studies using online samples in China, our respondents were younger, more highly educated, financially better off, and

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<sup>22</sup> Sheena Chestnut Greitens and Rory Truex, "Repressive Experiences among China Scholars: New Evidence from Survey Data", *The China Quarterly* 242, (2020): 349–375.

<sup>23</sup> E.g. Songying Fang and Xiaojun Li, "Historical Ownership and Territorial Disputes", *The Journal of Politics* 82 (2020): 345–360; Xiaojun Li and Dingding Chen, "Public Opinion, International Reputation, and Audience Costs in an Authoritarian Regime", *Conflict Management and Peace Science* 38(5), (2022): 543–560; Songying Fang, Xiaojun Li, and Adam Y. Liu, "Chinese public opinion about US–China relations from Trump to Biden", *The Chinese Journal of International Politics* 15(1), (2022): 27–46.

more likely to reside in coastal and urban areas. It is important to recognize the limitations of online public opinion surveys. Nevertheless, a recent study shows respondents in online surveys are much more representative of over one billion Chinese netizens.<sup>24</sup> In the Chinese context and for our purposes in this study, one could argue that netizens' opinions matter even more for the government than those of the general population.<sup>25</sup>

Another general issue of public opinion survey is social desirability bias, that is, when survey takers provide responses to conform to societal norms and expectations.<sup>26</sup> This bias can also arise in surveys related to political attitudes or behaviours, where respondents might feel pressure to "toe the party line".<sup>27</sup> We believe that this issue is mitigated as questions in this survey have been carefully designed to avoid, as much as possible, obviously 'politically correct' choices. There is also no discernible 'official' position to most of these questions.

Furthermore, using survey data collected through a variety of channels and methodologies in China, researchers have found that not all citizens align with the prevailing government policies, nor do their views

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<sup>24</sup> Xiaojun Li, Weiyi Shi and Boliang Zhu, "The Face of Internet Recruitment: Evaluating the Labor Markets of Online Crowdsourcing Platforms in China", *Research & Politics* 5(1), (2018): 1–8.

<sup>25</sup> Susan L. Shirk, *China: Fragile Superpower* (New York, NY: Oxford University Press, 2008).

<sup>26</sup> Nederhof, Anton J. "Methods of coping with social desirability bias: A review." *European journal of social psychology* 15, no. 3 (1985): 263-280.

<sup>27</sup> Nicholson, Stephen P., and Haifeng Huang. "Making the List: Reevaluating Political Trust and Social Desirability in China." *American Political Science Review* 117, no. 3 (2023): 1158-1165.

necessarily mirror state propaganda. Importantly, despite potential risks, they demonstrate a willingness to express their opinions.<sup>28</sup> Indeed, the perceived anonymity offered by online surveys could be a significant factor encouraging individuals to share their authentic perspectives. For instance, two recent studies have demonstrated that, despite persistent government propaganda advocating for armed unification, only a slim majority of Chinese citizens support such an approach.<sup>29</sup>

What makes this particular study both challenging and valuable is the fact that it focuses on the subject of law, of which the majority of the population will have little practical experience and knowledge. Indeed, a little over half of the respondents (53.3%) reported having “no relevant legal experience.” However, the impact and outreach of legal systems are obviously not dependent on people having had relevant first-hand experience of dealing the court or lawyers. Almost every respondent would have been exposed to concepts such as ‘rule of law’ or ‘the Constitution’ and their, perhaps unrefined, opinions and impressions are of interest to academics because they reflect the perception of Chinese law by those

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<sup>28</sup> Ilaria Mazzocco and Scott Kennedy, “Public Opinion in China: A Liberal Silent Majority?”, CSIS Report, February 9, 2022. <https://www.csis.org/analysis/public-opinion-china-liberal-silent-majority>.

<sup>29</sup> Qi, Dongtao, Suixin Zhang, and Shengqiao Lin. "Urban Chinese Support for Armed Unification with Taiwan: Social Status, National Pride, and Understanding of Taiwan." *Journal of Contemporary China* 32, no. 143 (2023): 727-744. Liu, Adam Y., and Xiaojun Li. "Assessing Public Support for (Non-) Peaceful Unification with Taiwan: Evidence from a Nationwide Survey in China." *Journal of Contemporary China* (2023): 1-13.

directly and indirectly affected by it. In essence, it is not about what the respondents actually know about Chinese law and legal principles, which will obviously never be as extensive and coherent as all the experts in current scholarship, but what the public think they know about the law.

More importantly and in recognition of the greater-than-usual challenges presented by the highly specialized subject of law, this study is designed to examine the differences between the attitudes of Chinese citizens with and without experience of the legal system. This requires oversampling respondents with experience of the legal system to form meaningful and statistically significant comparisons and contrasts with those without such experience. Out of the remaining 2,427 respondents, 158 (3%) identified as “currently or previously employed in judicial and legal related jobs”; 472 (9.1%) had “participated in judicial procedures (such as being the plaintiff or defendant of a case)”; 1,598 (30.7%) had “assisted or discussed with relatives or friends involved in the judicial process”; 577 (11.1%) had “participated in judicial procedures as part of their previous or current work”; and 380 (7.3%) were students, researchers, or scholars in law. These percentage points add up to more than 100 because respondents could have multiple experiences.

The remainder of the article presents the main findings from the survey, including overall patterns of the responses and analysis of the relationship between the survey responses and the respondents' judicial

experience as well as other socioeconomic characteristics.

### **The Importance of Law and the Nuances of *Fazhi***

Bearing in mind the largely “impressionistic” position of scholars over the importance of Chinese law,<sup>30</sup> the findings of this survey shed light on the debate by highlighting the perceived importance of law for Chinese citizens. When asked, “What do you think of the importance of the socialist rule of law and the construction of the socialist legal system in our country today?”, over 94% said that it was “extremely important” (72.5%) or “important” (21.8%). Only 5.3% of the respondents said that the law was “relatively important and should not be overlooked,” while only 17 out of 5,201 respondents considered the law to be “not important” for China.

That the overwhelming majority of the respondents regarded law as “important” or “extremely important” would not escape the attention of Chinese policymakers, who are known to consider popular opinion carefully and seriously in what some call a “responsive authoritarianism”.<sup>31</sup> With institutional reforms in the Xi Jinping era that emphasize the importance of law and the Constitution, it would seem excessively costly and therefore unlikely for even the monopolistic and powerful political discourse from the Communist Party to “turn against” such resonating belief in the importance

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<sup>30</sup>Zhang and Ginsburg (n 10):295.

<sup>31</sup>Runya Qiaoan and Jessica Teets, “Responsive Authoritarianism in China”, *Journal of Chinese Political Science* 25, (2020):139-153.

of law by the Chinese public.

Related to the general perception of the law's importance, a more specific issue that illustrates the differences between scholarly understanding, mostly those in English and in Chinese, is the understanding of the two *fazhi*. *Fazhi* (rule of law 法治) and *fazhi* (legal system 法制) are two heterographic homophones in Chinese. Early scholarship in English often did not make any effort to distinguish between the two, even when referring to *fazhi*,<sup>32</sup> although scholars have since explained the linguistic differences in some detail.<sup>33</sup> Despite the deep roots of these terms in the history and development of contemporary Chinese law,<sup>34</sup> English scholarship generally does not address the significance of any change from one *fazhi* to another, being unsure of its importance or implications beyond mere semantics. Such indifference is most noticeable in relation the high-profile 2018 amendments made to the Constitution. While the 1999 amendments introduced the word *fazhi* (rule of law) for the first time, the 2018 amendments achieved numerical parity between the two words, by replacing one reference to *fazhi* (legal system) with *fazhi* (rule of law) in the preamble.<sup>35</sup> Multiple articles in Chinese scholarship extensively pondered on

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<sup>32</sup>Ronald Keith, *China's Struggle for the Rule of Law* (Palgrave Macmillan, 1994), p.1.

<sup>33</sup>Peerenboom (n 1), p.63–4; Deborah Cao, *Chinese Law: A Language Perspective* (Routledge, 2004), p.35–43.

<sup>34</sup>Lu Xu, "The Changing Perspectives of Chinese Law: Socialist Rule of Law, Emerging Case Law and the Belt and Road Initiative", *Chinese Journal of Global Governance* 5, (2019): 157–60.

<sup>35</sup> *Ibid*:158.

this change of a single word as a major component of the 2018 amendments.<sup>36</sup> In English scholarship, however, a detailed examination of these constitutional amendments would only mention the matter in passing, without any explanation of the context.<sup>37</sup>

Are Chinese citizens aware of the nuances distinguishing the two concepts? The answer is yes. Over 83% of the respondents saw these two *fazhi* as either “completely different” (18.9%) or “related but substantively different” (63.6%). This would suggest that the relevant constitutional amendment in 2018, while involving only one homophonic Chinese character, was significant. It is well known that the Chinese Constitution does not describe or prescribe the forms and powers of governmental institutions and individual citizens but instead signals political and ideological changes.<sup>38</sup> The Constitution is “programmatic” in nature, setting out aspirational ideals that cannot be realized in the near future.<sup>39</sup> Therefore, the change from “socialist legal system” to “socialist rule of law” is a vital signal. Thus it is imperative for scholarship on Chinese law to begin critically examining such differences, which the overwhelming majority of

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<sup>36</sup>Cong Lin and Qi Haojian, “Cong jianquan shehuizhuyi fazhi dao jianquan shehuizhuyi fazhi” (From “improve the socialist legal system” to “improve the socialist rule of law”), *Fazhi bolan (Legality Vision)* 35, (2018):117–118; He Qinhua and Qi Kaiyue, “Fazhi biancheng fazhi: xianfa xiugai tuijin shehuizhuyi fazhi jianshe” (Legal system became rule of law: Constitutional amendments propel the construction of socialist rule of law), *Shandong shehui kexue (Shandong Social Science)* 7, (2018):5.

<sup>37</sup>Feng Lin, “The 2018 Constitutional Amendments”, *China Perspectives* 1, (2019): 11–21.

<sup>38</sup>William Jones, “The Constitution of the People’s Republic of China”, *Washington University Law Quarterly* 63, (1985):707–735.

<sup>39</sup>Peerenboom (n 1) p.61.



the Chinese public evidently regard as important, as shown in this study.

Finally, we asked respondents to evaluate whether the development of the legal system lags behind that of the economy or vice versa. There is now an established body of literature examining the relationship between China's economic growth and legal system. Different scholars dub this the "China problem" with respect to the "rights hypothesis" that economic growth requires a legal order,<sup>40</sup> offering a new model or paradigm alongside the experience of other East Asian systems,<sup>41</sup> or even requiring a fundamental rethink about the wisdom of the orthodox theory of law and economy.<sup>42</sup> Nevertheless, the common view in this interpretation is that the Chinese legal system somehow "falls short".<sup>43</sup>

The findings of this survey would confirm such a perception empirically. More than half of the respondents (52.8%) saw the development of the law and legal system as lagging behind economic growth, with 7.7% considering the difference to be substantial. Less than a third believed the two have developed equally (29.5%), and even fewer felt that the legal system has developed ahead of the economy (17.7%),

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<sup>40</sup>Donald Clarke, "Economic Development and the Rights Hypothesis: The China Problem", *American Journal of Comparative Law* 51, (2003): 89–.

<sup>41</sup>Peerenboom (n 1).

<sup>42</sup>Frank Upham, "Lessons from Chinese Growth: Rethinking the Role of Property Rights in Development", in *The Beijing Consensus: How China has Changed Western Ideas of Law and Economic Development*, ed. Weitseng Chen (Cambridge University Press, 2017), p.139–40.

<sup>43</sup>Yang Yao and Linda Yueh, "Law, Finance and Economic Growth in China: An Introduction", *World Development* 37, (2009):756.

confirming the long-held perception that Chinese economy has developed ahead of its legal system mentioned above. Relatedly, we also probed respondents' opinions on regional variation in legal development across China.<sup>44</sup> Specifically, we asked respondents whether or not they agreed with the statement that regions with a more developed economy had better legal development. More than three times as many respondents agreed (74%) than disagreed (23.7%) with this statement.

### **The Emerging Case Law System**

The idea that some system of “case law” will emerge in China has been around for more than two decades.<sup>45</sup> There has been strong support for a system of case law or judicial precedent with the objectives of promoting judicial independence, developing the role of the constitution and rule of law, and improving the capabilities of the judiciary.<sup>46</sup> Although scholars both inside and outside of China have expressed their views on how new systems such as guiding cases should be understood in legal study and practice,<sup>47</sup> no study has examined whether the current approach by the

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<sup>44</sup> Yongshun Cai and Songcai Yang, “State power and unbalanced legal development in China”, *Journal of Contemporary China* 14(42), (2005):117–134.

<sup>45</sup> Stanley Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford University Press, 1999), p.284–5.

<sup>46</sup> Zhang Qi, *Zhongguo sifa xianli yu anli zhidao zhidu yanjiu* (Study on Chinese Judicial Precedents and the System of Case Guiding) (Peking University Press, 2016).

<sup>47</sup> Hu Yunteng and Yu Tongzhi Yu, “Anli zhidao zhidu ruogan zhongda yinan Zhengyi wenti yanjiu” (Examining Several Major, Difficult or Controversial Issues of the Case Guidance System), *Faxue yanjiu* (*Chinese Journal of Law*) (2008/6): 3; Bjorn Ahl, “Retaining Judicial Professionalism: The New Guiding Cases Mechanism of the Supreme People’s Court”, *China Quarterly* 217, (2014): 121–139.

Supreme People's Court, which is effectively to have a group of non-binding but highly influential "guiding cases" that are to be considered by all judges when they make judicial decisions, aligns with the Chinese public's understanding or expectation of the significance of existing court decisions.

This survey fills this gap by gauging the level of support for case law among the Chinese public using the following question: Suppose that in a short period of time (for example, within the same year), the same court hears two very similar cases one after another; how do you think the latter case should be affected by the previous case? We provided five answer choices that varied from strict use of precedence to no use of precedence. The first four answer choices received increasing support: 11.8% of the respondents agreed that the previous judgment should be strictly followed and similar cases should receive the same outcome; 17.6% believed the previous case should be followed and the result should not be changed without good reason; 25.7% thought the previous case could be publicly referred to in the court trial and judgment but the judge of the subsequent case could make a judgment on their own; 30.7% held the opinion that the previous case could be referred to but there was no need to specify the impact of the previous case, and the judge of the subsequent case could make a judgment on their own.

Interestingly, only 14.2% of the respondents agreed that the previous

case should not be referred to and the judge of the subsequent case should make an independent judgment in accordance with the provisions of laws and regulations. There appears to be low support for either strict use or no use of precedents, suggesting the Chinese public are more comfortable with a hybrid model in which precedents can be referred to but need not be adhered to.

### **Does Judicial Experience Matter?**

Do respondents' experiences of the legal system influence their opinion, knowledge, and understanding of the legal system in China? To answer this question, we employed statistical analyses to explore the relationship between the responses to the survey questions and the respondents' experiences of the legal system. The dependent variables were measured as follows. For questions with responses on ordinal scales, we coded them into four- or five-point scales with higher numbers indicating that the law is "extremely important"; that the legal system and rule of law are very different concepts; that the legal system lags far behind economic development; and that judges should not be using precedents when deciding subsequent cases. For regional differences, we transformed the responses into a binary measure, with one indicating that the respondent agrees that regions with more developed economy also have better legal development.

For each of the dependent variable, we employed ordinary least

squares (OLS) regression for the ordinal measures ( $Y$ ), and logistic regression for the binary measures ( $P$ ), using the following two equations:

$$Y = \alpha + \beta Experience + \gamma X + \varepsilon \quad (1)$$

$$\text{Log} \left( \frac{P}{1-P} \right) = \alpha + \beta Experience + \gamma X + \varepsilon \quad (2)$$

In both equations, the main independent variables were judicial experience (*Experience*), coded as five dummy variables, each corresponding to one of the questions probing respondents' personal experience with the legal system, with the reference category being those without any experience of the legal system. Additionally, we included a battery of socioeconomic control variables ( $X$ ) in all of the models, including age, gender (dummy variable with one for male and zero for female), education (nine-point scale from no school to doctorate degree), business type of employment (state, foreign, and private), self-reported income (seven-point scale), socioeconomic status (11-point scale from poorest to richest), and geographical location of residence (eastern, central, and western). Summary statistics and a correlation matrix of the variables can be found in the Appendix.

[Table 1: Insert Table 1 about here]

Table 1 presents the main results, with each model corresponding to one of the eight questions. Several patterns related to judicial experience are noticeable. First, legal professionals and those who had been involved in

legal proceeding, either personally or through family and friends, were less likely to consider the two *fazhi* to be different (Model 1). They were also less likely to view the law as important for China (Model 2). This could perhaps be interpreted as a sign of disillusionment stemming from their personal experiences within the system, suggesting that direct exposure to the realities of legal processes might temper one's views of the law. In contrast, law students and scholars exhibited a higher regard of the law. This is possibly due to their academic immersion and potentially more idealistic perceptions of legal system.

Second, having any experience of the legal system significantly shifted the respondent's perception, categorically ensuring they saw the legal system as less behind in development relative to the economy (Model 3). In terms of the individual types of experience, being a current or former legal professional had the largest impact on respondents, making them most likely to see the legal system as less underdeveloped or more advanced in relation to the economy. This was followed by having personally been involved in legal proceedings, having studied law, having been involved in legal proceedings through work, and having been involved through personal connections, each with decreasing yet still significant weight of impact.

This is a highly significant finding, that members of the Chinese public who are more knowledgeable or legally involved have a more positive view of the development of the legal system in relation to the

economy than those who are not so involved. Further studies may be needed to evaluate whether such a trend indicates (i) recent progress made by the legal system, (ii) that those more involved in it will be in a better position to know, or even (iii) that the development of the legal system is finally catching up to the spectacular economic growth of the past few decades.

The significance of the impact of experience of the legal system on the perception of the development of law in relation to economic growth can be contrasted with the absence of any effect on the perception of regional differences. About three-quarters of respondents agreed with the statement that the legal system is more developed in more economically prosperous regions of China. Whether they practiced or studied law or had been involved in litigation had minimal influence on this perception.

Third, anyone with actual experience of the legal system, including professionals and those involved in litigation, were far more likely to support a stricter system of applying or referring to cases (Model 5). Yet the responses of law students and scholars did not differ from those of other members of the public, indicating little educational or academic influence over the opinions on this matter. It would seem that the current efforts led by the Supreme People's Court to construct a system of case law are largely driven by legal practice but also are generally in line with the public's expectation that there be a referable but non-binding system of using existing judicial decisions.

The socioeconomic control variables further highlight a couple of things. First, age, gender, and education were significant predictors of responses to a majority of the questions. For example, younger, male, highly educated respondents viewed law as more important. Older male respondents were more supportive of case law.

Second, absolute and relative income have divergent effects. In Models 1 and 4, only one of the coefficients for income and social status achieves statistical significance. In Models 2, 3, and 5, when both coefficients are statistically significant, they have the opposite sign. For example, respondents with higher self-reported income believed that the concepts of legal system and the rule of law are more different than similar; that the development of the legal system lags behind that of the economy; and that judges should pay more attention to precedents. Those who placed themselves in higher categories of social status (compared to their peers) believed that the concepts of legal system and the rule of law are more similar than different; that the development of the economy lags behind that of the legal system; and that judges should pay less attention to precedents.

## **Conclusion**

Two decades on from the observation by Peerenboom quoted at the beginning of this article, and despite a flurry of English-language publications on the topic of Chinese law, it is rather surprising that there are



still notable gaps between the accounts of the legal system in “Western” literature and the actual role of law in Chinese society. Even the most high-profile changes, such as constitutional amendments in favour of rule of law, have been dismissed as mere rhetoric. The literature on Chinese law typically laments the stark differences between “law in the book” and “law in action”.<sup>48</sup> Yet there is little scholarly effort made to understand how the Chinese public see the state and development of Chinese law, based on their knowledge and experience of the legal system, which arguably is an important aspect of “law in action.”

This study seeks to start filling the gaps in the understanding of Chinese law in terms of how ordinary citizens view it, including their perceptions of the importance of law, the differences between concepts of *fazhi* (rule of law or legal system), the relative state of development of law as compared to the economy. In doing so, it provides an invaluable insight into how Chinese law is perceived and understood by those who are most affected by it.

Findings from our survey suggest that the Chinese public overwhelmingly regard law as important or extremely important. Most of them would distinguish between *fazhi* (rule of law) and *fazhi* (legal system). We also find important differences between laypersons and those with legal

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<sup>48</sup>Jianfu Chen, “The Transformation of Chinese Law – From Formal to Substantial”, *Hong Kong Law Journal* 37 (2007):738.

and judicial experience. Any experience of the legal system, such as having studied law, having worked in a legal profession, or having been involved in legal proceedings, drastically influences their views. Those with experience or knowledge of the legal system are far more likely to hold a positive view of its state and development in relation to economic growth than those without such experience. Furthermore, their expectations about the role and importance of decided cases in legal proceedings seem to fall in line with the actual approach currently being implemented by the Supreme People's Court.

Overall, these findings open up new avenues for research into the understanding of Chinese law and raise new questions to be answered by future studies that consider the opinions and perceptions of the Chinese public. This study has shown not only that the Chinese public are accessible as an important source of opinions for rigorous studies on issues such as Chinese law and legal reforms, but also that they are reasonably knowledgeable and conscientious about this subject matter. Understandings of what the Chinese public think of Chinese law provide invaluable empirical knowledge that could be instrumental in advancing the ongoing academic debate about the evolving nature and direction of Chinese law in the past decade or so.

This study has also demonstrated that with a large enough sample size, it would be feasible and valuable to separate and compare different

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groups, such as those with experience of the legal system, for further insights into the highly complex conundrum of Chinese law and legal practice. It can certainly be hoped that this study and future efforts down the line will help to address the gap between how Chinese law is discussed in academic literature and its actual role in Chinese society, first identified by scholars some two decades ago.

Table 1: Legal experience and opinions on Chinese law and legal reform

VARIABLES	(1) Importance of law	(2) Conceptual difference	(3) Law vs economy	(4) Regional difference	(5) Legal system	(6) Legal reform	(7) Legal practice	(8) Legal precedence
<i>Legal Experience</i>								
Legal professional	-0.0919* (0.0520)	-0.269*** (0.0721)	-0.498*** (0.0927)	-0.0727 (0.201)	-0.0813 (0.182)	0.862*** (0.168)	0.999*** (0.188)	0.651*** (0.101)
Personal experience	-0.130*** (0.0316)	-0.198*** (0.0401)	-0.316*** (0.0522)	0.171 (0.127)	0.384*** (0.106)	0.329*** (0.0978)	0.790*** (0.100)	0.280*** (0.0587)
Relative & friend	0.0186 (0.0179)	-0.0650*** (0.0208)	-0.0586** (0.0294)	0.0209 (0.0773)	0.130* (0.0703)	0.682*** (0.0616)	0.878*** (0.0649)	0.0760** (0.0372)
Work-related	-0.0298 (0.0273)	-0.0532 (0.0326)	-0.0927** (0.0432)	-0.196* (0.107)	0.294*** (0.0970)	0.402*** (0.0837)	0.595*** (0.0890)	0.105** (0.0531)
Law student & scholar	0.0633** (0.0290)	-0.00723 (0.0354)	-0.160*** (0.0553)	-0.00628 (0.136)	0.500*** (0.119)	0.910*** (0.107)	0.966*** (0.119)	0.0452 (0.0671)
<i>Demographic</i>								
Age	-0.00369*** (0.00112)	0.000309 (0.00132)	0.00660*** (0.00179)	-0.0177*** (0.00407)	0.00273 (0.00382)	0.0139*** (0.00364)	-0.00444 (0.00356)	0.00566*** (0.00213)
Male	0.0319* (0.0175)	-0.0230 (0.0205)	-0.0362 (0.0286)	-0.0461 (0.0720)	0.267*** (0.0661)	0.227*** (0.0589)	0.199*** (0.0613)	0.191*** (0.0359)
Education	0.0401*** (0.0108)	0.0667*** (0.0124)	0.194*** (0.0159)	-0.0427 (0.0403)	0.156*** (0.0373)	-0.0111 (0.0327)	-0.132*** (0.0329)	-0.0313 (0.0197)
SOE	0.00690 (0.0308)	-0.0612* (0.0329)	-0.255*** (0.0453)	0.292** (0.121)	0.0385 (0.118)	0.579*** (0.105)	0.818*** (0.101)	0.219*** (0.0605)
Foreign	-0.00974 (0.0404)	-0.0315 (0.0427)	-0.222*** (0.0618)	0.296* (0.168)	0.174 (0.153)	0.725*** (0.138)	0.868*** (0.140)	0.0673 (0.0798)
Private	-0.0174 (0.0319)	-0.00701 (0.0331)	-0.223*** (0.0456)	0.195 (0.122)	-0.0714 (0.120)	0.247** (0.105)	0.620*** (0.101)	0.0987 (0.0608)

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Income	0.00797 (0.00580)	0.0233*** (0.00661)	0.0601*** (0.00938)	0.0610** (0.0240)	0.00799 (0.0214)	-0.0336* (0.0193)	0.0294 (0.0203)	-0.0393*** (0.0117)
Social status	-0.0268*** (0.00589)	-0.0552*** (0.00745)	-0.118*** (0.0100)	0.0386 (0.0246)	0.110*** (0.0221)	0.174*** (0.0200)	0.180*** (0.0205)	0.0957*** (0.0119)
east	0.00371 (0.0254)	-0.0287 (0.0282)	0.0321 (0.0405)	0.101 (0.103)	0.00519 (0.0958)	-0.0911 (0.0850)	0.0117 (0.0853)	-0.0232 (0.0519)
central	0.0603** (0.0292)	0.00755 (0.0332)	-0.00837 (0.0475)	-0.0734 (0.120)	-0.189 (0.116)	0.0531 (0.100)	0.00945 (0.101)	-0.101* (0.0610)
Constant	3.599*** (0.0844)	2.842*** (0.0988)	2.576*** (0.126)	1.340*** (0.320)	-2.767*** (0.302)	2.449*** (0.265)	2.621*** (0.261)	2.253*** (0.158)
Observations	4,686	4,677	4,686	4,592	4,686	4,686	4,686	4,686
R-squared	0.026	0.052	0.112			0.120	0.155	0.060

Note: Robust standard errors in parentheses; \*\*\* p<0.01, \*\* p<0.05, \* p<0.1

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**Appendix: Summary Statistics and Correlation Matrix**

Variables	Obs	Mean	Std. Dev.	Min	Max
<i>Legal Experience</i>					
Exp1: Legal professional	5,201	0.03	0.17	0	1
Exp2: Personal experience	5,201	0.09	0.29	0	1
Exp3: Relative & friend	5,201	0.31	0.46	0	1
Exp4: Work-related	5,201	0.11	0.31	0	1
Exp5: Law student & scholar	5,201	0.07	0.26	0	1
<i>Demographics</i>					
Age	5,096	29.45	9.22	18	101
Gender (Male = 1)	5,201	0.44	0.50	0	1
Education (1 = No schooling; 9 = doctorate)	5,201	6.58	1.05	1	9
Employed in state-owned enterprise	5,201	0.44	0.50	0	1
Employed in foreign-owned enterprise or joint ventures	5,201	0.08	0.28	0	1
Employed in private-owned enterprise	5,201	0.31	0.46	0	1
Self-reported income (1 = < 10k RMB; 7 = > 200k RMB)	4,787	3.30	1.77	1	7
Social status (1 = poorest group; 10 = richest group)	5,146	4.89	1.62	1	10
Eastern provinces	5,201	0.66	0.47	0	1
Central provinces	5,201	0.20	0.40	0	1

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	Exp1	Exp2	Exp3	Exp4	Exp5	Age	Male	Educ	State	Foreign	Private	Income	Status	East	Central
Exp1	1														
Exp2	0.064	1													
Exp3	-0.0044	0.0134	1												
Exp4	0.0227	0.074	0.0794	1											
Exp5	0.0286	-0.0198	-0.0255	-0.0433	1										
Age	0.0406	0.1078	-0.0693	0.0316	-0.042	1									
Male	0.0343	0.0711	0.0026	0.0584	-0.0172	0.1615	1								
Educ	-0.0155	-0.0499	0.0788	0.0476	0.0757	-0.1358	-0.0643	1							
State	0.0689	0.0773	0.1098	0.0838	0.0578	0.1874	0.0708	0.1255	1						
Foreign	0.0077	0.0376	0.0357	0.0347	-0.0066	0.0379	-0.0254	0.0381	-0.2886	1					
Private	-0.0384	-0.0254	-0.0681	-0.0192	-0.0713	-0.0044	0.0197	-0.1549	-0.6356	-0.214	1				
Income	-0.0154	0.0715	0.0843	0.104	-0.0316	0.2685	0.1081	0.2325	0.1504	0.1621	0.0155	1			
Status	0.0974	0.1775	0.1472	0.1446	0.0397	0.1196	-0.0118	0.1653	0.1726	0.0952	-0.1306	0.3028	1		
East	-0.0226	0.0062	-0.0468	0.0118	-0.0278	0.0658	-0.0494	0.0779	-0.04	0.1041	-0.0037	0.1392	0.0866	1	
Central	0.0165	-0.0152	0.0343	-0.019	0.013	-0.0491	0.0404	-0.0267	0.0251	-0.0911	-0.0042	-0.1088	-0.071	-0.6943	1