The Fall and Rise of Law and Social Science in China

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Abstract

This article traces the three waves of law and social science studies in contemporary China and examines the current status of this rapidly differentiating interdisciplinary field. Whereas the first two waves of studies subsided without generating a nationwide law and society movement, the most recent wave is rapidly changing the landscape of Chinese legal scholarship through empirical research. Four emerging subareas of Chinese sociolegal studies are reviewed in detail: (*a*) law in rural society, (*b*) the legal profession, (*c*) courts and dispute resolution, and (*d*) criminal justice.

INTRODUCTION

A specter is haunting the Chinese legal academia: the specter of law and social science. All the powers of doctrinal legal studies have entered into an alliance to exorcise this specter, yet it grows stronger each day. Unlike the law and society movement in the United States half a century ago, the recent rise of empirical legal studies in China has not led to a bifurcation between law and economics and law and society; instead, Chinese legal scholars have labeled all these empirical studies law and social science (法律和社会科学) or social science legal studies (社科法学), forming a critical mass of interdisciplinary researchers all over the country. Importantly, however, the burgeoning field of law and social science in today's China is the aftermath of two unsuccessful waves of sociolegal studies in the late twentieth century.

This article traces the historical development of law and social science in China and examines the current status of this rapidly differentiating interdisciplinary field. Our main focus is on indigenous sociolegal scholarship from China; thus, we include the English writings on Chinese law and society by overseas scholars only when they influence or overlap with the Chinese scholarship. We begin with a review of the two early waves of sociolegal studies in China in the 1980s–1990s and analyze why they did not lead to an enduring intellectual tradition. Then we proceed to discuss four emerging research areas of Chinese sociolegal studies in the early twenty-first century: (*a*) law in rural society, (*b*) the legal profession, (*c*) courts and dispute resolution, and (*d*) criminal justice. We conclude with a few comments on the future prospects of law and social science in China.

TWO UNSUCCESSFUL WAVES OF SOCIOLEGAL STUDIES

Like many other research areas, the sociology of law in China was rebuilt in the 1980s after the end of the Cultural Revolution. In 1981, Shen Zongling and Chen Shouyi proposed that the sociology of law should be included in China's legal research, focusing on the implementation and effects of law in society (Shen 1988). Yet the ideological debate in that transitional period constrained the development of sociolegal studies, which was primarily based on Western theories. The conceptual debate between the Western sociology of law and Marxist sociology of law continued in the Chinese legal academia for several years (Wang 1987, Wang & Lu 1983, Wang & Zhu 1986, Wen & Gao 1985), until the first major government-funded sociolegal research project, initiated by Zhao Zhenjiang, Ji Weidong, and Qi Haibin in 1986.

In September 1987, the First Theoretical Symposium on the Sociology of Law was held in Beijing. The 53 conference participants agreed to define the sociology of law as the "interdisciplinary integration between law and sociology," which was "to study the implementation, functions and effects of law by examining real social problems" (Gong 1987, p. 1). In a major article published after the symposium, Shen (1988, p. 5) emphasized again that law in action was a pivotal question for China's legal system, because "the failure to follow the law would become a major contradiction with the increasing number of legislations" and thus "the most urgent task for the construction of the legal system at present and in the foreseeable future is to fix this problem." The symposium also gave birth to the Plan for Exchange and Research in Legal Sociology (PERLS), which published 32 newsletters periodically from September 1987 to August 1989 (Qi 2009). By January 1988, the number of PERLS members reached 186, including several later-well-known legal scholars, such as Zhang Wenxian, Zheng Chengliang, He Weifang, Liang Zhiping, Wang Chenguang, and Zhang Zhiming, as well as 41 policy analysts and 10 lawyers. A few research institutes on the sociology of law were also founded in Beijing and Shanghai, most notably Peking University's Institute of Comparative Law and Sociology of Law and the Shanghai Sociological Society's Sociology of Law section (Ji 1989b).

The Second Theoretical Symposium on the Sociology of Law was held in Chongqing in October 1988. The Southwest Institute of Political Science and Law accommodated more than 40 researchers, including Ann W. Seidman and Robert B. Seidman from the United States, who were visiting scholars at Peking University at the time. The conference participants spent five days discussing topics such as the social effects of law, legal culture, and methodological issues, with three empirical studies recommended as examples: (*a*) Li Tianfu's 1985 study on 1,908 jailed rapists in four prisons; (*b*) Hu Ge et al.'s 1986 study on the popular attitude toward corporate bankruptcy law in four cities; and (*c*) Qi Haibin's 1987 study on contractual disputes in Henan Province and Shenyang (Ji 1989b). The conference participants stated that "the right path for developing more scientific studies on the sociology of law is to actively promote empirical investigations, as there is no short cut for scientific research" (Du 1989, p. 125). In a postsymposium article, Zhang Wenxian argued that "what is law" was the first question that the sociology of law should answer and, whereas doctrinal legal studies viewed law as a closed, static system of rules or commands, the sociology of law viewed law as "an open, dynamic system" (Zhang 1989, p. 94).

Therefore, by the late 1980s, the sociology of law in China had transcended the ideological debates in the early 1980s and showed a notable trend of convergence with the mainstream theories and perspectives of Western sociology of law. Arguably, this shift was related to Chinese legal scholars' growing interest in the volumes of translated sociolegal scholarship, ranging from the works of classical theorists such as Max Weber, Roscoe Pound, and Oliver Wendell Holmes, Jr. (Fu 1988; Pan 1985, 1988a; Wang 1985, 1988; Wu 1988) to the writings of contemporary sociolegal scholars such as Donald Black, Philip Selznick, Roger Cotterrell, and Niklas Luhmann (Ji 1989a, Pan 1988b, Shen 1990). Meanwhile, Ji Weidong (1988) and other Chinese law students studying in Japan at the time introduced Japanese sociolegal scholarship to Chinese legal academia. Although the transplants of Western and Japanese sociology of law mostly occurred at the theoretical level, some empirical studies were also conducted in different parts of the country and reported in the PERLS newsletters (Qi 2009). More importantly, these pioneers of Chinese sociolegal studies recognized the practical significance of sociolegal studies and consciously linked their academic research to the ongoing economic reform in the 1980s. This led to a good reciprocal relationship between the academic development of the sociology of law and its policy implications.

In their 1988 article "On the Significance and Research Framework of the Sociology of Law," Zhao Zhenjiang, Ji Weidong, and Qi Haibin outlined the main research agenda of Chinese sociology of law for the first time (Zhao et al. 1988). In addition to reviewing the history and main schools of sociolegal scholarship in other countries, this article provided a comprehensive blueprint for the field's future development in China. Emphasizing the importance of the sociology of law in the process of "significant structural social adjustment and reform" (Zhao et al. 1988, p. 30), the authors argued that, in the post-1978 reform period, the social functions of law expanded rapidly, and the conflict between the modern rule of law and China's indigenous legal culture was greatly exacerbated. The economic reform demanded better dispute resolution, and the sociology of law could provide new propositions and methods to challenge the traditional doctrinal and interpretative approach of legal scholarship. Under those historical backgrounds, the authors laid out a research agenda that included five components: (*a*) legal consciousness and legal culture, (*b*) legal actions and legal relations, (*c*) the organization and structure of law, (*d*) the legal profession and legal experts, and (*e*) the functions and operation of law.

Drawing on both Western and Japanese scholarship, this ambitious research agenda covered almost all of the major fields of sociolegal studies. Unfortunately, it was never implemented owing to the serious shakeout of China's intellectual community after the 1989 Tiananmen Student Movement. Many core members of PERLS were either exiled abroad or no longer active in the field. As a result, the first wave of sociolegal studies in China subsided in the dead sea of political turmoil.

Chinese sociology of law in the early 1990s was characterized by continuing efforts in translating Western classics. China University of Political Science and Law Press, for example, published four translated volumes in 1994, including Philip Selznick's *Law and Society in Transition*, Donald Black's *The Behavior of Law*, Takao Tanase's *Dispute Resolution and Adjudication System*, and Takeyoshi Kawashima's *Modernization and Law*. Several Chinese legal scholars also offered various interpretations of these classics to make them more accessible to the local audience (Gong 1992, He 1991, Ni 1994, Wang 1992, Zhu 1993). These efforts at transplantation and interpretation were the intellectual extension of the scholarly endeavors in the 1980s to lay a solid foundation for the sociology of law as a research field, but they neglected the profound social change and legal development occurring in China's rapid economic reform.

It was not until the mid-1990s that another wave of empirical studies emerged in Chinese legal academia. The landmarks were the publication of two books: *Towards an Age of Rights* (Xia 2000) and *The Rule of Law and Its Local Resources* (Zhu 1996). *Towards an Age of Rights* was the final report of a research project in 1993–1995, Social Development and Citizen Rights Protection in China, initiated by five Chinese legal scholars and funded by the Ford Foundation (Xia 2000). This two-year project was conducted using a combination of quantitative and qualitative social science methods. The researcher team distributed 6,000 questionnaires in 18 counties and cities of 6 provinces and managed to collect nearly 5,500 valid responses. Meanwhile, they also conducted interviews with urban residents, peasants, judges, lawyers, and administrative officials in 10 provinces, 23 counties and cities, 19 towns, 35 factories, 25 villages, and over 110 government agencies. Based on the data, the authors conducted empirical analyses on topics such as lawyers, judges, civil mediation, property rights, political rights, women's labor rights, and the rights of criminal defendants. Among them, both Zhang Zhimin's chapter on Chinese lawyers and He Weifang's chapter on Chinese judges were exemplary studies that had a large impact on later research. Xia Yong's chapter applied the theory of public rights to the social transition in rural China and identified several positive signs of the growth of public rights in the countryside. It was a promising start for empirical sociolegal studies on rural China.

The publication of this excellent book, however, did not lead to any significant growth of empirical legal studies in China in the 1990s. On the one hand, a funding shortage contributed to the stagnation, as large-scale social science surveys or even interviews would need financial support. On the other hand, Chinese legal scholars' preference for doctrinal legal studies and dependence on theoretical transplants at that time were formidable hurdles for the development of empirical sociolegal studies.

In this period, the theoretical innovation for the sociology of law in China was nearly made by one single scholar, Zhu Suli, who completed his PhD in interdisciplinary legal studies in the United States in the 1980s and then published a series of influential articles after returning to Peking University Law School in the early 1990s. In his early writings, Zhu boldly challenged the widely held view among Chinese scholars that the market economy was highly associated with the rule of law. Building upon theories of legal compliance and legal pluralism, Zhu advocated for the importance of local resources (本土资源) for the rule of law in China. He clearly rejected legal transplantation as a promising approach for constructing the rule of law and instead focused on the evolving local resources in China's economic and social changes. These articles were collected as a book in 1996, *The Rule of Law and Its Local Resources*, which became the foundational work for the second wave of Chinese sociology of law (Zhu 1996).

The theoretical foundation of Zhu's notion of local resources is an extension of critical legal studies and legal pluralism, both of which were popular in US law and society scholarship in the 1980s. For the Chinese legal academia in the 1990s, however, Zhu's argument was a bold paradigm shift. Casting doubt on the state-sponsored legal transplants entering China from

the late 1970s, Zhu maintained that the roots for the rule of law in China were not only in the historical and cultural tradition of Chinese society but also to be found in the local resources that emerged in the ongoing economic reform. This proposition provided a theoretical basis for the empirical studies on various legal phenomena that emerged in contemporary China. Zhu's initial focus was on Chinese rural society, as exemplified by his analysis of *The Story of Qiu Ju*, a movie depicting a legal dilemma faced by a rural woman in northwest China. This perspective was also adopted by a group of Chinese legal anthropologists and generated several excellent ethnographic studies, including *Order, Justice and Authority in Rural Society* (Wang & Feutchwang 1997) and Zhu's (2000) second book, *Sending the Law to the Countryside*. Other empirical efforts to study dispute resolution and the order of governance in rural China were also made by Jiang Shigong, Zhao Xiaoli, and Zhao Xudong, who did fieldwork in central-north and northwest China while completing their doctoral dissertations at Peking University (Jiang 2001, 2009; Zhao 1999, 2003).

At the turn of the new century, a new school of Chinese sociology of law that emphasized local resources and was targeted at Chinese rural society was burgeoning, with Peking University at its intellectual center. But this new school quickly collapsed in the early years of the twenty-first century before it matured. After becoming the Dean of Peking University Law School, Zhu Suli shifted his scholarly interests to law and economics as well as law and literature. Oddly enough, he became a major translator of Judge Richard Posner's work into Chinese. Other core members of this school, such as Jiang Shigong and Zhao Xiaoli, also abandoned their commitment to empirical studies and turned to other areas of legal scholarship.

The change in Zhu Suli's research interests had a significant impact on the orientations of Chinese sociology of law in the 2000s. Using a unique and innovative combination of two seemingly incompatible branches of legal scholarship (i.e., critical legal studies versus law and economics), he pioneered several research areas in China's law and social science studies, such as law and economics, law and literature, and legal anthropology. To a large extent, the idea of law and social science or social science legal studies in contemporary Chinese legal academia originated from this highly inclusive orientation. Nevertheless, it also made the theoretical and methodological foundations of Chinese sociology of law messy and ambiguous. With the rise of Zhu's influence in the Chinese legal academia, many of his followers tend to use mixed methods to conduct empirical legal studies without a clear theoretical lineage. This is in sharp contrast to the relatively coherent anthropological approach to studying law in Chinese rural society in the 1990s.

By the mid-2000s, this second wave of sociolegal studies subsided and was gradually replaced by the increasingly plural law and social science studies. However, unlike the first wave, which ended abruptly owing to political reasons, the second wave left an intellectual legacy and trained several younger sociolegal scholars, many of whom have become major figures in today's Chinese legal academia. In the rest of the article, we briefly review four emerging areas of law and social science studies in China. Owing to space limitations, we focus on empirical sociolegal studies and do not include the Chinese scholarship in other related areas, such as law and economics, legal history, or law and literature.

LAW IN RURAL SOCIETY

Empirical studies on law in rural Chinese society stem from two parallel research traditions: the legal anthropological tradition at Peking University, including Zhu Suli's local resources perspective discussed above, and the Central China School of Village Studies (CCSVS), a group of political and legal sociologists trained at or affiliated with Huazhong University of Science and Technology.

The early efforts of the Peking University researchers focus on challenging the then-dominating doctrinal legal studies in China and developing an alternative approach to studying

rural society that incorporates society as an equal subject into the state-society analytical framework (Deng 1997). For instance, Jiang Shigong (1997a,b) and Zhao Xiaoli (1997) examine how law was deployed and enforced in rural society by observing how local judges and village officials used their local knowledge, tactics, and power to persuade a debtor to perform his legal duty. Adopting a Foucauldian event-relation perspective and a power-relation analytical framework (Jiang 1997a, pp. 490–91; Zhao 1997, pp. 521–22), they argue that local judges and village officials' use of law in the mediation of rural disputes should not be narrowly understood as a result of the rise of rule of law in China or the expansion of the formal legal system to Chinese rural social life (Jiang 2003). Instead, Jiang echoes Zhu's account for sending the law to the countryside (Zhu 1998) and argues that mediation, which was widely used by state officials working in villages, represents the state's attempt to exert its power and strengthen its control over rural society (Jiang 2000, 2003). The law, in this sense, is an increasingly popular power tactic in the transformation of the Chinese state's governance and dominance (Jiang 1998, 2003; Zhao 2000). This tactic is also observed in the rationalization of criminal sanctions and punishment in rural society (Jiang 2009, Zhu 2011).

A less law-centered perspective was adopted by a group of Peking University–based legal anthropologists, who examine social order, authorities, and justice in Chinese rural society (Wang & Feutchwang 1997). Finding that Chinese rural society in the reform period was still far from industrialization or modernization (Huang 1992, pp. 291–304; Liang 1997, p. 421), they emphasize the symbiosis of state law and local norms, which resulted in a society in which disputes were settled according to the logic of reciprocity; the plural authorities of state law, local norms, and religious power; and a "stratified sense of justice" embedded in social connections and social distances (Zhao 2003, pp. 115–50, 258–88, 302–8). Consequently, when state law was imposed on rural society and held as a new source of authority, conflicts (Zhao 2001, pp. 79–80), competitions (Wang 2010, pp. 210–38), and confusions (Zhu 2007) arose during its engagement with other sources of local authorities.

This anthropological perspective echoes not only many insights of Western legal pluralism but also another indigenous social science tradition in China, the CCSVS. Political and legal sociologists in this Wuhan-based group have long concentrated their scholarly attention on the politics and social order of Chinese villages and conducted extensive ethnographic studies in rural regions (Chen 2010, He 2014, Liu & Zhao 2009, Lü 2006). The law-related part of CCSVS extends the inquiry on rural social order to legal issues and studies the role of state law and its agents in the efforts to restore and maintain the social order of Chinese villages in China's great economic and social transformations since the 1980s.

In contrast to the Peking University legal anthropologists' perception that traditional social networks and local norms remain a parallel source of authority alongside state law for maintaining the order of Chinese rural society, the CCSVS scholars find that social lives in Chinese villages have experienced a process of "economic rationalization" (Dong 2008, pp. 37–41) and fallen into a "structural disorder" since the economic reform (Dong et al. 2008, pp. 97–99). In his study of mediation in Song Village, Dong Leiming (2008) attributes this drastic social change in Chinese villages to the weakening of the state's totalitarian control, the rising market economy, and the erosion of the traditional morality of village residents. Similarly, Chen Baifeng's (2011a) study on the rise of "village hooligans" (混混) in central China demonstrates the decay of traditional mechanisms for maintaining social order in Chinese villages. As hooligans broke the peace of village life and threatened the villages' basic social order with violence, the villagers had to resort to the formal legal system and the power of the state to restore social order (Chen 2011a, pp. 174–200; Dong 2008, pp. 142–50). The increasing use of law in the practice of mediation by village officials and local judges, therefore, mirrors an endogenous desire that "welcomes the law to exert its power in rural society" (Dong 2008, pp. 203–6). This line of argument not only rejects the

state-centric view that law's increasing role in Chinese rural society was the result of the state's attempt to use an exogenous force to strengthen its control over villages (Jiang 2003, Zhu 1998) but also challenges the skeptical view that the state's efforts to build law's authority in rural society were made in vain and would result in only a "confusion of tongues" (Zhu 2007, pp. 107–8).

The finding of rural villagers' needs for the intervention of modern law does not imply that the modern legal system built in urban areas could be duplicated in rural society. Instead, the CCSVS legal sociologists argue that the "welcomed" legal authority could exert its power only through the intermediaries of village officials and the infrastructure of existing village customs and norms (Chen 2008; Dong 2008, pp. 158, 206–7). The CCSVS understanding of "rural justice" (Chen 2012a), therefore, is an eclectic view of law in Chinese rural society. Building upon their ethnographic studies, Chen & Dong (2010) maintain that neither argument is based on an accurate diagnosis of the current state of Chinese rural society. Today's Chinese rural society, as they argue, is far from a primitive society in which the integrity of social members and endogenous norms remain powerful, nor has it been urbanized and modernized enough to afford and offer sufficient legal services and resources that underlay the operation of a modern legal system.

In his recent work, Chen Baifeng uses the concept of a "two-level binary structure" (双二元结构) (Chen 2012a, p. 265; Chen & Dong 2010, p. 38) to describe characteristics of rural justice in China. Adopting a broad understanding of justice and judicial activities in rural society, Chen (2012a,b) argues that village officials, judicial assistants, and local government officials are all important actors performing judicial functions in rural society in addition to professional judges. The two clusters of judicial actors constitute the macro level of rural adjudication, indicating that law in rural society is employed by multiple actors in dispute resolution; the micro level of rural justice, however, is reflected through the double role played by the judges (Chen & Dong 2010, pp. 38–42). When handling rural cases, Chinese judges play not only the classic, passive role of adjudicators but also the administrative role of state officials, proactively mediating and settling disputes (Chen 2012a, pp. 274–79).

In sum, the complexity of the fast-changing social life in contemporary Chinese villages has generated many scholarly debates and empirical studies on the role of law and its operation in rural society. Although the CCSVS tradition and the Peking University legal anthropological tradition seem to have grown from distinct scholarly soils, they also engage with each other in subtle ways. Chen Baifeng, for example, acknowledges the influence of Zhu Suli's early work on his own research (Chen 2012a). One notable weakness of both schools, however, is that they focus exclusively on rural villages as research sites but overlook the complex legal issues arising in the rapid urbanization of rural China in recent years, such as land disputes in rural counties and labor disputes involving migrant workers in cities. More attention to the urban-rural intersection in future research would offer new paths for this well-developed research area.

THE LEGAL PROFESSION

Unlike the highly indigenous roots of the law in rural society scholarship, empirical research on the Chinese legal profession was championed by overseas scholars until recently. After Zhang Zhiming's (2000) study in *Towards an Age of Rights*, mentioned above, the next major study on Chinese lawyers was conducted by Ethan Michelson. Michelson (2003) surveyed 980 lawyers in 25 cities across China; interviewed 67 lawyers, legal scholars, government officials, and journalists; and observed 48 lawyer-client consultation sessions at a law firm in Beijing. Based on the combination of those data sources, he presents a sociological analysis of Chinese lawyers' privatization from the state in the 1990s. Michelson (2006, 2007) argues that the plight of Chinese lawyers in practice mirrors that of private business entrepreneurs because they are highly dependent on

key gatekeepers and decision makers in the state, including judges, prosecutors, police officers, and other state officials. This structural dependence between market and state actors is termed "political embeddedness" (Michelson 2007) and is widely observed in the Chinese legal profession.

Although Michelson's groundbreaking study provides a comprehensive picture of the social structure and working conditions of Chinese lawyers, it does not include alternative legal service providers. Like other civil law countries, such as France and Japan, China has multiple occupational groups providing legal services, including basic-level legal workers, enterprise legal advisors, legal consulting companies, patent agents, and trademark agents. All of them compete with lawyers in the workplace. Following the ecological tradition of the Chicago School of sociology, Liu's (2008; 2011a,b) research provides a panoramic overview of interprofessional competition in the Chinese legal services market. He uses two processual concepts, boundary work and exchange, to explain the structural isomorphism between the legal services market and its state regulatory regime. Liu modifies Michelson's structural concept of political embeddedness to a more dynamic concept: "symbiotic exchange" (Liu 2011a), which characterizes the exchange of power, personnel, and resources between law practitioners and state officials. He suggests that the structural embeddedness of law practitioners, including lawyers and their competitors, in the state apparatus is produced in the everyday social interactions between market and state actors.

Both Michelson and Liu suggest a state-centered approach for understanding the Chinese legal profession; that is, the social structure of the profession and daily work of lawyers and other law practitioners are highly dependent on the state. Cheng & Li (2012) challenge this approach by examining the structural constraints of legal change in China, including not only the state but also market and society. They argue that, with the growth in both the total number of lawyers and the percentage of full-time lawyers in the reform period, state intervention in the Chinese legal profession has changed from totalitarianism to professionalism. Their statistical analysis shows that market and social factors, particularly economic growth and higher education, have significant effects on the large variations in lawyer-population ratios across provinces.

In addition to those general studies, one area of Chinese lawyers' practice has received much attention from sociolegal scholars, namely, criminal defense. As several criminologists have demonstrated, a deep divide between the police, the procuracy, and the court (公检法) and lawyers exists in China's criminal justice system, which makes the work of defense lawyers extremely difficult and risky (Liang et al. 2014, Lu et al. 2014). Lawyers across the country face daunting difficulties in meeting criminal suspects during police interrogation, accessing the procuracy's case files, collecting evidence from witnesses, and mounting an effective defense in court (Halliday & Liu 2007, Liu & Halliday 2011, Lu & Miethe 2002, Michelson 2007, Yu 2002). Meanwhile, Article 306 of the 1997 Criminal Law established the "crime of lawyer's perjury"—labeled Big Stick 306 by Chinese lawyers—which was often abused by the procurators in practice to take revenge on defense lawyers (Halliday & Liu 2007, Michelson 2003). For lawyers doing human rights work or other work directly challenging state power, the risk of law practice extends to the loss of license, detention, or even torture (Fu & Cullen 2008, 2011; Givens 2013; Pils 2006, 2015). Not surprisingly, much of the literature on Chinese criminal defense lawyers has focused on their plight in practice.

At the other end of the Chinese legal profession, corporate lawyers have enjoyed rapid growth in income and status thanks to the globalization of the Chinese economy. Ethnographic research on corporate law firms in Beijing and Shanghai suggests that, in the process of globalization, Chinese corporate lawyers have developed unique and localized expertise to accommodate demands from multiple types of clients, including foreign corporations and state-owned and private enterprises (Liu 2006, 2008; Xu 2014). The entrance of foreign law offices into mainland China since the 1990s also has made the competition and collaboration between foreign and local law firms a highly

contentious issue in the workplace, both before and after the 2008 global financial crisis (Li & Liu 2012, Liu 2008, Stern & Li 2015). As some Chinese corporate law firms have grown into large firms with hundreds or even thousands of lawyers in multiple offices, they have started to merge domestically and expand overseas (Liu & Wu 2015). The rise of in-house counsel has also generated regulatory battles between different ministries in the Chinese state (Liu 2011b, 2012). Overall, the rapid growth of the corporate legal sector in China is changing the landscape of the global legal services market, and it is worth more attention from sociolegal scholars in future research.

Beyond the corporate sector in Beijing and Shanghai, however, the vast majority of Chinese lawyers still struggle in their everyday work to make ends meet. In many parts of rural China, lawyers are marginalized in the system of dispute resolution and can survive only on the government payroll (Liu & Wu 2010). Tightly constrained by the unfavorable legal system, even urban lawyers could become obstacles to justice, as Michelson's (2006) ethnography of a Beijing law firm's case screening practices illustrates. More importantly, the huge inequalities in economic development and legal environment in different regions of China generated large-scale migration of lawyers across provinces in the 2000s. Liu et al.'s (2014) recent study shows that income differentials and regulatory opportunities are the two main driving forces for the spatial mobility of Chinese lawyers. The massive movement of lawyers toward major cities on the east coast, however, has not only increased the stratification and inequality of law practice in major cities such as Beijing and Shanghai but also aggravated the shortage of legal service and intensified interprofessional competition in western and rural China.

The growth in the total number of Chinese lawyers and their concentration toward major cities on the east coast have led to another importance consequence: the rising political activism among lawyers in recent years. Since the Chinese legal profession was revived in 1980, the government has restricted the functions of lawyers in the economic sphere and repressed their political function in society. Although a small number of human rights lawyers exist in Beijing and take on cases all over the country, their political mobilization has generated strong and repressive responses from the state (Givens 2013; Pils 2006, 2015). Nevertheless, as Fu & Cullen (2008, 2011) suggest, harsh state repression has led to a radicalizing process for Chinese human rights lawyers, in which lawyers "climb the *weiquan* ladder" and become even more extreme in their ideology and practice. With an increasing number of lawyers joining the cause of rights protection in recent years, discussions on political lawyering, a long-forbidden topic, have also emerged in the Chinese legal academia (Cheng 2013, Liu 2013). Cheng Jinhua (2013), for example, analyzes cross-national data on Organization for Economic Co-operation and Development country leaders and shows that legally trained politicians have advantages in political participation, but there is no evidence suggesting that they have done better or worse on economic development or corruption prevention. Liu et al.'s (2014) study of the Li Zhuang case, in which hundreds of Chinese lawyers and legal scholars mobilized through the Internet to assist a criminal defense lawyer charged during Bo Xilai's rule in Chongqing, also demonstrates the challenges and potential of lawyers' collective action against populism.

COURTS AND DISPUTE RESOLUTION

Studying courts empirically is more challenging than studying lawyers because all courts in China are hierarchical and bureaucratic organizations tightly controlled by the Party-state. Until recently, few judicial opinions or records had been made available to the public except for yearbook statistics and a limited number of selected cases. As a result, most researchers could only get access to data on the Chinese judiciary from individual courts using institutional or personal connections. But even data obtained from such sources are often incomplete or flawed.

Under these circumstances, Chinese sociolegal researchers must use innovative methods to study courts. A good example is He Yongjun's (2008) historical study on the transformation of the notion of "people's adjudication" (人民司法) in Chinese courts from 1978 to 2005. Based on his meticulous reading of major official newspapers and a variety of local archival sources, He examines the rise, erosion, and partial restoration of people's adjudication as the Communist Party's judicial ideology in the three decades of legal reform. He argues that this ideology will remain strong in judicial practice as long as Chinese society suffers from socioeconomic inequalities and the Party-state takes initiative to intervene (He 2008, pp. 358, 362).

The most-researched Chinese court, not surprisingly, is the Supreme People's Court (SPC). Hou Meng's study (2007) shows the limited capacity of China's highest court and the costs of its coordination with other state agencies, especially when drafting and enforcing judicial interpretations. Hou argues that, to effectively perform its role in regulating economic activities, the SPC should shift its focus from individual cases that involve large economic stakes to paradigmatic cases that carry legal significance. He also finds that the SPC has substantial control over the personnel appointments and financial resources of lower-level courts and thus can exercise great influence on their work. Zuo Weimin (2004) and his collaborators provide another major empirical study on the SPC. Using archival research on the SPC's publications, they demonstrate the delicate balance between the SPC's judicial independence and the legislative supervision from the National People's Congress, as well as the various tactics that the SPC uses to interact with the media to strengthen its legitimacy and control over lower-level courts (Zuo & Feng 2004a,b). Their book also examines the internal working mechanisms of the SPC, such as the functioning of the adjudication committee (审判委员会), the collegiate panel (合议庭), and the systems of guidance seeking (案件请示) and judicial interpretations (Niu 2004; Wan 2004; Xiao 2004; Yang 2004a,b).

In addition to the SPC, lower courts have also received increasing scholarly attention in recent years. The most prolific author on Chinese courts is arguably He Xin, who provides a comprehensive picture of the daily operation of Chinese lower courts in his various empirical studies. In an early study, He observes a notable decline in the number of economic disputes that enter into court and explains it through two factors, namely, the pressure of formalizing the court system and limited funding (He 2006, 2007). Accordingly, he suggests that the improvement of the court's institutional quality and enforcement capacity is contingent upon economic development and sufficient funding (He 2009a). Meanwhile, his other studies show that Chinese courts, in both economically developed and undeveloped areas, have performed better than many believed in enforcing civil judgments and collecting damages for the winning parties (He 2009b, 2011). Nevertheless, He also emphasizes the political control over the judicial decision-making process through the adjudication committee, which he calls a "black hole of responsibility" (He 2012, p. 681).

In a recent article, He & Su (2013) use empirical data on nearly 3,000 cases tried in Shanghai courts to test Galanter's (1974) classic proposition of the advantages of the "haves" in litigation. The results suggest that judicial inequality in China is not only a consequence of resource disparity but also closely related to the relationship between courts and local governments. This conclusion corresponds to the findings of another of He's (2013) studies on judicial innovation, which shows that Chinese courts have gradually developed tactics to play a role in local politics. More recently, He & Ng analyzed the process of divorce mediation in a lower court in southern China and demonstrated the institutional constraints and the conflict of roles that Chinese civil judges face in their everyday work (He & Ng 2013a,b; Ng & He 2014).

Besides He Xin's prolific work, a few Chinese procedural law scholars have also conducted empirical studies on Chinese courts, focusing on procedural issues in civil litigation. Wang Yaxin's

empirical studies on nine intermediate courts' first-instance civil cases present a comprehensive law-in-action picture of civil trials in China (Wang 2003a,b,c). In addition, Wang also examines data from five basic-level courts to understand the mechanisms for litigants to introduce witnesses in court and finds that the judge plays a critical role in influencing the decisions of the two parties regarding witnesses (Wang & Chen 2005). Using data from cases and archival records, Fu Yulin (2005) examines the supervisory proceedings in civil cases. Xu Yun (2005) investigates the historic roots and existing practice of the so-called informal trials that often follow the formal trial before the judges deliver the judgment, suggesting a structural conflict between the increasing formalization of civil procedure and the court's political responsibility to seek substantive justice.

Despite the difficulties in obtaining high-quality data, quantitative methods have been used to study Chinese courts in recent years. Ran Jingfu (2005) examines the historical change in the number of civil cases in China from 1978 to 2002 and compares it cross-nationally. Tang Yingmao (2009) investigates the reasons behind the poor performance of judicial enforcement in civil cases using statistics collected from an intermediate court (see also Tang & Sheng 2006). Ai Jiahui (2008) studies the career mobility and performance evaluation of Chinese judges and identifies a dual-track system of evaluation and promotion, namely, those who enjoy administrative ranks and thus possess administrative power, and those who are solely responsible for judicial work. Based on his regression analysis of the 2005 Chinese General Social Survey data, Cheng Jinhua (2009) surveys the preferences of the aggrieved parties in administrative disputes and shows a clear preference for formal channels (e.g., administrative agencies or court) over informal channels for settling such disputes. However, Cheng also finds that a large proportion of respondents would lump their grievances toward the state rather than resort to legal channels in administrative disputes.

Not all Chinese citizens prefer to use the judicial system or legal professionals to resolve their disputes, particularly grievances against the state. Cheng Jinhua's (2009) article is among a large volume of literature that suggests the importance of nonjudicial means of dispute resolution in China, such as administrative reconsideration (行政复议), petitions (信访), people's mediation (人民调解), basic-level legal service (基层法律服务), and other forms of private remedies. For instance, He Xin (2010) suggests that the introduction of administrative reconsideration prevents many difficult or troublesome cases from entering into courts and thus erodes the designed function of administrative litigation. Wang Qinghua and Ying Xing's research on administrative litigation in rural China also demonstrates that formal administrative procedure merely provides a platform for the working of nonjudicial forces, such as "barefoot lawyers" (赤脚律师), who are self-educated law practitioners in villages (Wang 2011; Ying 2007, 2010). In addition to barefoot lawyers, basic-level legal workers, a parallel legal occupation to lawyers, also play a major role in both mediation and civil litigation in rural China (Fu 2006, Liu & Wu 2010).

Xu Xin's (2003, 2004) study on "private remedies" (私力救济) in debt collection cases pushes the boundary of informal dispute resolution even further. An order without law, according to his research, is not only possible but also viable in contemporary China. Using national records and data collected from a Shanghai hospital, Xu & Lu (2008, pp. 90–92) examine the violence used in medical disputes and find that the lack of trust between medical service providers and patients is a major obstacle in settling medical disputes. In a more recent study, Xu & Tian (2011) analyze 465 incidents involving violent resistance to law enforcement and find that the increasing violence is due mainly to the judiciary's insufficient capacity in legitimating its decisions, offering meaningful remedies, and enforcing its judgments.

Finally, the widely used petition system in China offers the aggrieved parties an alternative channel to appeal their cases to state authorities. Minzner's (2006) comprehensive overview of the petition system shows that petitions are often in conflict with the working of the judicial system

and may have the effect of politicizing individual grievances and amplifying petition incentives. Based on in-depth interviews with both petitioners and "petition interceptors" (接访人员) in Beijing, Hou Meng (2011a,b) finds that the petitioners who stayed in Beijing for a long time lost their connections with their original communities and started to form new communities among themselves, which complicated the local governments' task of persuading them to leave the capital. In particular, the infamous "black jails" (黑监狱), often run by private security firms to detain petitioners, undermined the effectiveness and legitimacy of the petition system (Hou 2012). Chen Baifeng approaches the petition system from the vantage point of governance. Chen (2011b) maintains that, with the change of governance rhetoric from power to rights and the loss of authority, local governments become impotent in dealing with "petitions without sound reason" (无理上访). Accordingly, the desirable way of handling soaring petitions all over China should distinguish among three types of petitions: petitions with sound reason, petitions without sound reason, and petitions for negotiation (Chen 2012c). Paradoxically, as Chen (2013) argues, the government's concern for stability and the bureaucratic logic of administration have encouraged the radical behavior of petitioners and constantly offered them new incentives for resorting to violence.

CRIMINAL JUSTICE

Criminal justice is a familiar topic in Western scholarship on China (see Leheny & Liu 2010 for a review), but most studies are doctrinal or historical rather than empirical. Arguably, this is due to the extreme difficulties in obtaining high-quality data on the police, the procuracy, and the court (公检法) in China, often labeled "the iron triangle" in the criminal justice system (Halliday & Liu 2007, Liang et al. 2014). Even for Chinese scholars, getting access to these three agencies is not an easy task. Accordingly, criminology in China remains an underdeveloped research area.

The most active domestic researchers of China's criminal justice system are criminal procedure law (CPL) scholars, who have become increasingly interested in empirical research in the past decade. One important reason is the generous funding support from foreign donors, such as the Ford Foundation, the ABA Rule of Law Initiative, and the International Bridge to Justice. Policy institutions such as the Vera Institute of Justice have also provided expertise in applied criminal justice research, particularly pilot projects. In the years leading to the 2012 revision of the PRC CPL, Chinese CPL scholars conducted several major pilot projects across the country to test the feasibility of various procedural reform measures. This generated a wave of empirical studies in criminal justice.

Chen & Xu (2001) conducted an early empirical inquiry on the Chinese criminal process, with an emphasis on the implementation of the 1996 CPL. Chen (2004) also used the survey method to study police roles in maintaining public order and conducting criminal investigations. More recently, Chen (2009, 2012) led two pilot projects that tested the efficacy of lay visitors' inspection systems in detention centers and a new sentencing procedure that separates conviction and sentencing. Meanwhile, Fan Chongyi & Gu Yongzhong (2007) conducted a pilot project on the introduction of lawyer-on-site, audio recording, and video recording during police interrogation. Song Yinghui (2009), another major participant in pilot projects on the CPL revision, even published a book discussing the social science methods used in them. Nevertheless, most of those pilot projects are methodologically flawed owing to Chinese CPL scholars' lack of familiarity with empirical research and the strong prescriptive orientations of the foreign donors. Scholars take the seemingly positive results of the projects to influence legislation, yet they shed little light on the actual operation of the Chinese criminal process.

In contrast to the prescriptive agendas of most pilot projects, Zuo Weimin and his collaborators (Guo 2011; Ma 2010; Zuo 2007, 2009, 2012) take a different approach. Using Sichuan Province as the primary research site, they have conducted a series of empirical studies on various aspects of the criminal process, including criminal investigation, detention, surveillance, arrest decision review, pretrial procedures, and first-instance trial procedures. Their findings challenge much of the common wisdom about the Chinese criminal justice system. For example, Zuo's (2011) fieldwork in police stations and courts suggests that the widespread concerns over "secret detention" (秘密拘捕) in the 2012 CPL are largely unfounded. Another study by Zuo & Ma (2012) uses two years of archival data in a basic-level court to challenge the common wisdom that lawyers' primary role in criminal defense lies in adversarial tasks, such as meeting suspects or collecting evidence. Instead, they argue that the efficacy of criminal defense in China is achieved mainly through less adversarial tasks, including legal research and brief writing. Zuo also led two pilot projects that examine legal aid in criminal cases and show that the investment of legal aid resources would increase the rate of legal defense for criminal suspects in rural areas, but not in urban areas, because only in rural areas is the lack of legal representation in criminal cases due to the shortage of lawyers (Zuo 2014, Zuo & Ma 2013).

In addition to his own research, Zuo Weimin has also trained several students of CPL who have become empirical researchers. He Yongjun (2010), whose historical study on Chinese courts is discussed in the previous section, provides a six-decade historical analysis of the practice of extorting confession by torture in China since 1949. Lan Rongjie (2008a,b; 2013) analyzes data from three basic-level courts and finds that the allocation of adjudicatory power inside the court varies significantly depending on where the court is located, which serves the knowledge monopoly by local judges and other judicial officials at the expense of criminal defendants, their lawyers, and other parties outside the state apparatus. Lin Xifen (2011) examines archival data during 1995–2005 and finds that, whereas the number of legal errors made in criminal trials increased, the number of factual mistakes declined. This finding, he argues, shows improvements in the Chinese criminal justice system and challenges the basis of a popular distrust of this system based on factual errors.

In comparison to most Chinese scholars, overseas researchers often take a more critical approach to studying criminal justice in China. Trevaskes (2007, 2010), for example, examines the judicial power in China in the context of campaigns and shame punishment and argues that China's criminal justice practice lags behind other aspects of the Chinese law in the process of modernization but also shows a recent change in its policy orientation from "strike hard" (严打) to "kill fewer." Biddulph (2007) provides a Bourdieusian analysis of administrative detention powers in China, a large area of punishment beyond the scope of the criminal justice system. Liebman's (2014) recent analysis of criminal sentences in a basic-level court in Henan Province suggests that, whereas the court showed a notable amount of leniency in routine cases, in cases "where core interests of the state are involved or where there are concerns about repeat or copycat crimes" (Liebman 2014, p. 35), the court usually gave harsher punishments. Finally, overseas criminologists have conducted several quantitative studies on confessions, the death penalty, criminal trials, sentencing, and other related topics (e.g., Liang & Lu 2006; Lu & Miethe 2002, 2007; Trevaskes 2012). Until recently, however, there have been limited research collaborations between criminal justice scholars in China and abroad.

CONCLUSION

As a research field, law and social science in China has traveled a bumpy road in the past three decades. Two waves of sociolegal studies rose and subsided from the mid-1980s to the turn of

the twenty-first century, without generating a nationwide law and society movement. Since the mid-2000s, however, a third wave of empirical research has risen, and it is rapidly changing the landscape of Chinese legal academia. Participants in this new wave of sociolegal studies include not only scholars of jurisprudence but also procedure law scholars, legal anthropologists, legal historians, criminologists, and other social scientists both in mainland China and abroad. As the strength of this loosely connected network of sociolegal researchers increases over time and spills over into various subfields of Chinese law, a strong Chinese law and society movement is in the making.

There are, however, potential difficulties and risks in this burgeoning intellectual movement. First, like the US law and society movement in the 1960s, the definition of "law and social science" in the Chinese context is ambiguous and is derived mainly from the intellectual opposition to doctrinal legal studies. Under this umbrella, vastly different social science approaches coexist, and some of them, such as law and economics or legal history, may differentiate into their own fields in the near future. Furthermore, the rise of law and social sciences has also led to skepticism and resistance from adherents of doctrinal legal studies, who argue that the critical orientation of social science legal studies could potentially weaken the newly established legal doctrines in various areas of Chinese law (Zhang 2012). The struggle for dominance between doctrinal and social science legal studies is likely to continue in the Chinese legal academy in the near future.

Second, the increasing research collaborations between domestic and overseas researchers have brought valuable expertise to Chinese sociolegal scholarship, yet they could also lead to the imperialism of Western theoretical paradigms and constrain the truly innovative indigenous research traditions, such as the CCSVS. Methodologically, the increasing popularity of statistics and other quantitative methods in recent years also challenges the largely qualitative and ethnographic tradition of Chinese law and social science. Because the majority of Chinese legal scholars still lack formal training in social science methods (qualitative or quantitative), how to strengthen the methodological rigor of their empirical studies is a vitally important question for the field's further advancement in China.

Finally, the fate of Chinese law and social science studies is, to a large extent, contingent upon the broader reforms of China's higher education system and political system. The rapid expansion of higher education in the early twenty-first century has provided abundant opportunities for Chinese sociolegal scholars to get funding support and student assistance in their research work, as well as job placements in law schools across the country. However, without the removal of tabooed political topics and improved access to official data sources, the specter of law and social science would hardly survive the daylight of China's mainstream legal scholarship.

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