THE PARADOX OF SOCIAL INSTABILITY IN CHINA AND THE ROLE OF THE XINFANG SYSTEM

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ABSTRACT

Against a backdrop of rapid social upheaval in contemporary China, this paper analyses the paradoxical role of the xinfang system in producing social instability. Xinfang (literally “letters” and “visits”) is an informal, dispute resolution system that serves as the dominant method of handling citizens' grievances. Originally designed as a political tool for social control, xinfang bureaus are not well-suited to this function. Politically more demanding citizens have thrust this venerable institution into new roles with problematic results. This paper focuses on how the xinfang system's failure to live up to heightened expectations is creating a growing body of disaffected but sophisticated petitioners whose manipulation of the system is causing social unrest. As the system's flaws manifest itself vis-à-vis more frequent, prolonged, widespread and broad-based demonstrations, the regime will need to be ready to implement significant reforms.

This paper also explores why xinfang bureaus, historic institutions in China, have only recently begun to have this destabilizing effect and concludes that it is citizens' growing rights awareness, a liberalised political opportunity structure and a willingness to act contentiously that are causing these changes. The last section concludes with an analysis of some of the impediments faced by the regime in their efforts to reform, including a resource constraint, the political costs of repressing or reversing citizens' heightened expectations for China's nascent legal system, and the contradiction of having parallel, but not mutually exclusive systems, of dispute resolution.

I. Introduction

Xinfang (literally “letters and visits”) is a system of administrative petitioning characterised by an appeal to discretionary authority (as opposed to an assertion of rights). Xinfang institutions serve a variety of functions in Chinese society, but this paper will focus on xinfang's role as an informal dispute resolution system. The system operates as follows: a petitioner asks a bureaucrat to reconsider a decision which impacts the petitioner. If the bureaucrat fails to provide a favourable response to that request, the petitioner can appeal to the bureaucrat's supervisor to modify the decision.

Petitioning for administrative reconsideration through xinfang bureaus is a practice grounded in both Chinese tradition and China's modern constitution.1 Seeking administrative reconsideration of

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1 See C. Minzner, "Xinfang: An Alternative to Formal Chinese Legal Institutions" (2006) 42 Stanford Journal of Int'l Law 105, 111 (dating predecessors of the modern system at least as far back as the Ming (1368-1644) dynasty). Article 41 of the Chinese Constitution guarantees citizens the "right to criticise and make suggestions regarding any state organ or functionary", and to
unfavourable judgments is vastly more popular than seeking redress through the formal legal system. Several factors account for xinfang’s prominence. The simplest explanation is that the regime has situated xinfang in a privileged position vis-à-vis the formal legal system. Even when problems could have been handled through the formal legal system, the regime has encouraged citizens to address their grievances through the xinfang system. Xinfang’s traditional and constitutional underpinnings are also part of the explanation. Perhaps more importantly, xinfang is utilised far more often than the formal legal system because it is easier to use, cheaper, more accessible, more participatory, less adversarial, and more manipulable.

The aim of this paper is to explore the correlation between the increasing use of xinfang institutions and growing social unrest in China. This correlation is paradoxical because the xinfang system was introduced to help maintain social stability. The system was designed to allow citizens to vent their concerns and frustrations in a controlled manner, but large, frequent and well-organised public actions are increasing. This paper focuses on how the xinfang system’s failure to dispense justice consistently is creating a body of disaffected but sophisticated petitioners whose efforts to manipulate the government are causing social unrest, and who appear ready to cause further disruption in the future.

Part II explains the benefits xinfang institutions are intended to provide to the government. These include maintaining social stability by providing an avenue for political participation; monitoring local bureaucrats; and gathering information about local conditions. Seeking to capture these benefits, the government has heavily promoted the use of xinfang institutions and citizens have responded to these incentives. However increased use has had unexpected results as citizens have learned to manipulate the xinfang system to serve their own ends.

Part III explores the paradox of the xinfang system: how institutions designed to create social stability have developed into a destabilising force. As a dispute resolution system, and despite being the dominant method of handling citizen complaints, the xinfang system is deeply flawed. Further, petitioners are

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2 10 million petitions were filed in 2004, far exceeding disputes handled through alternative channels. See Human Rights Watch: China, “We Could Disappear at Any Time: Retaliation and Abuses Against Chinese Petitioners” at p. 4 (hereafter “HRW”).

3 See Y. Cai, “Managed Participation in China” (2004) 119 Political Science Quarterly 425, 430. China has a history of encouraging petitioners to have faith in the system by taking steps such as allowing petitioners to ignore procedural requirements on an ad-hoc basis. See also Minzner, note 1 above, at p. 114.

4 Ibid.

5 Unlike the formal legal system, xinfang favours general grievances, which are the types that many citizens seem most capable of filing. Xinfang has no formal, procedural hurdles and there are no specific categories of grievances. See I. Thirou and L. Hua, “The Moral Universe of Aggrieved Chinese Workers: Workers’ Appeals to Arbitration Committees and Letters and Visits Offices”, (2003) 50 The China Journal 88, 91-2 (finding that workers who file arbitration grievances tend to focus on specific actions or decisions that can be dated; in contrast, xinfang petitioners often “disclose a multiplicity of abuses”).

6 Ibid., at p.90. The average petitioner has a lower salary than the average user of the formal legal system. Also, while xinfang is free to use, the cost of arbitration or filing a lawsuit can be significant, deterring average workers from using these mechanisms.

7 In addition to courts, most offices of state authorities also contain an office for receiving visitors and answering letters. See Minzner, note 1 above, at p. 61.

8 See Thirou and Hua, note 5 above, at p. 90.


10 Each year xinfang organs handle nearly twice as many cases as the courts. See Minzner, note 1 above, at p. 105 footnotes 12 and 13 (citing statistics suggesting that in 2002, petitions were submitted at an annual rate approaching 11.5 million per year, but
becoming sophisticated users of the *xinfang* system and are adapting their behaviour to take advantage of an internally coherent set of rules governing when the regime responds to petitions11 (hereafter ‘game rules’). *Xinfang’s* game rules dictate that the government resolve only those grievances that could serve as a flashpoint for more widespread social unrest. Thus sophisticated petitioners attempt to dress up their petitions according to the game rules and thereby achieve a favourable response.12 To the extent sophisticated petitioners are successful and divert resources from petitions the government desires to resolve to their own petitions, these petitioners are diminishing the usefulness of the *xinfang* system to the government.

Part IV explains why the *xinfang* system has recently become unstable, after centuries of use. This section examines some of the factors behind the social unrest and growing caseloads plaguing China’s dispute resolution systems, especially growing rights awareness and assertiveness. Chinese citizens are learning about the availability of new legal and pseudo-legal means of resolving their grievances from a plethora of sources, including the regime’s own efforts to increase rights awareness, other petitioners, the legal profession, and the influx of foreign-owned businesses. Additionally, Chinese citizens have become more assertive of their new rights, roused to act by corruption, industrialisation, urbanisation, high-handed birth control programmes, incompetent bureaucracies, and ineffective dispute resolution systems. The most important factor in the growth of contentious behaviour is the development of a more inviting political opportunity structure. In many ways, it is the tolerance of dissent that has created a ground swell of dissenters. The confluence of these factors has encouraged citizens to resort to the dispute resolutions systems more frequently, which, however, rarely meet their expectations. This failure has resulted in growing disenchantment with the government. Displeased with the current approach, citizens have adapted their responses and begun to interact with the government through the *xinfang* system in a more sophisticated manner, perpetuating the *xinfang* paradox discussed above.

Part V explores potential outcomes as the regime attempts to balance the continued promotion of economic growth with the desire to maintain political control. The current approach focuses on making incremental, ad-hoc movements toward a more formal, institutionalised legal structure in an attempt to forestall widespread social change. This approach rests on several assumptions that may not continue to hold. An alternative strategy, decreasing the attractiveness of the political opportunity structure by reinvigorating the regime’s repressive capacity, will also be explored. Part VI concludes.

II. THE *XINFANG* SYSTEM

Other scholars have already described the historical development of Chinese *xinfang* institutions and provided us with valuable insights into the manner in which modern *xinfang* institutions function today.13 Consequently, this paper will only briefly highlight some of the pertinent issues. Although this paper will refer to the *xinfang* system as an informal dispute resolution system, dispute resolution is only an incidental benefit provided by the system. *Xinfang’s* primary function is to serve political goals, the judicial workload was only approximately six million legal cases per year).

11 See generally Minzner, note 1 above.
12 Citizens have taken the promises of the government seriously and are willing to “work the law” in order to achieve the results they believe they have been promised. See M. Gallagher, “Mobilizing the Law in China: ‘Informed Disenchantment’ and the Development of Legal Consciousness” (2006) 40 Law & Society Review 783, 807.
13 See generally Minzner, note 1 above, at p. 115, and Cai, note 3 above.
which often “differ from and clash with” the functions of a western-style legal system. Indeed, the core characteristic of xinfang is that it is an appeal to discretionary authority, not an assertion of rights.

Several factors account for xinfang’s prominence, but the simplest explanation is that the regime has situated xinfang in a privileged position vis-à-vis the formal legal system. Even when problems can be handled through the formal legal system, citizens are encouraged to resolve their grievances through the xinfang system. The traditional nature of petitioning is also part of the explanation. A practical explanation is that xinfang is easier to use, cheaper, more accessible, more participatory, less adversarial, and more manipulable than the formal legal system.

As a system based upon discretionary intervention, xinfang is incapable of serving a purely judicial function. Rather, xinfang is, to borrow a functional definition from Carl Minzer, a “multipurpose governance tool” designed to: 1) provide information to central authorities and research social problems; 2) channel citizen input into policy-making; 3) serve as a cadre-monitoring device; and 4) help maintain social stability by resolving individual grievances and producing propaganda. Since dispute resolution directly or indirectly serves several of these functions, it is appropriate to view xinfang as an informal dispute resolution system, paralleling the formal legal system.

A. Providing Information About Local Conditions

Totalitarian regimes often have difficulty collecting information about local conditions. In a largely non-democratic system with severe restrictions on press freedom and the absence of widespread popular elections, the regime has few avenues to acquire information about local problems. Since China lacks the multiple feedback loops present in less restrictive societies, the xinfang system performs a vital role in providing information to the government. Xinfang organs provide the regime with a steady flow of statistics and information about the nature of petitioner complaints. In 2004, more than ten million

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14 Minzer, note 1 above, at p. 107.
15 Ibid., at p. 110.
16 See Cai, note 3 above, at p. 430. China has a history of encouraging petitioners to have faith in the system by taking steps such as allowing petitioners to ignore procedural requirements on an ad-hoc basis. See Minzer, note 1 above, at p. 114.
17 See Cai, note 3 above.
18 See Minzer, note 1 above, at p. 111 (dating predecessors of the modern system at least as far back as the Ming (1368-1644) dynasty). Article 41 of the Chinese Constitution guarantees citizens the “right to criticise and make suggestions regarding any state organ or functionary”, and to “make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty”. See Pils, note 1 above, at pp. 260-61 footnote 71.
19 See Thieau and Hua, note 5 above, at p. 90; see also note 6 above.
20 In addition to courts, most offices of state authorities also contain an office for receiving visitors and answering letters. See Pils, note 1 above, at p. 61.
21 See Thieau and Hua, note 5 above, at p. 90.
22 Written petitions, though considered less effective, may be filed anonymously: ibid., at p. 88. See also Xingzhong, note 9 above, at p. 31.
23 Minzer, note 1 above, at p. 120.
25 The 2005 regulations require xinfang bureaus to compile and report statistics about petitions to higher government authorities. The regulations also require the national agency in charge of xinfang, the State Bureau of Letters and Calls, to create a network to track petitioning activity nationwide. See Minzer, note 1 above, at pp. 117 and 135 (citing the 2005 National Xinfang Regulations).
petitions were filed and each one contained information about citizen perceptions of local governance, information which the regime can harness to formulate future policy or retool current policies.26

The most significant benefit provided by xinfang is that it serves as a “tripwire”, alerting the regime to issues that, if left unresolved, are likely to cause social unrest.27 Where the system functions properly, xinfang organs alert the regime about government policies or particular local issues that are the foci of citizen complaints. By identifying potential flashpoints, the regime is able to take affirmative steps to prevent the escalation of small-scale conflicts into threats to the social order.28

B. Providing a Legitimate Channel for Political Participation

Contemporary China is managed through a tightly controlled political system that offers few legitimate avenues for interested citizens to become politically engaged. Petitioning allows citizens to direct grievances through officially sanctioned channels.29 Although it resembles a legal action, a petition is more appropriately characterised as a form of political participation because, at its core, petitioning is a request for assistance rather than an assertion of rights.30 Xinfang’s role in facilitating political participation is evidenced by an increase in petitioning activity during major political events, such as meetings of the People’s Congress or plenary sessions of various political committees.31 The regime portrays xinfang as a means of providing contact between the government and the masses, but in reality that participation is carefully managed and limited.32 Xinfang is not intended to allow direct challenges to the regime’s underlying policy choices. Nevertheless, xinfang is a flexible institution, which can accommodate questions about substantive policy choices.33

Xinfang helps maintain social stability by doing more than merely identifying potential flashpoints; xinfang prevents social disorder by acting as a pressure release valve.34 In theory, by channelling dissent toward acceptable and non-threatening paths, political participation is managed and the threat to social stability is minimised.35 As a sanctioned method of political participation, voicing disagreement through the xinfang system is usually viewed as disagreement, but not rebellion.36 By channelling participation into designated channels and only accepting petitions the government deems appropriate, xinfang

26 See HRW, note 2 above, at p. 4.
27 Minzner, note 1 above, at p. 118.
28 See Thureau and Hua, note 5 above, at p. 88.
29 The xinfang system allows citizens to have a government official listen to their complaints. See Minzner, note 1 above, at p. 120.
30 Ibid., at p. 109 (characterising petitions as “requests for assistance from higher authorities rather than assertions of clearly defined rights”, notwithstanding the increasingly frequent instances of Chinese citizens citing government policies and slogans while employing mass direct action tactics to challenge local officials).
31 Petitioning activities traditionally increase during major political events because “it is easier to catch the attention of People’s Congress members and there is a lot of political reporting”. See Pils, note 1 above, at p. 282.
32 See Minzner, note 1 above, at p. 131.
33 See ibid., at p. 120 (citing the 2005 National Xinfang Regulations, Article 1): in “maintaining connections between the government and the masses”, loyal citizens are encouraged to point out how the government can better serve their interests. See also Cai, note 3 above, at pp. 449 and 451.
34 See HRW, note 2 above, at p. 4.
35 The language used in petitions generally does not include “open opposition to core central government policies”. See Minzner, note 1 above, p. 142 and Cai, note 3 above, at pp. 427-8.
36 See Luehrmann, note 24 above, at p. 865.
implicitly shapes the types of disputes that citizens consider are prudent to raise.37

**C. Monitoring Cadres and Exposing Illicit Activity**

Petitions help the regime monitor cadres by exposing illegal actions, thus helping to address China’s serious principal-agent problem.38 Faced with a heavy burden of sometimes conflicting responsibilities, cadres often have incentives to misrepresent their actions to their supervisors. Petitioning provides a political check against minimally supervised local officials and helps bring these deceptions to light.39 China relies heavily on petitioners to help flush out corrupt or disobedient local cadres. As many as 80% of the tips used to pursue prosecution of malfeasant cadres originates in information obtained through the xinfang system.40 Even when petitions do not expose illicit activity, the threat of discipline that petitioners represent can help keep cadres from acting inappropriately.41 Knowing citizens can seek an audience with higher-level officials by engaging in “peaceful but persistent and widespread resistance” can help keep cadres in line.42

**D. Maintenance of Social Stability**

Xinfang’s discretionary nature allows the regime to maintain firm control of government institutions while presenting an illusion of legal legitimacy and responsiveness to the public.43 The party encourages faith in its ability to resolve disputes and enhances its legitimacy by routinely intervening in the settlement of local grievances.44 Intervening when large numbers of citizens have suffered an egregious violation of their rights helps prevent large-scale collective action.45 Since xinfang ultimately depends on the intervention of higher-level officials, by utilising the xinfang system petitioners simultaneously create pressure for social change and reinforce the central government’s “legitimacy, appeal and, ultimately, power”.46 One estimate determined that only 0.02% of petitions are resolved to the satisfaction of the original petitioner, but this statistic obscures the fact that petitioning results in the successful resolution

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37 By labelling some disputes as appropriate, other types of disputes are implicitly inappropriate to raise. Therefore, petitioners are often constrained by uncertainty and the fear that their actions will be branded an illegitimate challenge to party authority. See generally X. He, “Ideology or Reality? Limited Judicial Independence in Contemporary Rural China” (2005) 6 Australian Journal of Asian Law 12.
38 See 1995 Xinfang Regulations, Article 8 and Minzner, note 1 above, at p. 122.
39 See Cai, note 3 above, at p. 449.
40 See Luehrmann, note 24 above, at pp. 848 and 858. See also Minzner, note 1 above, at p. 141.
41 See Fils, note 1 above, at p. 276.
42 Cai, note 3 above, at p. 449.
43 The xinfang system has been very successful in this regard. Most petitions accuse local cadres of twisting government policy to achieve their own aims. Despite the frequent complicity of the central government, few petitions are directed at higher-level officials although the number is growing.
44 This is the case even though the majority of petitions fail to be resolved to the satisfaction of the persons involved. See Cai, note 3 above, at p. 449 footnote 49; see Luehrmann, note 24 above, at pp. 845-6.
45 It is true that the regime only tends to address individual injustices when they become or threaten to become a potential flashpoint. However, focusing solely on why the regime intervenes obscures the fact that the most egregious violations of rights are more likely to be resolved through the xinfang process because of their potential to foment greater social unrest. See Minzner, note 1 above, at p. 114 and Cai, note 3 above, at p. 448.
46 Luehrmann, note 24 above, at p. 865.
of approximately 200,000 complaints each year. These petitions presumably represent some of the most egregious violations; their resolution undoubtedly serves to defuse some of the most broadly based social problems and therefore helps maintain social stability and faith in the central government.

III. The Paradox of Social Instability and the Role of the Xinfang System

As discussed above, the xinfang system has been designed as a tool to provide the central government with information about local conditions, as a check on otherwise poorly supervised bureaucrats and as a means of diverting political participation into carefully circumscribed channels. All of these sub-goals are aimed squarely at the preservation of social stability. Nevertheless, this paper argues that xinfang not only fails to achieve this goal, but also works to undermine it.

The xinfang system functions by resolving only the most egregious complaints each year. The system is designed to repeatedly frustrate petitioners in order to separate out issues that could have a destabilizing effect on society from issues that are more individualised. Essentially, the regime’s policy is to let grievances fester, so only petitioners with truly significant complaints will continue to pursue them. Put another way, the vast majority of petitioners are encouraged to use a system “designed to compound citizens’ grievances rather than to help redress them.” Xinfang thus is comparable to a bureaucratic sieve with the regime betting on its ability to lance the resultant boils of social unrest before political instability becomes too widespread.

Through repeated interactions with the xinfang system, petitioners have grown increasingly sophisticated. Sophisticated petitioners are able to disrupt the sieve-like function of the xinfang system by learning what types of petitions are more likely to receive a satisfactory response from the regime. These petitioners can manipulate the system by framing their petitions to be the type of conflict the regime has signalled it will resolve. Sophisticated petitioners have been able to discern that the following types of petitions are more likely to receive a quicker and more satisfactory response from the regime: collective petitions that are larger and more disruptive; skip over lower levels of government; are internally organised; are led by petitioners exhibiting strong leadership; attract the intervention of higher-level officials; promote information-sharing among petitioners; and clothe proactive claims in reactive terms. These rules are mutually reinforcing and, although addressed separately below, are not

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47 See Minzner, note 1 above, at pp. 100-101. In 2004, HRW estimated that 10 million petitions were filed.
48 See Minzner, note 1 above, at p. 158. By making it expensive, time-consuming, dangerous, and potentially illegal to petition, particularly at higher levels, those grievances that are too individualised to present a threat to the system’s legitimacy are distinguished from grievances requiring an immediate response.
49 Ibid., at p.157. Bureaucratic delay, which forces citizens to engage in repeated petitioning behaviour, is an effective tool for imposing additional costs on petitioners. In requiring petitioners to devote more time, energy and money, petitions involving less serious problems or grievances affecting only a limited class of individuals are more likely to be dropped. Consequently, those petitioners who persist are “more likely to receive those grievances with the potential for serious social consequences”.
50 Pilis, note 1 above, at p. 236.
51 By focusing on those petitions that are resolved, adroit citizens are able to discern general patterns. Adapting their actions to those patterns can help petitioners achieve a more satisfying response See also K. O’Brien, “Collective Action in the Chinese Countryside” (2002) 48 The China Journal 100, 146.
52 Ibid., at p. 146. Petitioners are exploiting the “yawning gap between rights that have been promised and those that are delivered”.
53 It is likely that the regime responds to these protests based on the assumption that larger, organised groups of vocal protestors have more legitimate grievances. Once protestors appropriate these conceptions, the assumptions no longer hold and the ability
necessarily distinct in practice.

A. The “Game Rules”

The following section will examine the myriad ways in which Chinese citizens have learned to manipulate the xinfang system, and how each undermines xinfang’s purported goal of maintaining social stability. Most petitioner tactics lead to social unrest in their own right, while decreasing the government’s capacity to identify which petitions to resolve. Without the ability to intervene appropriately, the regime is unable to properly allocate its limited resources, thereby perpetuating a downward spiral of increasing social unrest.

First, xinfang regulations direct petitioners to file complaints at the lowest levels of government, in accordance with the principles of “returning the problem to the source” (guikou banli) and “assuming responsibility accordingly” (fenguan fuze). In other words, petitioners are supposed to petition the original decision-maker for reconsideration, and only move to higher levels of the bureaucracy after receiving an unsatisfactory reply at each previous level. But immediate supervisors of the original decision-makers are rarely sympathetic to petitioners, making it difficult to successfully resolve petitions “by returning problems to the source”. Petitioners are more likely to receive a satisfactory response at higher levels of government. Therefore, they often seek to save time and money by avoiding starting the petitioning process at the lowest levels of government.

Skipping over the lower levels of government is not strictly illegal due to inconsistent xinfang regulations. Cadre responsibility systems also help create incentives to bring petitions to higher levels as early as possible. Local officials are subject to progressively greater disciplinary punishments according to whether petitioners express their grievances at the county, provincial or national level. Therefore, petitioners frequently attempt to skip levels of government, particularly low-level officials who are the least receptive to complaints about cadre administration. The practice is so widespread that one survey of rural petitioners found that more than sixty percent of petitioners skipped at least one level of government.

A second, and more disruptive tactic than skipping over xinfang bureaus, is the organisation of bigger and more disruptive protests because such protests increase the likelihood of a favourable response and offer some insulation from reprisal. Large, mass incidents draw a proportionately swifter response and,

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54 See Minzner, note 1 above, at p. 123 (citing the 2005 National Xinfang Regulations, Articles 4 and 21(3), and the 1995 National Xinfang Regulations, Article 4).
55 See Pils, note 1 above, at pp. 268 and 272, and He, note 37 above.
56 There is a general “unwillingness to definitively bar direct petitions to higher-level” xinfang offices. See Minzner, note 1 above, at pp. 123-24.
57 Ibid., at p. 156.
58 In 2003, petitions to the national level rose 14% compared with 2002, while petitions to the provincial and county levels increased by an almost imperceptible amount. Between 2003 and 2004, the Supreme People’s Court encountered a 23.6% increase in petitions, while petitions to the lower courts only increased by 6.2%. See Ibid. at pp. 164-64 (citing “Zui Gao Ren Min Fa Yuan 2005 Nian Gong Zuo Bao Gao” [2005 Sup. People’s Ct. Work Report] (2005)). See also K. O’Brien and L. Li, “The Politics of Lodging Complaints in Rural China” (1995) 143 The China Quarterly 756, 778.
59 See O’Brien and Li, note 58 above.
60 New regulations restrict the right of citizens to organise collectively but these rules are routinely flouted, further incentivising disregard of the dictates of the central government. See HRW, note 2 above, at p. 27.
often, a more favourable one because they are perceived as legitimate complaints exposing "recurrent and general abuses" and affecting more than a few individual interests. Larger protests activate the regime's alarm system because persistence in the face of official foot-dragging and efforts to undermine group solidarity is considered "powerful evidence that serious improprieties have occurred". For a regime that considers the maintenance of social stability a pre- eminent value, the social disorder occasioned when petitioners engage in "violent, 'war-like'" mass actions is an obvious call to action.

Not only are larger protests a more effective means of obtaining meaningful official responses, but large protests may provide some protection from reprisal by local cadres. Xinfang responsibility systems provide for the punishment of local officials who allow mass incidents to occur. Although these penalty provisions were designed to encourage local officials to limit petitioning behaviour, cadres appear to find it difficult to discipline large groups. Moreover, to the extent that a larger protest attracts intervention by higher-level officials, it also provides a degree of protection to those petitioners because the participation of an influential patron implicitly posits that the petitioners' and the central government's interests are aligned.

Third, the ability to organise a large, collective response depends in part on the existence of effective leaders. Effective leaders can help motivate fence-sitters and build coalitions among citizens with disparate complaints by framing issues in a way that resonates with others. "Skilled rabble-rousers" have increasingly been utilising direct action techniques in "highly confrontational settings" in order to achieve their aims. Effective leaders are generally organised and charismatic individuals who enjoy prestige or authority among the masses. Often, they are fairly well educated, younger, male veterans. Petitioners who develop into leaders begin to approach xinfang not as a legal process, but as an "instrumental approach to the law as a game", a game whose "outcome depends on how the battle is waged, not on the moral positions of the two sides".

Fourth, faced with a system designed to compound rather than solve their grievances, successful

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61 One study explained the evolution of Chinese petitioning efforts toward larger and more disruptive actions as an adaptive response. The study demonstrated that the probability of a meaningful official response "increased with the number of petitioners, the level of government at which collective petitions are directed, and the extent to which petitioners use public and disruptive tactics". See Minzner, note 1 above, at pp. 144 and 156-57 (citing X. Chen, Chinese Petitioners' Tactics and Their Efficacy (2005), pp. 29-31).
62 See Thireau and Hua, note 5 above, at pp. 93-94.
63 See O'Brien and Li, note 58 above, at pp. 773-4.
64 Pilis, note 1 above, at p. 285.
65 See Minzner, note 1 above, at p. 143.
66 See T. Bernstein and X. Lu, Taxation without Representation in Contemporary Rural China (CUP, 2003), p.138, finding that sustained leadership is the key to creating widespread disruption.
67 See O'Brien, note 51 above, at p. 148.
68 Minzner, Xinfang at p. 144 (citing "Access to Justice in China: Staff Roundtable of the Congressional-Executive Commission on China", (July 12, 2004) (written statement of Professor Kevin O'Brien, University of California, Berkeley)).
69 See Bernstein and Lu, note 66 above, at p. 149.
70 See Minzner, note 1 above, at p. 145.
71 Most petitioners emerge from the process with a more developed sense of their legal rights and a more realistic view of the process. In other words, citizens learn that petitioning is akin to a high-stakes game and their chances of winning depend on their ability to act strategically. A high degree of willingness to try again is often found among petitioners whose complaints were not successfully resolved. See Gallagher, note 12 above, at p. 800.
72 Ibid., at p. 804. Some petitioners develop "prestige and authority" because of their own past petitioning activity, for having lead previous protests or, more generally, for engaging in conflicts with cadres. See Bernstein and Lu, note 66 above, at p. 149.
petitioners routinely seek to attract the attention of a higher-level official.\textsuperscript{73} Often, the pressure an influential patron can place on a subordinate is the only way to force local cadres to resolve complaints fairly. Despite the near universal attempt to draw the attention of a higher-level official, few petitioners are successful. Intervention appears to be idiosyncratic, but certain themes can be discovered. In part, patrons intervene when intervention simultaneously serves to confine petitioner demands to remedial measures (rather than broader political change) and to confer the appearance of legitimacy on the government through intervention in particularly egregious cases.\textsuperscript{74}

Higher level officials also often intervene because of the Party’s internal ideological conflicts.\textsuperscript{75} Although it may appear monolithic, various government institutions often work at cross-purposes, and sophisticated petitioners are quick to exploit emerging rifts between government officials.\textsuperscript{76} Xinfang allows petitioners to engage in a type of venue shopping by directing their complaints to multiple xinfang bureaus, allowing the exploitation of internal ideological conflicts.\textsuperscript{77}

A popular technique to attract the attention of higher-level officials is for petitioners to use legal slogans or the party’s own rhetoric.\textsuperscript{78} Petitioners accuse cadres of botched policy implementation and portray themselves as faithful citizens exposing illegality. Another variant on this theme is when petitioners engage in large, boundary-spanning collective actions such as traffic blockades or sit-ins, which can quickly draw the attention of the regime.\textsuperscript{79} Petitioners frame these disruptive, collective actions as an effort to circumvent the attempts of unfaithful local cadres, who may be withholding information from higher-level officials. Occasionally, the media also plays a role in publicising these efforts.\textsuperscript{80} If successful, petitioners simultaneously manage to increase pressure on local government officials by attracting higher-level attention and avoid sanction for causing a social disturbance.\textsuperscript{81}

Merely drawing the attention of higher-level officials is usually necessary but not sufficient for successful resolution of the petitioner’s complaint. Once petitioners get an official’s attention, petitioners must seek to create a sense of obligation to respond to their complaints. Petitioners’ use of legal slogans and government rhetoric is an example of this attempt. Higher-level officials may also feel a sense of obligation to respond to the petitions stemming from an official’s honest belief in the regime’s ideology, an ego-boost associated with the exercise of authority, or a desire to stem further disruptive actions. Although the precise reasons behind official intervention are not clearly understood, it is apparent that officials intervene with some frequency and when they do intervene petitions are more likely to be successful.

Lastly, an important tactic for exploiting cracks in the regime’s façade is information sharing. When

\textsuperscript{73} See O’Brien and Li, note 58 above, at p. 776.
\textsuperscript{74} See Bernstein and Lu, note 66 above, at p. 138.
\textsuperscript{75} See He, note 37 above, at p. 2.
\textsuperscript{76} See Minzner, note 1 above, at p. 14, and O’Brien, note 51 above, at p. 151.
\textsuperscript{77} A recent survey of petitioner behaviour in Beijing found that petitions were directed, on average, to six different central government xinfang bureaus. See Minzner, note 1 above, at p. 143 (citing J. Yu, “Xin fang zhi du diao cha ji gai ge si lu” [A Survey of the Xinfang System and Thoughts on Reform], in 2005 Nian: She Hui Xing Shi Fen Xi Yu Ce [2005 Analysis and Forecast on China’s Social Development] at p. 213).
\textsuperscript{78} See Minzner, note 1 above, at p. 143.
\textsuperscript{79} See Cai, note 3 above, at p. 451.
\textsuperscript{80} The international media, in particular, have shown a growing interest in stories about social unrest in China. Petitioners have eagerly sought the opportunity to circulate their stories to a wider audience, thereby increasing the likelihood of positive intervention. See Pils, note 1 above, at p. 287.
\textsuperscript{81} See Minzner, note 1 above, at p. 156.
one group of petitioners successfully locates and takes advantage of divisions within the Chinese bureaucracy, spreading that knowledge helps exploit the system.\textsuperscript{82} Petitioners spread information by circulating legal texts, printing regulations and pasting them on walls, and by utilising the media and the Internet.\textsuperscript{83} Also, petitioners from nearby villagers will sometimes send “inspection teams” to learn from other petitioners’ experiences.\textsuperscript{84} The regime itself helps petitioners learn about effective strategies by issuing official reports of mass petitioning activity and by condoning some media freedoms. Some NGOs and legal aid organisations also contribute to petitioners’ ability to exploit internal government fractures.\textsuperscript{85}

Sharing information about the content of laws and regulations is useful to petitioners because it increases the chances of drawing favourable attention to their case. When local cadres act illegally, they often endeavour to prevent citizens from learning about the laws and regulations they are contravening.\textsuperscript{86} By invoking the law, and explaining how cadres have been acting illegally, petitioners are more likely to attract the attention of influential patrons.\textsuperscript{87} Moreover, sharing information and protest stories with other citizens can help break down “social and psychological barriers to legal mobilisation”.\textsuperscript{88} A third benefit of sharing information is that any publicity engendered helps petitioners organise larger protests, which generally receive a more favourable resolution.\textsuperscript{89}

The regime has increasingly turned to the law as part of its post-Mao search for a new basis of legitimacy.\textsuperscript{90} As such, restricting knowledge of the law, as attempted by local cadres, represents a double-edged sword. \textit{Xinfang’s} sieve function depends on the imposition of bureaucratic delay and the system’s discretionary nature, but the successful resolution of one petition can spawn a flood of copycat complaints all demanding a similar resolution. On the one hand, the regime has the incentive to encourage information sharing about the law to help control its principal-agent problem. On the other hand, the regime needs to control the flow of information so it can continue to impose delays and intervene in a limited number of petitions, while maintaining an appearance of legitimacy, even-handedness and responsiveness.

\textbf{B. Conclusion}

Traditionally, citizens have looked to the \textit{xinfang} system as way to vindicate individual grievances. They trusted that the central government was interested in resolving their disputes and maintaining the public order.\textsuperscript{91} As rights awareness has grown, citizens have become more assertive. The regime has given law

\begin{footnotesize}
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\item[82] \textit{Ibid.}, at p. 141.
\item[83] See Pils, note 1 above, at pp. 275-76 and Gallagher, note 12 above, at p. 809 (discussing the efforts of one citizen to learn about new laws and regulations so he could help mobilise others).
\item[84] O’Brien and Li, note 58 above, at p. 763.
\item[85] See Gallagher, note 12 above, at p. 805.
\item[86] See Pils, note 1 above, at p. 276 (describing an incident in a Zigong land dispute where citizens made copies of laws to hand out and paste onto walls around town despite removal by officials and the threat of punishment).
\item[87] See Minzner, note 1 above, at p. 143.
\item[88] See Gallagher, note 12 above, at p. 805.
\item[89] See Minzner, note 1 above, at p. 157.
\item[91] See Pils, note 1 above, at p. 285.
\end{itemize}
\end{footnotesize}
to its citizens but the law creates expectations the regime has not fulfilled.92 Citizens have endured “flawed legal reform and rampant corruption” for a remarkably long time, but attitudes are changing and, in response, citizens are beginning to alter their behaviour.93 Sophisticated petitioners often shed the assumption that the government wants to help correct individual injustices, and have increasingly shaped their behaviour to disrupt the public order. The gap between expectations and results has created a more aggressive class of petitioners willing to exploit the system, leading to social disruption and “undermining the conditions of stable political rule.” 94

IV. Growing Rights Awareness and Assertiveness

The xinfang system has been used as a multi-faceted tool for social control for centuries.95 Yet it is only recently that the xinfang system has begun to contribute to social instability. This paper suggests that xinfang is contributing to instability now because petitioners have become more sophisticated due to increased interaction with the xinfang system. Increased interaction with the xinfang system is the result of the growth of rights awareness and rights assertiveness.

Rights awareness is on the rise because of: 1) the government’s increased use of rights-based rhetoric; 2) greater information-sharing between citizens; 3) the promotion of the rule of law by the legal profession; 4) the advent of democratic local elections; and 5) the influx of foreign businesses. Rights assertiveness is on the rise not only because of increased rights awareness, but also because of a more liberal political opportunity structure. Government reforms have given villagers more protection against cadre retaliation as well as more laws and directives that make it possible to file charges.96 Most studies suggest the Chinese are filing more legal disputes, writing more letters to xinfang offices, and engaging in larger, more frequent and better organised mass demonstrations.97 In addition to increased rights awareness and a more liberal political opportunity structure, the sources of discontent are on the rise. Rights awareness, rights assertiveness, and increased discontent explain why Chinese citizens are asserting their rights more frequently, disrupting xinfang’s functioning and contributing to social unrest.

A. Sources of Citizens’ Growing Rights Awareness

1. The regime’s use of rights-based rhetoric

Citizens are becoming more aware of their rights, in part, because the regime invokes rights-based rhetoric more frequently.98 The Chinese government has increasingly based its own legitimacy on

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92 Ibid.
93 Ibid.
94 Ibid.
95 See generality Minzner, note 1 above.
96 These increased incentives to bring suit coupled with the regime’s decreased repressive capacity have been described as creating a more open political opportunity structure. See O’Brien and Li, note 58 above, at p. 764.
98 See Gallagher, note 12 above, at p. 784 footnote 1 (“Raising legal consciousness (or the need to raise legal consciousness further) is mentioned constantly by Chinese leaders as an integral part of the Chinese state’s new emphasis on rule of law.”)
notions of legality.\footnote{See Pei, note 90 above, at p. 861 footnote 50 and P. Potter, "Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China", (1994) 138 The China Quarterly 325, 57.} By shrouding itself in the mantle of the law, the regime has legitimised the use of legal institutions by the citizenry.\footnote{This stands in sharp contrast to when the regime initially rose to power and employed mass actions, such as the Anti-Rightists Campaign and the Cultural Revolution, when law was used much more instrumentally. See also Gallagher, note 12 above, at pp. 787-97 (discussing the enhanced domestic status that comes from the legitimacy conferred by a rule of law system, improved government power, \footnote{See Minzner, note 1 above, at p. 175 (citing "Law in Political Transitions: Lessons from East Asia and the Road Ahead for China," Hearing Before the Cong.-Exec. Comm’n on China, 109th Cong. 28-35 (2005) (written statement of Jerome Cohen)).} improved governance, access to justice for weak groups, transparency, restraint on the arbitrary use of state power and due process” result from China’s rule-of-law project, whether intended or not.\footnote{Compare Gallagher, note 12 above, at p. 787.}

Some commentators have suggested that the regime remains committed to a rule-by-law system and any changes the regime has made are superficial.\footnote{One survey found that more than 75% of claimants were willing to use their increased legal competency to assist family members, friends and other workers with their own lawsuits. \textit{Ibid.}, at p. 807.} This argument misses the point. The government’s questionable commitment to a rule-of-law system notwithstanding, the use of rights-based rhetoric by highly placed government actors leads citizens to develop heightened expectations of the law.\footnote{Citizens are using the Internet to post their own stories of interactions with the government or to search for the laws and regulations the government itself has posted. See Pils, note 1 above, at p. 275 and see Gallagher, note 12 above, at p. 809.} Citizens are using constitutional language and legal rhetoric more often in their attempts to combat government power.\footnote{See Gallagher, note 12 above, at p. 794 ("media coverage of legal news, legal information, and specific lawsuits” is an important element of efforts to disseminate the law).}

2. Information sharing

Citizens have begun to turn their lawsuits and petitions into a learning experience that can be shared with others.\footnote{Greater use of the law and courts by local officials to protect their own interests creates openings for others to use the system because it legitimizes the use of law. See Liebman, note 101 above, at pp. 35, 99.} Technological advances, such as the Internet,\footnote{Compare Gallagher, note 12 above, at p. 787.} the proliferation of new media outlets, and an improved transportation infrastructure facilitate the reproduction and dissemination of information.\footnote{\textit{Ibid.}} The media, although heavily restricted, is often a useful source of information for
petitioners as sometimes even graphic accounts of violence by and against citizens appear in the Chinese media.\textsuperscript{110} Both as a tool to disseminate tactical information and to stir the ire of other citizens, increased information sharing leads to increased rights awareness.

Sometimes these information distribution networks are so efficient that citizens seem to have more information and a better understanding of the law than local cadres. When courts evince a willingness to rule against powerful state-backed entities, potential petitioners can read about this in the newspaper.\textsuperscript{111} When the regime passes a new law guaranteeing freedom from burdensome taxation, word spreads quickly. As a result, cadres are sometimes forced to attempt to cajole or threaten contentious citizens into restricting the flow of information about the law, which can foment social unrest.\textsuperscript{112}

Aggressive information-sharing helps break down “social and psychological barriers to legal mobilisation”.\textsuperscript{113} In the past, some citizens felt that “only bad people file suits”.\textsuperscript{114} For example, some legal aid staff in China have noticed that a side-effect of their work has been to mitigate some citizens’ “feelings of isolation and embarrassment by providing a social network” and a comfortable space where potential plaintiffs learn about new strategies or relevant regulations through informal interactions.\textsuperscript{115} These interactions can have another significant effect: they can alert citizens to potential links between their grievances and those of other citizens, resulting in larger collective actions.\textsuperscript{116}

In sum, information sharing can create a positive feedback loop whereby increasing numbers of citizens become aware of new rights and new avenues to assert those rights. More knowledgeable citizens assert their rights more frequently and share this fact with others. In turn, other citizens are empowered to shed their inhibitions about filing their own lawsuits, thus perpetuating a cycle of contentiousness.

3. The legal profession

China’s commitment to legal reform has been substantive as well as rhetorical. For example, legal reforms have created a greater role for the courts, which powerful local actors have been particularly eager to use.\textsuperscript{117} Government use of legal institutions has increased the legitimacy of their use by citizens and institutional legitimacy creates space for legal actors to actively shape their roles. Judges have also helped raise legal awareness through regular visits to rural areas.\textsuperscript{118}

At this time, the legal profession’s role is limited. China’s courts continue to exhibit systemic weaknesses

\textsuperscript{110} See Bernstein and Lu, note 66 above, at p. 118.
\textsuperscript{111} Several newspaper columns regularly feature explanations of key laws and regulations arising in current legal cases. See Gallagher, note 12 above, at pp. 794-95.
\textsuperscript{112} See Pilis, note 1 above, at p. 276. The author describes an incident that occurred as part of a land dispute in Zigong. Citizens managed to obtain copies of a law favourable to their efforts and made hundreds of photocopies, which were distributed to every household and family within the area. These laws were also pasted on walls in town. Officials were repeatedly forced to pull down the signs and eventually threatened that they would detain persons suspected of posting the signs if any more were put up.
\textsuperscript{113} See Gallagher, note 12 above, at p. 805.
\textsuperscript{114} Ibid. This type of sentiment often underlines the so-called Asian values argument, which imparts a desire for stability and maintenance of the status quo to Asian peoples. Although this paper does not address this issue in depth, suffice to say that, as in all societies, some social and/or psychological barriers to legal mobilisation exist in China.
\textsuperscript{115} Ibid.
\textsuperscript{116} Ibid., at p. 806.
\textsuperscript{117} See also ibid., at p. 789 (noting an “increasing legalisation and formalisation of the dispute process” for labour conflicts); see generally Liebman, note 101 above.
\textsuperscript{118} See Minzer, note 1 above, at p. 138.
and are widely considered ineffective, or worse still simply an extension of the coercive mechanism of the State. Judges are known for their poor training,\textsuperscript{119} corruption, lack of independence,\textsuperscript{120} and refusal to rule against powerful, state-backed entities.\textsuperscript{121} However, as better-trained judges slowly replace older and often poorly-trained judges, the courts are becoming more innovative and assertive.\textsuperscript{122}

Notwithstanding their modest impact, other elements of the legal profession can also help increase rights awareness. Legal aid programmes publish administrative and judicial decisions, encourage social networking, share legal strategies and provide claimants with the “words” they need.\textsuperscript{123} Similarly, China’s “barefoot lawyers” have also played a role in growing rights awareness.\textsuperscript{124} Barefoot lawyers are citizens who have gained some degree of fluency in challenging the regime during the course of their own petitions and lawsuits, and are now willing to share their experiences. More than three-quarters of claimants in one survey reported that they “advised friends and family, introduced others to legal aid, and in some cases served as witnesses” in other trials.\textsuperscript{125}

4. Democratic local elections

Democratic elections at the local level have become more common and can serve to increase rights awareness and assertiveness. Democratically-elected village leaders are more likely to be receptive to complaints, which in turn encourages citizens to be more assertive.\textsuperscript{126} Democratic elections can also empower citizens by allowing them to defend their interests by voting out corrupt cadres. Political engagement can increase political consciousness and indirectly foster rights awareness.

5. Foreign businesses

Economic growth and the concomitant proliferation of foreign-owned businesses can increase rights awareness because foreign businesses may import greater expectations for the legal system. Foreign-owned businesses both adapt to local conditions and help alter those conditions. Multinational corporations may be more willing to pursue legal remedies because of their political influence, deep pockets or greater expectations for the law. Foreign businesses are subject to intense media scrutiny and when potential claimants learn about the legal successes of foreign businesses they may be more inclined to pursue their own grievances.\textsuperscript{127} In addition, foreign businesses hire some Chinese employees who gain exposure to their particular corporate culture and expectations of the role of the legal system.

\textsuperscript{119} See Potter, note 101 above, at p. 675.
\textsuperscript{120} Ibid., at p. 677. Party “adjudication committees” review and must provide prior approval of judicial decisions.
\textsuperscript{121} Ibid., at p. 675 (China’s legal system is still dominated by survivors of the Cultural Revolution and the Anti-Rightists campaign and their experiences have dampened their willingness to challenge the orthodoxy of Party supremacy).
\textsuperscript{122} See Liebman, note 101 above, at pp. 45-46.
\textsuperscript{123} See Gallagher, note 12 above, at pp. 806-07. See also Pils, note 1 above, at p. 270.
\textsuperscript{124} Mary Gallagher prefers the term “little expert” in place of Jerome Cohen’s “barefoot lawyer”.
\textsuperscript{125} Gallagher, note 12 above, at p. 807.
\textsuperscript{126} See O’Brien and Li, note 38 above, at p. 765.
\textsuperscript{127} Whether or not citizens bring their own lawsuits, the mere fact that foreign business owners bring lawsuits can serve to increase rights awareness in China. Moreover, the government is interested in creating an attractive investment environment, and one way to achieve this is to provide better access to a more formalised legal system.
B. Sources of Citizens' Rising Assertiveness

Rights awareness alone is necessary but insufficient for the changes we have witnessed to the xinfang system. Developing in tandem with a more acute awareness of legal entitlements has been a growing willingness to engage in contentious behaviour by asserting those rights. The sources of discontent driving rights assertiveness include industrialisation, corruption, a flawed birth control policy, incompetent institutions and officials, and an ineffective dispute resolution system. Perhaps the most important explanation, however, is the regime's substantive and rhetorical moves toward a rule of law system. By decreasing the likelihood of repression, contentious behaviour becomes less costly and therefore more likely to occur. Social discord combined with increased rights and an improved political opportunity structure has encouraged assertive behaviour.

Newly assertive citizens often meet with initial frustration but rather than give up they often utilise their newfound “competency vis-à-vis the law” and are “willing to play the game again”. Through repeated interactions, petitioners develop a more sophisticated understanding of the legal process. Sophisticated petitioners learn to behave strategically and, by sharing what they have learned, contribute to a growing sense of political radicalism, further perpetuating growing rights assertiveness among their peers.

1. An open invitation: the political opportunity structure

Why are more citizens engaging in more frequent petitioning activity? One simple explanation is that the regime has explicitly and implicitly encouraged such activity. Reluctance to use the law is often motivated by concerns related to the state's capacity and willingness to repress disfavoured activities. Therefore, more petitions are filed when institutional access improves, rifts between members of the elite become apparent, the state's capacity or will to repress declines or influential allies become available. A historical analysis of Chinese petitioning activity confirms this insight and reveals a long-term correlation between increased collective action and openings in the political opportunity structure.

The regime's capacity and propensity to swiftly crush resistance has declined in recent years, encouraging the growth of petitioning and other contentious behaviour. Structural changes since the end of the Mao era, including decollectivisation, the end of mass campaigns, class labelling and class-

128 Gallagher, note 12 above, at pp. 807 and 800.
129 Ibid., at p. 788 (finding that “through the process of legal mobilisation, self-professed 'common people' (lao bai xing) evolve into critical citizens, taking the state to task for failures or problems with the legal system”); See Luehrmann, note 24 above, at p. 857 (finding that collective petitioning is an increasingly important means of addressing social issues and that petitions are increasingly being addressed to higher levels of the government). See also O'Brien and Li, note 58 above, at pp. 760-1 (finding collective actions to be on the rise).
131 See Gallagher, note 12 above, at p. 811.
133 Minzner, note 1 above, at p. 158 (by analysing historical data, the author concluded that periods of relative political liberalisation corresponded to spikes in petitioning activity).
134 See Bernstein and Lu, note 66 above, at p. 143.
based struggles, have decreased the strength of the regime's political control.\textsuperscript{135} The loss of repressive capacity has been aggravated as the centres of support for the regime have moved into the cities and out of the countryside. Awareness of the government's reluctance or incapacity to use force stimulates political action, just as a high risk of repression or severe punishment for participation in collective actions acts as strong deterrent.\textsuperscript{136} By seeking legitimacy through the rule-of-law and attempting to deter escalating social disruption by placating the masses rather than utilising its previously "impressive coercive capacity", the regime has signalled that it is willing to accept unprecedented challenges to local cadres.\textsuperscript{137}

The government has also implicitly created increased avenues to petition. Ironically, as local cadres face greater pressure from their superiors to reduce social unrest, the opportunities to engage in petitioning behaviour increases because when various state actors "contradict and counteract each other," it creates the appearance of a weak and fragmented state, encouraging petitioners.\textsuperscript{138} For example, local cadres are responsible for promoting economic growth; this creates opportunities for local officials to favour private interests over the public good. In turn, this requires higher-level officials to engage in closer supervision of cadres, often by paying more attention to citizen grievances.\textsuperscript{139} Thus China's hierarchical government structure creates "formidable principal-agent problems" that petitioners are able to exploit.\textsuperscript{140} The hierarchical, though non-monolithic, nature of the Chinese government helps increase institutional access.\textsuperscript{141}

Officials have been divided on how far to crack down on petitioners who violate xinfang regulations to draw attention to the illegal behaviour of local cadres. Simultaneously encouraging collective action to get the attention of higher-level officials, while suppressing mass petitions, has created a system set in tension, which has presented opportunities for petitioners who are capable of quickly exploiting even slight openings in the political opportunity structure.\textsuperscript{142}

Openings in the political opportunity structure mean the regime is willing to tolerate more dissenting voices, but, on its own, does not explain why citizens are willing to risk punishment to bring petitions. Citizens are becoming more politically active because of increased social tensions. The next section will explore the substantive changes that are sources of conflict and have produced widespread social unrest.

\textsuperscript{135} See O'Brien, note 51 above, at p. 152.
\textsuperscript{136} See Bernstein and Lu, note 66 above, at p. 142.
\textsuperscript{137} Ibid. at pp. 143 and 145. For example, by removing local officials for the poor implementation of birth control limits, the regime gives citizens a bargaining chip against cadres and creates a more complex power relationship. See He, note 27 above, at p. 5.
\textsuperscript{138} Pils, note 1 above, at p. 284.
\textsuperscript{139} Cadres are tasked with an impressive array of responsibilities. They are expected to "extract resources without using force, build roads without raising levies, enforce birth control through persuasion, conduct democratic elections while preventing the selection of 'untrustworthy' cadres, develop the village economy while living up the ideal of 'hard work and plain living.'" See K. O'Brien and L. Li, "Villagers and Popular Resistance in Contemporary China" (1996) 22 Modern China 28, 42.
\textsuperscript{140} K. O'Brien, "Neither Transgressive Nor Contained: Boundary-Spanning Contention in China" (2002) 8 Mobilization 51, 57.
\textsuperscript{141} Problems can also arise because no single governmental entity is acting in the sovereign capacity. Both the centre and cadres may issue laws or regulations that conflict, but because an adequate dispute resolution system does not exist, the conflict can go unresolved and citizens are pulled in multiple directions. See Pils, note 1 above, at p. 284.
\textsuperscript{142} Luehrmann, note 24 above, at p. 859. See also Bernstein and Lu, note 66 above, at p. 144 (finding that officials are divided on how far to go in cracking down on petitioners).
2. Sources of discontent

First, a growing sense of relative poverty and the physical processes of modernisation, urbanisation and industrialisation have been sources of tremendous social unrest. The speed of China's transformation has resulted in the rapid displacement of millions of people. Industrialisation has also contaminated water supplies, poisoned fields and caused illness. Without a system to adequately protect property rights, or to acquire land through a market mechanism, citizens are often forced into the role of protagonist. In short, the rapid modernisation of China has forced citizens to fight “an aggressive battle for rights and economic security”, thus contributing to social unrest.

Second, an important source of social discord is rampant corruption. Citizens often express bitterness about illicit gains by corrupt individual officials. Corruption appears to be a function of the hierarchical nature of government, which fails to provide adequate supervision and results in a chronic shortage of funding. Despite inadequate financing, local cadres are disciplined if they fail to achieve various centrally-mandated targets. As a result, local cadres often impose illegal taxes and other confiscatory measures to make up for funding shortfalls. No wonder that “corruption ranks at the top of citizens’ dissatisfaction with government performance in contemporary China”. Further, once officials act “illegally” to achieve legitimate state aims the temptation to “steal from public coffers or to favour family and friends” is sometimes too strong to resist.

Third, the administration of China's birth control policy has been a longstanding source of social discord in part, because many citizens believe that having more children brings better fortune. Intrusions upon reproductive freedom -- taking the form of heavy fines, administrative favouritism, coercive abortions, forced sterilisations and arbitrary enforcement -- have all contributed to creating a more assertive populace.

Fourth, incompetence at both the institutional and individual levels frustrates citizens and contributes to a growing willingness to act contentiously. Institutional incompetence is partially a result of an inability to incorporate input from the masses or to respond quickly to local concerns. Without a framework that creates responsive institutions capable of rapidly redeploying assets, the role of competent officials is especially important. Unfortunately, local cadres often receive little job training and are tasked with an impossible set of conflicting mandates, which creates incentives for local cadres to employ coercive

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143 See Cai, note 3 above, at p. 433 (estimating that over 80% of appeals are related to problems arising from reform and development).
144 See Bernstein and Lu, note 66 above, at p. 158.
145 Social unrest exists because the speed of social change creates more problems than can be resolved by China’s inadequate dispute resolution mechanisms. See Pils, note 1 above, at p. 240.
146 Gallagher, note 12 above, at p. 806.
147 See Pils, note 1 above, at p. 256 footnote 59.
148 See He, note 27 above, at p. 2 (suggesting that social unrest is a result of an expanding bureaucracy and inadequate financial resources).
149 Luehrmann, note 24 above, at p. 857.
150 See O’Brien and Li, note 58 above, at p. 761.
151 In the early 1980s, the regime instituted a national policy on birth control and it has been a source of contention ever since. See He, note 37 above, at p. 5.
152 Ibid.
153 See Bernstein and Lu, note 66 above, at pp. 158-9; also O’Brien and Li, note 58 above, at p. 760.
tactics.  Although higher-level officials are often sympathetic to local cadres, they are sometimes forced to criticise cadres for their excesses. When higher-level officials stand behind citizens on a crucial issue or at a key moment, citizens are often empowered to challenge the regime on other issues and social stability is placed at risk.

Fifth, the failure to provide adequate and appropriate channels for the resolution of conflicts between citizens and government intensifies social unrest. The xinfang system is the primary system of dispute resolution in China, but has generally failed to function effectively as a system of redress. China also has a formal legal system, but those institutions are not the primary avenue for dispute resolution because it is more expensive to bring lawsuits, and courts lack “the power and the will to challenge the political order” on hot button issues. Both the structure of the dispute resolution systems and its failure to provide for the effective protection of individual rights render the system problematic.

3. Perpetuating assertiveness: developing sophistication

The combination of increasing rights awareness, growing sources of discontent, and new avenues to assert its rights has resulted in a populace engaged in a more active political exchange with the regime. One result is that more citizens are exposed to the gulf between their expectations of legal and political interactions and the results actually achieved.

Petitioners often initiate contentious behaviour with a strong sense of their rights, but without an understanding of how those rights can be validated in the legal process. As a result, they may fail to receive the protection they expected for their rights. Nevertheless, many petitioners emerge from the process with an even stronger sense of their legal rights. Petitioners often realise they were unsuccessful because they allowed themselves to be unfairly treated, coerced, intimidated or “thwarted by corruption”. Some petitioners develop a more realistic view of the legal process and emerge determined to “play the game again” in a more strategic fashion. In other words, they have developed the tools necessary to work the law toward their own ends, are willing and eager to share that information with others and have the incentive to do so. Citizens have been taking their claims to the courts, but even more so, they have been taking their claims to the streets. Importantly, citizens are becoming activists and learning that when they link their complaints and file collective appeals, better results tend to occur.

154 See O’Brien and Li, note 58 above, at p. 762.
155 See He, note 37 above, p. 14; also Bernstein and Lu, note 66 above, at p. 146.
156 See Pils, note 1 above, at p. 235.
157 Sometimes the system appears “designed to compound citizens’ grievances rather than to help redress them”: Pils, note 1 above, at p. 236. See HRW, note 2 above, at p. 18; and see generally Minnner, note 1 above.
158 See Potter, note 99 above, at p. 355.
159 See Pils, note 1 above, at p. 237.
160 See Gallagher, note 12 above, at p. 800.
161 Ibid.
162 Ibid., at p. 801.
163 Ibid.
164 According to a Ministry of Public Security estimate, “mass incident’ cases appear to have increased again (from 74,000 in 2004 to 87,000) in 2005”. See Pils, note 1 above, at p. 283 footnote 146. See also Minnner, note 1 above, at p. 163 (aside from whether the total number of petitions is growing, it appears that petitioners are utilising “more mobilised, extreme, mass petition tactics”). But see generally He, note 97 above (arguing that the data used by most commentators is out-of-date and unrest has levelled off or decreased in the past few years).
Discouraging petitioners from linking their claims together and keeping unrest localised is imperative for social stability in China.

V. Outcomes

Available statistics suggest that Chinese citizens prefer to resolve their grievances through the xinfang system rather than the formal legal system by approximately a two-to-one margin.⁶⁵ If the xinfang system were to collapse, alternative institutions would experience a nearly two hundred percent increase in their caseloads. The regime has noticed problems with the xinfang system and has repeatedly attempted to rectify these. Despite issuing new xinfang regulations in 2005, party officials planned to meet only eighteen months later to discuss further steps they could take to reduce the growing pressures on the system. As the system's growing decay manifests itself vis-à-vis more frequent, prolonged, widespread and broad-based demonstrations, the regime needs to stand ready to implement more significant reform.

The regime has already taken steps to transform the government from a provider of rights and entitlements to a neutral arbiter of disputes. Despite these reforms, or perhaps because of them, there has been a general decline in respect toward the Party and government, even at the highest levels.⁶⁶ The remaining portion of this paper will discuss two possible outcomes of these reforms, although myriad outcomes remain possible.

The regime's current approach is to make incremental, ad-hoc movements toward a more formal, institutionalised legal structure. The advantage of this approach is that it allows the regime to maintain maximum political control and forestall widespread social change by making concessions only when absolutely necessary. However, continuing to follow this approach appears premised on several questionable assumptions: 1) despite growing awareness of the system's rampant problems and an increasing ability to manipulate the system, citizens will continue to have faith in the regime's choices;⁶⁷ 2) there are sufficient financial resources to finance bureaucratic overhaul;⁶⁸ and 3) xinfang can be transformed into a rule of law institution.⁶⁹ The regime has already enjoyed modest success in creating alternatives to the xinfang system, but it is an open question whether these alternatives, or other institutions not yet created, will become sufficiently robust to capture all of the benefits provided by the xinfang system.

Alternatively, the regime may attempt to reinvigorate its repressive capacity and maintain social

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⁶⁵ See Minzner, note 1 above, at p. 105 footnotes 12 and 13.
⁶⁶ When citizens lack any serious expectation of redress, their respect for the regime's claims to legal authority is likely to diminish. As citizens grow simultaneously more conscious of their rights and more willing to assert those rights, they are likely to find that no one in the government is willing or able to help them. See Pils, note 1 above, at p. 288-89.
⁶⁷ Ibid., at pp. 285-6: citizens have demonstrated remarkable faith in the regime, despite rampant corruption and several flawed attempts at legal reform, but as the gulf between expectations and actual results continues to widen citizens are likely to grow more sceptical.
⁶⁸ The extraction of financial resources necessary to support the existing bureaucracy, let alone fund a substantial overhaul, are already contributing to decreasing social stability. The ratio of officials to the general population has increased dramatically in the past several decades, growing from approximately 1:600 (1951) to 1:36 (1991). In poorer areas that lack profitable township and village enterprises, citizens are forced to pay a heavy tax burden to support the state infrastructure. See He, note 37 above, at pp. 8-9.
⁶⁹ The defining characteristics of the xinfang system are significantly different from those of rule-of-law institutions found in western nations. Although China may be able to fashion distinctly Chinese rule-of-law institutions, it is unclear that xinfang would serve as a useful platform upon which to experiment.
stability through the threat of coercion. One significant reason for the growing rights assertiveness of petitioners is that the regime has signalled an increased willingness to tolerate dissent. Therefore the regime could "reform" by decreasing opportunities for citizens to engage politically. However, the regime's ability to restrict petitioning and other forms of protest is uncertain. Success will depend heavily on whether the regime has the political capital and financial resources to return to a more restrictive system. In addition, there is a serious risk of exacerbating social unrest by misjudging the degree to which citizens are willing to slough off their new identities as political participants.

A. The Current Approach: Incremental and Ad-hoc

China has been pursuing incremental reform on an ad-hoc basis for several decades. China’s pursuit of economic reform has required the regime to make trade-offs between increasingly complex and inter-related policy agendas. Partially as a response to the growing ineffectiveness of the informal legal system, the regime has attempted to strengthen existing legal institutions and to create new ones. Despite massive, decades-long investment of political and economic resources devoted to revamping the formal legal system, new laws and legal institutions remain vastly under-utilised. These reforms have enjoyed only modest success because they have been partially co-opted by the masses and because they suffer many of the same disadvantages of the xinfang system.

One example of the regime’s efforts to enact reform without significantly diluting its political control is changes to local election laws. Approximately two decades ago, the regime initiated democratic elections for some positions at the lowest rungs of government. Although elections were touted as an alternative forum for political expression, and undoubtedly do serve that function to some extent, the regime’s real interest in promoting local elections is to solve some of the problems of economic stagnation and help recruit cadres to run hard-to-manage villages. Unfortunately, locally-elected leaders have no opportunity to move up the political hierarchy and therefore cannot exert a bottom-up influence. Consequently, local elections can serve, at best, as only a limited outlet for political expression. At worst, the regime is creating a disconnect between citizens’ expectations and reality by promoting the opportunity to elect local leaders as a means of political participation while severely curtailing the benefit of that participation.

Another example of reform is the Administrative Litigation Law (the “ALL”), a mechanism by which individuals can sue the government for mistreatment. So far, critical analysis of the ALL's effectiveness has been split. It is suggested that despite its limited reach, the law’s mere existence and modest use

170 The ability to crack down may be limited because new institutions acquire their "defenders who are beneficiaries of the new system" and the political costs of reversing the rights already granted will continue to grow the longer the system remains in place. See Pei, note 90 above, at p. 861.
171 It has even been suggested that political reform is a necessary precondition to significant economic reform. See J. Oi, “Two Decades of Rural Reform in China: An Overview and Assessment” (1999) 159 The China Quarterly 616, 617. However, an equally likely explanation is that xinfang discourages the regime from clearly defining acceptable behaviour, which leads to boundary-pushing by petitioners and, in turn, to incremental political change. See Luehrmann, note 24 above, at p. 863.
172 See Oi, note 171 above, at p. 626.
173 See Cai, note 3 above, at p. 429.
174 Critical commentary is split on the effectiveness (and potential) of the ALL. In its current form, the ALL appears to be, at best, a frail weapon with a modest deterrent effect. See K. O’Brien "Suing the Local State: Administrative Litigation in Rural China" (2004) The China Journal 75, 106. However, it has the potential to be "a major new weapon in the villagers’ arsenal". See O’Brien and Li, note 58 above, at p. 766. Popular willingness to use the ALL may be on the wane, however, because the party itself is not
has had significant ramifications.\textsuperscript{173} At a minimum, the law has a modest deterrent effect\textsuperscript{176} and appears to have a fairly high success rate compared to petitioning.\textsuperscript{177} The mere act of filing a suit can generate substantial benefits, since it creates the "considerable chance" that the desired result will be obtained informally.\textsuperscript{178} The ALL's aspirational character creates the possibility that eventually the law will be a more important tool in holding the government to account.\textsuperscript{179} Moreover, the ALL serves as another avenue for citizens to gain sophistication in challenging the regime and can inspire the confidence of petitioners who are pursuing other avenues of redress. Interestingly, the ALL's most significant limitation may be that it merely duplicates the functions of the xinfang system without enjoying many of its advantages.\textsuperscript{180} It is possible that administrative litigation will be transformed from a frail weapon into a stout rod by disincenitising the use of xinfang and retooling the ALL. As with other reforms, however, the regime's commitment to empowering citizens appears limited. And it is this disconnect between expectations and reality that can create social unrest.\textsuperscript{181}

Thus far, most citizens have refrained from challenging the national government and demanding significant political change.\textsuperscript{182} This has led some commentators to suggest that the xinfang system serves to correct and therefore strengthen the legal system.\textsuperscript{183} However, increasingly sophisticated petitioners are unlikely to maintain their faith in the regime indefinitely. And reactive claims can easily broaden into proactive ones, even without a subjective intent to manipulate the system.\textsuperscript{184} Historically, xinfang has been the preferred alternative to the formal legal system because it is where the real power resided. In order to provide formal legal institutions with real traction, the regime will need to shift power away from xinfang organs.

As the xinfang system disintegrates and the rapid implementation of substantial reform becomes important, the regime is likely to suffer from a serious resource constraint. Despite unprecedented and sustained economic growth, China appears to have financial difficulties in supporting its existing bureaucracy.\textsuperscript{185} Further, by its very nature, an ad-hoc approach to reform prevents the regime from formulating a comprehensive plan; without a comprehensive plan, it is difficult to efficiently allocate

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subject to administrative litigation. See Potter, note 101 above, at p. 677.

\textsuperscript{173} The ALL has directly benefited many people with relatively low political or social status by making it clearly illegal (and potentially costly) for local cadres to punish villagers without going through the proper legal procedures. See O’Brien and Li, note 58 above, at p. 766. See Pei, note 90 above, at pp. 850, 852.

\textsuperscript{176} In one survey, nearly three quarters of government officials said they would exercise more caution in their work because of the ALL. See Pei, note 90 above, at p. 860. See also O’Brien, note 174 above, at p. 117.

\textsuperscript{177} Xinfang has a reported success rate of 0.2\%, whereas administrative lawsuits appear to have a success rate of nearly 40\%. See Pei, note 90 above, at p. 839 and Minzner, note 1 above.

\textsuperscript{178} Pei, note 90 above, at p. 843.

\textsuperscript{179} If fully enforced, "it would afford Chinese citizens an important legal instrument with which to defend themselves against the abuse of state power by government agencies and officials". \textit{Ibid.}, at p. 832.

\textsuperscript{180} Xinfang and the ALL may be direct substitutes for each other. Unlike xinfang, however, the ALL is expensive, final and subject to the greater influence of local officials. See Minzner, note 1 above, at p. 162.

\textsuperscript{181} Problems with the ALL include, but are not limited to, long delays, the refusal of government agencies to appear to defend charges against them, and the immunity of the party itself from litigation. See O’Brien, note 174 above, at pp.106 and 112; see also O’Brien and Li, note 58 above, at p. 35.

\textsuperscript{182} Petitioners are usually mollified once localised complaints against individual local officials are resolved. See O’Brien, note 51 above, at p. 144.

\textsuperscript{183} See generally Pei, note 90 above.

\textsuperscript{184} See O’Brien, note 51 above at p. 145.

\textsuperscript{185} See He, note 37 above, at pp. 8-10.
limited resources. Although financial constraints make such a scenario unlikely, it appears that the regime desires to expand the formal legal system while maintaining parallel, informal institutions.

Even if the regime were able to maintain the faith of its citizens and to find the financial resources to continue to make incremental, ad-hoc changes, it is not clear that xinfang is an appropriate platform upon which to base legal reforms. The regime needs to create a more robust legal system that can promptly and adequately address a greater number of grievances. Transforming xinfang necessitates streamlining the system and creating uniform rules. ¹⁸⁶ This transformation from flexible dispute resolution system to a formal system subject to objective, external standards may be impossible. In fact, some scholars believe that reforming this type of socialist structure is impossible and that "it can only be dismantled and replaced". ¹⁸⁷

B. Reinvigorate Repressive Capacity

An alternative approach is to limit opportunities to protest by reinvigorating the regime's repressive capacity. Openings in the political opportunity structure are one of the most significant reasons for the recent increase in petitioning activity. However, restricting political participation would have serious side effects because it would close off one of the few legitimate avenues for citizens to express their discontent. Therefore, whether or not the regime attempts to crackdown and repress protestors will depend on balancing the perceived significance of mushrooming collective actions and the costs of removing an avenue for political participation.

The easiest way to limit dissent would be for the regime to signal that it is no longer willing to tolerate mass incidents. If the regime can make the political opportunity structure appear less promising, acts of resistance will become more "occasional, furtive and comparatively unthreatening". ¹⁸⁸ Fear of the State can be increased, which could lead to a decrease in open social conflict. ¹⁸⁹ Moreover, since organising is "essential to powerful collective action", focusing on punishing leaders and denying the legality of independent organisations can serve as a crucial check on large-scale collective action. ¹⁹⁰ Without organisers and organisation, most collective actions will be short-lived and by only punishing the leaders the social costs of repression will be minimised. ¹⁹¹ However, the regime's ability to crackdown on political participation may be limited because new institutions acquire their "defenders who are beneficiaries of the new system" and the political costs of reversing the rights already granted will continue to grow the longer the system remains in place. ¹⁹²

C. Conclusion: Chinese Attempts at Reform

The extent to which the further development of formal legal channels can displace more traditional petitioning practices in China remains uncertain. The creation of new, formal legal institutions alone is

¹⁸⁶ See Thireau and Hua, note 5 above, at p. 91.
¹⁸⁸ O'Brien and Li, note 139 above, at p. 35.
¹⁸⁹ See Bernstein and Lu, note 66 above, at pp. 141 and 142 footnote 97.
¹⁹⁰ Cai, note 3 above, at p. 448.
¹⁹¹ Ibid.
¹⁹² Pei, note 90 above, at p. 861.
insufficient to discourage citizens from engaging in traditional behaviour. Instead of withering, xinfang institutions may well gain new strength despite the growth of formal legal channels. The regime needs to dispel the widespread notion that China’s legal institutions remain plagued by lack of independence, incompetent agents and corruption. In addition to strengthening the formal legal system (by making it more accessible and less politically contingent), the regime also needs to reform the xinfang system and decrease incentives for its use.

The regime finds itself in a quandary because an institution designed to maintain social stability has begun to contribute to social unrest. The regime has strong incentives to attempt to restore the xinfang system’s ability to control social problems and not to eliminate xinfang entirely. Although some have argued that the existence of the xinfang system keeps broader social change from occurring, this paper has suggested that the xinfang system has become a contributing factor, on net, to social unrest. It is not sufficient to merely strengthen formal legal institutions. The regime will also need to retool the xinfang system to decrease the incentives for its use while retaining its benefits: a potentially impossible task.

Petitioners are using the law as a rhetorical device to challenge the regime through the very system it devised to maintain social stability. Legal rights are being asserted as a proxy for the notion that the threshold between the acceptable and the unacceptable has been crossed. Although the number of citizens who are actively engaged in asserting their rights is currently small, they are increasing every year in both number and sophistication. An increasingly articulate citizenry, actively seeking to exploit all potential avenues for change, can manipulate strongly worded laws and infuse them with more substantive meaning than their authors intended.

The regime’s efforts to encourage substantive reform and increase the supervision of local officials, without opening the door to the possibility of regime change, will be difficult to balance. The existing balance has caused citizens to develop “new identities and heightened expectations”. Already, petitioners have demonstrated a “marked change” in the tone of their petitions. Numerous petitioners have indicated they would be willing to go beyond mere organisation and would consider taking violent action to achieve their desired results. Whether the regime can turn back the clock and alter the expectations of its citizens at a manageable political cost is unclear.

VI. Conclusion

This paper has attempted to highlight a correlation between the xinfang system and the growth of social unrest in China. This correlation is paradoxical because xinfang institutions are intended to be a method of maintaining stability. As an institution, xinfang has been transformed, because it can be manipulated by following a set of internally consistent game rules. Chinese petitioners have become increasingly sophisticated as they have become more aware of their rights and as openings in the political opportunity structure have increased the incentives for asserting those rights. These sophisticated petitioners have

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193 See Minzner, note 1 above, at p. 160.
194 One survey found only 10% of aggrieved citizens would consult the law when considering their course of action. See Cai, note 3 above, at pp. 430 and 449.
195 See generally Minzner, note 1 above; but see Potter, note 99 above, at p. 350.
196 O’Brien and Li, note 139 above, at p. 55.
197 Petitioners are more likely to be accusatory instead of merely requesting assistance as they once did. Pils, note 1 above, at p. 281.
198 See HRW, note 2 above, at p. 24.
learned to play the *xinfang* game, thereby transforming a system of social control into a destabilising force in Chinese society.

Despite growing problems with current institutions and some limited movements to empower formal legal institutions, the Chinese government appears unwilling to engage in the wholesale adoption of a more formal, institutionalised legal system. This has led some commentators to suggest that the existence of flexible institutions such as *xinfang* is delaying the inevitable switch to a western-style legal regime.\(^{199}\) However, there are many reasons why the government might be reluctant to adopt more formal and less discretionary legal institutions. Moreover, as the *xinfang* system breaks down, the regime will be increasingly able to implement its policies. As petitioners become more sophisticated and increasingly capable of manipulating the *xinfang* system, the regime will be forced to look for other methods of legitimacy, and to find alternative institutions that can offer the benefits the regime currently enjoys from the *xinfang* system.

Whatever tactic the regime takes, it should act quickly and decisively. Inconsistent signals from the centre create opportunities propitious for the rise of large-scale citizen social movements.\(^{200}\) If social unrest continues to spread, these movements will continue to attract organisers who can help transcend divisions and create linkages between citizen complaints. There are signs that previously poorly led, organised and coordinated protests are becoming better organised, more coordinated and are developing a leadership structure that can create a larger threat to the regime. If this trend toward greater coherence, coordination and duration of mass actions continues, the regime could be in trouble.

Predicting responses to political and legal changes is an incredibly challenging task and the reactions of various scholars often appear to be based more on their own biases than an objective inquiry. Many questions remain unanswered, and perhaps, unanswerable. What happens as reform inches along? Will citizens continue to accept a modest pace of political and legal liberalisation? Or will modest changes lead to significantly increased demands on the regime? Will the regime accommodate an increasingly militant citizenry and accede to their demands for increased participation in and accountability from the government? Or will the regime attempt to reinvigorate its repressive capacity? Is the adoption of a western-style legal regime inevitable? Or is it more likely that China will forge some sort of hybrid model that marries traditional Chinese mores with some elements of a more liberal system? Only the future will tell.

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\(^{199}\) See generally Minzner, note 1 above.

\(^{200}\) See generally Tarrow, note 132 above.