
Pressures on Chinese Judges under Xi

Xin He*

ABSTRACT

Drawing on interviews with Chinese judges, this paper reveals the major effects of judicial reforms during the past half decade. It focuses on the ramifications of a new quota and responsibility system for judges and on the strengthening of central-government controls over the judiciary. The paper differentiates between what the Party considers to be legitimate and illegitimate influences on judges, which sheds light on recent legal developments and the role of the judiciary in Chinese governance. The article finds that illegitimate influences on courts have declined palpably, but what the Party perceives to be legitimate influences have persisted and even been reinforced. More direct, comprehensive control over judges has replaced previously fragmented, multilayered mechanisms. Despite important changes, the reforms did not lead to institutional independence of Chinese judges, nor has the stature of the courts in China's political landscape changed.

The Chinese Communist Party's "Decision to Strengthen Rule of Law" in 2014 launched a new wave of judicial reforms. Under a slogan that promoted "ruling the country in accordance with law,"¹ these reforms cover, among other things, the courts' budgets, personnel, adjudication, judges' decision-making power vis-à-vis their immediate superiors, and lay assessors. A judge quota (员额制) reform, for example, attempts to build up an elite profession of judges, admitting a more limited but more capable number of people to the judge's career track. In the judge's "responsibility system," another pillar of the reforms, the thrust is to "let the adjudicator judge but hold those who adjudicate responsible" (让审理者裁判, 让裁判者负责). While nowadays judges can make most decisions free of their supervisors' approval, they are held responsible for their decisions for life.

*I thank Anita Chan and Jonathan Unger for their thoughtful comments. An early version of this paper was presented at the Pacific China Legal Research Forum hosted by the University of Hong Kong and at "The Chinese Communist Party at 100" conference hosted by the University of Pennsylvania in September 2020. I am thankful for the comments and suggestions from the audience, in particular, Sarah Biddulph, Jacques deLisle, Kun Fan, Hualing Fu, Jamie Horsley, Jed Kroncke, Jiajian Liu, Neysun Mahboubi, Ye Meng, Shitong Qiao, Po Jen Yap, and Angela Zhang. I am also grateful to the Chinese judges who candidly answered my interview questions.

1. Elisa Nesossi and Susan Trevasques, *Procedural Justice and the Fair Trial in Contemporary Chinese Criminal Justice* (Leiden: Brill, 2018).

Electronically published December 21, 2020

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Few English-language publications have empirically examined the reforms' impact. Without empirical evidence, a number of the existing studies are either suggestive, ambivalent, or even conflicting. For example, after outlining the reforms, Feng Lin suggests that "the introduction of quota judges will enhance the social status of quota judges and the new appointment and removal system will give quota judges more job security," even though "the actual effect of these reforms is hard to predict at this stage."² Taisu Zhang and Tom Ginsburg are more sanguine; they contend that the reforms empower the courts, raise the judges' prestige, and strengthen institutional independence.³ However, Tao Wang asserts that "the current reform does not touch the real substance of the feeble and dependent status of China's courts."⁴ In the Chinese-language literature, reports and analyses abound,⁵ including several that rely on empirical research.⁶ Due to political sensitivities, however, none of them have touched the issue of extralegal influences on the courts, let alone the judiciary's role in China's governance.

Have Chinese judges gained prestige and independence? If so, to what extent and in which sense have the reforms empowered them? Have the reforms reduced extralegal interference? How does the regime control the judges?

Scholars have long debated by what standards Chinese courts are independent.⁷ While many criticize China for lacking judicial independence, Randall

2. Feng Lin, "The Future of Judicial Independence in China" (Centre for Judicial Education and Research City University of Hong Kong Working Paper track no. 2, 2016), 20. Donald Clarke is similarly cautious, stating that "it offers some modest progress toward the CCP's rule-by-law project, including reforms in the way judges are selected and promoted"; see "China's Legal System and the Fourth Plenum," *Asia Policy*, no. 20 (2015): 10, 16.

3. Taisu Zhang and Tom Ginsburg, "Legality in Contemporary Chinese Politics," *Virginia Journal of International Law* 59, no. 2 (2019): 307.

4. Tao Wang, "China's Pilot Judicial Structure Reform in Shanghai, 2014–2015: Its Context, Implementation and Implications," *Willamette Journal of International Law and Dispute Resolution* 24, no. 1 (2016): 53, 54.

5. Ruihua Chen, "Theoretical Reflections on the Systemic Reform of the Specified Number of Judges" [法官员额制改革的理论反思], *Jurist* [法学家] 3 (2018): 1; Yongsheng Chen and Bing Bai, "Limitations of the Systemic Reform of the Specified Number of Judicial Personnel" [法官、检察官员额制改革的限度], *Journal of Comparative Law* [比较法研究] 2 (2016): 21; Zhiyun Chen and Wenbo Sun, *Studies on the Allocation of Judicial Posts* [法官员额问题研究] (Beijing: China Democracy and Legal System Press [中国民主法制出版社], 2016).

6. Jisen Xia, "An Empirical Study on the Professional Identity of Judges in Light of the Judicial System" [员额制下法官的职业认同实证研究—基于在安徽省某市法官员额制试点法院的调查], *Law Science Magazine* [法学杂志] 1 (2018): 109; Qing Zhang, "Case Pressures and Solutions in Basic Judicature after the Reform of the Judge Quota System: Three Typical Courts in Y-Province as Examples" [员额制改革后基层司法的案件压力及其应对 : 以Y省三个典型基层法院为例], *Journal of China University of Political Science and Law* [中国政法大学学报] 69 (2019): 96.

7. Randall Peerenboom, "Judicial Independence in China: Common Myths and Unfounded Assumptions," in *Judicial Independence in China: Lessons for Global Rule*, ed. Randall Peerenboom (Cambridge: Cambridge University Press, 2010), 69–94; Suli Zhu, "The Party and the Courts," in *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, ed. Randall Peerenboom (Cambridge: Cambridge University Press, 2009), 52–68; F. Lin, "The Future"; Lance Ang and Jiangyu Wang, "Judicial Independence in Dominant Party States: Singapore's Possibilities for China," *Asian Journal of Comparative Law* 14, no. 2 (2019): 337.

Peerenboom argues that it is inappropriate to assess China by the standard of international best practices; China has been doing well given its development stage.⁸ He and others have begun categorizing influences on courts from Party organs and local governments, the *guanxi* of social acquaintances, the media, and legal scholars.⁹ Similarly, Kwai Hang Ng and I list four types of embeddedness in explaining the judicial decision-making process in Chinese courts: political, administrative, social, and economic.¹⁰

While such categorizations deepen our understanding of China's courts, they blur a crucial distinction: one type of influence is allowed, preferred, and even urged by the regime. In the official rhetoric, it is called "supervision," "management," and "carrying out duties." It can be openly discussed in the courts' internal meetings, recorded in these meetings' minutes, and subjected to further scrutiny by the Party and the upper-level courts or governments. These are "legitimate influences" (正当影响). In other words, according to Chinese laws and political rules, certain influences over Chinese courts are not only declared to be legally and politically legitimate; they are required and even hailed as the key to effective governance.¹¹ Nobody should be punished or held responsible for exerting or acting under such influences. On the contrary, failing to act on or obstructing these would be penalized. For example, both the court officials and government or Party leaders are supposed to instruct the responsible judge (承办法官) on how to handle politically sensitive or influential cases such as those affecting social stability. In keeping with this, the media, and especially the official media, can comment on case decisions, and their comments have affected how the courts decide cases.¹²

Influences that permeate through informal, private channels to support personal interests are disapproved of or forbidden. Exemplifying these influences is *guanxi*, or social ties.¹³ They may be exercised through the structural channels of Chinese courts, in which patron-client relations between superiors and subordinates may lead to abuses. *Guanxi* sometimes may also be exerted through broad, diffuse,

8. Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (Oxford: Oxford University Press, 2007), and "Judicial Independence."

9. Yulin Fu and Randall Peerenboom, "A New Analytic Framework for Understanding and Promoting Judicial Independence in China," in *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, ed. Randall Peerenboom (New York: Cambridge University Press, 2009), 97; F. Lin, "The Future."

10. Kwai Hang Ng and Xin He, *Embedded Courts: Judicial Decision-Making in China* (New York: Cambridge University Press, 2017).

11. Zhen Peng, "Speech at the Forum on Urban Safety in Five Major Cities (May 21 and 22, 1981)" [在五大城市治安座谈会上的讲话 (一九八一年五月二十一日、二十二日)], in *Selected Works of Peng Zhen (1941-1990)* [彭真文选 (1941-1990)], ed. Editorial Committee on Party Literature of the Central Committee of the Communist Party of China (Beijing: People's Publishing House, 1991), 405-20.

12. See Zhiyu Li's research paper on how the (in)famous Xu Ting (许霆) Case was handled: "Innovation through Interpretation: How Judges Make Policy in China," *Tulane Journal of International and Comparative Law* 26 (2018): 327.

13. Xin He and Kwai Hang Ng, "It Must Be Rock Strong!' Guanxi's Impact on Judicial Decision Making in China," *American Journal of Comparative Law* 65, no. 4 (2017): 841.

and deep-rooted cultural connections in Chinese society. While these influences may coexist with the rule of law,¹⁴ they lack legal or political justification. They cannot be openly cited when making decisions. No official rhetoric praises them; nor can they be recorded in the formal minutes of any meeting. They are illegitimate influences (不当影响).

Failing to differentiate between the two often leads to confusion and misunderstanding among scholars. Both appear in academic publications as inappropriate and extralegal, even though one is condemned by the regime while the other is trumpeted. For example, when Yulin Fu and Peerenboom list the sources of interference, the interference of Party organs parallels the *guanxi* of social acquaintances.¹⁵ However, these two categories differ in legitimacy: the first is justified; the second is illegitimate. Among the four types of judicial embeddedness, social embeddedness is illegitimate while others may be legitimate. Such a distinction exists even in the actions of the president of a court, who can have both a legitimate and illegitimate influence on her subordinate judges.¹⁶ While it is legitimate that she instructs the responsible judge on how to handle a criminal case involving a high-ranking official, it is illegitimate when she does so for a case involving her relative. Similar confusion was found in a study of Russian courts in which “telephone law” was found to be widespread.¹⁷ Are these telephones for the regime’s or simply personal interests? Through which channels do they operate? Are they justified by the regime? It is legitimate if exerted through official channels and for the regime’s interests. As shall be demonstrated, differentiating between illegitimate and legitimate influences will clear away this confusion.

The line between legitimate and illegitimate is sometimes blurry, and there is always a gray area. One reason is that the Party’s policies and politics have been changing. An originally legitimate practice may become illegitimate after a policy change. Furthermore, regional variations prevent a clear-cut line. A practice that is legitimate in one location may be illegitimate in another. In addition, sometimes it is not obvious whether the officials are acting out of the regime’s interests or their personal interests. Nonetheless, differentiating between legitimate and illegitimate influences provides a conceptual tool to analyze the operation and development of China’s judiciary and its role in China’s political governance. If some decisions of Chinese courts are arbitrary because of extralegal influences or “legitimate” influences, such a differentiation allows us to understand when these apply.

14. Pitman Potter, “Guanxi and the PRC Legal System: From Contradiction to Complementarity,” in *Social Connections in China: Institutions, Culture, and the Changing Nature of Guanxi*, ed. Thomas Gold, Doug Guthrie, and David Wank (New York: Cambridge University Press, 2002), 179–96.

15. Y. Fu and Peerenboom, “A New Analytic Framework,” 97.

16. Ng and He, *Embedded Courts*.

17. Kathryn Hendley, “‘Telephone Law’ and the ‘Rule of Law’: The Russian Case,” *Hague Journal on the Rule of Law* 2 (2009): 241.

This article draws on the author's interviews with 17 judges, as well as three former judges who are now practicing lawyers. These interviewees have experienced the reforms in different regions of China and at various levels of Chinese courts. Five of them are the vice presidents of intermediate courts, and two were previously the presidents of basic-level courts. Their experiences as judges and court officials provide firsthand evidence of the reforms.

THE QUOTA AND RESPONSIBILITY REFORMS IN ACTION

In response to the fourth plenum of the Eighteenth Party Central Committee in October 2014, the Supreme People's Court (SPC) revised its fourth five-year-reform outlines in February 2015.¹⁸ These reforms cover, among other matters, elevating court budgets to the provincial level, setting up SPC circuit courts, strengthening adjudication powers, and overhauling lay assessor's systems. Originally Chinese courts were decentralized, with their budgets and personnel controlled by the local governments. Elevating budgets and setting up circuit courts apparently are to address local protectionism. Chinese judges were known as nonprofessional;¹⁹ many of them were cadres or discharged military officials with little legal education.²⁰ Some Chinese courts were known to be corrupt, plagued by *guanxi* and other extralegal influences, and thus lacked the trust of the general public.²¹ The reforms of the lay assessors' system are to increase judicial democracy and thus the general public's confidence in the courts. Among these measures, none have touched the judges' nerves as much as the judge quota and responsibility (责任制) reforms.

The Judge Quota

The SPC has presented several reasons for the judge quota reform.²² The first is to change the original situation in which some judges were extremely busy while others have little to do. Second, the reform would salvage the judges from trivial tasks by equipping them with assistants. The third reason is to ensure that the most capable judges adjudicate cases and are not assigned jobs at the logistics

18. The Supreme People's Court (SPC), *Opinions of the Supreme People's Court on Comprehensive Deepening of Reform of People's Courts: The 4th Five-Year Outline of the Program for Reform of People's Courts (2014–2018)* [最高人民法院关于全面深化人民法院改革的意见—人民法院第四个五年改革纲要(2014–2018)].

19. Yuwen Li, *The Judicial System and Reform in Post-Mao China* (Surrey: Ashgate, 2014).

20. Ng and He, *Embedded Courts*, 59–60; Xin He, Luoyun Li, and Yuqing Feng, "The Mediator versus Legalistic Discourse in Chinese Courts," *POLAR—Political and Legal Anthropological Review* 40 (2017): 326.

21. Xin He and Jing Feng, "Unfamiliarity and Procedural Justice: Litigants' Attitudes toward Civil Justice in Southern China," *Law and Society Review* 55, no. 1 (2021), forthcoming.

22. Jiaxin Xu, "Responding to Questions Related to the Judicial Responsibility System and the Comprehensive Reform Pilot" [徐家新就司法责任制等综合改革试点工作答问], <http://www.court.gov.cn/fabu-xiangqing-49802.html> (accessed May 2, 2020).

departments. Fourth, letting only capable and experienced judges preside at trials means they can be held responsible for their decisions. Finally, when the number of judges is reduced a relatively higher professional salary can be implemented. The judge quota system is supposed to weed out who can adjudicate and thus to lay the foundation for judicial reforms whose goal is to shape a professional, standardized, and elite court organization.

Originally almost all of a court's staff were "judges," most of whom could adjudicate cases. Upon its completion in 2017,²³ the judge quota reform dropped the number of Chinese judges from 210,000 to 120,000. For each province, the judge quota was capped at 39 percent of all court staff. Depending on caseloads, population, and court level, this ratio was not implemented consistently across individual courts. Generally, the heavier the caseloads, the higher the quota.²⁴

According to Xu Jiixin, the head of the SPC's political department, the standards for being included in the quota were work experience, performance, investigative reports, awards, adjudicatory documents, and adjudicatory reports.²⁵ However, individual courts' definitions of work performance have varied. Many courts relied on the recommendations of immediate supervisors. Some courts examined the candidates in person before making their final recommendations. Given the bureaucratic nature of Chinese courts, it was common that most of the court vice presidents or equivalent were accepted, even if they had not adjudicated cases for a long time. But some frontline judges were not accepted.²⁶

Income

After the reform, the original court staff has been classified into three categories: the quota judges (员额法官), support staff, and judicial administrative staff. To increase the incentives of all three categories, a separate higher salary system was created. In Shanghai, for example, the salary of the quota judges, support staff, and judicial administrative staff are supposed to be 50, 20, and 10 percent higher than the average civil servants of the same rank.²⁷ Other jurisdictions have made similar arrangements.

23. *Xinhua Net* [新华网], "Experimental Establishment of Judge Quotas Is Basically Completed" [我国法院法官员额制改革试点工作基本完成], http://www.xinhuanet.com/2017-02/13/c_1120459608.htm (accessed February 13, 2017).

24. R. Chen, "Theoretical Reflection."

25. Jiixin Xu, "Promoting the Personnel-System Reform and Strengthening Team Building" [推进司法人事制度改革加强队伍建设], <http://www.court.gov.cn/shenpan-xiangqing-85662.html> (accessed May 1, 2020).

26. Q. Zhang, "Case Pressures," 100.

27. T. Wang, "China's Pilot Judicial Structure Reform"; *Rule by Law Net* [法制网], "693 Courts Adopt Comprehensive Reform of the Judicial System, More than 20,000 Judges Registered under the Personnel Quota System, of Which 85% are Front Line Judges" [693 家法院全面推开司法责任制改革 2 万多名法官进入员额制 85%以上在办案一线], *China Court Web* [中国法院网], <https://www.chinacourt.org/article/detail/2016/07/id/2022503.shtml> (accessed May 6, 2020).

A judge's income also has persistently included a performance and local allowance, in addition to the salary. As a result, the actual percentage increase in income has been lower than the above-mentioned percentage.²⁸ In Shenzhen, the difference was only 19 percent for the quota judges.²⁹ In one hinterland intermediate court, a vice president's income was 30 percent higher, but in another intermediate court in a developed area, the difference has been less than 10 percent.

Furthermore, the difference between the quota judges and other civil servants has gradually narrowed. At the beginning of the reforms, only judges and procurators enjoyed salary increases. Guangzhou Municipality announced that the 50 percent difference would remain unchanged,³⁰ but soon afterward officials in the police force, the most powerful branch in the political-legal arena, secured a political-legal allowance.³¹ Local governments with abundant resources have also raised the salaries of other civil servants and Party cadres.

Promotions

Before the reforms, the judges' only promotion channel was through an administrative position, such as the deputy division head, and competition was fierce.³² For the lower ranking positions, it was a competition to exhibit professional capability, which one PRC scholar has dubbed "horse racing" (赛马).³³ For higher-ranking positions, political leaders made the choice in what was dubbed "horse picking" (相马). One needed not only to excel at an administrative position but also to establish relationships with the leaders and to serve as an effective communicator. It has been a political process in which the local congress, government, and court officials each have possessed influence, but the ultimate decision-making power lay with the Party.³⁴

This practice has remained the same for the court officials, but the reforms have made it easier for the rank-and-file judges to advance. Under the new system, most of the rank and file can get promoted one rank every other year. Through such promotions a young person beginning a career as a judge at the age of 23 could achieve the third highest judgeship at the age of 40—the equivalent of *zhengchu*, the same

28. F. Lin, "The Future," 6 n. 67.

29. *Rule by Law Net*, "693 Courts."

30. *Ibid.*

31. Ministry of Human Resources, *Notice by the Political and Law Committee of Issues concerning the Establishment of the Working Allowance Scheme* [关于建立政法委机关工作津贴有关问题的通知].

32. Jonathan Kinkel, "High-End Demand: The Legal Profession as a Source of Judicial Selection Reform in Urban China," *Law and Social Inquiry* 40, no. 4 (2015): 969.

33. Lusheng Wang, "Horse-Picking and Horse-Racing: An Empirical Study on the Appointment Mechanism of Judges in China" [相马与赛马: 中国初任法官选任机制实证研究], *Law and Social Development* [法制与社会发展] 2 (2015): 41.

34. Zhong Liu, "The Appointment of Court Presidents under Tiao-Kuai Relations" [条条与块块关系下的法院院长产生], *Global Law Review* [环球法律评论] 1 (2012): 107.

rank as the vice president of an intermediate court.³⁵ Of course, the higher the court level that a young judge enters, the higher the rank one can finish with.

Consistent with the above changes, a judicial personnel commission has been created at the provincial level to handle the promotion and appointment of the rank-and-file judges,³⁶ and the salary budget it controls has been elevated to the provincial level as well.³⁷ Lifting the staffing, budgeting, and equipment of the courts to the provincial level is aimed to free them from local government interference. However, the appointment and promotion of major court officials has been more symbolic than substantial. The only salient change has been the appointment of the basic-level court presidents, which now have to be approved by the provincial level of the Party, instead of the municipal level: the president has nominally become a province-managed cadre (省管干部).³⁸ Even so, the provincial Party's Organization Department lacks the capability to scrutinize the presidential candidates from across the province, and behind the scenes the weight of the decision still lies at the municipal level.³⁹ For less important court officials, the original practices have been kept intact.

Workload

The caseloads for judges in the coastal areas had already been high. A popular saying among Chinese judges goes, "In courts, women are used as men, and men are used as donkeys."⁴⁰ The quota system has only made this worse. The reforms in 2017 cut the number of the judges by 40 percent, even though caseloads were increasing from 143 million in 2014 to 250 million in 2018 (fig. 1). On average, every quota judge handled 152 cases in 2017, three times the 50 handled by a judge in 2008.⁴¹ While the SPC hailed this as an improvement in efficiency, never

35. J. Xu, "Promoting the Personnel-System Reform."

36. SPC, *Opinions of the Supreme People's Court on Comprehensive Deepening of Reform*.

37. Raising the budgets to the provincial level has had less of an effect than the literature suggests.

The budget allocation (转移支付), under which the Central government has allocated 3–4 billion RMB per annum to compensate for courts in hinterland areas' budgetary gaps, has alleviated the inadequate budgets in these areas (The Party's Central Office and the State Council 2009). The reforms have simply institutionalized the existing practices. Moreover, the budget for the support staff still relies on the local government. See Q. Zhang, "Case Pressures," 104.

38. Pierre Landry, *Decentralized Authoritarianism in China: The Communist Party's Control of Local Elites in the Post-Mao Era* (Cambridge: Cambridge University Press, 2008).

39. For example, Guangdong has more than 200 basic-level courts.

40. Chunyan Zheng, Jiahui Ai, and Sida Liu, "The Elastic Ceiling: Gender and Professional Career in Chinese Courts," *Law and Society Review* 51, no. 1 (2017): 168, 190.

41. "The Supreme People's Court: In Comparison with the Statistics Last Year, the Number of Judges Nationwide Has Declined 60 Percent, While the Number of Cases Resolved in This First Half Year Has Increased around 10 Percent" [最高法: 全国法官人数少4成, 今年上半年结案量同比升近1成], *The Paper* [澎湃], http://m.thepaper.cn/newsDetail_forward_1747748 (accessed May 1, 2020).

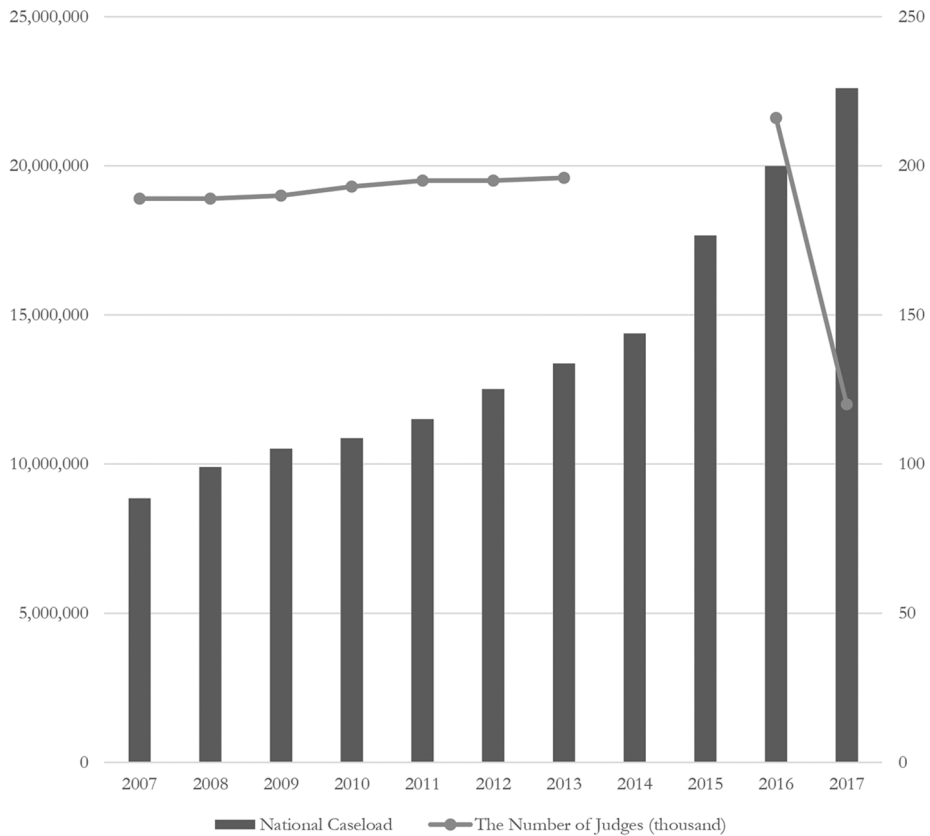


Figure 1. The caseload change contrasted by the number of judges in China (2007–17). Sources: (1) For the number of cases closed by the People’s Courts in China: “Statistics” [统计资料], in *Law Yearbook of China* [中国法律年鉴] (Beijing: Law Yearbook of China Press [中国法律年鉴出版社], 2008–2018). (2) For the number of Chinese judges in 2007–9, see Supreme People’s Court of the People’s Republic of China, “2006–2010 Trend in the Clearance Rate of Judicial Cases and the Number of Judges” [2006年–2010年审执结案件数量与法官人数走势情况], <http://www.court.gov.cn/fabu-xiangqing-2409.html> (accessed April 23, 2020); for 2010, see Jinwen Zhu, ed., *Report of China Law Development 2012* [中国法律发展报告 2012] (Beijing: China Renmin University Press, 2013); for 2011, see *People’s Court Daily* [人民法院报], “How Many Judges Are Sufficient” [法官多少才够用], http://rmfyb.chinacourt.org/paper/html/2013-06/07/content_64729.htm?div=0 (accessed April 23, 2020); for 2012–13, see Central People’s Government of the People’s Republic of China, “The Number of Judges in China Reached around 200,000, Which Will Become the Focus of the Classification Management Reform” [我国法官人数已近20万人 将成分类管理改革重点], http://www.gov.cn/jrzq/2013-07/25/content_2455484.htm (accessed April 23, 2020); for 2016, see *China Court* [中国法院网], “Continuing the Judicial Reform and Moving Forward” [坚持司法改革不停步], <https://www.chinacourt.org/article/detail/2018/03/id/3244680.shtml> (accessed April 22, 2020).

before have Chinese courts faced such a severe situation of “too many cases, too few personnel.”⁴²

The most immediate reason for the recent spike seems to have been the case registration system, under which all cases are accepted without review and filtering.⁴³ Other reasons include reclassifications of enforcement cases, which have consisted of roughly 40 percent of overall caseloads, and social-economic development.⁴⁴ At any rate, no evidence suggests that the explosive increase in cases has been a result of improving the quality of the judges and their decisions, as claimed by Zhang and Ginsburg.⁴⁵

The uneven distribution of the caseloads within individual courts has aggravated the situation. Most court officials, such as the president, vice presidents, and division heads, have squeezed themselves into the judge’s track,⁴⁶ but they only share a tiny portion of the caseloads. According to the SPC guidelines, in basic- and intermediate-level courts, which process most cases, the president only handles 5–10 percent of the frontline judge’s average, and the vice president’s rate is 20–30 percent at the intermediate level and 30–40 percent at the basic-level courts.⁴⁷ The division head’s rates at both the basic and intermediate courts are 50–70 percent of what the frontline judges handle. Furthermore, the court officials can choose the straightforward cases that are easier and less time consuming. Some court leaders only chair the collegial panel (合议庭), without doing any substantial work.

As a result, the president of a provincial high court may handle only 10 cases per year, while the caseload of a rank-and-file judge at the basic level commonly exceeds 300. It is not surprising that the judges at the express division (速裁处), which deals with routine and straightforward cases, or those with multiple plaintiffs and/or defendants, handle as many as 700–800 per year. The situation is especially serious in the economically developed areas, where caseloads are the heaviest (table 1). Numerous basic-level judges have to work overtime, and some ruminate about switching from the judge’s track to the judge’s assistant’s track.⁴⁸

Handling cases, however, is only part of the judge’s job. Although the State Council and the SPC prohibit assigning errands to the judges, the practice has

42. Q. Zhang, “Case Pressures”; Xia, “An Empirical Study,” 109; R. Chen, “Theoretical Reflection”; Y. Chen and Bing Bai, “Limitation of the System Reform.”

43. Xia, “An Empirical Study.”

44. Xin He, “Recent Decline in Chinese Economic Caseload: Exploration of a Surprising Puzzle,” *China Quarterly* (2007): 352–74.

45. T. Zhang and Ginsburg, “Legality,” 342.

46. Q. Zhang, “Case Pressures.”

47. The Supreme People’s Court (SPC), *Opinions of the Supreme People’s Court on Strengthening the Work of Case-Handling by Presidents and Chief Judges of the People’s Courts at Various Levels (for Trial Implementation)* [最高人民法院关于加强各级人民法院院长办理案件工作的意见(试行)].

48. Q. Zhang, “Case Pressures.”

Table 1. The Disparate Impact of the Reforms on Caseloads across Courts

| | Developed Areas | Developing Areas |
|---------------|-----------------|------------------|
| Lower courts | Heaviest | Heavy |
| Higher courts | Medium | Lightest |

persisted.⁴⁹ A judge has noted, “Non-adjudicatory work has occupied a great deal of my time, such as conferences, poverty alleviation work, political indoctrination, and preparation of reports. To some extent, case handling became a side dish while nonprofessional errands are the main course. Often I have had to review cases in my overtime work.”⁵⁰

Responsibilities

Article 25 of the document “Several Opinions to Perfect Judicial Responsibilities” stipulates that a judge is held responsible for life for the quality of the cases handled.⁵¹ This covers not only issues of corruption, factual mistakes, and inappropriate legal applications but also procedural and paperwork flaws that “cause serious consequences,”⁵² either intentional or grossly negligent. These stipulations leave much space for interpretation. For example, what constitutes “serious” consequences? Inside the court, mistakes can be traced in cases reversed on appeal or remanded for retrial by superior courts, internal case checks, and what are called letters-and-visits complaints.⁵³ As political ideology and the court’s role to “serve the general public” have been stressed, the turnover of judicial malpractice dossiers handled by the disciplinary and political departments has been brisk. To foreclose any appearance of political sluggishness, a tiny issue can trigger a serious investigation. A judge complained, “Originally the political department belonged to the support staff; now it has become the frontline.”

The Party’s control of the courts through the Supervisory Commission (监察委) has become formidable. Since its establishment in 2018, aggressive controls over officials, including judges, have been expanded. While the commission lies at the same rank as the court constitutionally, it enjoys more power and resources.⁵⁴

49. Supreme People’s Court (SPC), *Measures for the Implementation of the Provision for the Protection of Judicial Personnel for Performing Their Statutory Duties* [人民法院落实《保护司法人员依法履行法定职责规定》的实施办法]; General Office of the Central Committee of the Communist Party of China and the General Office of the State Council, *Provisions on the Protection of Judicial Personnel in the Lawful Performance of Their Duties* [保护司法人员依法履行法定职责规定].

50. Q. Zhang, “Case Pressures,” 104.

51. SPC, *Opinions of the Supreme People’s Court on Comprehensive Deepening of Reform*, art. 25.

52. *Ibid.*, art. 26.5.

53. *Ibid.*, art. 34; T. Wang, “China’s Pilot Judicial Structure Reform.”

54. Li Li and Peng Wang, “From Institutional Interaction to Institutional Integration: The National Supervisory Commission and China’s New Anti-corruption Model,” *China Quarterly*, no. 240 (2019): 967.

In the Party's hierarchy, its head sits one or two levels above the court president at the same administrative level. Similar to the internal disciplinary and political departments of the court, the Supervisory Commission acts on official inspections and litigants' complaints, including legal and procedural flaws, inappropriate behavior, and even rudeness. Complaints have been lodged against judges for interrupting the litigants' presentations, for typos in judgments, and for inaccurately recording statements, as well as for immoral or corrupt behavior.⁵⁵ The rule is that any complaint must receive an official reply.

To complicate the situation, the judges have to bear responsibility for their support staff's mistakes. After the reforms, each judge has an assistant and a clerk (the 1+1+1 model). The assistant and clerk are to liaise with litigants and lay assessors, set up schedules, deliver subpoenas, transcribe court hearings, and prepare draft judgments. Yet most of the interviewed judges mentioned that the 1+1+1 model has not materialized. For example, sometimes two judges share one assistant, or the quality of the assistants is too poor to rely upon.⁵⁶ Many of the support staff enter the court system as fresh graduates, often without a law degree, and some of them have little incentive to learn their roles since they regard the job as a springboard to a different type of career.

The SPC has installed regulations that place special restrictions on judges. For instance, judges have to withdraw from the judge's track if both their spouse and children are living overseas. The requirement had earlier been imposed on high-ranking officials, but it is now also imposed on ordinary judges. The SPC in 2018 further stipulated that "judges, upon leaving the judiciary, may not practice as a lawyer for two years, and must never practice as lawyers in the court(s) in which they have worked."

A Tale of Two Cohorts

Despite the heavy workload and demanding responsibilities, most young personnel have felt pressured to seek to get admitted into the judge's track. Without becoming a judge, career prospects in the judicial system are bleak. One judge said, "Getting into the track is to a judge what a license is to a lawyer." Another implicit reason is power. A judge put it bluntly, "The power of a quota judge is what they are after. If one does not have any say on cases, you have little to exchange in a society full of *guanxi*." Some court personnel, especially those with better job alternatives, quit right after failing to get into the track.⁵⁷

55. "In Dong'an, Hunan, the Judge Was Held Accountable for Seven Mistakes in Judgments, Including Information about Places, Names, and Gender" [地名、姓名、性别都写错 湖南东安“七错裁判文书”涉事法官被问责], http://m.xinhuanet.com/2017-11/12/c_1121943097.htm (accessed May 2, 2020).

56. The support staff budget is provided by the local government; see Q. Zhang, "Case Pressures," 104.

57. Bin Liu, "From the Phenomenon of Judges' 'Resignation,' Exploring the Underlying Logic of the Reform of Judge Quota System" [从法官'离职'现象看法官员额制改革的制度逻辑], *Law Science* [法学] 10 (2015): 47.

The older personnel, however, are less enthusiastic about entering the track. Some may have wanted to get into the judge's track to procure better pensions, but they were not the majority. At this stage in their careers, promotions are not their priority. "Some old comrades chose to make room for capable hands."⁵⁸ They simply do not want the pressure of handling cases. A less demanding job as an assistant, or in the logistics or political departments, is preferred. Some, especially female judges in their forties, have opted to work in the express division or to conduct pretrial mediation where cases are straightforward.

ILLEGITIMATE INFLUENCES

How have the reforms altered the illegitimate influences on Chinese judges? According to the "SPC Opinions on the Judge's Quota Reform," the judges must sign off on their own decisions, and the court leaders cannot look into (过问) them or interfere (干预).⁵⁹ It further requires that the judges record any external or internal interference; failure to do so will incur a penalty.⁶⁰ There are also similar warnings against improper interventions by political leaders outside of the courts.⁶¹

According to the interviewed judges, rarely have they heard of any recording of leaders' undue interference.⁶² But that may be because the court officials and political leaders remain powerful. They have immense discretion over the allocation of promotions and positions for judges. Recording instances of interference might lead to reprisals against a judge. If the judges recorded these interferences, this would have triggered formal investigations, which would have covered both the interference itself and a thorough review of the case-handling process.⁶³ Some extra work is one thing; letting things spin out of control is another.

Nonetheless, the prohibitions against illegitimate influence by leaders have had palpable results. The statement that was typical of leaders' instructions prior to the reforms—"Please take this seriously in accordance to the law"—has almost vanished. After the reforms, such a statement, leaving a written record in the file, would be labeled as interference and might conceivably wreck its author's political

58. J. Xu, "Responding to Questions."

59. SPC, *Opinions of the Supreme People's Court on Comprehensive Deepening of Reform*.

60. *Ibid.*, art. 33.

61. The General Office of the Central Committee of the Communist Party of China and the General Office of the State Council, *Regulations on Documenting, Reporting, and Sanctioning Interference with Judicial Activity by Government Officials* [领导干部干预司法活动、插手具体案件处理的记录、通报和责任追究规定].

62. Even in a Xinhua news report shaming 20 officials who had interfered with judicial affairs, only five were from the court system; see *Xinhua Net* [新华网], "Who Is Interfering with Judicial Work? The Central Party Political Commission Again Publishes 7 Typical Cases Involving 20 People" [谁在干预司法? 中政委再次通报7起典型案例, 20人涉案], February 1, 2016, http://www.xinhuanet.com/local/2016-02/01/c_1117960559.htm.

63. In one instance, when a judge mistakenly recorded a government official's participation in a case related to social stability, which should have been a legitimate interference, it took excessive efforts from both the local leaders and the court officials at the upper-level court to delete it.

future. The prohibitions have repressed the prior rampant use of illegitimate influences in hinterland areas. In the more developed coastal areas, according to the interviewees, such incidents have become even rarer.

Here is an example of an incident that did arise. In a basic-level court in a coastal area, a special member (专职委员) of the adjudication committee (equivalent to the vice president) contacted a division head about a commercial case represented by a law firm with which his son was affiliated (the Son's Case). The division head invited the special member and the responsible judge to his office. Then the division head left, leaving the special member alone to talk to the judge, a female in her thirties. When the special member made his intention known, the judge did not buy it. After all, she was neither the special member's direct supervisee nor his personal friend. Humiliated, the special member orchestrated a complaint to the court's political department, accusing the judge of malfeasance. The move cornered the judge, who revealed the whole story.

What would have been a trivial matter before the reforms had spiraled into a political incident. The nature of the intentions of the special member was revealed, and he was removed from his position and ousted from the judge's track. Both the judge and the division head were criticized for not recording the interference. A note of criticism was circulated across the jurisdiction, and all of the judges were rattled.

This case is unusual, in that the division head had left the office to avoid responsibility, nor, according to interviewees, would a court official normally retaliate against a judge by fabricating allegations. Moreover, this case occurred in a developed area where *guanxi* had not permeated the judicial system as much as in many other places.⁶⁴ Nonetheless, the impact of the reform has been palpable: even though the judge ignored the illegitimate instructions of a court official, and even though the regime took the intervention seriously and vindicated the judge's refusal, the judge and the division head were publicly shamed simply for failing to record the interference!

In the hinterlands, according to interviews, while illegitimate influences have been reduced, some remain in a surreptitious form. When a court leader does approach a judge, it is in a more circumspect and sociable fashion, and the judge, while responding to the request, also has become more careful. Thus, interference has been channeled more through personal, rather than institutional, conduits. For instance, an interviewee noted a case where a vice president of a suburban basic-level court in a hinterland area summoned a judge to his office. He was polite and, showing his detailed notes, he said, "The president of the intermediate court called yesterday. One of his relatives was in your hands, sued for back wages (the Wage Case). This is the president's phone number. You may register it as well. I

64. He and Ng, "It Must Be Rock Strong!"

am caught by this. You know, he is the president of our upper-level court, and this was the first time he asked me for a favor. I cannot just go without responding. See what you can do. Don't get your fingers pinched."

Compared to the situation in the hinterlands before the reforms, when court presidents simply called judges and bluntly instructed them how they should decide the case,⁶⁵ the court vice president was more scrupulous. First, he asked the judge to his office, instead of instructing her by phone. He not only showed her his notes but also gave the judge the number of the court president who had called. The notes had been taken not for reporting the interference, but to show that the requests were genuine. He continued, "He is the president of our upper-level court," and "This was the first time he called," to show that he was under pressure. Moreover, he specified, "You just see what you can do," to remind the judge not to overstep her discretion. "Don't get your fingers pinched" was the punch line. Any favor, if possible, should be granted within the discretion of the law. On the other hand, this also suggested that should anything occur, the judge had to bear the responsibility herself.

This pattern recurs for interference from outside the courts. In a hinterland province, the municipal secretary called the vice president of the intermediate court. One of his "friends" had been sentenced at a trial to imprisonment, and he hoped the appellate intermediate court could revise it to a suspended sentence. The defendant had poached ore-bearing mud from a mineral mine (the Mud Case). Upon receiving the request, the court vice president, who had been in charge of civil and commercial divisions, approached the criminal division head and the judge—he had a personal relationship with both of them. The judge raised conditions for a suspended sentence: the ore must be recovered, the mine owner must be willing to issue a letter of forgiveness, and the monetary penalty must be paid in full.

The vice president said, "I approached the judge and his division head only because I knew both well. Otherwise, I would have simply gotten back to the municipal secretary that I was not in charge of criminal affairs." Personal intimate *guanxi* had made a difference. Recall that in the Son's Case the judge had rejected an approach in part because the special member had not known the judge well; he had to rely on relayed *guanxi* via the division head. *Guanxi's* effect, once relayed, diminishes.⁶⁶ Moreover, the judge in the Mud Case had raised explicit conditions, ensuring that a suspended sentencing was within the law and his discretion.

What if the illegitimate request had exceeded the judge's discretion? There were signs that judges have become more resistant. In a rural basic court, a defendant received a shipment of cement worth 700,000 yuan but refused to pay (the

65. Ibid.

66. Cheris Shun-Ching Chan and Zelin Yao, "A Market of Distrust: Toward a Cultural Sociology of Unofficial Exchanges between Patients and Doctors in China," *Theory and Society* 47, no. 6 (2018): 737.

Cement Case) because “the contract was signed by the defendant’s project department without the defendant’s authorization.” The law regards this as “apparent agency,” and it assumes the defendant’s authorization. Accordingly, the judge was to adjudicate in favor of the plaintiff, requiring the defendant to pay the 700,000 yuan, with interest, until the municipal secretary of political-legal affairs summoned both the president and the judge to “report the case.” While the secretary had no specific recommendation, it was transparent that he was implying that he favored the defendant. After the meeting, the judge took an initiative to settle the case, and the court president issued an official case report to show the court’s position and had it delivered to the secretary in person. However, the defendant refused to make any payments beyond 200,000 yuan, far below the plaintiff’s expectation.

The court president and the judge were torn. The law is clear: anyone with legal training understands “apparent agency” and its consequences. At this point, the reform’s impact kicked in. The judge would have to find against the defendant. To protect themselves, the court president first instructed the judge: “Why don’t you delay the decision? Maybe the secretary will leave his post soon.” This was a miscalculation—several months passed while the secretary remained at his position. Since Chinese courts are strict on deadlines to close cases, the court had to announce a decision. Eventually, instead of asking the parties to fetch the judgment from the delivery office, which was routine, the judge made a formal announcement in person; he added a special session to address the parties’ concerns, explained the legal stipulations and the decision in detail, and encouraged the defendant to appeal.

Each of these cases indicates some degree of resistance on the part of the judges when they came under the pressure of illegitimate influence. In the Wage Case, the judge had halved the compensation from 10,000 to 5,000 yuan, but she did not dismiss the plaintiff’s claims, as she would have done in the prereform period. The reduced compensation was within her discretion. In the Mud Case, the judge ensured that a suspended sentence was legally defensible. In the Son’s Case, the judge defied the special member. In the Cement Case, both the judge and his president made overtures to settle, a typical means to diffuse extralegal influence. When that did not work, they ruled against the defendant, defying the secretary of political-legal affairs, their direct supervisor.⁶⁷

Of course, not all judges were willing to risk offending their political bosses. The Cement Case might be an exception. It turned out that the neighboring court had received a related case and faced the same interference. It bowed to it. A year later, the municipal secretary of the political-legal affairs came under investigation because of an unrelated unruly behavior. The Supervisory Commission soon

67. He and Ng, “It Must Be Rock Strong!”

found out about his interference in these cases. The judge in the Cement Case dodged a bullet (unlike in the Son's Case, neither he nor his president were criticized for not recording it!), while the neighboring court got reprimanded for bowing to the pressure. Accommodating illegitimate interference has been riskier since the reforms, and that might be why such occurrences have declined.

LEGITIMATE INFLUENCES

What about legitimate influences? Legitimate influence can be classified into those that are internal—within individual courts—and those that are external—from either upper-level courts or other powerful actors.

Internal Influence

There has been a drop in administrative influence within individual courts. The previous requirement that court officials needed to approve case decisions, which once characterized the bureaucratic nature of the courts, has been abolished. The responsible judge and her or his collegial panelists now have the final say in most cases. Related is the reduced number of cases submitted to the adjudication committee. The SPC Opinion states that the adjudication committee is only in charge of the most influential and complicated cases.⁶⁸ The Opinion also states that all of the committee members' decisions have to be recorded in the minutes (留痕). One judge who was interviewed said that only a few civil and commercial cases were heard by the committee each year, contrasting with 5–10 percent of such cases before the reforms.⁶⁹

This does not suggest that the administrative influence in individual courts has vanished. Court officials still exert influence through both formal and informal channels. The SPC Opinion lists several categories of cases for which court officials can demand briefings.⁷⁰ Another control on the judge is exercised through the case management system. Despite the SPC's abolishment of all "unscientific criteria" for assessing judges' performance and ranking courts, the closing rate, appeal rate, and remand rate—indicating the percentage of cases closed as against cases filed,⁷¹ court decisions being appealed, and the cases the appeal court returns for retrial, respectively—still get commonly referred to and compared to other courts. An official said to me, "With only a few courts within the region, one does not need to officially rank their performance to know which court is doing better.

68. SPC, *Opinions of the Supreme People's Court on Comprehensive Deepening of Reform*, art. 9.

69. Xin He, "Black Hole of Responsibility: The Adjudication Committee's Role in the Chinese Court," *Law and Society Review* 46, no. 4 (2012): 681.

70. SPC, *Opinions of the Supreme People's Court on Comprehensive Deepening of Reform*, art. 24.

71. *Ibid.*

And how do we define ‘unscientific criteria’? How can the court officials mobilize the rank-and-file judges without concrete numbers?”⁷² One basic-level judge complained, “The case closing rate continues to be the primary measure to gauge our performance. Our court president only cares about the outcome, whatever means we have to take.” As a result, many judges have told litigants to withdraw their petitions before the deadline for the court to submit annual statistics and promised to take them back later. This long-entrenched practice has survived the reforms.

Indeed, court officials are concerned that the judges now enjoy too much power. Several court officials and lawyers whom I interviewed asserted that the judges’ expanded powers, especially those at the appellate level, have spun out of control. In some courts, legal standards were inconsistent between two judges sharing an office. As a response, some courts have set up the Specialized Judges’ Committees (专业法官委员会) to determine cases in which the collegial members are split. Others have adopted more subtle and informal means. According to a vice president of an intermediate court in a hinterland area, the case quality declined partly due to the judges’ expanded power: the revise and remand rates doubled from less than 10 percent to 20 percent. Alarmed by this change, which hurts the court’s performance, she has required briefings for all cases with dissenting opinions. She would either make suggestions or recommend cases be heard by the adjudication committee, even though she did not sign off on any documents. Thus far, all of her suggestions had been followed.⁷³

External Influence

At the same time, the “legitimate” influence emanating from upper-level courts or government and Party organs has only strengthened. Inside the judiciary, the higher-level courts have more say on both appointing senior court officials and recruiting judges from lower-level courts. All told, there are greater vertical controls over the lower-level courts. Many of the decisions on judiciary staffing and budgeting have been elevated to the provincial level. Moreover, the role of adjudication supervision (审判监督) has become more prominent and is now a major source for uncovering wrongfully decided cases.⁷⁴

72. Jonathan Kinkel and William Hurst, “The Judicial Cadre Evaluation System in China: From Quantification to Intra-State Legibility,” *China Quarterly*, no. 224 (2015): 933.

73. The Supreme People’s Court (SPC), *Opinions of the Supreme People’s Court on the Implementation of the Judicial Accountability System (for Trial Implementation)* [最高人民法院司法责任制实施意见(试行)]: “the presidents and division heads cannot approve the cases in the form of oral instructions, sitting on the discussion of the collegial panel, and reviewing documents.” Due to pressure to reduce the remand rates, this court has nonetheless adopted an approach circumventing the SPC requirement.

74. Carl Minzner, “Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On,” *New Mexico Law Review* 39, no. 1 (2009): 63.

Nonetheless, many of the basic-level courts have been eager to liaise with local Party and government entities, especially since the local government and Party organs still have a major influence on the appointment of court presidents. Moreover, the courts still need these entities' support in securing infrastructure and support staff. "Informally their interaction might have been reinforced."⁷⁵

Significant and sensitive cases are now defined as those affecting social stability, the general public, and the image of the state. In handling these cases, coordination between the court and Party and government entities has been strengthened. The keywords for handling these cases are "the three synchronizations" (三同步): to process cases according to the law, to guide the media, and to control society.⁷⁶ This is equivalent to the long-standing slogan hailing "the combination of legal and social effects."⁷⁷ Controversial cases are supposed to be reported to the upper-level leaders, both inside and outside the courts, so that they can synchronize the public consequences.

Examples abound. A vice president said that when an underage girl was allegedly raped, his court had already formed a Special Case Group (专案组) before the procuratorate transferred the case to the court. This potentially sensational case had drawn the attention of the Provincial Party chief. Another judge in a major metropolitan area's intermediate court said that intellectual property cases involving foreign parties have always been reported to the SPC, both before and after the judicial reforms. These cases were "sensitive" because they may affect China's image. For court cases regarding mass protests that threaten social stability, coordination between various government agencies and the court has been key.⁷⁸ A court vice president said that he had coordinated with Party leaders and the government for almost a decade regarding the auction of a piece of land owned by a state-owned enterprise because there was local concern and opposition. Another court president said that she had liaised with the local Party and government on an eminent domain case. The compensation for the villagers had been set at 2,000 yuan per square meter a decade earlier, but the decision had never been enforced. With housing prices surging to 30,000 yuan a square meter (a factor of 15), compulsory eviction without extra compensation had become unjustifiable. When

75. Q. Zhang, "Case Pressures," 104.

76. *Legal Daily* [法制网], "Report: Stepping into the Year of Ruling the Country by Law, Political and Legislative Institutions Progressively Improved Their Capability of Dealing with the Public Opinion" [报告: 依法治国开局之年 我国政法机关舆情处置能力稳步提升], http://www.cac.gov.cn/2016-01/25/c_1117887637.htm (accessed May 2, 2020).

77. Benjamin 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.

78. Yang Su and Xin He, "Street as Courtroom: State Accommodation of Labor Protest in South China," *Law and Society Review* 44, no. 1 (2010): 157; Feng Chen and Xin Xu, "'Active Judiciary': Judicial Dismantling of Workers' Collective Action in China," *China Journal*, no. 67 (2012): 87.

the land purchaser sued for compulsory eviction, the court needed the help of government organs to secure higher compensation. In particular, criminal cases involving high-ranking officials, such as the trial of Zhou Yongkang, which was held after the judicial reforms, in June 2015, entailed a high degree of “legitimate” intervention by the top Party leadership and followed the pattern of the trial of Bo Xilai in 2013, before the reforms.⁷⁹

Reassigning the budgets and staffing decisions to the provincial level reduced some of the leverage held by local government organs and the Party at the same level to control the courts. However, the political stature of the courts had hardly changed. The mutual reliance between political actors and the courts continues. After all, they are still under Party leadership, and both court officials and government officials are Party cadres. Despite the slogan “to place adjudication at center stage,”⁸⁰ mutual cooperation, not restraint, dominates the relationship between the Party and the legal apparatuses.

PRESTIGE

The above discussion suggests that the reforms have barely elevated the prestige of the judicial profession. Prestige depends on a high level of dignity, a high income, and social respect. But the caseloads of rank-and-file judges have increased by 50–100 percent, while their overall income has only increased 10–30 percent. “The judge is no mandarin” (法官不是官), my informants kept saying, “We are cogs in a huge bureaucratic machine.” Several judges called themselves “*faguan min’gong*” (法官民工). *Min’gong*, literally meaning “peasant-worker,” is a term that stigmatizes peasants migrating to cities for temporary jobs.⁸¹ Calling themselves judicial migrant workers puts them at the bottom of Chinese society, which denigrates the judges’ self-worth.

The improved chances for promotion do not elevate their prestige, either. These promotions only entail monetary benefits, but the judges gain no substantial power. As the saying goes, no one pays attention to a mandarin who has no administrative power (当官不带长, 放屁都不响). The judges have little sense of pride when comparing themselves to their colleagues in the political, supervision, staffing, and even logistics departments. These colleagues have a lot of leverage: they could assign the judges to remote villages to work on poverty alleviation; they could ask

79. BBC, “China Corruption: Life Term for Ex-security Chief Zhou,” <https://www.bbc.com/news/world-asia-china-33095453> (accessed May 7, 2020).

80. Central Committee of the Chinese Communist Party, *Decision of the Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law* [中共中央关于全面推进依法治国若干重大问题的决定].

81. Dorothy Solinger, *Contesting Citizenship in Urban China* (Berkeley: University of California Press, 1999).

them to check residents' temperatures in a seedy neighborhood during the coronavirus outbreak; they could initiate an investigation based on complaints against the judges; their review reports on the judges affect the judges' promotions and pay.

The reforms did not grant the judges life tenure; instead, they have brought them lifelong responsibility for their court judgments. In a regime that prioritizes social stability and in which a populist ideology responding to the people's feelings has been reinigorated,⁸² the judges have become more vulnerable. Many cases that retrospectively can be examined for judicial errors sleep like time bombs, and no one knows when they might explode. Maybe a litigant's petition, an investigation triggered by other cases, or an inspection by the appellate court could trigger one. With the caseload hitting 300 cases per judge per year, it is hard to be mistake free, especially when the definition of "mistake" is vague. Due to the heavy caseload, they have to rely on their support staff, who are not so reliable, and they now have to bear responsibility for the support staff's mistakes. One scholar argues that "a lifetime accountability system has become a sword of Damocles hanging over judicial minds."⁸³ Concerns about personal safety also loom large—judges often face threats or even physical attacks from resentful litigants, especially after making controversial judicial decisions.⁸⁴

The requirement for judicial transparency only aggravates the situation.⁸⁵ Massive investments allow the hearings to be live streamed,⁸⁶ and most of the adjudication documents are put up online. This allows big-data analysis of every judge's propensities, traits, and stripes. Even a typo could turn catastrophic.⁸⁷

If that is the situation for rank-and-file judges, do the court officials fare any better? One reason for the heavy workload and the narrowed income difference for the rank and file is that the funding introduced by the reforms has been tilted toward the court officials. The officials control the reforms' implementation; the higher-level courts get to decide how to distribute the quotas within their jurisdictions. While the presidents and division heads are required to handle cases, they

82. Susan Trevaskes, Flora Sapio, Sarah Biddulph, and Elissa Nesossi, *Justice: The China Experience* (Cambridge: Cambridge University Press, 2017); Delia Lin and Susan Trevaskes, "Creating a Virtuous Leviathan: The Party, Law, and Socialist Core Values," *Asian Journal of Law and Society* 6, no. 1 (2019): 41.

83. T. Wang, "China's Pilot Judicial Structure Reform," 75.

84. Ke Li, *Marriage Unbound: Divorce Litigation, Power and Inequality in Contemporary China* (Stanford, CA: Stanford University Press, 2021); Zheng et al., "The Elastic Ceiling." The SPC 2018 Work Report states that 85 judges had died of overworking or violent attacks over the previous five years. The 2019 SPC Report states that 46 enforcement judicial cadres had died fulfilling their duties over the past three years.

85. Björn Ahl and Daniel Sprick, "Towards Judicial Transparency in China: The New Public Access Database for Court Decisions," *China Information* 32 (2018): 3; *Harvard Law Review*, "Making Chinese Court Filings Public? Some Not-So-Foreign American Insights," <https://harvardlawreview.org/2020/03/making-chinese-court-filings-public-some-not-so-foreign-american-insights/> (accessed May 6, 2020).

86. Susan Finder, "Supreme People's Court Starring on Court TV," *Supreme People's Court Monitor*, <https://supremepeoplescourtmonitor.com/2016/07/14/supreme-peoples-court-starring-on-court-tv/> (accessed May 1, 2020).

87. *Xinhua Net*, "In Dong'an Hunan."

can always choose the easier ones. They interpret the rules promulgated by the SPC. They decide by which criteria to assess the rank and file.

The court officials with administrative power are respected in the courts. They fare better than ordinary judges, but not much better. The government and Party leaders continue to exert both legitimate and illegitimate influence on them. Moreover, since the reforms, the court officials' promotion channels into other government and Party organs have been blocked on the grounds that they can be promoted within the judiciary system. The court officials' aspirations to be transferred into other branches suggests the judicial profession is far from prestigious.

The brain drain of judges has continued. The SPC Work Report of 2019 states that because "the caseloads in some courts are enormously heavy, some judges perennially have to work beyond their limits, and some courts suffer serious losses in talent." In explaining the brain drain and especially why mid-career male judges tend to leave the judiciary, three scholars argue that there is "a general decline of professional honor."⁸⁸ According to another scholar, the courts in the largest metropolitan areas face the most serious talent losses because of the heavy caseloads, the contrast between their incomes and prohibitive housing prices, and the lucrative opportunities open to lawyers in private practices.⁸⁹ Under the new ideology that stresses political loyalty, many judges are afraid to tender their resignations because the resignations may invite investigations by the Supervisory Commission. Some others cannot get their resignations approved. Thus, many middle-aged judges choose early retirement.

FROM FRAGMENTED TO COMPREHENSIVE CONTROL

How to separate the politically sensitive cases from the mundane is a chronic problem facing authoritarian regimes. They cannot afford not to control the former, while they lack the capacity to scrutinize the latter. Franco's Spain notoriously had two parallel systems, one for each.⁹⁰ China does not have two separate systems. However, it has never loosened its grip on the sensitive and significant cases that might chip away at its legitimacy. Thus, the authorities seek a way to differentiate the sensitive from the ordinary cases, in the type of process that legal scholars have labeled "dualism."⁹¹

88. Zheng et al., "The Elastic Ceiling," 190.

89. Xia, "An Empirical Study."

90. José Toharia, "Judicial Independence in an Authoritarian Regime: The Case of Contemporary Spain," *Law and Society Review* 9 (1975): 475.

91. Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (New York: Oxford University Press, 1941); Xin He, "Debt-Collection in the Less Developed Regions of China: An Empirical Study from a Basic-Level Court in Shaanxi Province," *China Quarterly*, no. 206 (2011): 274; Hualing Fu, "Duality and China's Struggle for Legal Autonomy," *China Perspectives* 1 (2019): 3.

How do the judges single out cases that are significant and sensitive? The guidelines specified by the SPC, and those of individual courts, are vague and vary across time and region. Some seemingly routine cases can escalate into sensitive cases, and other cases or court-related issues may explode on the internet. In Xinjiang, a local disturbance at a workplace may be taken as serious, while in Guangdong mass incidents over delayed wages are frequent and draw little public attention.

The SPC and various political-legal organizations have routinely issued classified documents to help judges determine the nature of cases. Not only are sensitive issues specified, but keywords are listed to alert the judges. For example, are there any lawsuits against the Communist Party or state leaders? Any lawsuits over how the government has handled a terrorist attack or, more recently, over mismanagement of the coronavirus?⁹² Any suits related to lawyers advocating for human rights?

Before the judicial reforms, the focus of control had been on individual judges, through approving individual cases and signing off on adjudicatory documents. This was exercised through administrative approvals within the court system, along with coordination with other bureaucracies.⁹³ Involving various layers of approvals within the judiciary system, this control mechanism was cumbersome and fragmented. The principal and agent problem inside the court apparatus was fully evident, and the system had also been saturated with illegitimate influences. While judges were to take responsibility for wrongfully decided cases, “wrongfully decided” was narrowly interpreted as “procedural errors” in practice.⁹⁴

The reforms have addressed this concern. By imposing severe and comprehensive responsibilities for the judges, but allowing more room for them to make decisions, they have become more responsive and effective. Through classified documents including keywords, guidelines, and political indoctrination, the laws and policies prioritized by the national leadership have better penetrated the administrative layers inside the courts. The influence of both the patron-clientelism that emphasizes hierarchical loyalty and *guanxi* have declined.⁹⁵ Since the judicial reforms, the promotion of rank-and-file judges has hinged less on personal relationships with court officials than on seniority, while they are punished more often for deviating from the Party’s line and laws.

92. *Mingpao News*, “Regarded as Natural Disaster, Covid-19 Lawsuit Petitions Were Not Accepted” [官方稱新冠屬自然災害 武漢遺屬興訟被拒], September 18, 2020.

93. Ng and He, *Embedded Courts*, chap. 4.

94. Lungang Wang and Sida Liu, “From Substantive Responsibility to the Rule of Procedure: An Empirical Study of the Operation of the Wrongful Case Responsibility System in China” [从实体问责到程序之治：中国法院错案追究制运行的实证考察], *Jurist* [法学家], no. 2 (2016): 27.

95. Andrew Walder, *Communist Neo-traditionalism: Work and Authority in Chinese Industry* (Berkeley: University of California Press, 1988).

Table 2. The Control over Judges before and after the Reforms

| | Before the Reforms | After the Reforms |
|-------------------------------|---------------------------------|---|
| Judges' decision-making power | Constrained | Expanded |
| Responsibilities | Moderate | Broadened and life-long |
| Internal control | Approval by supervisors | Key words, guidelines, adjudication supervision, political indoctrination |
| External control | Appeals and petitions | Appeals and petitions, the general public via judicial transparency, the Supervisory Commission |
| Loyalty | Personal loyalty to supervisors | Institutional loyalty to the Party |
| Overall | Fragmented, multilayered | Direct, comprehensive |

Xu Jiabin, the head of the SPC's political department, puts it aptly: "A micro supervisory mechanism focusing on approving individual cases and signing off on adjudicatory documents has been replaced by macro scrutinization of the whole process and of all the judges. In practice, the power of the heads and presidents is clearly delineated by which they have reformed the mechanisms for controlling the key junctions (节点), as well as the quality and efficiency [of judges]. Moreover, we rely on smart courts and information technology to improve internet-processing, thus recording, tracing and controlling all key junctions of the case handling process."⁹⁶

He summarized this process as "releasing power, but not responsibilities" (放权不放任). This is why judicial transparency has been stressed over the last decade. It kills two birds with one stone: it opens up court cases to the general public so as to enhance the regime's legitimacy; it also allows the regime to control the rank-and-file judges via the users of the judicial process—the litigants and the general public. Together with the lifelong responsibility system, in which the responsibility is broadened and vaguely defined, these reform measures have tightened the Party-state's grip over the judges (see table 2).

CONCLUSION

Unpacking the judicial reforms, this article suggests that illegitimate influence has waned. This is especially so in hinterland areas where this influence had been rampant. On the other hand, what the government deems to be legitimate influences have persisted. While the vertical administrative influences within individual

96. J. Xu, "Promoting the Personnel-System Reform."

courts have declined, a more direct and comprehensive control over the judges has replaced originally fragmented, multilayered mechanisms, and the influence of Party priorities has strengthened. The regime has tightened its grip over the judiciary.

Zhang and Ginsburg assert that even though there is no major shift in the judiciary's political stature, the courts have become "more *institutionally* independent" relative to political entities other than the Party leadership (emphasis in the original).⁹⁷ The empirical research in this paper provides a more nuanced picture than this assertion. It is true that financially the courts have relied less on the local governments, and local political actors have often become less blunt in interfering in the courts' decision making. But the local Party and government organs still influence the appointment of major court officials. For sensitive and significant cases, the collaboration between the courts and the local political authorities has been reinforced. Furthermore, the higher-level courts' control over the lower-level courts and judges has been more comprehensive, quantitatively based, and effective. Overall, the reforms have barely altered the stature of the courts in China's political landscape. The rank-and-file judges have been overwhelmed by increasing caseloads while subject to greater responsibility for legal errors. Their gains in income and promotions have not come close to offsetting the increasing workload and stress.

The room for Chinese judges' decision making may slightly have been expanded. However, the position of the courts in China's political hierarchy remains intact. According to Peter Solomon's four categories of the relationship between the authoritarian regime and judges, China's courts remain politically marginal: "In these courts, judges were not independent and faced multiple lines of dependency on political authorities at the same level of government and on vertical superiors, including constant evaluation."⁹⁸ While the Chinese Communist Party might have tweaked its strategy for controlling the judiciary, the underlying nature of the judiciary as an instrument of the Party's governance persists. Chinese courts have become more professional and transparent, but not independent. If professionalism means fewer illegitimate influences, then Chinese courts are moving in that direction. However, there are few signs that they are becoming independent from the regime's political control.

This article has demonstrated the need to differentiate between legitimate and illegitimate influences when studying judicial independence. Only then can we comprehend the nuances in legal and political developments in China. As shown, one type of influence may decline while another strengthens. As Martin Shapiro

97. T. Zhang and Ginsburg, "Legality," 332.

98. Peter Solomon, "Courts and Judges in Authoritarian Regimes," *World Politics* 60, no. 1 (2007): 122, 125.

argues, the judiciary is an integral component of state governance and only one of many mechanisms,⁹⁹ and an authoritarian regime like China may simply strengthen one type of interference while minimizing others. To assert an increase or decline of judicial independence in general may miss the point.

99. Martin Shapiro, *Courts: A Comparative and Historical Analysis* (Chicago: University of Chicago Press, 1981).