
From Law to Politics: Petitioners' Framing of Disputes in Chinese Courts

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ABSTRACT

Drawing on empirical data collected from petitioners in Chinese courts, this article analyzes how the regime's political concern for social stability transforms petitioners' disputes and shapes the evolution of their legal consciousness. Compared with first-time petitioners, who often address their complaints within a legal paradigm, the veteran petitioners take advantage of the judges' political concern for social stability and present their disputes as potentially threatening social stability. They hold the judiciary responsible for their plight; they petition courts during "sensitive periods"; they employ innovative tactics to draw official attention; and they seek to secure government stability-maintenance funds as a substitute for legal remedies. However, in framing a legal dispute as a political problem, the veteran petitioners risk retaliation. This article's analysis provides insights into the operation of the court petition system, how the legal consciousness of Chinese petitioners evolves, and how in the petitioners' eyes the legitimacy of the legal system gets eroded.

The way common people perceive legality and develop legal consciousness is crucial in studies of law and society. Scholars have explored how everyday problems are transformed into legally cognizable disputes,¹ how social norms are internalized to shape peoples' notions of legality,² and how legal consciousness is

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1. See, e.g., Laura Nader and Harry Todd, *The Disputing Process: Law in Ten Societies* (New York: Columbia University Press, 1978); Lynn Mather and Barbara Yngvesson, "Language, Audience, and the Transformation of Disputes," *Law & Society Review* 15, no. 3-4 (1980-81): 775-821; Richard E. Miller and Austin Sarat, "Grievances, Claims, and Disputes: Assessing the Adversary Culture," *Law & Society Review* 15, no. 3-4 (1980-81): 52-62; Sally Engle Merry, *Getting Justice and Getting Even* (Chicago: University of Chicago Press, 1990); Hazel Genn, *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart, 1999).

2. See, e.g., Robert C. Ellickson, "Law and Economics Discovers Social Norms," *Journal of Legal Studies* 27, no. S2 (1998): S537-S552.

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derived from social action and cultural construction.³ Scholars have also paid attention to the role of politics in court decisions.⁴

Along this line of research, this article inquires into how social stability maintenance, the regime's top political concern, shapes the actions and discourses of petitioners in Chinese courts and how these petitioners adapt their strategies to take advantage of political opportunities. Based on observations and interviews with judges and petitioners in three Chinese intermediate courts, we have found that while inexperienced petitioners frame disputes within the legal framework, those who have petitioned again and again frame their disputes with reference to judges' political concerns. They realize the judges are under pressure from the authorities to eliminate popular resistance and maintain social stability, and so the veteran petitioners frame their disputes as potentially threatening social stability. The regime's political concern has thus shaped the legal consciousness of the petitioners, and they have learned to resist the official legal rhetoric and practices.

FROM FIRST-TIME TO VETERAN PETITIONERS

Petitioning in China, known as *xinfang* 信访, refers to "an effort to go past basic-level institutions to reach higher-level bodies, express problems and request their resolution."⁵ According to Article 15 of Regulations on Letters and Visits, promulgated by the State Council in 2005, a petition that falls within the scope of the functions and powers of the judiciary shall be presented exclusively to the court's petition office. Court petitioners are mostly litigants who challenge court decisions or seek enforcement of an unexecuted judgment that had been in their favor. By contrast, petitioners who file their appeals through courts are thus different from petitioners who seek help from the government's Letters and Visits Offices or the petition offices of various administrative departments.⁶

3. See, e.g., Sally Engle Merry and Susan S. Silbey, "What Do Plaintiffs Want? Reexamining the Concept of Dispute," *Justice System Journal* 9, no. 2 (1984): 151–78; Gillian K. Hadfield, "Framing the Choice between Cash and the Courthouse: Experiences with the 9/11 Victim Compensation Fund," *Law & Society Review* 42, no. 3 (2008): 645–82; David M. Engel and Jaruwan S. Engel, *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand* (Stanford, CA: Stanford University Press, 2010).

4. See, e.g., Stuart A. Scheingold, *The Politics of Rights* (New Haven, CT: Yale University Press, 1974); Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago Press, 1994); Martin Chanock, *The Making of South African Legal Culture 1902–1936: Fear, Favor and Prejudice* (Cambridge: Cambridge University Press, 2001).

5. Carl F. Minzner, "Xinfang: An Alternative to the Formal Chinese Judicial System," *Stanford Journal of International Law* 42, no. 1 (2006): 103.

6. See, e.g., Isabelle Thireau and Linshan Hua, "The Moral Universe of Aggrieved Chinese Workers: Workers' Appeals to Arbitration Committees and Letters and Visits Offices," *China Journal* 50 (2003): 83–103; Yongshun Cai, "Social Conflicts and Modes of Action in China," *China Journal* 59 (2008): 89–109; Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* (New York: Cambridge University Press, 2006).

Although frequently intertwined with retrial (*zaishen* 再审) or enforcement (*zhixing* 执行) procedures, the petition process in courts, albeit hosted by senior judges, is not a legal procedure, but a special administrative channel to address disputes.⁷ This mechanism serves the purposes of managing civil resistance, strengthening central government supervision, and monitoring the progress of legal reforms.⁸

To illustrate the influence of political concerns in the minds of petitioners, we distinguish “veteran petitioners,” who are the more determined and persistent petitioners, from the beginners, who have no experience in petitioning. These rookie petitioners have followed routine litigation procedures or are in the midst of litigation, and most of them see petitioning as their last resort to seek remedy through a legal channel.⁹ That is why they normally give up after one or two unsuccessful visits.

However, a tiny portion of petitioners do not give up and are persistent in making repeated claims over their original disputes. In addition, they begin to raise issues with the problems they experience during the repeated petition procedures, which may have lasted for years or decades. As one of these we call “veteran petitioners” observed, she had come to regard petitioning as “an integral part of daily life.” According to our observations, several factors contribute to their transformation into veteran petitioners. The main reason is that they are in desperate need of remedies.¹⁰ Some had been dispossessed of property, suffered a serious work injury, or been deprived of back pay and were as a result snared in financial difficulties, often unemployed, and living a miserable life. Turned down during formal legal procedures, they believed that petitioning repeatedly was the only way to get their grievances addressed. Coming under economic and emotional pressure in the petitioning process, they felt further motivated to claim for relief and reimbursement. Older and less educated petitioners are more likely to become veteran petitioners.¹¹ As will be discussed, one reason might be that these people are less capable of mobilizing the law but are sensitive to the regime’s political concerns.

7. Ying Xing, “Zuwei teshu xingzheng jiuji de xinfang jiuji” [*Xinfang*: A special form of administrative relief], *Faxue yanjiu* [Jurisprudence Research] 3 (2004): 58–71; Minzner, “*Xinfang*,” 109–20.

8. Yongshun Cai, “Local Governments and the Suppression of Popular Resistance in China,” *China Quarterly* 193 (2008): 24–42.

9. See an analysis of the discourse of the petitioners, see Xin He and Yuqing Feng, “Mismatched Discourse in the Petition Offices of Chinese Courts,” *Law & Social Inquiry* 41, no. 1 (2016): 212–41.

10. See also Yu Jianrong, “Zhongguo xinfang zhidu pipan” [Criticisms of the petition system in China], *Zhongguo Gaige* [China Reform] 2 (2005): 26–28; Minzner, “*Xinfang*,” 140–46.

11. Mary E. Gallagher and Yuhua Wang, “Users and Non-users: Legal Experience and Its Effect on Legal Consciousness,” in *Chinese Justice: Civil Dispute Resolution in Contemporary China*, ed. Margaret Y. K. Woo and Mary E. Gallagher (Cambridge: Cambridge University Press, 2011), 204–33; Mary E. Gallagher and Yujeong Yang, “Getting Schooled: Legal Mobilization as an Educative Process,” *Law & Social Inquiry* 42, no. 1 (2017): 163–94.

The inexperienced petitioners and veteran petitioners frame disputes differently. In normal circumstances, in China and elsewhere, dispute develops from encountering injurious experiences, to making claims, and then to judicial proceedings.¹² While those are dissatisfied with their litigation experiences start to lose confidence in the law, they initially still recognize the law as their “normative repertoire,” and when they initially petition they tend to justify their complaints under the legal framework.¹³

As repeat petitioners accumulate experience, however, some become better informed of the courts' concern for social stability. They realize that the law is often slighted in the judges' decisions when handling petitions, and they start to take advantage of the judges' worry over social instability. As will be shown, their threats that their disputes will escalate into social disorder might backfire and eventually make their situation worse. However, these threats do grant them more serious treatment. By playing upon the political concerns of the regime and challenging the official perspective of legality, their relationship with the law is redefined. The transformation from a new petitioner to a veteran petitioner thus illustrates how legality is constructed and deconstructed under the political context of maintaining social stability.

Our investigations were conducted in 2014 and 2015, when China launched the campaign of “ruling the country by law” (*yifa zhiguo* 依法治国).¹⁴ While the campaign mandates judges to enforce the law in handling petitions, it stresses that judges should resolve petitioners' “actual difficulties.” Yet in reality no legal remedy is available for many grievances. A judge whom we interviewed remarked critically, “to enforce the law and resolve petitioners' ‘actual difficulties’ means to implement the law for some but set the law aside for others.” As will be observed, judges sometimes were indifferent to petitioners who follow the legal framework and more responsive to those who actively adopt extralegal tactics and create uproars, inasmuch as maintaining social stability, a leading judicial policy since the Hu Jintao era (2003–13),¹⁵ remains dominant in handling petitions to Chinese courts.

12. William Felstiner, Richard Abel, and Austin Sarat, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .,” *Law & Society Review* 15, no. 3–4 (1980–81): 631–54.

13. John L. Comaroff and Simon Roberts, *Rules and Processes* (Chicago: University of Chicago Press, 1981), 70.

14. The national campaign of rule of law was officially announced in the 2014 landmark decision “The Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China” [*Zhonggong zhongyang guanyu quanmian tuijin yifazhiguo zhongdawenti de jue ding*, 中共中央关于全面推进依法治国重大问题的决定].

15. In the Hu Jintao era, maintaining social stability was regarded as a top priority when handling petitions. See “Holding High the Great Banner of Socialism with Chinese Characteristics and Striving for the New Victory of Building a Well-Off Society in an All-Round Way,” reported by former President Hu Jintao at the Seventeenth National Congress of the Communist Party.

METHODOLOGY

Our research focused on intermediate courts because intermediate courts are the nexus of petitioning. Aggrieved litigants normally refrain from petitioning at trial courts, since petitioning simply normally entails bringing their case to a higher-level court in hopes of a reversal of a lower court's decision. However, while provincial courts and the Supreme People's Court receive a mounting number of petitioners, they lack the personnel and adequate resources to investigate the petitions they receive.¹⁶ Hence, their routine practice is to channel petitioners back to intermediate courts, which are deemed more capable of resolving disputes. Thus, intermediate courts become the terminus of petitions, where specific issues are addressed, contested, and settled.

Studying petitioning in Chinese courts presents methodological challenges. For the judiciary, the issues in the petitioned cases and the petitioning process itself are often politically sensitive. Any mishandling may lead to incidents threatening social stability. Both the courts and the judges are thus wary of any inquiry from researchers outside of the judiciary. This is why the existing literature relies primarily on reported data and news reports. Fortunately, we have gained the trust of judges from previous projects on Chinese courts and were allowed to access three intermediate courts: one in Guangdong, and two in Jiangsu province. Due to the sensitive nature of our research topic, all other identifying information about the courts is removed.

As in most Chinese courts, registration tribunals serve as petition offices for these three courts. Petitions are processed through a special type of petition procedure (*shensu chengxu* 申诉程序). Petitioners are to file their petitions only on "receiving dates" (*jiefangri* 接访日) that are scheduled for either every week or every two weeks, and two to three petition reception sessions were held on each of these days, depending on the number of petitioners to be received. Senior court officials took turns to host these sessions. We visited the three courts primarily on their receiving dates.

To understand petitioners' framing of disputes, our investigations focused on their discourses and behavior patterns. We were allowed to sit beside the court officials and observe the petition reception sessions.¹⁷ We also had casual talks with the petitioners before and after their appearance in the petition offices, at their convenience. We stressed that we would keep their identities confidential and that any details that might reveal their identity would be removed. A total of 91 peti-

16. Hou Meng "Zuigao fayuan fangmin de xintai he biaoda" [The Attitude and Expression of the SPC Petitioners], *Zhongwai faxue* [Peking University Law Journal] 23, no. 3 (2011): 648–59.

17. While observing petitioning sessions provides a good opportunity for insights, our presence may possibly have, to varying degrees, changed the discourses and behavior of both the petitioners and the judges we observed. To minimize this, we stressed that our research was completely anonymous and avoided any unnecessary contact with the petitioners or the judges when they were communicating with each other.

tioners agreed to provide information for this study. In addition, we managed to interview the judges after their sessions were over, so as to understand their views on the disputes of the petitioners we observed. Twelve judges agreed to such interviews, and the interviews lasted between 30 minutes and two hours.

To make petitioners and judges feel comfortable in these discussions, recordings were not used throughout our empirical work. Instead, we took notes, or in some instances, when note taking was not feasible, we memorized important details and compiled them in notebooks as soon as possible. Taken together, the empirical findings allow us to understand how the petitioners and judges frame disputes and perceive legality.

LEGAL FRAMING VERSUS POLITICAL FRAMING

While the scholarly literature and news reports have documented a radicalization of petitioners' behavior and strategies,¹⁸ the transformation from first-time to veteran petitioner is basically about shifts in their constructions of legality which are reflected by the ways they frame disputes. According to Felstiner, Abel, and Sarat, dispute framing can be divided into three stages: perceiving injurious experiences ("naming"), determining who should be held responsible ("blaming"), and making claims for restitution ("claiming").¹⁹ Based on our observations of the conversations between the petitioners and the judges, this section details the differences we observed between legal framing and political framing. It reveals petitioners' changed attitudes toward the law and the regime and their shift in tactics to take advantage of the authorities' political goal of maintaining social stability.

Naming and Blaming

In framing of disputes, naming and blaming are fundamental to the claim-making process.²⁰ In legal framing, the naming and blaming process focuses on the issue of the original dispute; in political framing, the scope of naming and blaming has extended to the mishandling of the court case by a judge or the errors of the personnel who received their subsequent petitions. When petitioners initiate a petition and fail for the first time, they often grumble about how the judges they met have "disobeyed the law," "lacked sympathy," "behaved arrogantly," and "been bi-

18. He and Feng, "Mismatched Discourses," 212–41; Benjamin L. Liebman, "A Populist Threat to China's Courts?," in *Chinese Justice: Civil Dispute Resolution in Contemporary China*, ed. Margaret Y. K. Woo and Mary E. Gallagher (Cambridge: Cambridge University Press, 2011), 269–313; Lianjiang Li, Mingxing Liu, and Kevin J. O'Brien, "Petitioning Beijing: The High Tide of 2003–2006," *China Quarterly* 210 (2012): 311–34.

19. Felstiner et al., "The Emergence and Transformation of Disputes," 633–37.

20. *Ibid.*

ased,” but they normally do not regard this as a reason to shift the nature of their complaints. They continue to believe that the best way is to frame their appeal to a higher court as a legal issue, and they continue to argue the merits of their original cases. In contrast, veteran petitioners far more often focus on the treatment they received during their litigation and petitioning, blame the judges, and threaten to escalate their disputes. Sometimes, the mishandling of their cases becomes central to their complaints, to the extent that the original disputes have become secondary.

Zhang’s case (henceforth the Vasculitis Case) exemplifies how legal framing develops into political framing. Zhang was clawed by a pet dog, and in court she reached a settlement of 8,000 yuan with the dog owner. Several months later, Zhang contracted vasculitis and made a claim to the trial court. The judge declined her lawsuit, quoting the *bis in idem* principle. Zhang petitioned the intermediate court for a second trial, arguing that the judicial settlement had failed to take her vasculitis into consideration. As a first-instance petitioner, Zhang, like most litigants, framed her complaint as a tort case, naming her vasculitis as injurious and blaming the dog owner. Her naming and blaming was based on her understanding of the law: the owner should be responsible for the harm his pet caused. The court arranged for a medical examination for Zhang, which proved no causal relation between her injury and the vasculitis infection. It thus rejected Zhang’s petition.

Short of a legitimate cause, Zhang gave up petitioning for a while. However, her family could not afford her medical expenses, which forced her to petition the intermediate court as a last resort. After several unsuccessful visits, Zhang obstructed the car of the municipal Party Secretary in order to get the attention of the official, who expressed concern regarding her case. Under political pressure, the intermediate court granted Zhang extra compensation. The outcome did not satisfy her because she felt she had devoted so much time and energy to petitioning. She started to hold the intermediate court responsible for her misfortune. She blamed the judges for maliciously declining her application for a new trial and treating her arrogantly. Her focus of naming and blaming thus shifted from the dog owner to the mishandling by the judges, and the tort case evolved into a mishandling dispute.

The focus of naming and blaming also took a sharp turn in Liu’s case (henceforth the Assaulted Son Case). Liu was petitioning on behalf of his son, who was assaulted by a gang of three people and suffered grave injuries. In the trial, only one assaulter was convicted, and the other two were released due to lack of evidence. The verdict did not cover the full cost of his son’s medical treatment. When he first lodged a petition at the petition office of the intermediate court in 1998, Liu sought to “uncover the truth,” carrying a stack of documents as evidence to support his claim. The judge browsed the documents for a few minutes and turned down Liu’s request. Determined to get justice for his son, Liu per-

sisted in petitioning. By 2005, seven years later, his latest petition had shifted ground, asking the police, the procuratorate, and the court to take responsibility for a miscarriage of justice. He had set the evidence aside and submitted only a five-page petition letter. By 2010, his scope of blaming further extended to the local government, as the government, he argued, “had not put its law enforcement apparatus into operation.” Like Zhang in the Vasculitis Case, Liu had originally relied on legal framing: he blamed the assaulters for his son’s injury and made a claim at court. He framed his complaint as a routine criminal case, and used evidence to support his legal framing. As he engaged in repeat petitioning, however, his focus of naming and blaming shifted from the misconduct of the defendants to the mishandling of the judges and the negligence of the government. The criminal case involving the defendants and the son was thus turned into a political problem between Liu and the state apparatus, and the evidence required by legal framing was no longer necessary.

Sometimes, imprudent utterances may extend the scope of naming and blaming. Old Li, a rough, elderly, but energetic petitioner from eastern China, petitioned on behalf of his son, a 17-year-old vocational school student (henceforth the Sweatshop Case). In 2005, the son, then a trainee in a manufacturing sweatshop in southern China, had died of a heart attack after work. The local court held the sweatshop 70 percent responsible, but Old Li insisted that the sweatshop should be held 100 percent responsible. In our interview, Old Li revealed how he started to hold judges responsible:

At first, I did not intend to take it this far. . . . Each time I went there to petition, I had to take both a train and bus, spending more than 40 hours on the road without rest. Each visit cost me 500 to 1,000 yuan. This was an amount I could hardly afford. . . . I tried my best to reason with those judges. However, I was always asked to come back home and wait for further notices. After I left, the judges told me over the telephone that there was nothing they could do. Once, a judge even accused me of “deliberately messing up.” . . . Their responses to me have gravely violated the Party’s principles and the state’s policies. I now plead to hold those bastards responsible for what they did to me.

Cases involving unenforced judgments, in which the victims were unable to collect the compensation awarded by a court, have long been a major source of contention. In our empirical investigations, nearly one-fourth of the petitions were of this type. Some debtors had deliberately transferred or hidden all their assets before the judiciary initiated the enforcement procedure, and the enforcement bureaus of the courts lacked adequate resources to conduct in-depth investigations of the debtors’ true assets. So the enforcement bureaus shifted the burden of investigation back to the litigants: if the litigants failed to provide information about their debtors’ assets, the enforcement procedure was suspended.

Among petitioners with unenforced judgments, first-time petitioners mostly named the debtor's actions as injurious, whereas the veteran petitioners had given up hope of gaining enforcement of the judgment through legal channels they changed strategy. Instead, they held the judges responsible for their plight and demanded the judiciary make up their losses through any means, legal or extralegal.

For example, Tian was a victim of a case of fraud in which his neighbor swindled 120,000 yuan out of him and then disappeared (henceforth the Fraudulent Neighbor Case). Tian petitioned the court, but the court could not locate the neighbor nor his assets. After several fruitless visits to the court's petition office, Tian threatened to commit suicide in the judge's office because he "had no way to go." The court reimbursed his litigation fee, which only temporarily pacified him. Tian claimed, "the court failed me. I spent all my money on litigation, but the judgment turned out to be a piece of toilet paper. I have no money now. The court should be responsible for the rest of my life." Tian's target of naming and blaming had shifted from the cheating neighbor to the court.

Ling, a veteran petitioner with an unexecuted judgment on a work injury case against a local enterprise, underwent a similar transformation in naming and blaming. In her initial petition, the judge had promised to execute the judgment within two months. However, the enterprise suddenly had gone bankrupt. After she was told that the case was closed and the court could do nothing for her, Ling started to blame the judges for colluding with the enterprise and for deliberately obstructing the judgment's execution. When we saw her in the petition office, she had printed her allegations against the judges in red on her shirt, catching everybody's attention.

Since most judgments cannot be enforced due to a lack of enforceable assets, many courts allocate designated budgets to reimburse petitioners through administrative channels for up to 20 percent of the unexecuted amount. However, these efforts sometimes are satisfactory to veteran petitioners, who after receiving their reimbursements blame the court for reducing the amount they feel they deserve and then ask for more.

Once judicial mishandling becomes the target of naming and blaming, the judiciary is treated as an opponent rather than a neutral decision maker, and the original personal disputes are transformed into a fight between powerless individuals and the mighty state. This transformation of disputes results from petitioners' changed perception of legality. In the original personal disputes, the law shapes their perception of legality, and they voice their complaints on that basis, even if the law may not provide a remedy. In the disputes between petitioners and state apparatuses, the petitioners find legal framing unrealistic, and they increasingly resort to other means to draw official attention to their complaints. The extended scope of naming and blaming imposes political pressure on the courts and defies the official version of legality.

When to Petition?

The authorities' concern for social stability influences petitioners' choices on when to make claims. First-time petitioners follow the official schedule and file their petition on a receiving date, in the belief this will enhance the efficacy of their complaints.

Veteran petitioners, on the contrary, are attentive to the cycle of national politics. Disappointed by the perfunctory treatment of their complaints on a receiving date, they start to resist the official timing for petitioning and feel it exists merely to control their petition activities. They believe that the best times for petitioning are the politically sensitive periods (*min'gan shiqi* 敏感时期) when major political events take place. Since a high degree of domestic and global attention is diverted to the administration of the regime during these periods, the state exhibits a grave concern over social stability. For example, in 2015, during the National People's Congress annual session and the annual meeting of the People's Political Consultative Conference, a mounting number of petitioners appeared at the petition office of the Supreme People's Court.²¹ Another sensitive period is at the time of leadership turnover, which is marked by a "high tides of petitioning Beijing."²² During these periods, the staff of all the courts we investigated was mobilized to monitor and control petition activities. Several judges even stationed themselves in rural districts around the clock throughout the entire sessions to prevent local petitioners from visiting higher-level petition offices. Some were also sent to Beijing to bring the petitioners home through persuasion, bluffing, and coercion in order to keep the number of petitioners in check.²³

While these sensitive periods entail the enforcement of vigilant controls, they also provide opportunities for experienced petitioners to have their voices heard. For example, Qian, a peasant who is a veteran petitioner, had lost a lawsuit against the local township government for unsettled eminent domain claims several years earlier. Both the trial court and intermediate courts did not give favorable rulings to Qian's petitions. In 2012, it had been rumored that a local trial judge had been disciplined because a petitioner had visited Beijing during a sensitive period and had his case reported by foreign media. Subsequently, in 2013, Qian visited the

21. According to the estimate of several SPC judges we interviewed, the number of petitions increased 300–500 percent during that period. See also Yu Jianrong, "Jihui zhili: Xinfang zhidu yunxing de kunjing jiqi genyuan" [Opportunity management: The dilemma and causes of the operation of the petition system], *Academic Exchange* 259 (2015): 83–92.

22. Li et al., "Petitioning Beijing," 316.

23. See, e.g., Guo Hongpeng, "Shanggao fayuan wuge daoweizhulao quanguo lianghui weiwen fangxian" [Shanggao Court: Five precautions to enhance the defensive network against social instability during Two Conferences], *Fazhi ribao* [Legal Daily], March 2, 2015; Guo Dan, "Pingtang fayuan: Sicuoshi zhuashi quanguo lianghui qijian xinfang weiwen gongzuo" [Pingtang Court: Four measures to secure stability maintenance work in handling petitions during Two Conferences], March 4, 2015, <http://bmgz.ptjp.gov.cn/bmtjxx/201503041627248689> (accessed January 4, 2018).

petition office of the high court during a sensitive period. The visit became a turning point: the local court president was summoned to Beijing to “escort” him home and resolve his difficulties. Since then, petitioning during sensitive periods has become an important tactic for him.

Tian, of the Fraudulent Neighbor Case, also employed this tactic. A retired employee of a local state-owned enterprise, Tian read *People’s Daily* every day and was familiar with the timing of political events. In 2013, he petitioned Beijing twice during sensitive periods, following the suggestion of a veteran petitioner he had befriended while petitioning. Since then, Tian had received “special treatment” from the local courts. Before the two major political conferences in 2015, a vice president of the local court visited Tian with gifts, arranged to have his apartment cleaned, and promised to “actively resolve Tian’s livelihood difficulties” as long as he did not petition during the two conferences.

Li, a veteran petitioner and an organizer of a local petitioning network, stated, “Petitioning during sensitive periods means more risks but can also bring more benefits. Most petitioners . . . do not understand the importance of waiting for an opportunity to occur. Without such an opportunity, petitioning is plainly useless. No one cares about you at all. . . . But timing makes a difference. Take me for example. You see, a new Supreme People’s Court president has recently assumed office, and that creates new opportunities for us since he wants to achieve something.”

According to the judges we interviewed, petitioning during sensitive periods did amplify petitioners’ voices: the judges said they were more responsive to petitioners’ complaints then. The judges felt more obliged to pay close attention to petitioners’ demands and to at least partially satisfy their demands. Making claims during sensitive periods thus became an integral part of the veteran petitioners’ political framing, as it was more effective than following the official timetable.

How to Claim?

First-time petitioners normally follow the procedural requirements: they appear cooperative in addressing their complaints, restrict their complaints to the petition offices, and try to refrain from being labeled as “troublemakers.” They feel more comfortable introducing themselves as “appellants” (*shensuren* 申诉人), a neutral legal term, rather than as “petitioners” (*fangmin* 访民), a term associated with negative political implications. By contrast, the veteran petitioners have shaken off the procedural shackles and are willing to employ extralegal tactics to apply political pressure.

McAdam used the term “tactical innovation” to describe the strategies of some protestors in social movements.²⁴ The veteran petitioners adopt similar strategies,

24. Doug McAdam, “Tactical Innovation and the Pace of Insurgency,” *American Sociological Review* 48, no. 6 (1983): 735–54.

though almost always revolving around the authorities' concern for social stability. Short of an effective formal channel to address disputes and voice grievances, resorting to "disruptive" tactics becomes a channel to draw official attention.²⁵ For example, a man named Wang petitioned for compensation from the local government for his forced relocation after his home was demolished. Every time he visited the court, he took his 80-year-old mother, his wife, three children, and a few relatives, to insinuate his potential to create a mass incident (*quntixing shijian* 群体性事件). Zheng's eye-catching tactic was to pull out a banner in front of the court gate, on which was written a huge Chinese character: *yuan* (冤 'injustice'). Both Hang and Zhang attempted to obstruct government vehicles with their bodies in order to have their complaints heard by the officials inside. Du once ran into the local government compound naked to protest the court officials' indifference to his grievances. On several occasions, Wu, a petitioner in his fifties, climbed to the rooftop of the court building and threatened to jump. These tactics were meant to publicly illustrate to the authorities how desperate these veteran petitioners were.

From the perspective of the judges, the above tactics signaled threats to social stability. The judges were anxious that these activities by petitioners might escalate into headlines, which would invite higher-level inspections and administrative sanctions.²⁶ Complaints that were aired through extralegal tactics were thus treated with closer attention.

In the Vasculitis Case, for example, Zhang had first petitioned through the official procedures and was rejected. Under the pressure of mounting medical expenses, she turned to extralegal means, as noted, when she rolled herself in a wheelchair in front of official cars coming out of the municipal government gate. In the words of the court president, Zhang's strategy had turned her case into "a time bomb that could explode at any time" in the future if she were seriously injured, placing the court under "imminent danger of political intervention and sanctions." The court therefore reconsidered Zhang's case and sought to satisfy her needs.

Like Zhang, Liu, in the Assaulted Son Case, had previously stuck to formal channels that proved fruitless. In 2012, he made a bold decision: at the gate of the court, he ingested an entire bottle of "pesticide" and was rushed to hospital by the court staff. The pesticide was later identified as water, but the court president was terrified and applied for Liu to receive a substantial amount of financial support as relief. Other desperate petitioners engaged in self-mutilation and suicidal attempts, actually risking their lives to get their voices heard.²⁷

25. Xin He, Lungang Wang, and Yang Su, "Above the Roof, Beneath the Law: Perceived Justice behind Disruptive Tactics of Migrant Wage Claimants in China," *Law & Society Review* 47, no. 4 (2013): 703–38.

26. Cai, "Local Governments," 24–42.

27. See also Liebman, "A Populist Threat," 283–84.

A less risky and thus more popular strategy today is to seek popular support. Since the courts are directed to take the “mass line” (*qunzhong luxian* 群众路线) into account,²⁸ judges sometimes feel obliged to pay attention to public opinion, be it reasonable or absurd. As a result, popular support, once successfully sought, will quickly develop into “popular pressure” on the judges.²⁹

Popular support is mostly drawn through the internet. When Old Li in the Sweatshop Case started to petition through official channels, he almost always was told to go back home to await further notice. Feedback never arrived. He read about how “netizen” opinions had affected judicial decisions in several landmark cases, and in 2013 he contacted a television celebrity to spread his grievances for him on Weibo, the most popular social media platform in China at the time. The court soon received notification from the local propaganda department about Old Li’s online activity. A vice president of the court contacted Old Li and offered to compensate all of the requested damages, on the condition that Old Li “erased all the negative effects on the Internet.”

In a similar vein, a poor petitioner, Zhu, hung a wooden board over his neck and wrote his grievances in scarlet characters. When he stood outside the court, inviting bystanders to take a photo of him and post it on the Internet, the court president immediately rushed downstairs to stop his “roadshow” and to handle his grievances.

As shown, while first-time petitioners refrain from being defined in the official perspective as “unlawful,” the veteran petitioners’ tactics sometimes disregard this concern. They realize that judges have treated their cases as legally unsound and their legal framing unworthy of response. In this sense, the boundary-expanding strategies of the veteran petitioners seem more feasible in a situation where the law is not able to help.

What to Claim?

The judiciary is inclined to buy off the most determined and “disruptive” petitioners through the budget allocated for stability maintenance. That is why the veteran petitioners are willing to take money and drop their case (at least temporarily), even if some of them deserve a more solid legal remedy. In our interviews, judges confessed that they had been compensating diehard petitioners to dissuade them from petitioning. In the Hu Jintao era, granting financial compensation was a routine strategy to handle veteran petitioners.³⁰ While granting legal

28. Ning Jie, “Zhou Qiang: Jiang dang de qunzhong luxian guanchuan renmin fayuan gongzuo quanguocheng” [Zhou Qiang: Enforcing mass line of the Party in all aspects of the work of people’s courts], *Renmin fayuanbao* [People’s Court Daily], July 22, 2014, 1.

29. Liebman, “A Populist Threat,” 306.

30. Yu, “Jihui zhili,” 84–85; Li et al., “Petitioning Beijing,” 311.

remedies requires a legalistic justification monetary compensation does not, and from for the judge's vantage point it is much easier.³¹ Since petitioners' protest activities, if escalated and publicized, might possibly put their careers at risk, judges have been willing to use taxpayers' money to bail themselves out.

But under Xi Jinping, the state has tightened up on the practice. Currently, to buy off a petitioner, judges are subject to an official procedure called the "petitioner aid mechanism" (*xinfang jiuzhu chengxu* 信访救助程序), in which extra-legal compensation is applicable only in cases with "significant social impact" and a "lengthy and repeated petition history."³² The new procedures also require the court to consult the local Petition Bureau, the local Politico-Legal Committee, and the local government before paying petitioners.

Despite the diminishing chance of compensation, the veteran petitioners believe that seeking these government funds is their most realistic option. Through repeated petitioning, they have realized that the law does not provide them with another way out. Their expectations for remedies change over time, and the stability maintenance fund, a compromise that can serve as a feasible substitute for legal remedies, eventually becomes their main target.

The Assaulted Son Case exemplifies how a petitioner may develop new expectations of remedies through repeated petitioning. Like most of the first-time petitioners, Liu requested a retrial and provided evidence to support his request when he first petitioned. As he became more experienced in petitioning, however, he dropped his expectations of legal remedies and started to target the financial compensation offered by the court. In the past decade, his demands increased from 10,000 yuan in 1998 for his son's medical expenses, to 20,000 yuan in 2005 for his son's mental distress, to 40,000 yuan in 2010 for his son's mental condition, to 80,000 yuan for his son's mental state in 2012, to 290,000 yuan in 2014 for Liu's lost wages. Below is his dialogue with the judge in 2014:

Judge: Hasn't your case been resolved? Didn't we agree that this case was over long ago when we satisfied your demands the last time? We signed the agreement and you had promised that you would start a new life.

Liu: This time is different. The last time was mainly about my son's mental damage, but my own damages have not been well-compensated.

Judge: What? What do you mean by "not well-compensated"? I have told you, the subsidy we offered was not to compensate your son. We had no responsibility to do

31. Carl F. Minzner, "Riots and Cover-Ups: Counterproductive Control of Local Agents in China," *Journal of International Law* 31 no. 1 (2009): 53–123.

32. Authors' interviews with judges, 2014–15.

so. We offered you the subsidy because the court cared about you and the child, and pitied your situation.

Liu: Do not think of shirking your responsibility! I have petitioned relentlessly over the past sixteen years, and I lost my job for it. Yet the court has not yet completely resolved my problem. I demand the court compensate me for my lost wages over the past sixteen years, or else I will be compelled to go into the street and make further moves. . . . I have calculated. The total amount is 290,000 yuan.

Judge: That is not possible. Let's sit down and negotiate with good will.

As shown by the above excerpt, Liu's claim employed arguments of both law and politics. Beyond the superficial legal reasoning about "lost wages," Liu's claim targeted the political concerns of the judge: by threatening to "go into the street and make further moves," he defied the official legal framework of his case and expected the judge to define his resistance as a political threat and buy him off, as the judge had done the last time.

Like Liu, many veteran petitioners had sought remedies through political framing after they had found legal remedies futile. Du had been falsely accused by a local government cadre and detained for 130 days. When he started to petition, he expected to send the cadre to jail through legal procedures, but was told he lacked sufficient evidence. Frustrated, Du finally struck a deal with the judges as an alternative to legal remedies. Hang, a man in his forties, had been petitioning to enforce the judgment he had received five years before. The defendant had gone bankrupt, leaving no property for repayment. Hang told us, "I finally understand how little the law means to me. I do not expect the judgment to be executed any more, but I do expect all of the painful petitioning experiences to be fully compensated before I give up petitioning." Wu, a petitioner in his fifties, claimed that the judges who handled his petition had offended him. Thus, he demanded 200,000 yuan from the court system for emotional compensation. This was on top of his actual losses of 30,000 yuan. He admitted that the chance of having his demands fulfilled was small, but he expected to be paid "at least a portion of the emotional compensation" to cover the losses he suffered.

Compensating diehard petitioners has created moral hazard for the judiciary. Owing to the predominance of political concerns, judges tend to choose the more secure approach of extralegal compensation and lack incentives either to uphold lawful judicial decisions or reverse wrongful decisions. In practice, the veteran petitioners are sometimes pacified at the expense of valid judicial decisions and rigid law enforcement, which turns petitioning into "a populist threat" to the judiciary.³³ This approach further strengthens petitioners' conviction that political

33. Liebman, "A Populist Threat," 308.

concerns, rather than the law, determines the game they must engage in. A demobilized army officer with six years of petition experience told us: "It took me so long to find that the judges had no intention of helping me. They were just afraid of undertaking responsibilities and losing their *wushamao* [乌纱帽, referring to their official post]. . . . Now I've figured out the real rules of this game, and I think I know how to play with them."

Petitioners and judges are thus trapped in a vicious circle: the diminished role of the law invites more political framing of disputes, which further marginalizes the law. This is demonstrated in the Vasculitis Case. The petitioner, Zhang, initially asked for nothing more than a fair retrial. After her case was retried and an extra compensation of 10,000 yuan (which she believed was insufficient to cover her losses) was granted owing to the intervention of the Party Secretary of the municipality, she started to combine legal mobilization with political strategies. From 2008 to 2011, she initiated four lawsuits successively for reimbursement for mental distress. At the same time, she continued petitioning to the intermediate court and the municipal government during sensitive periods. The intermediate court found all the four lawsuits unfounded, but under the pressure of Zhang's persistent petitioning, the court hastily supported Zhang in two of her lawsuits and granted her 40,000 yuan.

Receiving the decisions of the court, Zhang adopted further political framing. In 2012, Zhang lay down at the municipal government gate, summoned the court president, and claimed that she "needed money to celebrate the Spring Festival." The court applied for the minimum living allowance for Zhang and her husband and granted an immediate subsidy of 8,000 yuan. In 2014, she submitted a claim for reimbursement of her medical expenses by threatening to commit suicide in the courtroom. The court granted her another 20,000 yuan.

From 2008 to 2014, the goals Zhang pursued had shifted gradually from a fair retrial to extralegal compensation, and the law gave way to political concerns. Judicial concerns for social stability and the practices of compensating diehard petitioners facilitated her evolving perception of the law and prompted her to pursue different remedies, as she told us: "You may think I am deliberately causing trouble, but imagine yourself in my shoes, what else could you do? . . . Yes, I engaged in lawsuits many times. However, the law is little more than decoration, and how could you expect me to follow the law? Fortunately, I discovered that it was much easier to obtain money from the court as long as you find out the real concerns of the judges."

NEGLECT OR RETALIATION AS A CONSEQUENCE

Not all repeat petitioners are successful. Some simply wasted years in fruitless efforts. Li, the organizer of a local petitioning network, described the desperation of the veteran petitioners: "I've seen too many petitioners trapped in petitioning for

so many years. They have completely lost their lives to petitioning. . . . My advice is not to get involved in (repeat) petitioning. Once you become involved, it is hard to let go.”

A worse risk of political framing is retaliation from the judiciary. While efforts to compromise, as illustrated earlier, are the mainstream official response to political framing, retaliation sometimes is deployed to deter political framing. Suppression of petitioners, though diminished in Beijing and provincial capitals, remains routine at township and municipal levels.³⁴ In our empirical work, some veteran petitioners were labeled as “illegal petitioners” (*feizhengchang xinfangren* 非正常信访人) and placed under the surveillance of local governments and courts. They had trouble finding decent jobs and sometimes sought to recoup their mounting losses through repeated petitioning. To earn a living, some also served as civil rights activists petitioning on behalf others or as organizers of petition networks that offered lessons and services in exchange for money. They had few alternatives. Having connected themselves to new petitioners, they facilitated the political transformation of additional disputes, which sometimes led to more retaliation.

The potential risk of retaliation has further polarized relations between the petitioners and judges. In a few cases, the differences have been so great that there has been no common ground for the two sides to settle their disputes. The accumulated economic and mental pressure has made some of these petitioners increasingly desperate and resentful. A haggard woman, who had been persistently petitioning to overturn her son’s criminal conviction for homicide, revealed her painful experiences: “I could hardly fall asleep. I am losing hair every day. I could not help wondering why no one understood me. How did they think of me? . . . People kept a distance from me as if I were a criminal.”

Retaliation can be even more vicious than defamation and surveillance. In the past, a form of imprisonment without a court trial called Reeducation through Labor (RETL; *laojiao* 劳教) was frequently employed to punish veteran petitioners.³⁵ After the abolition of reeducation in December 2013, criminal sanctions were deployed as a replacement. The most common accusation was the crime of creating disturbances (*xunxinzhishizui* 寻衅滋事罪), under which an obstreperous petitioner could be sentenced to up to five years’ imprisonment. Some veteran petitioners have also been charged with blackmail (*qiaozhalesuo* 敲诈勒索罪) by the procuratorates and sentenced to a fixed-term imprisonment of one to three years. Our search of the documents of adjudication decisions published by the Supreme People’s Court found 375 cases from 2013 to 2015 in which pe-

34. Cai, “Local Governments,” 30–38; Yu, “Jihui zhili,” 85–86.

35. See also Minzner, “*Xinfang*,” 115–16.

petitioners had been convicted of instigating disturbances, and 317 cases in which petitioners had been convicted of blackmail.³⁶

Such cases of criminal sanctions exert a profound chilling effect on petitioners. We did not encounter any example of criminal sanctions in our fieldwork, but most of the veteran petitioners in our sample had heard such rumors and expressed concerns over the potential risks. Given the close ties between courts and procuratorates, the petitioners deem these convictions as political reprisals rather than as resulting from fair trials. Such reprisals further facilitate political framing, as they erode the petitioners' already limited trust in the courts and judicial decisions. In this sense, retaliation, which aims at deterring political framing, ironically consolidates the role of politics in the petitioners' perceptions of justice.

CONCLUSION: FROM "WITH THE LAW" TO "WITH THE POLITICS"

A study focusing on the United States found that one's encounters with the legal system usually play a decisive role in the development of a person's legal consciousness.³⁷ In a similar vein, another American study categorizes the legal consciousness of common people as "before the law," which understands the law as distant and awesome, "against the law," which denounces the law as oppressive and defies its influences, and "with the law," which utilizes the legal system as a set of instrumental rules which one can play with to achieve goals.³⁸

When petitioners bring their disputes to the courts' petition office for the first time, most of them, as has been noted, mobilize legal weapons and pursue remedies within the legal framework. In other words, most of them are "with the law." As they persist with the petitioning mechanism, some of them begin to realize that the law is not taken seriously by the court. These veteran petitioners become frustrated by the futility of their legal arguments and start playing "with the politics."

While "with the law" describes the law as "an arena of competitive tactical maneuvering," "with the politics" treats politics as the arena of maneuvering.³⁹ "With the politics" also means varying degrees of indifference about the law, even though this is done covertly. Unlike the classic notions of legal consciousness that regard the law as the core of legality construction,⁴⁰ in "with the politics" the law is compromised. At the same time, the regime's political concerns gradually emerge

36. The documents of adjudication decisions are published by the Supreme People's Court at *China Judgments Online*, available at <http://wenshu.court.gov.cn/Index> (accessed January 1, 2018).

37. Merry, *Getting Justice*, chap. 7.

38. Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998), 48.

39. *Ibid.*

40. Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 29.

as what Comaroff and Roberts term the “predominant discourse paradigm.”⁴¹ This is an evolving process of legality and dispute construction in which the law becomes a peripheral paradigm and, finally, subordinate to political concerns.

In this evolutionary process, “with the politics” and “with the law” are not mutually exclusive; they are fluid conceptions that overlap. In this subtle transition, the veteran petitioners still employ the legal discourse, but they frame disputes more in the shadow of politics, probing the leeway between maneuvering the government’s concern for social stability and getting their grievances remedied. In other words, legal elements always exist in the veteran petitioners’ complaints, but the law is marginalized as the regime’s political concern becomes the predominant dispute paradigm. While “with the politics” does not involve an overt sense of “being up against the law,”⁴² it does illustrate petitioners’ resistance to the procedures of the legal system. Their resistance does not mean that they try to avoid or even escape from the law. Nor are they “beneath the law,”⁴³ failing to gain access to justice. Instead, they actively seek remedies by playing with politics. This political framing demonstrates how Chinese litigants grip both the reality and meaning of the law.

“With the politics” provides further evidence of why the legal system in China may not gain support among the people.⁴⁴ Similar to other lower-class cohorts in China, such as migrant workers,⁴⁵ petitioners find that, situated at the grassroots of the society, they normally lack the ability to mobilize legal weapons as the “haves” do, and their efforts to negotiate with the legal system are mostly futile, so they eventually turn, more successfully, to political framing. While some persist in the “with the law” route, like in Mary Gallagher’s study of migrant labor disputants, who still resorted to litigation even after the legal system has failed them, but the petitioners we have interviewed who are “with the politics” have experienced a more thorough form of “informed disenchantment”: they become aware of the difficulties in chasing their rights through legal efforts, and they resist the official perspective of legality.⁴⁶

41. Comaroff and Roberts, *Rules and Processes*, 84–85.

42. Ewick and Silbey, *Common Place of Law*, 48.

43. He et al., “Beneath the Law,” 728.

44. See also Xin He and Kwai Ng, “‘It Has to Be Rock Hard!’ Guanxi and Judicial Decision Making in China,” *American Journal of Comparative Law*, forthcoming; Carl F. Minzner, “China’s Turn against Law,” *American Journal of Comparative Law* 59 (2011): 935–84; Xin He and Yang Su, “Do the ‘Haves’ Come Out Ahead in Shanghai Courts?,” *Journal of Empirical Legal Studies* 10, no. 1 (2013): 121–46; Xin He, “Maintaining Stability by Law: Protest Supported Litigation and Social Change in China,” *Law & Social Inquiry* 39, no. 4 (2014): 849–73; Kwai Hang Ng and Xin He, “Internal Contradictions in China’s Judicial Mediation,” *Law & Social Inquiry* 39, no. 2 (2014): 282–312; Xin He, “‘No Malicious Incidents’: The Concern for Stability in China’s Divorce Law Practice,” *Social & Legal Studies* 26 (2017): 467–89.

45. He et al., “Beneath the Law,” 703.

46. Mary E. Gallagher, “Mobilizing the Law in China: ‘Informed Disenchantment’ and Development of Legal Consciousness,” *Law & Society Review* 40, no. 4 (2006): 785.

To summarize, this article has explored the role of politics as a formative agent in people's construction of legality. It analyzes how the regime's concern for social stability transforms Chinese petitioners' disputes and shapes the evolution of their legal consciousness, from "with the law" to "with the politics." Compared with first-time petitioners who address their complaints within the legal paradigm, the veteran petitioners frame their complaints as worthy of official concerns for social stability. To achieve this goal, the veteran petitioners develop new patterns in the naming, blaming, and claiming process: they complain about the judges' mishandling of their cases, petition during sensitive periods, employ innovative tactics to draw official attention, and target stability maintenance funds as a substitute for legal remedies. While their political framing of disputes compels judges to take petitioners more seriously, the petitioners risk retaliation. Retaliation, however, further highlights the dominant role of politics in the petitioning system.

The analysis in this article provides new evidence of how common people in an authoritarian regime perceive and respond to the legal system. Studies based on liberal democracies indicate that law almost always remains the ultimate and most important paradigm in people's framing.⁴⁷ The Chinese case has shown that law is attenuated and finally set aside and that politics takes over in shaping people's "legal" consciousness. The Chinese case of petitioning in courts provides evidence of how the political concerns of the regime has a role in redefining aggrieved individuals' modes of naming, blaming, and claiming, in circumstances where the state exerts political control over the judiciary. Among veteran petitioners, in the transition from "with the law" to "with the politics," petitioners' perceptions of the law and justice are reconstructed. This may lead to the malfunctioning of judicial institutions and helps in understanding the eroded legitimacy of the Chinese legal system.

The structural contradiction between the Chinese legal system and political system is currently aggravated by the perception of "with the politics." This process poses challenges to the Chinese regime's current campaign to "rule the country by law." As the courts fail to resolve disputes in legal terms and the petitioners convert legal cases into political problems, both the judiciary and the law risk enhancing the image of ineffectiveness and powerlessness. This eroded legitimacy and diminishing image of judicial power could defeat the state's intention to govern society by law.

47. Kay Levine and Virginia Mellema, "Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy," *Law & Social Inquiry* 26, no. 1 (2001): 169–97; Phoebe A. Morgan, "Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women," *Law and Social Inquiry* 33, no. 1 (1999): 67–93; Anna-Maria Marshall, "Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment," *Law & Social Inquiry* 28, no. 3 (2003): 659–89.