

CHAPTER THIRTEEN

Citizens Engage the Constitution: The Sun Zhigang Incident and Constitutional Review Proposals in the People's Republic of China

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I. Introduction

Shortly after assuming leadership of the Chinese Communist Party (CCP) in the fall of 2002, Hu Jintao proclaimed that China's "broad masses" should view the Constitution as a "legal weapon for safeguarding citizen rights" (*Zhongguo xinwen wang* 2002). In recent years, citizen activists have tested the limits of this rhetoric by advancing constitutional claims in different legal fora. Some of these efforts have focused on the people's courts (see Pils, this volume). But as noted throughout this volume, neither the government nor the courts recognize the Constitution as being justiciable (see, e.g., Supreme People's Court 2008). Other citizens have focused on an alternative legal mechanism that the government *has* explicitly recognized as a legitimate forum for constitutional complaints: the constitutional review procedure established under Article 90(2) of China's Law on Legislation (*Zhonghua Renmin Gongheguo Lifa Fa* 2000). This provision grants Chinese citizens the right to propose (*jianyi*) that the National People's Congress Standing Committee (NPCSC) review administrative regulations and local laws that they deem to be inconsistent with national law or the Constitution. (This citizen proposal right should be contrasted with the right granted to state organs such as the State Council, the Supreme People's Procuratorate, and provincial people congresses in

Article 90(1) of the same law to demand (*yaoqiu*) NPCSC review of such legal conflicts.) Subsequent National People's Congress (NPC) procedures clarified that the scope of review also includes Supreme People's Court judicial interpretations (*Xinjing bao* 2005).

Since 2003, a growing number of citizens have taken advantage of this mechanism to advance constitutional claims. The defining event in these efforts took place in the spring of that year, when legal reformers leveraged public outrage over the death of a young man named Sun Zhigang in police custody and filed a proposal with the NPCSC challenging a form of administrative detention called "custody and repatriation" (C&R). This citizen challenge generated widespread discussion of constitutional enforcement and inspired numerous subsequent constitutional claims. Whereas only a few proposals had been filed under Article 90 prior to the Sun Zhigang incident, citizens have since sent the NPCSC at least thirty-six requests for constitutional and legislative review on topics ranging from re-education through labor and Internet content rules to employment discrimination and injury compensation standards.¹

This chapter examines the constitutional dynamics of the Sun Zhigang incident and subsequent foci for constitutional review proposals. An examination of these citizen proposals suggests that although the review mechanism articulated by the Law on Legislation has numerous deficiencies as a legal process, citizen constitutional claims are promoting China's legal and constitutional development in several respects. First, when there is a degree of policy flexibility on the part of the leadership on legal and policy reform issues, a carefully crafted constitutional review proposal can help focus public attention on an issue and push authorities to move related reforms forward. Second, by filing proposals and thereby occupying the limited space for constitutional review that the leadership has created, reformers can exert pressure on the party and government to make this existing space meaningful in practice and thereby establish a foothold for expanding the scope of constitutional review in the future.

II. The Sun Zhigang Incident

A. The Detention and Death of Sun Zhigang²

In mid-March 2003, a twenty-seven-year-old Hubei man named Sun Zhigang was stopped by police outside an Internet café on the outskirts of Guangzhou. Although Sun was in Guangzhou legally, he had not yet obtained a temporary residence permit and was not carrying his identification card. As a result, he was detained on the suspicion that he was an illegal migrant, held overnight, and transferred to a Guangzhou C&R center the next day.

Under China's residence registration (*hukou*) system, the Chinese government has tightly controlled internal migration between urban and rural areas

for decades (Congressional-Executive Commission on China 2005). C&R was a controversial form of administrative detention closely connected to these controls. The 1982 Measures on Custody and Repatriation of Vagrants and Beggars in Cities (*Chengshi liulang qitao ren yuan shourong qiansong banfa* 1982) (the “C&R Measures”) gave civil affairs and public security bureaus virtually unchecked power to detain beggars and vagrants in urban areas and to repatriate them forcibly to their place of registered residence. Although these measures were designed in part to provide relief and shelter to indigent persons, in practice, public security officials used them to manage the flow of migrant workers and rural undesirables into China’s urban centers (Yun 2003; Yan 2003). Chinese commentators and international human rights organizations had long criticized pervasive corruption, extortion, and abuse in the C&R system (see, for example, *21 Shiji Jingji Baodao* 2003; Chen 2003a; Human Rights in China 1999).

Several days after Sun’s detention, employees of a medical clinic affiliated with the C&R center announced that Sun had died suddenly of heart problems. However, Sun’s body showed signs of abuse, and an autopsy performed nearly a month later found that he had died of injuries caused by blunt trauma. On April 25, after an exhaustive investigation, the Guangzhou newspaper *Southern Metropolitan Daily* published a detailed report on Sun’s death. This report and an accompanying editorial cited local Guangzhou regulations to demonstrate that Sun should not have been detained in the C&R center and suggested that Sun had died as a result of being beaten in custody (*Nanfang dushibao* 2003a; *Nanfang dushibao* 2003b).

The report on Sun’s death immediately inflamed public opinion. Although party authorities in Guangdong banned local media reports on the case, national media outlets picked up the story, which soon became a fixture in daily headlines (Liebman 2005; see also Hand 2006, 122–123). The case captured the attention of Chinese society, and waves of protest filled online chat rooms. Commentary on the case included not only statements of outrage over Sun’s death and demands for punishment, but also broader complaints about the C&R system and the pervasive abuses of that system by law enforcement personnel (Hand 2006, 123).

This public response created extreme pressure on authorities to investigate Sun’s death. By mid-May, government officials acknowledged that Sun had been wrongfully detained and announced that they had arrested thirteen suspects: eight patients at the C&R center’s clinic, who were charged with beating Sun; and five employees of the clinic, who were accused of inciting the beating (*Xinhuanet* 2003b). In early June, the trial of these twelve defendants opened in the Guangzhou Intermediate People’s Court. According to published accounts of the courtroom testimony, clinic guards were angered that Sun had screamed for help and ordered eight detainees to beat him as punishment. Within days, twelve of the defendants were convicted and given sentences ranging from three years’ imprisonment to death. In two separate

trials, an additional six public security officers were convicted of dereliction of duty and sentenced to prison terms ranging from two to three years (*Zhongguo liushi wang* 2003b; *Xinhua News Agency* 2003a).

B. Constitutional Arguments Raised in Reaction to Sun's Death

Chinese legal reformers viewed the controversy over Sun Zhigang's death as an opportunity both to challenge the C&R system and to establish a precedent for constitutional review in China. In May 2003, three young legal scholars named Xu Zhiyong, Teng Biao, and Yu Jiang submitted a formal proposal to the NPCSC under Article 90(2) of the Law on Legislation (Yu et al. 2003) (the "Review Proposal"). The Review Proposal challenged the legality and constitutionality of the C&R Measures. Under the People's Republic of China (PRC) Constitution and the Law on Legislation, it is the NPCSC, rather than China's judiciary, that has the power to invalidate laws and regulations that conflict with the Constitution. In practice, the NPCSC has not actively exercised this power (Lin 2005; Teng 2004a). Legal scholars hoped that by filing the Review Proposal, they would breathe life into the NPCSC's constitutional review mechanism. "This is not aimed just at the Sun Zhigang case," said Xu Zhiyong. "We are concerned about the system itself. A mechanism for reviewing violations of the Constitution should be established and initiated in order to root out abuses and innovate continually" (Cui 2003). Scholars expressed strong support for the Review Proposal and concluded that its filing was as significant as the Sun Zhigang case itself (see, for example, *Jingji guancha* 2003; see also Wang 2004, 159).

The Review Proposal was written in the form of a legal brief and relied on legalistic arguments to challenge the C&R Measures. The first argument was that the Measures violated the allocation of lawmaking powers set out in Articles 8 and 9 of the Law on Legislation, a core component of China's constitutional architecture. Article 8 of that Law provides that "[t]he following affairs shall only be governed by statute: ... (5) coercive measures (*qiangzhi cuoshi*) and penalties (*chufa*) involving the deprivation of the political rights or personal freedom of citizens." Article 9 provides that the NPC or the NPCSC may authorize the State Council to formulate administrative regulations on the matters listed in Article 8 "except for matters concerning criminal offences and their punishment, coercive measures and punishments involving the deprivation of the political rights or personal freedom of citizens, and the judicial system." The C&R Measures (Arts. 5, 6) and related implementing rules—including the "Detailed Implementing Rules for the Measures on Custody and Repatriation of Vagrants and Beggars in Cities (Temporary)" (*Chengshi liulang qitao renyuan shourong yisong banfa shishi xize (shixing)* 1982), passed by the State Council in 1982, and also subordinate rules issued by lower-level government

entities—contained provisions that were clearly “coercive” under the Law and Legislation (cf. Zhang 2005), and thus constituted clear violations of that law (see *Renmin Wang* 2003; Yan 2003).

The second argument was that the C&R Measures violated Article 37 of the PRC Constitution. This Article provides that “[t]he freedom of the citizens of the PRC is inviolable. No citizen may be arrested except with the approval or by a decision of a people’s procuratorate or by a decision of a people’s court, and arrests must only be made by a public security organ. *Unlawful* deprivation or restriction of citizens’ personal freedom by detention or other means is prohibited, and unlawful search of the person of citizens is prohibited [emphasis added].” This argument had two variants. Some commentators concluded that the Measures technically violated Article 37 because the C&R Measures were “unlawful” under the Law on Legislation. Others argued that C&R was by its nature a constitutionally impermissible violation of citizens’ “personal freedom” (compare Tong 2003, Yan 2003; with Guo 2004).³ The drafters of the Review Proposal did not specify which interpretation they were relying on.

The Review Proposal received significant attention in the Chinese media. The drafters, recognizing that their proposal would have little impact if it were not publicized, had coordinated with national media and carefully timed the submission of the document to maximize media coverage (Teng 2004b). On May 16, the *China Youth Daily* published a supportive article on the Review Proposal, noting the arguments and motivations of the scholars and hailing their decision to make use of the Law on Legislation to propose review of the C&R Measures. Media across China reprinted the *China Youth Daily* story and published other articles on the Review Proposal (Cui 2003; Teng 2004b). On May 22, a different group of five prominent legal scholars submitted a second petition to the NPCSC calling for an investigation into the C&R system, an act that helped to maintain public focus on the incident (see He et al. 2003). By late May, the NPCSC publicly acknowledged receipt of the Review Proposal and indicated that it was considering the document (Nie 2003).

In early June, after the trial and conviction of Sun’s alleged attackers, authorities moved to address the broader concerns that the incident raised. On June 18, official media reported that the State Council, at an executive meeting chaired by Premier Wen Jiabao, had approved a new regulation to replace the C&R Measures. This regulation, entitled “Measures on the Administration of Aid to Indigent Vagrants and Beggars” (*Chengshi shenghuo wuzhuo de liulang qitao renyuan jiuzhu guanli banfa* 2003) (“Aid Measures”), directed civil affairs bureaus to establish *voluntary* aid stations to “provide aid to indigent vagrants and beggars and safeguard their basic subsistence rights and interests.” It also prohibited forced commitments and repatriations (see also *Xinhua News Agency* 2003c). Chinese commentators reacted to the repeal of C&R Measures with euphoria, declaring that the day would be “entered into

the history books” and that “this milestone will always remind us to cherish and strive for every right to which our citizens are entitled and to promote political civilization, the rule of law, and social progress in China.” (Xiao 2003; see also Zi 2003)

Although expressing vindication and a sense of empowerment with the State Council’s decision, however, some observers noted with disappointment that the State Council’s voluntary reform of the C&R system had sidelined the groundbreaking process of constitutional scrutiny by the NPCSC. By unilaterally repealing the C&R Measures, the State Council had eliminated the need for NPCSC review and, therefore, the possibility of a constitutional precedent. Some Chinese scholars noted that the failure of the NPCSC to exercise its review powers made the Sun Zhigang incident less significant for rule of law development in China than it otherwise would have been. Others expressed concern that this would bring an end to citizens efforts to initiate NPCSC review (see, for example, Leu 2003; Tong 2003; Teng 2003a).

As the government implemented the Aid Measures and instituted a series of additional law enforcement reforms related in part to anger over the Sun Zhigang case (Congressional-Executive Commission on China 2004, 24–25), it also adopted countermeasures to bring closure to the incident. In late July 2003, authorities moved to reassert control over public discourse by banning further reporting on Sun Zhigang, suppressing a similar review proposal challenging China’s re-education through labor system (see below), temporarily restricting public discussion of constitutional reform in the media and in academic conferences, and closing several Internet web sites that had been major forums for discussing Sun Zhigang’s death (Pomfret 2003; Teng 2003b). These actions demonstrated the state’s ability and determination to maintain control over the constitutional discourse that Sun Zhigang’s death had helped set in motion.

C. Sociopolitical Factors Contributing to the Decision to Repeal the C&R Measures

In the Sun Zhigang incident, a confluence of external sociopolitical circumstances created conditions favorable to a positive reform outcome. These included a leadership transition, a political crisis generated by the outbreak of Severe Acute Respiratory Syndrome (SARS), political concern with the ramifications of a more formal and drawn out NPCSC review of the C&R Measures, and the adoption of effective advocacy strategies by legal intellectuals pushing reforms.

1. Leadership Need for Constitutional Legitimacy

The Sun Zhigang incident took place against the backdrop of a politically tense leadership transition in China and the upheaval of the SARS crisis. In

late 2002 and early 2003, Hu Jintao succeeded Jiang Zemin as the leader of the party and the state. An ally, Wen Jiabao, replaced Zhu Rongji as Premier of the State Council, China's highest administrative organ. However, Jiang retained the post of Chairman of the Central Military Commission and placed his allies in a majority of the positions on an expanded CCP Politburo Standing Committee. These events left Hu's status and authority relative to Jiang unsettled and generated speculation that the two leaders were engaged in a power struggle (Fewsmith 2003b; Miller 2003a). As they assumed their new posts, Hu and Wen emphasized reform themes of governing for the people, stressed greater government transparency and openness, and took steps to promote understanding and implementation of the PRC Constitution in an effort to bolster their popular support (Fewsmith 2003b; Miller 2003b).

The SARS crisis in early 2003 brought these new leadership dynamics into sharp relief. For weeks, Chinese officials fearful of the economic and political repercussions of the outbreak maintained that the disease was under control. In April 2003, however, the central government was forced to acknowledge that the number of SARS cases had not been accurately reported to the public. This admission created a legitimacy crisis, but also gave Hu and Wen an opportunity to reinforce themes of openness that they had been trying to project, demonstrate their leadership, and contrast themselves with Jiang (who had come across as aloof on the SARS issue) (Fewsmith 2003b). The temporary emphasis on openness and combating SARS provided citizens with space in which to advance their challenge to C&R. The decision to repeal the C&R Measures provided Hu and Wen with another opportunity to reinforce their constitutional credentials and rebuild government legitimacy in the wake of the SARS debacle. There was already some flexibility on reforming C&R. According to Chinese sources, the government had been considering reform of the C&R system for a number of years, and a State Council General Office (2003) directive issued in early 2003 indicates that senior officials were aware of abuses in the system (see also Zhao and Shen 2003; *Xinhua News Agency* 2003d). In March, Huang Jingjun, a member of the Chinese People's Political Consultative Conference, submitted a proposal calling for a firmer legal basis for the C&R system and rectification of C&R abuses (*Xinhuanet* 2003a). By responding to the citizen call to address an injustice and repeal C&R, Hu and Wen were able to extract significant propaganda value on an issue that did not really threaten fundamental state or party interests, and thereby strengthen their position in the leadership transition.

2. *The Review Proposal Created the Prospect of a*

Constitutional Precedent that the Government was Anxious to Avoid

The Review Proposal created a potential institutional conflict between the NPC and the State Council. Although the NPC is the paramount legislative

organ in China and the NPCSC in theory has the power to annul State Council regulations that conflict with the Constitution and national law, the NPCSC has not exercised this power in practice (Teng 2003a). The Review Proposal put the NPCSC in a politically awkward position of possibly overturning a State Council regulation. Rather than engage in a formal, extended constitutional process that could undermine the State Council's authority in the public's eyes, the NPCSC and the State Council conducted behind-the-scenes consultations to find a solution that could address the underlying social concern without calling into question the State Council's authority. The reasonable solution, other than taking the politically risky step of ignoring the Review Proposal, was for the State Council simply to repeal the C&R Measures (Teng 2003a; Wang 2004, 115, 165; Tong 2003).

In addition, an NPCSC decision to cancel the C&R Measures would have created a precedent that could potentially have threatened other administrative measures. "Re-education through labor" (RTL), another form of administrative detention created by administrative regulation rather than by national law, is vulnerable to the same legal arguments reformers made against the C&R Measures in the Review Proposal. Unlike C&R, however, RTL is much more central to the operation of China's public security system. According to constitutional law scholar Tong Zhiwei, the government was concerned that a review decision by the NPCSC in the context of C&R would encourage citizens to launch challenges to RTL and other rules that Chinese authorities depend on more heavily than C&R (Tong 2004). Such concern was evident in official media coverage of the State Council's decision to repeal C&R Measures, which avoided discussion of the constitutional infirmities of the regulation (*Xinhua News Agency* 2003c; Teng 2003b). By repealing the C&R Measures itself, the State Council avoided such a precedent.

3. Legal Intellectuals Worked Effectively within the System by Casting Their Calls for Reform as Consistent with the Leadership's Stated Emphasis on Constitutional Supremacy

As noted above, Hu Jintao placed strong emphasis on the supremacy of the PRC Constitution in late 2002 and early 2003. In addition to casting the Constitution as a weapon to be used in safeguarding rights, Hu noted that government deficiencies had led to a failure to observe law in some cases and stressed that the NPC and its Standing Committee should "shoulder the duty to supervise the implementation of the cardinal law in practice, and firmly rectify acts that violate the Constitution" (emphasis added) (*Zhongguo xinwen wang* 2002). This and other rhetoric opened the door to spirited discussion of constitutionalism in China in the first half of 2003 (see also *Zhongguo liushiwang* 2003a).

Reformers challenging the C&R system used these rhetorical themes to their advantage.

The authors of the Review Proposal intentionally relied on a very technical, legal argument, rather than emotional appeals, to avoid politicizing their challenge to the C&R Measures. The Proposal does not even mention the Sun Zhigang case. As Teng Biao (2003b) noted, “[i]t was not an appeal, but an exercise of citizen proposal rights granted by the Constitution and the Law on Legislation. It was not a protest, but citizens carrying out the practice of law within the cracks in the system.”

This approach allowed them to cast their effort as consistent with leadership objectives. By invoking the citizen proposal mechanism clearly provided for in the Law on Legislation and making a rational and technical argument that the regulations were unlawful (rather than challenging the legitimacy of the regime as a whole), the three scholars could claim to be using the law as a weapon to protect citizen rights and calling on the NPCSC to exercise its constitutional supervision function, just as Hu Jintao had instructed. This effort received favorable coverage in the Chinese media. One party publication explicitly endorsed the approach of these scholars, praising them for “taking the path of citizen proposals to participate in politics” and for playing a crucial role in “solving problems within the constitutional framework” by “guiding society to use rational, legal methods through which to express indignation” (Cao 2003; see also Cai 2005a).

The legal reformers active in the Sun Zhigang incident calculated that by working within the system and relying on technical legal challenges, they were more likely to achieve a positive result and avoid a political backlash. “I have respect for those who raised human rights issues in the past,” said Xu Zhiyong. “But now we hope to work in a constructive way within the space afforded by the legal system. Concrete but gradual change—that is what most Chinese people want” (Eckholm 2003; see also *Renmin wang* 2003). As these and other comments suggest, the drafters of the Review Proposal hoped to achieve modest but meaningful reform that they could build on in the future.

The efforts of these legal scholars were critical to the reform outcome in the Sun Zhigang incident. Legal reformers could not have achieved their goals in the absence of aggressive media reporting on the Sun Zhigang incident and the tide of public opinion it produced. However, without the directed efforts of these legal scholars, the government may have been able to assuage public anger by quickly punishing those responsible for Sun’s death or implementing superficial reforms to C&R. The constitutional review proposal provided legitimacy and power to the voices of average citizens and channeled public outrage over Sun Zhigang’s death into a defined, well-grounded constitutional challenge to C&R that could be cast as an effort to advance stated leadership goals.

D. Constitutional Impacts of the Sun Zhigang Incident

The Sun Zhigang incident not only led to the repeal of C&R, but also had broader influence on China's constitutional development by establishing a precedent for the acceptance of constitutional review proposals, promoting constitutional consciousness, and empowering citizen activists.

1. Impact on the Development of Constitutional Review

The drafters of the Review Proposal hoped that by publicly exercising their right to call on the NPCSC to annul the C&R Measures, they would create a precedent for NPCSC review. They did not achieve this goal. Despite the fact that the NPCSC failed to act, however, the Sun Zhigang incident had a significant impact on constitutional development in China. From a long-term perspective, the incident clarified the right of citizens to submit proposals to the NPCSC, accelerated the creation of embryonic institutions and procedures within the NPCSC to review such proposals, and raised public consciousness of the Constitution and constitutional review.

The fact that the Review Proposal was filed and formally accepted by the NPCSC was a step forward for China's constitutional development. Although the Review Proposal was not the first citizen proposal filed under Article 90(2) of the Law on Legislation (see, for example, Shang 2000), it was the most prominent and well-publicized. NPCSC officials not only publicly acknowledged that they were considering the Review Proposal, but also emphasized the importance of constitutional review and the NPCSC's review function (Nie 2003). China's state-run legal press encouraged citizens to use the Constitution to protect their rights and the following year, NPC officials again publicly confirmed that citizens could exercise the proposal right (see Du 2003; *Xinhuanet* 2004). Such statements placed an official stamp on the efforts of scholars to exercise an important legal right and legitimized arguments that the NPCSC should carry out its supervisory role in practice. By clarifying the citizen proposal right under the Law on Legislation, the Review Proposal opened the door for the filing and acceptance of future review proposals.

The Sun Zhigang incident, and the surge of public interest in the Constitution that it generated, also appear to have accelerated NPCSC efforts to develop constitutional review procedures. When the Review Proposal was filed, numerous legal experts criticized the NPCSC because it had no procedures for handling and replying to such citizen proposals (see, for example, *Jingji guancha* 2003; Deng 2003). At the time, an NPCSC official acknowledged this problem and expressed confidence that the Sun Zhigang incident and related discussion would push China's rule of law process forward (Nie 2003). In June 2004, the NPCSC announced that it had established a new administrative office to review legislative conflicts and related citizen

proposals and make recommendations on addressing them (*Xinjing bao* 2004). The *China Daily* tied this reform to the Sun Zhigang case and characterized it as a response to “mounting public demand that [the NPC] rectify its constitutional oversight” (*China Daily* 2004b). In December 2005, the NPCSC took a further step, issuing two circulars that set out detailed procedures for handling proposals for NPCSC review of administrative regulations and judicial interpretations. Press articles on the procedures were reprinted on the NPC and *Guangming Daily* Web sites, and connected this reform to the Sun Zhigang incident as well, calling on readers to remember “Sun Zhigang’s epitaph” (*Xinjing bao* 2005b; see also Lan 2005; *Xinjing bao* 2005a).

It would be premature to conclude that the reforms described above represent the emergence of an institutionalized and independent legal process for constitutional review. In fact, the limited nature of the reforms suggest that they may be part of a leadership effort to demonstrate progress on the issue of constitutional review while staving off demands for more robust constitutional enforcement mechanisms and maintaining tight control over constitutional claims. Nevertheless, they represent small but nevertheless significant advances. The NPC has now legitimized the citizen proposal right in practice and has publicized the fact that it has adopted detailed procedures to handle such proposals. The establishment of the review mechanism and the official recognition that it can and should be used opens up expanded space for future citizen constitutional claims. References to Sun Zhigang in discussions of these reforms demonstrate that the incident was a factor in pushing the reforms forward.

2. *Constitutional Consciousness and Citizen Empowerment*

The Sun Zhigang incident also intensified public discussion of constitutionalism and added a new dimension to this discourse by focusing attention on the issue of constitutional review. Interviews with the drafters of the Review Proposal indicate that even these three highly educated legal scholars were initially unaware that the Law on Legislation gave them a right to submit constitutional review proposals and only “discovered” it with excitement after several weeks of discussion and research on the Sun Zhigang case (*Nanfang zhoumo* 2003b). In reports on the Review Proposal, mainstream Chinese media explained the proposal right and stressed that the mechanism was a tool that not only legal experts, but also ordinary citizens, should use (see, for example, *Nanfang dushibao* 2003c; Cui 2003; *Jingji guancha* 2003). Such reports undoubtedly exposed many citizens to the concept of constitutional review for the first time. Reformers viewed this contribution as critical, noting that only citizen pressure and real-life precedents could activate China’s dormant constitutional review procedures (Teng 2004a). This discussion had a profound impact on constitutional awareness in China. Even the *Guangming Daily*, a party publication, opined that “the supreme authority of

the Constitution is carved into the hearts of every citizen at the moment,” and that the Sun Zhigang case was “an opportunity for an intellectual movement to actively protect the Constitution that is gradually rising in Chinese society” (Cao 2003; see also Deng 2003).

This awareness, and the partial reform victory in the Sun Zhigang incident, generated a sense of citizen empowerment. Although the strategy of using incidents or individual cases to promote broader legal reform was not new (see Liebman 1999, 271–272, 278–279), legal reformers in the Sun Zhigang incident applied this strategy in a more aggressive and public manner, drawing on constitutional arguments and leveraging a surge of public opinion to challenge a flawed national regulation. While in the absence of an NPCSC decision or official acknowledgement, there was no way to prove that the Review Proposal itself triggered the repeal of the C&R Measures, the State Council’s decision nevertheless offered what many interpreted to be a dramatic illustration of the effectiveness of citizen action.

Chinese citizens exhibited not only hope and exhilaration at this outcome, but also a new sense of confidence and purpose. In the wake of the Sun Zhigang incident, reformers refined and publicized strategies for bottom-up constitutional activism, including “rights defense” (*weiquan*) actions and impact litigation (*yingxiangxing susong*) (see, for example, Wang 2003; Teng 2003b; Teng 2005; Ji and Wang 2005; *Radio Free Asia* 2006j). More importantly, as noted in Section I, a cadre of rights defenders, public interest lawyers, and average citizens have continued to advance new constitutional arguments in subsequent proposals for NPCSC review, and in litigation. (Several of these will be discussed in Section III.) Chinese scholars and lawyers have cited the Sun Zhigang incident as a catalyst for this new wave of constitutional activism (Cai 2005a).

III. Citizen Constitutional Challenges Subsequent to the Sun Zhigang Incident

This section presents four examples of citizen proposals for NPCSC constitutional review that were developed and submitted subsequent to the Sun Zhigang incident. These examples illustrate a range of constitutional challenges and official responses, and highlight the conditions under which constitutional appeals may be effective tools for promoting specific legal and policy reforms. They also demonstrate that lawyers are filing such appeals with broader, constitutional development goals in mind, similar to the scholars in the Sun Zhigang incident. In the first two examples, citizens advanced constitutional arguments in the pursuit of reform goals that were unrealistic in the existing political environment or raised sensitive political issues. The immediate impacts of these proposals appear to have been limited or nonexistent. The second two examples, both involving constitutional challenges to

discriminatory rules or practices, demonstrate that a positive reform dynamic similar to that in the Sun Zhigang incident has been created in some subsequent cases. As these examples suggest, when media coverage focuses public attention on an injustice or issue of broad concern and there is a degree of government policy flexibility, constitutional appeals may be helpful in promoting specific legal and policy reforms.

A. Challenges to Re-education through Labor

Immediately after the repeal of the C&R Measures in 2003, reformers launched a challenge against China's re-education-through-labor (RTL) system. Under China's RTL system, public security bureaus have the power to send citizens, without trial, to "re-education through labor" camps for terms of up to three years, with the possibility of a one year extension, for a variety of illegal acts. RTL, like C&R, was established by administrative regulation and was vulnerable to the same constitutional arguments that were made against C&R in the Review Proposal (see Hung 2003). However, in this case the government refused to repeal the system under challenge. The RTL challenge highlights the importance of leadership flexibility and illustrates the limits of party and government responsiveness to citizen constitutional review proposals.

In June 2003, a Beijing scholar named Hu Xingdou attempted to build on the success of the Sun Zhigang incident by filing the first of two proposals with the NPCSC challenging the legality of RTL. His first proposal, submitted only days after the State Council announced the repeal of the C&R Measures, was a short, technical document that drew on the Constitution and Law on Legislation and replicated the legal arguments made against C&R in the Review Proposal (Hu 2003a). Hu noted in online comments (Hu 2003b) that the proposal was an effort to breathe life into a constitutional review process that had been left "stillborn" after the State Council voluntarily repealed the C&R Measures. He characterized his proposal as a "second wave" effort to establish constitutional review and expressed hope that there would be third and fourth waves. In July 2003, Chinese media reported on the torture death of an RTL inmate named Zhang Bin under circumstances that resembled those of Sun Zhigang's death (*Ming Pao* 2003a). Seeking to build upon this, Hu several months later filed a second, significantly longer proposal challenging RTL (Hu 2003c). This proposal repeated the legal arguments of the first, but added emotional descriptions of RTL abuses, a more detailed constitutional analysis, and appeals to China's leaders to recognize that it was in their political interest to abolish the system.

Although Chinese media reported on the death of Zhang Bin, the level of such reporting did not approach that in the Sun Zhigang incident. According to official reports, senior leaders issued firm and timely instructions in response to the Zhang Bin case, and authorities imposed harsh sentences on the alleged perpetrators of that incident. In late 2003 and in 2004, official

media also emphasized government efforts to humanize RTL centers (see, for example, Guo 2003; see generally Congressional-Executive Commission on China 2004, 17). At the same time, authorities reportedly barred the Chinese media from covering Hu's constitutional review proposals and warned Hu not to publicize his efforts (*Ming Pao* 2003b).

Unlike in the case of C&R, the leadership was not flexible on the issue of repealing RTL, which it continues to rely upon as an important mechanism of social control (Ma 2003; see also Peerenboom 2004b). This lack of flexibility, in turn, probably resulted in government efforts to limit media coverage and preempt public pressure for systemic reform. At least from a short-term perspective, Hu's constitutional review proposal was a failure: it neither resulted in the repeal of RTL nor established a constitutional review precedent. The case demonstrates that constitutional arguments may not be sufficient to catalyze reforms when other factors, such as a government predisposition for reform and intense media coverage, are not in place.

From a long-term perspective, however, constitutional challenges to RTL may have contributed to pressure for a reevaluation of the system. Although RTL remains in force, the government is now considering a national "Law on Correcting Unlawful Acts" to provide a statutory, rather than simply administrative, basis for the RTL system. The drafting of this national law, an effort that directly addresses at least one of the arguments in Hu's constitutional review proposals, has opened the door to discussion of modest reforms to the system. These possible reforms include reducing the maximum RTL sentence from three years to eighteen months, allowing RTL suspects to hire a defense lawyer, and providing for formal RTL hearings and appeals (Congressional-Executive Commission on China 2005, 28). In February 2006, *Xinhua* published a commentary on RTL acknowledging that the system lacks a legal basis and that current RTL procedures fail to uphold the basic demands of fairness, openness, and justice as demanded by the Constitution (Lin 2006). Although Chinese leaders ignored calls to repeal RTL in 2003, they seem to feel the need to respond to the argument that RTL lacks a proper legal basis by both founding the system on stronger legal legitimacy, and making modest changes that address some basic complaints about it. This long-term response is one indication of the importance the leadership places on maintaining the appearance of legality and illustrates the related role that citizen constitutional appeals may play in promoting modest reforms.

*B. The Aegean Sea Group Constitutional Review Proposal on
China's Internet News Management Regulations*

In a second example, this one from early 2006, citizens used the constitutional review mechanism as a forum for political protest, challenging administrative regulations on Internet news content. This case suggests that politicized

constitutional challenges to core regime interests have limited potential as vehicles for generating public discussion and movement on specific reforms.

In March 2006, after the Zhejiang Press and Publication Administration closed down a number of Web sites shortly before the annual meeting of the NPC Plenary Session, a consortium of independent Web site operators calling themselves the “Aegean Sea Incident Constitutional Review Application Delegation” filed a constitutional review proposal with the NPCSC challenging the Provisions on the Administration of Internet News Information Services (*Hulianwang xinwen xinxi fuwu guanli guiding* 2005) (the “Provisions”) (see generally *Congressional-Executive Commission on China Virtual Academy* 2006b). The Provisions, issued by the State Council Administration Office and the Ministry of Information Industry in the fall of 2005, empower local press and publication bureaus to close any “Internet news information service” established without the authorization of the State Council Information Office. They also require such services to have 10 million yuan in registered capital in order to receive authorization. The authors of the proposal argued that the Provisions violate the rights to freedom of speech and the press enshrined in Article 35 of the Constitution. They also argued that the rule violates the PRC Administrative Licensing Law, which states that industrial licenses may only be established by national statute (passed by the NPC or the NPCSC) or by administrative regulation promulgated by the State Council. The Provisions, by contrast, were jointly promulgated by a State Council sub-bureau and an agency rather than the State Council itself. Finally, they also asserted that the violation of a public law such as the Administrative Licensing Law is a *de facto* violation of the Constitution (see *Congressional-Executive Commission on China Virtual Academy* 2006c).

Similar to the RTL proposal, the Aegean Sea proposal directly challenged a core control mechanism of the Chinese party-state—in this case, legal controls over news and information. Moreover, the Aegean Sea proposal was much more “politicized” than the others discussed in this chapter. Like the other proposals, it presented distinct constitutional arguments and was addressed to the NPCSC office charged with reviewing legislative inconsistencies. But while reformers in other cases have been careful to cast their proposals as efforts to advance stated government and party interests, the Aegean Sea proposal was clearly framed as a protest against regime power. The title of the proposal, which was published as an open letter, read like a political call to arms: “Demand for Thorough Repeal of the ‘Provisions on the Administration of Internet News Information Services’—Netizens of the World Sign On!” The authors further declared that once the number of signatories on the proposal reached 10,000, if the NPCSC had not conducted a review and announced its decision, they would apply to a “model constitutional court” composed of Chinese scholars and “authoritative persons” for review.⁴

Unlike the more technical and politically cautious proposals discussed elsewhere in this chapter, the Aegean Sea proposal failed to catalyze any reform movement and may even have contributed to a political backlash. It was not covered in the domestic state-run media (although it was reported and discussed in foreign media and on dissident and rights-defense Web sites). Moreover, in October 2006, the founder and editor of the Aegean Sea Web Site, a vocal and experienced dissident named Zhang Jianhong, was arrested and charged with subversion (*Congressional-Executive Commission on China Virtual Academy* 2006d). The NPCSC never responded to the proposal, and, as of August 2007, the Provisions remained in place unamended.

C. The Hepatitis B Discrimination Cases

In 2003, two legal cases and corresponding efforts to challenge pervasive official discrimination in public employment against carriers of the Hepatitis B virus (“HBV”) presented reformers with an opportunity to press for legal and constitutional reforms similar to that in the Sun Zhigang case. Legal reformers took advantage of public attention on the issue and pursued constitutional challenges against HBV discrimination both by filing litigation in the courts and by sending a constitutional review proposal to the NPCSC. Their efforts arguably contributed to pressures for systemic legal reforms to address the issue of HBV discrimination and established antidiscrimination principles that could be used to challenge other forms of discrimination in the future. Moreover, their discussion of constitutional principles in these legal forums maintained public focus on the issue of constitutional review after the Sun Zhigang incident. Indeed, some Hepatitis B activists drew explicit parallels between their cause and the Sun Zhigang case (see, for example, Huang and He 2003).

According to Chinese estimates, more than 120 million Chinese citizens (nearly 10 percent of the population) are HBV carriers. Although many of these carriers have not developed full Hepatitis B infections and are not a threat to those around them, they have been systematically excluded from civil service positions and frequently suffer discrimination in education, marriage, and other areas (see generally Chen 2004c; *China Law and Governance Review* 2004). In April 2003, a man named Zhou Yichao, who had been denied a civil service position because of his HBV status, entered a government office in Zhejiang Province, killed a local official, and seriously injured another. Although Zhou was eventually sentenced to death and executed, the case attracted significant and somewhat sympathetic media attention. The case also prompted commentators to debate the appropriateness of the discriminatory hiring practices that led Zhou to commit this desperate act (Chen 2003; Guo 2004).

Shortly after Zhou’s trial, other Chinese citizens took steps to challenge HBV discrimination through legal channels. In November 2003, a man

from Anhui Province named Zhang Xianzhu filed a groundbreaking lawsuit in a basic level court in the city of Wuhu challenging the decision of the Wuhu municipal government to deny him employment because of his HBV status. The lawsuit argued that such discrimination violated both Zhang's right to participate in the affairs of the state (through government employment), and his right to equal protection, as enshrined in Articles 2 and 33 of the Constitution respectively. Zhang was represented by Zhou Wei, a well-known law professor and public interest lawyer. Zhou, who had previously filed other antidiscrimination lawsuits based on similar constitutional arguments, was hoping to use this case not only to push for antidiscrimination reforms but also more broadly to promote constitutional consciousness and judicial application of the Constitution (*China Law and Governance Review* 2004; see also *Sichuan xinwen wang* 2003).

At the same time, a group of HBV carriers submitted a constitutional Review Proposal to the NPCSC on the HBV discrimination issue. The proposal challenged the constitutionality of a large set of national, provincial, and municipal regulations that systematically excluded HBV carriers from public employment. The proposal, which was circulated and discussed on an Internet site devoted to HBV carriers, was eventually signed by more than 1,611 citizens and formally submitted to the NPCSC in December 2003 (*Xinjing bao* 2003).

Both the court cases and the proposal received national media coverage and generated sustained constitutional discussion among the public. A commentary on the Web site of China's central television network noted that, like the Sun Zhigang case, the Hepatitis B cases had the potential to promote a systemic change that would affect all Chinese citizens. The report also noted that reformers were pursuing legal strategies to deal with the problem that resembled those in the Sun Zhigang incident (*CCTV.com* 2004; see also Chen 2003; Guo 2004). The Zhang court case ended in a technical but hollow victory for legal reformers. The Wuhu court overturned the local government decision to disqualify Zhang, but it grounded its decision in an evidentiary issue and dodged the constitutional question that Zhang had raised. (It also declined to order the Wuhu government to employ him, noting that the recruiting season had already ended; see *China Law and Governance Review* 2004.)

Collectively, however, the Zhou killings, the Zhang lawsuit, the constitutional review proposal, and related public discussion helped to catalyze a series of broader legal reforms on HBV discrimination. In the wake of these events, at least six provinces announced that they would no longer exclude noninfectious HBV carriers from public employment (Yan 2004). In August 2004, the NPC passed revisions to the Law on the Prevention and Control of Infectious Diseases (*Zhonghua renmin gongheguo chuanranbing fangzhi fa* 2004) that banned discrimination against disease carriers (see Art. 17). And in early 2005, the personnel and health ministries finalized new health

standards confirming that HBV carriers who do not show symptoms of the disease are eligible for public employment (see Article 7 of the Civil Service Employment Physical Examination General Standards (Provisional) (*Gongwuyuan luyong tijian tongyong biao* (shixing) 2005)). Officials from the Ministry of Personnel noted that they had received proposals in the past on this issue and had been working on modifications to the civil service health standards for some time, an indication of government policy flexibility. However, the officials noted that public opinion “provided the impetus for the new amendment” (Chen 2004c). Subsequently, both the Ministry of Labor and Social Security (see Ministry of Labor and Social Security 2007) and the NPCSC (see *Xinhuanet* 2007) have taken steps to begin addressing the problem of HBV discrimination in the private sector.

D. Discriminatory Injury Compensation Standards

In 2006, legal activists built on their experience in the Hepatitis B cases and applied similar constitutional strategies to challenge discriminatory compensation standards for accident-related injuries. Subsequent to the filing of constitutional review proposals and related media coverage, both local and national authorities took steps to limit the impact of the discriminatory standards. The case provides a recent example of constitutional claims that appear to have contributed to a positive legal reform dynamic.

The death of three students in a traffic accident in Chongqing Municipality in early 2006 brought the issue of injury compensation standards to national attention (Yardley 2006). Pursuant to a Supreme People’s Court legal interpretation (SPC 2003, Art. 29), many local courts in China determine compensation in part on the basis of whether accident victims hold an urban or rural residence registration (see generally Cheng, Zhou, and Li 2006). Based on this standard, the party responsible for the Chongqing accident provided the families of two students with urban residence registrations more than twice the compensation it agreed to provide the family of a third student with a rural residence registration, despite the fact that the family of the third, supposedly “rural” victim had lived in Chongqing for almost fifteen years. As in the Sun Zhigang and Hepatitis B cases, domestic media reported widely on the case and the controversy surrounding the disparate compensation standard (see, for example, *Zhengyi wang* [undated]; *Renmin wang* (2003); see generally Hand 2006, 191).

This controversy prompted several legal reformers to file constitutional review proposals with the NPCSC challenging the constitutionality of the Supreme People’s Court (SPC) interpretation. In April 2006, Zhou Wei, the lead lawyer in Zhang Xianzhu’s Hepatitis B litigation, filed a proposal on behalf of the Chongqing family with the rural residence registration. The proposal challenged the constitutionality of Article 29 of the SPC interpretation,

citing the equal protection clause of the Constitution and offering detailed arguments for why the compensation distinction in the SPC interpretation was constitutionally impermissible. Zhou Wei noted that NPC delegates had raised questions about the compensation standard at the 2006 NPC meetings and, drawing on official rhetoric, argued that such legal discrimination against rural residents “violated constitutional principles of building a socialist rule of law society,” and was “not in accord with aim of building a harmonious society” (Cheng, Zhou, and Li 2006).

The Zhou Wei proposal was one in a series of citizen proposals on the issue. Beijing activist Hu Xingdou (2006) and Chongqing labor lawyer Zhou Litai (2004) also filed constitutional review proposals challenging the SPC interpretation. Subsequently, PRC citizens sent additional constitutional review proposals and suggestions on the interpretation both to the NPCSC and directly to the SPC. All of these proposals took advantage of political conditions favorable to policy movement, as the controversy arose at a time when senior leaders had been actively promoting new policies designed to narrow China’s urban-rural income gap (see, for example, Wen 2006). As discussion of the Chongqing case and the constitutional review proposals circulated in the media, SPC officials indicated that the issue of compensation disparity had been under discussion for several years and that there was broad agreement on the need for a uniform standard (*Xinjing bao* 2006).

Since the filing of the constitutional review proposals, both local and national authorities have announced changes to injury compensation standards. In mid-2006, the Henan High People’s Court issued an opinion that brought injury compensation standards for migrants meeting certain conditions into line with compensation standards for urban residents. According to domestic reports, Anhui Province, Guangxi Province, and Chongqing Municipality have all adopted similar measures (*Congressional-Executive Commission on China Virtual Academy* 2006b; *Fazhi ribao* 2006). After accepting public suggestions on revision of the interpretation in 2006, SPC President Xiao Yang announced in March 2007 that the interpretation would be revised sometime after the close of the 2007 NPC session (*People’s Daily Online* 2007; *Xinjing bao* 2007). Reporting on the SPC interpretation in government mouthpieces such as the *Workers Daily* and *Xinhua* acknowledged the role that this robust constitutional debate was playing in discussions on the revision of the discriminatory standard (Cheng 2006; *People’s Daily Online* 2007).

IV. Concluding Observations

What does popular engagement in constitutional interpretation and challenge tell us about China’s constitutional development? Despite the reform

enthusiasm that followed the repeal of the C&R Measures in 2003, the record of the past three years provides significant ammunition for critics (see, for example, *Nanfang dushibao* 2004; Lin 2005; Cai 2005b; see also Pils, this volume). Following the Sun Zhigang incident, authorities took small steps to build up the NPCSC's constitutional review capacity and related procedures. However, as explanations of the Law on Legislation published by the NPC Legal Affairs Commission indicate, the NPC intended the proposal right established under Article 90(2) to serve primarily as a safety valve for citizen complaint and as an information collection mechanism, rather than as an enforceable right to constitutional review (see Zhang 2000, 265–268). Under the current system, citizens have no right to a response to their constitutional review proposals. Indeed, not only has the NPCSC yet to issue a formal answer to a single proposal, but also it seems to be taking great pains to avoid doing so even on relatively benign issues, such as with regards to the collection of road maintenance fees (see *Xinhua News Agency* 2006). Moreover, the details of the review process do not appear to have been made readily available to the public,⁵ and the mechanism cannot be used to challenge the constitutionality of national statutes passed by the NPC or the concrete behavior of administrative officials in specific cases. Finally, as noted in Section II of this chapter, authorities have explicitly ruled out the possibility of constitutional litigation in the people's courts.

Why then do Chinese citizens continue to raise constitutional arguments under the Law on Legislation review procedure? Several reasons might be offered. First, in some cases, constitutional review proposals appear to provide reformers with a useful tool for promoting modest legal and policy reforms. Filing a constitutional review proposal with the NPCSC generates media coverage and social discussion of reform issues. Engaging what is at least superficially the proper legal forum for constitutional complaints also gives activists a way to cloak their reform arguments in legal and constitutional legitimacy. The RTL and Aegean Sea examples suggest that when constitutional review proposals challenge fundamental party or state interests, the short-term impact of constitutional arguments may be limited or even nonexistent. However, the Sun Zhigang and antidiscrimination examples suggest that when there is policy flexibility on the part of the government, constitutional review proposals may help to nudge authorities in the direction of reform. Given the lack of any official NPCSC responses and the opaque nature of leadership decision making in China, it is difficult to establish a cause (a constitutional review proposal) and effect (movement on specific reforms) relationship with any degree of certainty.

Nevertheless, the fact that Chinese citizens continue to file constitutional review proposals tells us that even if the NPCSC review mechanism remains deficient as a *legal process*, reformers view these proposals as one of a number

of useful tools, including media coverage and individual cases of injustice, to attract public attention and build political momentum for legal and policy reforms.

More importantly, many of the citizen activists who are filing such proposals are doing so in a long-term effort to make constitutional review meaningful as a legal process. Although flawed in numerous respects, the NPCSC review mechanism remains the one existing legal forum that Chinese authorities have authorized as an acceptable forum for constitutional challenges. By occupying this space, activists help to consolidate the symbolic citizenship gains that the creation of the constitutional review proposal mechanism represents. They also challenge China's authorities to live up to their rule of law rhetoric and make the existing review process meaningful in practice (see, for example, Teng 2004a; Yang 2004; Shang and Zhang 2005). Finally, filing proposals and exposing the limitations of the current mechanism gives citizen activists leverage from which to pry open space for enhanced constitutional review. By generating public discussion of legal issues, stimulating new government rhetoric that can be used as further political cover by reformers, establishing precedents, and creating patterns of and expectations for government responsiveness to citizen action, citizen constitutional challenges can push reform discussions to new levels and build foundations for more dramatic constitutional change should political conditions be more conducive to such change in the future (see also *Radio Free Asia* 2006j).

Viewed from this perspective, citizen constitutional review proposals are part of a dynamic process of constitutional development, one shaped not only by top-down decision making but also by interactions between the government and ordinary citizens (see Fu, this volume; Dowdle this volume). The Sun Zhigang incident illustrated this dynamic. Discussion by government leaders and state-run media of constitutional enforcement and the rule of law provided a source of (perhaps unintended) legitimacy for the initial scholar demands for review of C&R. However, it was media and Internet coverage of the citizen challenge to C&R, more than the government's planning and more general rhetoric on constitutionalism, that generated a sense of citizen empowerment and strengthened public consciousness of constitutional rights and enforcement mechanisms. Reformers not only capitalized on official legal rhetoric and existing legal institutions, but also created a legal story of their own. This story attracted public attention and, amplified by media and Internet coverage, provided legal activists with an opportunity to disseminate and reinforce messages of their choosing. The government's response to these pressures in turn generated further publicity on the issue, a flurry of new constitutional review proposals, and an expectation that NPCSC's December 2005 procedures for handling constitutional review proposals were "just the beginning of the establishment of constitutional review" (*Xinjing bao* 2005a).

In sum, the Sun Zhigang incident and government rule of law rhetoric legitimized a self-reinforcing cycle of citizen action, reform pressures, and further publicity that promoted constitutional development. Similar observations might be made about the Hepatitis B cases, challenges to the SPC injury compensation standard, and even to some degree the challenges to RTL.

Whether these constitutional claims will prove successful in prompting the creation of a more robust mechanism for constitutional review in China remains to be seen. Given the sensitive political dynamics that surround this issue and the present reluctance of the NPCSC to issue public decisions in response to constitutional review proposals, the establishment of such a mechanism seems unlikely in the near term. In the current political environment, however, reformers do not have many effective alternatives for promoting constitutional development. Unrealistic reform demands, politicized appeals, unauthorized organization and collective action, and demonstrations all hold significant risks for legal reformers and, as some in China have noted, may actually set the reform process back (see Eva Pils' chapter in this volume).⁶ Constitutional review proposals offer citizens the limited but nonetheless significant opportunity to bolster arguments for specific legal reforms and to keep pressure on the state to breathe life into constitutional review. To the extent that the party and the government increasingly rely on constitutionalism and rule of law as sources of legitimacy, and on legal institutions to address growing instability (see also He, this volume), such long-term movement seems plausible.

Notes

1. The author has collected thirty-six examples of citizen proposals filed under the Law on Legislation review mechanism. The actual number of proposals are almost certainly much higher. Not all such proposals cite the Constitution specifically, but are nevertheless "constitutional" in a broader sense.
2. Except as otherwise indicated, the account presented in this subsection is based on Chen and Wang (2003). See also Yun (2003).
3. Both interpretations of the second argument appear to be controversial (see Deng 2003; Jiang 2003).
4. It is unclear if the proposal was ever formally sent to the NPC Legislation Filing and Review Office.
5. The author has been able to identify only one obscure Internet source for the full text of the procedures and has been unable to locate any published NPCSC decision on a review proposal. When last visited in August 2007, the Web site that had earlier posted the procedures had become inoperable.
6. See, e.g., Kahn (2005). In discussions with the author, other rights lawyers have made similar comments.