

ARTICLE

OVERCOMING EMBEDDEDNESS:

HOW CHINA'S JUDICIAL ACCOUNTABILITY  
REFORMS MAKE ITS JUDGES MORE  
AUTONOMOUS

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ABSTRACT

*Studies frequently report significant divergence between institutional arrangements promoting judicial independence and judges' actual independent behavior, particularly in authoritarian or semi-authoritarian countries. Many believe that such divergence is especially likely in China, where the problem of judicial dependence is deeply embedded in local contexts and historical practices. Drawing on in-depth interviews with judges and lawyers from three provinces with diverse socioeconomic demographics, this Article assesses the judicial accountability reforms launched by the current Xi Jinping administration, which promise to empower individual judges to decide cases with minimal interference from superiors. Defying expectations, this Article finds that the reforms have enabled frontline judges to decide most cases without obtaining approval from court leaders and have limited the use of the powerful adjudication committees, making individual judges considerably more autonomous. It argues that what enabled this unexpected development is the regime's recent power consolidation, which has put an end to China's decades-old policy fragmentation and forces local agents to more faithfully implement the centrally mandated reform plans. The findings shed light on the relationship between the judges' local embeddedness and the*

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*macrostructural dynamics, and compel researchers to reevaluate the diverse roles contemporary authoritarian regimes play in shaping judicial behaviors.*

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### I. INTRODUCTION

In recent decades, courts have become increasingly important institutions for strengthening authoritarian rule.<sup>1</sup> Moustafa summarizes several common ways in which courts can make an authoritarian

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1. See, e.g., JOTHIE RAJAH, *AUTHORITARIAN RULE OF LAW : LEGISLATION, DISCOURSE, AND LEGITIMACY IN SINGAPORE* 46 (2012) (noting that in Singapore, law and courts have been an important tool for “the decimation of opposition parties[,] . . . the dismantling of independent media[,] . . . and the thwarting of an autonomous civil society.”); TAMIR MOUSTAFA, *THE STRUGGLE FOR CONSTITUTIONAL POWER : LAW, POLITICS, AND ECONOMIC DEVELOPMENT IN EGYPT* 230 (2007) (describing that the Sadat regime established the Supreme Constitutional Court to attract foreign investment, because “[w]ith unchecked power, authoritarian regimes have difficulty providing credible commitments to the protection of property rights and therefore have difficulty stimulating private investment.”); Alexei Trochev, *Legitimacy, Accountability and Discretion of the Russian Courts*, in *POLITICS AND LEGITIMACY IN POST-SOVIET EURASIA* 123 (Martin Brusis, et al. eds., 2016) (noting that the Russian courts provide “a comfortably flawed instrument nonetheless able to lend a voice to aggrieved citizens without undermining the nature of the regime [and] provide a legal veil for . . . reigning in political opponents”); Hootan Shambayati, *Courts in Semi-Democratic/Authoritarian Regimes: The Judicialization of Turkish (and Iranian) Politics*, in *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES* 283, 284 (Tamir Moustafa & Tom Ginsburg eds., 2008) (describing the Turkish military limited the effectiveness of elected institutions by subjecting them to judicial review by the unelected and pro-military judiciary).

regime more resilient, including exercising control over opposition, advancing discipline within the bureaucracies, facilitating trade and investment, and bolstering regime legitimacy.<sup>2</sup> To achieve these objectives, governments under authoritarian and hybrid regimes professionalize and empower judiciaries through institutional changes such as depoliticizing the appointment of judges<sup>3</sup> and securing their jobs with life tenures.<sup>4</sup> China joined this trend with its latest round of judicial reforms. Under the banner of “governing the country according to the law,” the Xi Jinping administration announced its plan to tackle the decades-old problem of judicial dependence through the centrally imposed judicial accountability reforms.<sup>5</sup> Essentially, the reforms promise to empower judges to independently adjudicate cases with minimal interference from superiors and to hold these judges fully responsible for the cases they decide.

Despite the various potential benefits listed by Moustafa, there are many reasons to be skeptical about such promises of judicial autonomy, especially from an authoritarian regime. Scholars point out that there is often a significant gap between formal institutional arrangements promoting judicial independence and judges’ actual autonomous behavior.<sup>6</sup> For example, successive USSR and Russian leaders, including Gorbachev, Yeltsin, and Putin, established and strengthened

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2. Tamir Moustafa, *Law and Courts in Authoritarian Regimes*, 10 ANNU. REV. LAW SOC. SCI. 281, 283 (2014).

3. Tamir Moustafa, *Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt*, in *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES* 132, 138–39 (Tamir Moustafa & Tom Ginsburg eds., 2008) (describing the appointment process of the Egyptian Supreme Constitutional Court, under which new justices were nominated by sitting justices).

4. PETER B. MAGGS ET AL., *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 159 (6th ed. 2015).

5. Central Committee of the Chinese Communist Party, *CCP Central Committee Decision Concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward*, CHINA COPYRIGHT AND MEDIA, <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/> [<https://perma.cc/DVC4-PBZC>] (last visited Oct 3, 2018).

6. See, e.g., Lisa Hilbink, *The Origins of Positive Judicial Independence*, 64 WORLD POL. 587, 587–88 (2012) (claiming “a clear distinction between formal judicial autonomy—that is, formal or ‘negative’ judicial independence—and independent judicial behavior or ‘positive independence.’ The former refers to the rules [formal and informal] governing judicial appointment, discipline, tenure, jurisdiction, and budget, while the latter is behavioral.”); Daniel Brinks, *Judicial Reform and Independence in Brazil and Argentina: The Beginning of a New Millennium?*, 40 TEX. INT. LAW J. 595, 597 (2005) (arguing that “formal independence is a singularly unhelpful construct, especially in the Latin American context.”).

various institutional mechanisms designed to insulate Russian judges from extrajudicial influences, including life tenure, non-politicized nomination and discipline systems, and financial and administrative autonomy.<sup>7</sup> However, empirical evidence suggests that the notorious Soviet practice of “telephone law,” a system through which case outcomes come from orders issued over the phone by higher-ranking judges or government officials, remains widespread after more than a decade of continuous judicial reforms.<sup>8</sup> There are many possible reasons for this divergence, such as too little political competition,<sup>9</sup> a low level of political fragmentation within the government,<sup>10</sup> and judicial passivism.<sup>11</sup>

Bridging such a gap seems particularly daunting in the case of China. Since the launch of the judicial accountability reforms, the prevailing narrative has been one of deep skepticism, particularly given China’s huge size and diversity, its deep-rooted practice of judicial dependency, and the Western origin of the reforms’ design. Through empirical research, this Article challenges this narrative by demonstrating that the reforms have indeed made frontline judges significantly more independent in adjudicating the vast majority of court cases. It argues that such development is made possible not because China is becoming more democratic or liberal but—ironically—because the regime’s increasingly authoritarian nature has enabled the central reformers to overcome the local embeddedness facing the reforms’ implementation.

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7. MAGGS ET AL., *supra* note 4, at 159; Kathryn Hendley, *The Role of Law, in PUTIN’S RUSSIA: PAST IMPERFECT, FUTURE UNCERTAIN* 83, 85–86 (Stephen K Wegren ed., 2016).

8. Alena Ledeneva, *Telephone Justice in Russia*, 24 *POST-SOVIET AFF.* 324, 344 (2008).

9. See, e.g., J Mark Ramseyer, *The Puzzling (In)dependence of Courts: A Comparative Approach*, xxiii *J. LEGAL STUD.* 721, 741–43 (1994) (claiming that “[i]f rational politicians face significant odds of being in the minority party . . . they will try to reduce the variance to their political returns . . . by insulating the judicial system from political control.” But politicians or parties that “could realistically expect to stay in power indefinitely . . . could rationally elect to monitor judges instead, and thereby obtain greater control over policy.”); but see Aylin Aydin, *Judicial Independence across Democratic Regimes: Understanding the Varying Impact of Political Competition*, 47 *LAW SOC. REV.* 105, 105 (2013) (suggesting that “while in advanced democracies high levels of political competition enhances judicial independence, in developing democracies political competition significantly hampers the independence of the courts.”).

10. Brinks, *supra* note 6, at 620 (arguing that in polities where power is more fragmented, judges are more willing and able to challenge the government, as the latter is less able to retaliate against the courts.).

11. Hilbink, *supra* note 6, at 597 (suggesting that an attitude of judicial activism is crucial to “motivating positive judicial independence” and emboldening “a new cohort of judges to begin asserting their professional authority against powerful actors”).

## II. ADVANCING JUDICIAL AUTONOMY IN CHINA: MISSION IMPOSSIBLE?

The risk of divergence between formal rules promoting judicial autonomy and actual judicial behavior seems particularly significant in the Chinese context. For decades prior to the reforms, each Chinese judge had been deeply embedded in the pyramid-like administrative structure of his or her court.<sup>12</sup> Under this structure, court leaders<sup>13</sup> could control case outcomes through the case-approval system, which required frontline judges to seek court leaders' approval for their drafts of court decisions before the decisions could take effect.<sup>14</sup> If a case was considered legally complex, socially impactful, or politically sensitive, it would be submitted to an adjudication committee,<sup>15</sup> who would then make a collective decision regarding the outcome.<sup>16</sup> Besides making frontline judges dependent upon their superiors, this system of administrative hierarchy enabled court outsiders such as Communist Party officials to interfere in cases through their connections to court leaders.<sup>17</sup>

By invoking the concept of embeddedness developed by scholars such as Polanyi and Granovetter,<sup>18</sup> Ng and He rightfully question whether the current administration's centrally imposed judicial accountability reforms can change such deep-rooted practices in the short term. They argue that "[d]espite the stated goal of the central government, institutional culture, local practices, and immediate concerns on the ground are more determinant in shaping the work of the grassroots courts. It is unlikely that the new rules that promote

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12. Ranks of judges in a typical Chinese court include, in descending order, court president, vice-presidents, division chiefs of different divisions (e.g. civil, criminal administrative), vice-division chiefs, and frontline judges.

13. The court president, vice-presidents, division chiefs, and vice-division chiefs are considered to be "court leaders" in a Chinese court.

14. Ling Li, *The "Production" of Corruption in China's Courts: Judicial Politics and Decision Making in a One-Party State*, 37 L. & SOC. INQUIRY 848, 858–59 (2012).

15. The adjudication committee, which consists of court leaders, is established in every Chinese court. It is charged with deciding legally complex/controversial, socially impactful, or politically sensitive cases.

16. KWAI HANG NG & XIN HE, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA 91 (2017).

17. Li, *supra* note 14, at 858–61; Sida Liu, *Beyond Global Convergence: Conflicts of Legitimacy in a Chinese Lower Court*, 31 LAW SOC. INQUIRY 75, 94 (2006).

18. See generally Mark Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOCIOLOGY 481 (1985); KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* (2d ed., Beacon 2001).

individual responsibility will have any immediate tangible effects.”<sup>19</sup> Indeed, some scholars have argued that the vertical hierarchy, especially the adjudication committee system, could be advantageous in many local contexts. For example, Wang and Liu’s empirical work suggests that the adjudication committees can often help local courts reach acceptable compromises between political/social and legal considerations in troublesome cases.<sup>20</sup> Zhu argues that the vertical hierarchy is necessary to maintain the quality of judicial decisions and a unified application of law within a single court, which often consists of hundreds of judges with diverse levels of professional quality.<sup>21</sup> Zhu criticizes the accountability reform as an impractical plan based not on actual practice in China but on the foreign and small US federal court system and predicts that it is likely to fail.<sup>22</sup>

Even some of the vertical hierarchy’s much-criticized disadvantages are likely to make the system more—rather than less—resilient to change. According to He, the adjudication committee system provides both individual judges and committee members shelter from responsibility, as the collective nature of a committee’s decisions means that no single person can be held accountable in a case gone wrong.<sup>23</sup> Li argues that Chinese courts’ vertical hierarchy and chain of command create institutionalized opportunities for corruption by all participants of the judicial decision-making process.<sup>24</sup> Despite being harmful to society and the regime as a whole, these factors benefit judges and court leaders, giving them incentive to resist changes to the status quo. Taken together, there is good reason to suspect that “judges will find ways to adapt to the new rules of the game. The [accountability reforms], as always, will be observed nominally, but

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19. NG & HE, *supra* note 16, at 197.

20. Lungang Wang & Sida Liu, *Jiceng Fayuan Shenpan Weiyuanhui Yali Anjian Juece De Shizheng Yanjiu [An Empirical Study on How the Adjudication Committee in Basic-Level Courts Makes Decisions on Cases with External Pressure]*, 1 *CHINESE J. L.* 80, 96 (2017).

21. Suli Zhu, *Jiceng Fayuan Shenpan Weiyuanhui Zhidu De Kaocha Ji Sikao [Investigation and Thoughts On The Adjudication Committee System In Basic Courts]*, *PEKING UNIV. L. REV.* 320, 336–37 (1998) [hereinafter Zhu, *Investigation*]; Suli Zhu, *Sifa Gaige De Zhishi Xuqiu [Knowledge Demand of Judicial Reform]*, *LAW MOD.* 100, 102–03 (2017) [hereinafter Zhu, *Knowledge*].

22. Zhu, *Knowledge*, *supra* note 21, at 102–04.

23. Xin He, *Black Hole of Responsibility: The Adjudication Committee’s Role in a Chinese Court*, 46 *L. & SOC’Y REV.* 681, 706–08 (2012).

24. See Li, *supra* note 14, at 871.

whether they will be followed in substance remains an open question.”<sup>25</sup>

These arguments, however, have overlooked the fact that such embeddedness is part of a multi-layered structure. Indeed, Granovetter himself has made clear in his seminal work that “the embeddedness argument is a rather proximate one” between “macrostructural circumstances” and individuals.<sup>26</sup> As a result, answering any large-scale questions about economic and political changes require not only appreciating the embeddedness in social networks, but also understanding the “larger cultural and political and economic phenomena at the macro level of institutions” in which social networks operate.<sup>27</sup>

This is very much true in the case of the Chinese judiciary: just as judges are deeply embedded in the administrative hierarchy of their courts, the courts themselves—and the judiciary as a whole—are also embedded in the broader national political environment. Significant changes in the national power dynamics will inevitably affect how court leaders interact with frontline judges, especially when such interaction involves balancing national mandates with local contexts. Such a change has indeed taken place in China. Since taking office in 2012, Xi Jinping has drastically consolidated his power by sending hundreds of thousands of public servants to prison on charges of corruption—a move that “signaled a zero tolerance approach to non-compliance with central directives.”<sup>28</sup> Such an approach has the potential to make local courts significantly more compliant about implementing the centrally mandated judicial reforms despite the deep administrative embeddedness. Therefore, as Hilbink suggests, a systematic empirical inquiry is necessary to evaluate the real-world gap between the formal institutional arrangements that promote judicial autonomy and actual judicial behavior.<sup>29</sup>

Based on in-depth interviews with lawyers and judges from three Chinese provinces with diverse socioeconomic demographics, this Article marks the first systematic attempt to empirically describe and

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25. NG & HE, *supra* note 16, at 197.

26. See Granovetter, *supra* note 18, at 506.

27. Greta Krippner et al., *Polanyi Symposium: A Conversation on Embeddedness*, 2 *SOCIO-ECON. REV.* 109, 116 (2004); see also Granovetter, *supra* note 18, at 506.

28. Genia Kostka & Jonas Nahm, *Central-Local Relations: Recentralization and Environmental Governance in China*, 231 *CHINA Q.* 567, 568 (2017).

29. Hilbink, *supra* note 6, at 587–88 (arguing “[p]ositive judicial independence can be assessed only empirically”).

analyze the implementation and effect of the judicial accountability reforms. Partially inspired by the US federal court system, these reforms promise to strengthen individual judges' autonomy and accountability, directly contradicting the traditional emphasis on collective decision-making in Chinese courts. Defying some of the predictions mentioned above, this Article finds that the reforms were, for the most part, earnestly implemented by local courts as assigned by the central government and the Supreme People's Court. Moreover, the reforms have, at least in the short term, increased the autonomy of judges by enabling them to render judgements without prior approval from higher-ranking judges and by limiting the use of adjudication committees. These changes have not only reduced higher-ranking judges' influence over most cases, but also weakened the key mechanisms that powerful outsiders use to interfere in judicial matters. The findings provide critical information on the recent development of the Chinese judiciary and compel researchers to reevaluate the role of the authoritarian state in shaping judicial behavior, especially in light of its increasingly authoritarian nature. This Article also contributes to the larger debate about the complex relationship between judiciaries and nondemocratic regimes.

### *III. DATA AND METHODS*

This Article is based on interviews the Author conducted in China during summer 2018. Given the diversity of China's various localities, the author's fieldwork spanned three province-level units: Zhejiang, an affluent unit in the coastal region; Chongqing, a moderately prosperous unit in the inland region; and Yunnan, a relatively underdeveloped unit in the inland region. In each, the Author interviewed judges and lawyers to learn from their different perspectives. To facilitate meaningful comparisons between the pre- and post-reform courts, the Author chose to primarily interview judges and lawyers who had joined their respective practices prior to 2012 (i.e., before Xi Jinping became president). The Author interviewed judges in various positions ranging from judicial assistants (technically not judges) to court presidents, with the majority being frontline judges and division chiefs/vice-chiefs. Interviewee ages range from mid-twenties to mid-fifties, with roughly half born after 1980. The interviewed lawyers were associates and partners from law firms of various sizes, with larger law firms generally handling cases with larger stakes.



The composition of the interviews across the province-level units is as follows. In Zhejiang, fourteen interviews with judges were conducted in two basic courts and one intermediary court,<sup>30</sup> and fifteen interviews with lawyers were conducted in one small, one medium, and one large law firm.<sup>31</sup> In Chongqing, ten interviews were conducted in two basic courts, and ten interviews were conducted in one small and one large law firm. In Yunnan, ten interviews were conducted in two basic courts and one intermediary court, and eight interviews were conducted in one medium and one large law firm. Altogether, thirty-four interviews with judges and thirty-three interviews with lawyers were conducted. Additionally, four courts included in this study were located outside developed areas. One Chongqing basic court, one Yunnan basic court, and one Yunnan intermediary court were located in relatively underdeveloped small cities, and another Chongqing basic court was located in an impoverished rural county that is a five-hour drive from Chongqing city. There is a possible urban bias in the sample, as courts in rural areas are generally considered to be less professional and more dependent upon local governments.<sup>32</sup>

The interviews were semi-structured. The questions mostly focused on changes in the judiciary during Xi Jinping's presidency, especially on the accountability reforms (责任制). Typical questions include:

1. What is your position in the court (or law firm)? What is your practice area?
2. When did you start working here? Did you have other legal experiences before joining?
3. What measures have been taken with regard to the accountability reforms (责任制), such as "the one who handles the case will decide" (审理者裁判) and "the one who decides will be accountable" (裁判者负责)?

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30. China has a four-level court system: the Supreme Court, high courts, intermediary courts, and basic courts. The basic courts are the courts of the first instance for most civil, criminal, and administrative cases. The jurisdiction of a basic court normally consists of a single town or municipal district. An intermediary court sits at the prefecture or municipality level, and handles appellate cases from the basic courts within its jurisdiction. It also serves as a court of first instance for cases that meet certain statutory threshold.

31. In the Chinese context, a small law firm normally employs no more than 20 to 30 attorneys and has only a single office. A big firm employs a minimum of 100 attorneys and has offices across multiple provinces. Medium firms are the ones in between the two extremes.

32. See NG & HE, *supra* note 16, at 193.

4. What do you think are the effects of the accountability reforms?
5. How did the accountability reforms affect the role of external influences on court cases?

This list of questions was for the Author's reference only. The Author encouraged interviewees to speak freely on any related topics that they had deep knowledge about or were interested in discussing, and the Author sometimes asked follow-up questions not included on the list. Interviews with judges lasted around thirty to seventy-five minutes, and interviews with lawyers lasted around twenty to forty minutes.

There are two main challenges in using interviews to evaluate the judicial reforms. First, the Xi Jinping administration considers the reforms an important part of its domestic policy.<sup>33</sup> As a result, court officials are wary of producing "negative publicity" for the reforms that could be tracked to a specific court. Second, questions about external influences can potentially touch upon wrongdoing by interviewees or their colleagues. Under these circumstances, it is unreasonable to expect interviewees to be completely forthcoming about these issues even if guaranteed anonymity.

Several steps were taken to address these challenges. First, to protect not only the identities of the interviewed individuals but also the entities in which the interviews took place, interviewees and contacts were promised that the names of their cities and counties would not be mentioned in publications. This level of confidentiality facilitated the process of arranging interviews and encouraged more candid discussions. Second, in addition to interviewing judges, the author interviewed lawyers, who offered a somewhat more objective and candid perspective on the impacts of the reforms. Third, all interviews were arranged through scholars who worked at universities in the interviewees' respective provinces and had long-term connections with the courts and law firms where the interviews were conducted. The connection and trust between the scholars and the entities helped ease the latter's fear of negative publicity. However, as the interviewees were chosen by the entities to which they belonged, there is an inherent risk that the entities—especially the courts—picked individuals with views they deemed politically *safe*. Nonetheless, given

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33. Jacques Delisle, *Law in the China Model 2.0: Legality, Developmentalism and Leninism under Xi Jinping*, 26 *J. CONTEMP. CHINA* 68, 69 (2017).

that random sampling was not a feasible option, the abovementioned measures were the best available to the Author in obtaining information from as many interviewees as possible.

To preserve anonymity, the interviewees' names have been coded as two letters and two digits (e.g., JA01 or LA01) according to the following method. The first letter (J or L) denotes *judge* or *lawyer*, representing the occupation of the interviewee. The second letter is a province-level unit code representing the location of the interview (Zhejiang: A, Chongqing: B, Yunnan: C). The digits that follow indicate the interview number.

#### IV. POLICY BACKGROUND

The judicial accountability reforms are part of a comprehensive judicial reform launched by the Xi Jinping administration since 2013.<sup>34</sup> In 2013, the third plenum of the 18th Communist Party (“CCP”) Central Committee issued a decision laying out a broad roadmap for judicial reforms.<sup>35</sup> This blueprint was reconfirmed and elaborated during the fourth plenum of the CCP Central Committee in 2014, the first high-profile meeting dedicated to “governing the country according to the law.”<sup>36</sup> In June 2014, the Central Leading Group for Comprehensively Deepening Reform, a Party body headed by Xi Jinping, officially authorized the implementation of the reforms in six provinces (these were expanded to the remaining provinces in 2015).<sup>37</sup> While the Party was in charge of the reforms, much of the actual design

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34. Besides the judicial accountability reforms, which primarily concern the relationship between frontline judges and the court leaders, the overall judicial reform also includes measures addressing the courts' dependency on local governments (“the judicial centralization reforms”) and issues involving the judicial professionalism (“the judicial personnel reforms”). For a detailed description on these reforms, see Yueduan Wang, “*Detaching” Courts From Local Politics? Assessing Judicial Centralization Reforms In China* (under review) (on file with author); Yueduan Wang, *Reevaluating “Countermeasure from Below”: Evidences from Judicial Personnel Reforms*, Peking U. L. J. (forthcoming 2020).

35. Central Committee of the Chinese Communist Party, *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform*, CHINA.ORG.CN (2014), [http://www.china.org.cn/china/third\\_plenary\\_session/2014-01/16/content\\_31212602\\_9.htm](http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602_9.htm) [https://perma.cc/V57B-QGXF] (last visited Oct. 3, 2018).

36. Central Committee of the Chinese Communist Party, *supra* note 5.

37. Weihang Yang, *Zhongyang Jueding Zai Shanghai Guangdong Deng Liu Shengshi Shidian Sifa Gaige [The Party Center Decides To Test Judicial Reform In Guangdong And Other Five Provinces]*, CAIXIN.COM (June 16, 2014, 7:59 AM), <http://china.caixin.com/2014-06-16/100690795.html> [https://perma.cc/SRQ7-K4S5].

and implementation work was entrusted to the Supreme People's Court and its Leadership Group for Judicial Reforms, which was headed by Court President Zhou Qiang.<sup>38</sup> It was also stipulated that any “pilot programs” related to the judicial reforms implemented by the provincial high courts must be first approved by the Court or the central government,<sup>39</sup> thus ensuring that reform designs were uniform and centralized. In 2015, the Court promulgated the Opinions on Comprehensively Deepening the Reform of People's Courts, which laid out specific reform measures for the entire judiciary.<sup>40</sup> These include a series of reforms on the “judicial accountability system” (or “the accountability reforms”).<sup>41</sup>

The principle goal of the accountability reforms is to ensure that the “one who tries the case shall have the power to decide the case and be responsible for his decision.”<sup>42</sup> Specifically, these reforms promise to: (1) deprive court leaders of the power to review and sign court opinions drafted by frontline judges, (2) substantially reduce the use of adjudication committees, (3) establish “conferences of professional judges” that provide frontline judges with non-binding advice on the application of law, (4) establish a system that records “interference with cases by court insiders,” and (5) develop a system of “lifelong accountability for the quality of cases” that holds judges accountable for cases they adjudicate.<sup>43</sup>

Interestingly, despite the regime's official rejection of Western ideology, the judicial reforms seem to have deep Western – indeed, American – roots. Judges reported during their interviews that they were told these reforms were inspired by the US federal court system. For example, an intermediary court judge shared that he learned during a meeting with officials from the Supreme People's Court that “there were a bunch of people who came back from the US in the Office of

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38. SUPREME PEOPLE'S COURT OF CHINA, *ZHONGGUO FAYUAN DE SIFA GAIGE: 2013-2018* [JUDICIAL REFORM OF CHINESE COURTS: 2013-2018] 7 (2019).

39. *Id.* at 7.

40. Supreme People's Court of China, *Zuigao Renmin Fayuan Guanyu Quanmian Shenhua Renmin Fayuan Gaige De Yijian* [Opinions of the Supreme People's Court on Comprehensively Deepening of Reform of People's Courts], CHINACOURT.ORG (Feb. 4, 2015), <https://www.chinacourt.org/law/detail/2015/02/id/148096.shtml> [https://perma.cc/SP6G-PY5T] (last visited Oct. 3, 2018).

41. *Id.*

42. SUPREME PEOPLE'S COURT OF CHINA, *ZHONGGUO FAYUAN DE SIFA GAIGE: 2013-2016* [JUDICIAL REFORM OF CHINESE COURTS: 2013-2016] 30 (2017).

43. *See id.* at 30–33.

Judicial Reforms.<sup>44</sup> They made the current plan for judicial reforms mainly based upon the US federal court system.”<sup>45</sup> While there is no official account to validate this statement,<sup>46</sup> it does offer a plausible hypothesis for why China has chosen to move from its traditional emphasis on collective decision-making to emphasizing the power and responsibility of individual judges,<sup>47</sup> an approach more commonly associated with Anglo-American legal systems.<sup>48</sup> Such connection is especially ironic given Chief Justice Zhou Qiang—the head of the Chinese judiciary and the public face of the recent judicial reforms—publicly announced in the midst of the reforms that “We should resolutely resist erroneous influence from the West: ‘constitutional democracy,’ ‘separation of powers’ and ‘independence of the judiciary.’ We must make clear our stand and dare to show the sword.”<sup>49</sup> However, such divergence between political rhetoric and actual policies may have been a necessary tactic, as demonstration of political loyalty is likely a prerequisite for the Party’s support of the reforms, especially since the reforms have *sensitive* Western origins.<sup>50</sup>

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44. For example, He Fan, one of chief authors of the Supreme Court’s plan on the judicial reforms, has translated multiple books on the US federal court system and even drafted a book named *Essays on US Supreme Court*. See Wei Gao & Hua Qin, *Supreme People’s Court Comrade He Fan’s Deeds*, CHINESE COMMUNIST PARTY NEWS (Sept. 15, 2015, 5:23 PM), <http://dangjian.people.com.cn/n/2015/0915/c399092-27588729.html> [<https://perma.cc/9WGX-FQUX>].

45. Interview with JC10, Judge, Intermediary People’s Court, in Yunnan, China (July 13, 2018).

46. Several Chinese legal scholars with connections with the Supreme People’s Court also confirmed this connection between the judicial reforms and US federal court system during conversation with the author.

47. See Ray Worthy Campbell & Fu Yulin, *Moving target: the regulation of judges in China’s rapidly evolving legal system*, in REGULATING JUDGES 105, 105, 114–15 (Richard Devlin & Adam Dodek eds., 2016).

48. See, e.g., Joseph Dainow, *The Civil Law and the Common Law: Some Points of Comparison*, 15 AM. J. COMP. L. 419, 432 (1966); Michael Kirby, *Judicial dissent - common law and civil law traditions*, 123 LAW Q. REV. 379 (2007).

49. Michael Forsythe, *China’s Chief Justice Rejects an Independent Judiciary, and Reformers Wince*, N.Y. TIMES (Jan. 18, 2017), <https://www.nytimes.com/2017/01/18/world/asia/china-chief-justice-courts-zhou-qiang.html> [<https://perma.cc/DUR4-5XQG>].

50. See Benjamin L Liebman, *China’s Courts: Restricted Reform*, 191 CHINA Q. 620, 627 (2007), <https://www.jstor.org/stable/20192809?seq=1#metadata> [<https://perma.cc/E3VH-279H>] (info tab contents) (arguing that judicial reforms in China “may be possible precisely because the courts are not a challenge to Party authority.”).

V. *THE IMPLEMENTATION OF THE JUDICIAL  
ACCOUNTABILITY REFORMS*

A. *The Reform Measures and Their Implementation*

The judicial accountability reforms generally aim to increase the independence of individual judges or judge panels from their superiors in the courts. Prior to the reforms, most court opinions had to be co-signed by either a department division chief or one of the court presidents/vice-presidents. Cases with higher stakes often went to adjudication committees, which consist mostly of court leaders. Li identifies this mechanism as one of the key components of the systematic corruption that once characterized Chinese courts because it “allow[ed] corrupt [court leaders] to control the outcome of a much greater number of cases of interest.”<sup>51</sup>

Formally, the reforms have completely eliminated this case approval system. In the words of the Supreme Court, the reforms “revoked the system of asking for instructions and examination and approval level by level [and] established [in its place] the system that one who tries a case shall have the power to decide the case and be responsible for his decision.”<sup>52</sup> Prior to the reform, it was standard practice in most courts to have either a division chief or a president/vice-president co-sign an opinion before it became effective. One judge described the approval system in his court prior to the reforms this way: “Before the reform, all cases must be approved by division chiefs or president/vice presidents. Initially, all cases must go through both a division chief and a president/vice-president. Later, simple cases needed to be approved by division chiefs, and other cases were approved by vice-presidents or a full-time member of the judiciary committee.”<sup>53</sup> Normally, an opinion could not be issued without going through a similar approval process. Under the new reforms, however, a court opinion becomes effective immediately after it is signed by the judge or the judicial panel that tried the case.<sup>54</sup> In effect, the new system closes the primary institutional channel through which court leadership previously influenced the outcomes of

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51. Li, *supra* note 14, at 860.

52. SUPREME PEOPLE’S COURT OF CHINA, *supra* note 40, at 30.

53. Interview with JC03, Judge, Basic People’s Court, in Yunnan, China (July 10, 2018).

54. See, e.g., Interview with JA01, Judge, Basic People’s Court, in Zhejiang, China (June 6, 2018); Interview with JC02, Judge, Basic People’s Court, in Yunnan, China (July 10, 2018).

individual cases. As this Article discusses later, court leaders can still use informal means to convey their preferences in important cases under the new system, but the elimination of the formal approval system has made it harder—and thus less worthwhile—for leaders to interfere with their subordinates' cases under most circumstances.

The accountability reforms have also limited the scope of the adjudication committees' review of cases. According to the Supreme Court, “[i]n addition to the cases required by the law and the major and complicated cases involving foreign affairs, security and social stability of the State, the adjudication committees shall focus on the application of law in major, difficult, and complicated cases.”<sup>55</sup> In other words, the adjudication committees are generally not supposed to interfere with case fact-finding unless a case involves “foreign affairs, security and social stability of the State.”<sup>56</sup> It also means that the adjudication committees are not supposed to take a case simply because it involves large sums of money. In 2019, the Court stated that as a result of the reform, “the number of cases submitted to the judicial committees in the people’s courts at all levels for discussion has decreased significantly,” sometimes by more than forty percent.<sup>57</sup> Many interviewed judges confirmed that adjudication committees are indeed utilized much less frequently since the reforms.<sup>58</sup> For example, one criminal judge said: “the adjudication committee now rarely discusses criminal cases. In the past, many cases had to be reported to the adjudication committee. Now, every year, there are only single-digit [numbers of cases reported].”<sup>59</sup> Similarly, a court leader reported:

The functioning of the adjudication committee indeed changed a lot . . . The number of cases handled by the adjudication committee has been significantly reduced. Before the reform, whenever judges were unsure about a case, they would bring it to the adjudication committee. Now, in principle, the case handlers are responsible for the cases themselves . . . Nowadays the adjudication committee only focuses on difficult matters of law. In

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55. SUPREME PEOPLE’S COURT OF CHINA, *supra* note 40, at 32.

56. *Id.* at 32.

57. SUPREME PEOPLE’S COURT OF CHINA, *supra* note 40, at 81.

58. *See, e.g.*, Interview with JA05, Staff of the Political Department, Basic People’s Court, in Zhejiang, China (June 6, 2018); Interview with JB06, Judge and Vice Division chief of the 1st Civil Division, Basic People’s Court, in Chongqing, China (June 27, 2018); Interview with JC06, Judge and Member of the Adjudication Committee, Basic People’s Court, in Yunnan, China (July 11, 2018).

59. Interview with JC03, *supra* note 53.

the past, difficult matters of fact could also come to the committee . . . The problems in most cases are matters of fact, so this also blocked a large number [of cases from entering the adjudication committee].<sup>60</sup>

To compensate for the elimination of the approval process and the reduced function of the adjudication committees, many courts have established so-called “conferences of professional judges” (专业法官会议). The function of these conferences include “provid[ing] the collegiate panels with advice on correct application of law and opinions for their reference” and “filt[ering] the cases submitted to the adjudication committee.”<sup>61</sup> A court usually has multiple conferences on various subjects, with civil, criminal, and administrative law each having its own conference.<sup>62</sup> Each conference includes judges not only within the relevant departments, but also from other departments that focus on a related subject.<sup>63</sup> For example, administrative law judges might be included in the civil law conference, as civil disputes can involve governmental actions.<sup>64</sup> The judges or judicial panels have the power to decide whether to submit a case to the judicial conference. When they do, it is mostly because a case is too complex or the judges on the panel disagree on the outcome. The conference can then give its opinions, but such opinions are advisory and non-binding—the judges or judicial panels that submit the cases are, at least in theory, free to take or reject the conference’s opinions and remain fully accountable for these cases.<sup>65</sup> The voluntary nature of the conferences has led to complaints that some *bold* judges will refuse to submit complex cases to the conferences, which could increase the number of erroneous decisions.<sup>66</sup>

Although the Supreme Court has called for establishing conferences of professional judges, the implementation does not seem to be universal. Those judges who reported frequent utilization of the

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60. Interview with JA06, Judge and Director of the Trial Administration Office, Basic People’s Court, in Zhejiang, China (June 7, 2018).

61. SUPREME PEOPLE’S COURT OF CHINA, *supra* note 40, at 31–32.

62. Interview with JA07, Judge and Vice Division chief of 2nd Civil Division, Basic People’s Court, in Zhejiang, China (June 7, 2018).

63. *See id.*

64. *See id.*

65. *Id.*; Interview with JA09, Judge, Basic People’s Court, in Zhejiang, China (June 9, 2018).

66. Interview with JB04, Judge, Basic People’s Court, in Chongqing, China (June 22, 2018); Interview with JB09, Judge and Division Chief of Small-Subject Division, Basic People’s Court, in Chongqing, China (June 27, 2018).



system generally consider it quite useful.<sup>67</sup> They expressed that the conferences not only provide professional advice to individual judges on difficult cases, but also help relieve the pressure of important or controversial cases.<sup>68</sup> Some courts utilize the formal conference infrequently due to the difficulty of assembling large numbers of judges from multiple departments.<sup>69</sup> Instead, these courts set up informal conferences consisting of judges within a single department, which perform roughly the same function as the formal conferences.<sup>70</sup> Regardless of the conference formalities, the judges confirmed that conference recommendations are always advisory and that judges themselves remain fully accountable for their cases.<sup>71</sup>

The reforms have also attempted to strengthen the independence of judges by introducing “the system of recording and affixing responsibilities for interference with cases by insiders of judicial organs.”<sup>72</sup> Each court is tasked with establishing a special database within the case management platform.<sup>73</sup> Judges are required to record any “interference with cases by insiders . . . outside the legal procedures or relevant working procedures,”<sup>74</sup> including the names of those interfering and the specific nature of the interference. Not a single judge interviewed, however, reported actually using this system or knowing of a colleague who had. But several judges observed that the mere existence of the system makes a difference. As one judge explained:

Although I do not know anyone who actually recorded [any interference], this mechanism functions as an invisible claw. If a leader wants to interfere, he will have to think twice because it is the right of the judge to record. If the judge is determined to record, then no one can stop him or her.<sup>75</sup>

With increased power comes increased accountability, at least in theory. The Supreme Court states that “a judge shall be responsible for

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67. *E.g.* Interview with JA07, *supra* note 62; Interview with JA08, Judge, Basic People’s Court, in Zhejiang, China (June 7, 2018).

68. Interview with JA07, *supra* note 62.

69. Interview with JB01, Judge and Director of the Research Office, Basic People’s Court, in Chongqing, China (June 22, 2018); Interview with JC06, *supra* note 58.

70. Interview with JB01, *supra* note 69; Interview with JC02, *supra* note 54.

71. Interview with JB01, *supra* note 69.

72. SUPREME PEOPLE’S COURT OF CHINA, *supra* note 40, at 33.

73. *Id.* at 33.

74. *Id.*

75. Interview with JA07, *supra* note 62.

his/her performance of duties of adjudication and for the quality of cases handled by him/her for life.”<sup>76</sup> However, during the interviews, judges indicated that with the exception of several high-profile wrongful convictions in criminal cases, there are no concrete policies setting exactly how to measure the *quality of cases* or how a judge will be held responsible for his or her performance.<sup>77</sup> That being said, for some (but not all) judges, the mere term *lifelong accountability* and the fact that they can no longer *share* accountability with their superiors add pressure.<sup>78</sup> One judge complained: “After the lifelong [accountability] system, judges universally reported that [we feel] more responsibility for [our] cases. In the past, [we] had insomnia. Now, [we] have anxiety.”<sup>79</sup>

*B. Evaluating the Reforms: Views from Judges and Lawyers*

The judges almost unanimously recognized that the accountability reforms empower them to handle their cases more independently, particularly due to the elimination of the case approval system. Many judges characterized their post-reform role as “independent judging,”<sup>80</sup> “complete independent handling of cases,”<sup>81</sup> “personal judging,”<sup>82</sup> or “the last gate.”<sup>83</sup> One criminal law judge described the difference like this:

In criminal cases, there used to be . . . outside interferences. After the reforms . . . interference by leaders is basically a non-issue. I personally have never encountered [any interference] after the judicial reforms. The main reason is that now the presiding judges themselves are the ones who decide.<sup>84</sup>

Even the less optimistic judges recognized that the reforms have made them more independent. For example, one judge said:

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76. SUPREME PEOPLE’S COURT OF CHINA, *supra* note 40.

77. Interview with JA08, *supra* note 67.

78. *E.g.* Interview with JA01, *supra* note 54; Interview with JA07, *supra* note 62; Interview with JB03, Judge and Director of the Trial Administration Office, Basic People’s Court, in Chongqing, China (June 22, 2018).

79. Interview with JA05, *supra* note 58.

80. Interview with JA01, *supra* note 54.

81. Interview with JA03, Judge, Basic People’s Court, in Zhejiang, China (June 6, 2018).

82. Interview with JB07, Judge and Division Head of 1st Civil Division, Basic People’s Court, in Chongqing, China (June 27, 2018).

83. Interview with JC02, *supra* note 54.

84. Interview with JC03, *supra* note 53.

It is hard to avoid all external interference. But now the person making the final decision is different. In the past, if the division chief did not agree, he or she could refuse to sign on the opinion. Now [the division chief] can only come to speak [with the presiding judge]. This is a matter of degree, but things are indeed better than before.<sup>85</sup>

Some judges from more developed regions, however, stated that the elimination of the approval process has had limited impact because they rarely encountered interference from superiors before the reform.<sup>86</sup> One judge from a big-city court explained: “The rule-of-law environment is relatively good in our place . . . There have been few instances of leaders interfering with cases.”<sup>87</sup>

Like the judges, most of the interviewed lawyers said that the reforms have generally made judges more autonomous in adjudicating cases. Among the thirty lawyers who were asked to comment on the effect of the accountability reforms, twenty-four answered that the reforms have resulted in greater judicial independence and less external influence on their cases,<sup>88</sup> and five answered that there had been little or no difference and that external influence remained a problem.<sup>89</sup> One criminal lawyer from Zhejiang answered that she felt that criminal law cases, “unlike in civil law [cases],” had not been seriously influenced by external factors since the early 2000s.<sup>90</sup>

Many lawyers pointed to the elimination of the approval process as the most important factor contributing to increased independence. Specifically, they mentioned that (1) eliminating the approval process has made it much harder for court leaders to intercede in cases and (2) judges are less willing than before to let improper requests influence

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85. Interview with JB03, *supra* note 78.

86. Interview with JA04, Judge and Vice Division Chief of the Administrative Division, Basic People’s Court, in Zhejiang, China (June 6, 2018); Interview with JC07, Judge, Basic People’s Court, in Yunnan, China (July 11, 2018).

87. Interview with JA07, *supra* note 62.

88. Lawyers who responded this way include: LA02, LA03, LA05, LA06, LA07, LA08, LA09, LA10, LA11, LA13, LA14, LB05, LB06, LB07, LB08, LB09, LB10, LC01, LC02, LC04, LC05, LC06, LC07, LC08.

89. Lawyer who responded this way include: LB01, LB02, LB03, LB04, LC03.

90. Interview with LA12, Associate, Anonymous Law Firm, in Zhejiang, China (June 5, 2018). She said: “When I first became a lawyer in the 1990s, there were many meal gatherings with judges. Back then, restaurants just started to pop up, and the management [of judicial corruption] was not very strict. After 2000, there were a series of ‘red alerts’ aimed at regulating the relationship between judges and lawyers, and we began to become more ‘formal.’”

their opinions because they are now fully accountable. One lawyer's words are especially representative:

[The accountability reform] was helpful in reducing outside interference. Before the reforms, some cases had few disputes and the judges agreed with our opinions. But when the decisions were rendered, they turned out to be the complete opposite and were totally unexpected. Such [cases] were definitely problematic. In the past few years, such [a] situation has become very rare. After the reforms, there were very few requests and little interference from above . . . When I first entered the profession [around 2011], lawyers did not rely on their skills, but rather relied on their *guanxi*<sup>91</sup> with the courts. Now there are significantly fewer such lawyers, and those left are having a hard time. That path has closed. Guanxi may still allow you to learn about the progress of your cases, but it cannot affect the [judges'] views of the facts and the final decisions.<sup>92</sup>

Another lawyer elaborated on how the reforms have influenced judges' independence from superiors:

Nowadays, [court] leaders interfere less frequently because [such interferences] are not as useful as before. After the reforms, even if they do interfere, the judges can still decide the cases themselves because they no longer need the leaders' signatures to render decisions . . . Whatever the leaders do, the judges will normally just pay some lip service to give face to the leaders and decide the cases in the way they should be decided. After all, there is the system of lifelong accountability—the responsibility is on the judges themselves.<sup>93</sup>

The lawyers who expressed skepticism about the effectiveness of the reforms in reducing external influence mostly focused on the fact that court leaders maintain strong informal influence over frontline

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91. Guanxi is the pinyin Romanization of the Chinese word 关系, meaning “connection” or “relationship.” It means, among many things, the personal relationship cultivated by an individual with other individuals, especially with persons of power. For a more detailed discussion on guanxi and judicial decision-making in China, see Xin He & Kwai Hang Ng, “*It Must Be Rock Strong!*”: *Guanxi's Impact on Judicial Decision Making in China*, 65 *AM. J. COMP. LAW* 841 (2017).

92. Interview with LC08, Associate, Anonymous Law Firm, in Yunnan, China (July 12, 2018).

93. Interview with LA13, Associate, Anonymous Law Firm, in Zhejiang, China (June 5, 2018).

judges.<sup>94</sup> Such informal influence is largely rooted in the court leaders' power over their subordinates' promotions.<sup>95</sup> However, these lawyers recognized that this form of informal interference is reserved for exceptionally large cases, which constitute a small fraction of the cases handled by the courts. As one lawyer explained:

At this point, the impact of the accountability reforms still does not seem obvious. The influence of external factors is still very significant. The saying goes that "small cases depend on law, mid-sized cases depend on *guanxi*, and large cases depend on politics" . . . However, after the reforms, if the judge insists on a specific result, then the leaders have no way to force him or her to change the decision. But such insistence will be disadvantageous to him/her in the longer term, as it will negatively affect his/her *guanxi* with the leaders.<sup>96</sup>

Some lawyers painted a more balanced picture of the situation based on their experiences with regular and large cases. One said:

The accountability reforms had a very large impact on the judges. In the past, those from above often interceded in cases. Now, even if [they] intercede, the judges will be much more careful, as they are now accountable [for the cases] themselves . . . If the value of the subject matter is large, there will still be interference. In the past, there was interference, no matter [how] large or small [the case].<sup>97</sup>

Another lawyer reported:

After the accountability reforms, there are fewer external factors [in cases] . . . But there are still problems in large cases . . . Sometimes, in order to deal with these situations, we will also find someone [to intercede on behalf of our client]. But normally, such situations will only happen in large cases, not in cases involving only hundreds of thousands or a couple million [RMBs].<sup>98</sup>

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94. See *e.g.*, Interview with LB03, Partner, Anonymous Law Firm, in Chongqing, China (June 20, 2018); Interview with LB04, Partner, Anonymous Law Firm, in Chongqing, China (June 20, 2018).

95. See Interview with LB01, Partner, Anonymous Law Firm, in Chongqing, China (June 20, 2018); Interview with LB04, *supra* note 94.

96. Interview with LB04, *supra* note 94.

97. Interview with LB07, Associate, Anonymous Law Firm, in Chongqing, China (June 28, 2018).

98. Interview with LB09, Associate, Anonymous Law Firm, in Chongqing, China (June 28, 2018).

Notably, even in some large cases, judges are increasingly unwilling to violate clear-cut rules or procedures, as the reforms have made them personally accountable for such behaviors. For example, one administrative law lawyer explained:

In administrative cases, even though the government will still try to influence the court, it is obviously less useful than before . . . For example, I do a lot of house demolition cases. Nowadays, if there are any procedural defects in the government's demolition process, then the court will not help the government . . . After all, judges are now accountable for their own cases, and the cases are uploaded online.<sup>99</sup>

On the other hand, some lawyers expressed concern that the increased discretion of individual judges makes it more likely that the judges themselves—rather than their superiors—will be influenced by external factors. For example, one lawyer said: “Now the judge himself or herself makes the final decision. In the past, [we] needed to co-opt the division chiefs and the presidents. Now, some judges might say that ‘all you need to do is co-opt me.’ There is a problem of too much power.”<sup>100</sup> Among the thirty interviewed lawyers, eight mentioned this as a concern, but six of those nonetheless maintained that the reforms have made a positive change to the overall impartiality of the judiciary. One lawyer stated: “In terms of independence, [the reforms] only reduce interference from superiors but cannot completely eliminate [the judges'] personal connections with the outside world. But overall, there is an improvement compared to before the reforms.”<sup>101</sup> In addition, several lawyers also mentioned that young judges tend to be more “formal,” “just,” and “valuing of the law” compared to their senior counterparts.<sup>102</sup> Before the reforms, the opinions produced by these junior judges were subjected to the approval of their superiors, who were mostly senior judges. With the removal of the approval system, younger judges have reaped the substantial benefits of individual empowerment, which reduces the prevalence of interference by court superiors.

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99. Interview with LB07, *supra* note 97.

100. Interview with LC01, Partner, Anonymous Law Firm, in Yunnan, China (July 9, 2018).

101. Interview with LA08, Associate, Anonymous Law Firm, in Zhejiang, China (June 4, 2018).

102. *See, e.g.*, Interview with LB09, *supra* note 98; Interview with LB10, Partner, Anonymous Law Firm, in Chongqing, China (June 28, 2018).

The accountability system has also created some problems with the quality of court opinions. Some judges appreciated the old case approval system because it functioned as a safeguard, whereby the professionally more capable court leaders would check opinions for potential errors or deficiencies.<sup>103</sup> Some young judges in particular miss the approval system, as they often lack the experience and confidence to decide more complex or consequential cases on their own.<sup>104</sup> Indeed, some judges complained that the abolition of the approval system has resulted in more “erroneous” cases. For example, one intermediary court judge said:

Particularly for us intermediary courts, the bad thing [about the accountability reforms] is that we are increasingly overruling or reversing [basic court decisions], which rarely happened in the past. The main thing is that young judges have little experience . . . In the past, there were people who could check [their opinions], so [young judges] were less likely to make mistakes.<sup>105</sup>

Lawyers also expressed concerns about the reforms’ impact on the quality of judges’ decisions. Some lawyers conveyed that the new system gives too much discretion to judges with less experience or capability. One lawyer complained:

Nowadays, [judges] are very powerful, so the judges’ professional qualities need to be relatively high. For example, many young judges have never married themselves, but are deciding divorce cases by themselves. [They] have no idea about the messy and complicated things in a marriage, so it is hard for them to understand the circumstances of such cases.<sup>106</sup>

Another echoed this sentiment:

Nowadays, there are too many court opinions that simply lack common sense. This is all because the judges are now deciding [cases] by themselves. We have now secured the judges’ independence in deciding cases but not their competences in legal skills. This is because whether one can join the judge quota depends on a lot of factors, not just on the candidate’s legal skills. In the past, we still had the presidents and division chiefs to ensure

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103. Interview with JB09, *supra* note 66.

104. Interview with JA09, *supra* note 65.

105. Interview with JA12, Judge, Intermediary People’s Court, in Zhejiang, China (June 8, 2018).

106. Interview with LA11, Associate, Anonymous Law Firm, in Zhejiang, China (June 5, 2018).

the quality [of court opinions]. Now, too many cases are arbitrarily decided.<sup>107</sup>

The old approval system also helped the courts mitigate the problem of inconsistent rulings because the division chiefs and presidents/vice-presidents would try to ensure that similar cases produced similar results across different judges in the same court.<sup>108</sup> One lawyer said:

Because judges' professional levels vary a lot, personal accountability will lead to a severe problem of "similar cases treated differently." There was one court that decided similar situations in four different ways, making our predictions of case results very difficult. In general, the independent judgment [system] has made judges too powerful.<sup>109</sup>

#### VI. OVERCOMING LOCAL EMBEDDEDNESS

How do the reforms overcome judges' deep-rooted embeddedness in the administrative hierarchy? To answer this question, one must first answer another: why do local contexts matter in the first place? In other words, why can't the central government always get its preferred policies implemented regardless of local resistances? The explanation lies in the multi-layered nature of the system: just as a judge is embedded in the court's administrative hierarchy, that court is situated in the broader political dynamic that includes many local and central actors. From the start of Reform and Opening in the late 1970s through early 2010, the state of Chinese politics was characterized by two general features: horizontally, political power in the center was often shared by rivaling factions, each with its own power bases and spheres of influence in different localities or bureaucracies;<sup>110</sup> and vertically, economic and political power was decentralized to such extent that some scholars even termed the structure "federalism, China style" or

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107. Interview with LC07, Partner, Anonymous Law Firm, in Yunnan, China (July 12, 2018).

108. *E.g.* Interview with JA04, *supra* note 86; Interview with JC03, *supra* note 53.

109. Interview with LA08, *supra* note 101.

110. For a more detailed discussion about factional dynamic in China, see VICTOR C SHIH, *FACTIONS AND FINANCE IN CHINA: ELITE CONFLICT AND INFLATION* (2008); CHENG LI, *CHINESE POLITICS IN THE XI JINPING ERA: REASSESSING COLLECTIVE LEADERSHIP* (2016); Hongbin Cai & Daniel Treisman, *Did Government Decentralization Cause China's Economic Miracle?*, 58 *WORLD POL.* 505 (2006).



“de facto federalism.”<sup>111</sup> Such fragmentation of authority unavoidably led to fragmentation in policy implementation. The popular phrase “where there is a policy from above, there is a countermeasure from below” (上有政策，下有对策) accurately captures the disjointed decision-making of the central and local governments during this period.<sup>112</sup> Under such “fragmented authoritarianism,”<sup>113</sup> it would be almost guaranteed that the judicial accountability reforms would be implemented unevenly across China, with many courts only nominally observing the reform measures.

However, Xi Jinping’s surprisingly effective power consolidation changed the rules of the game, resulting in the unexpectedly earnest implementation of these reforms. After taking power in late 2012, Xi surprised almost all observers by launching the largest anti-corruption campaign in the People’s Republic’s history. Between 2013 and 2016, over 200,000 officials were indicted on corruption-related charges, and over 180,000 were tried and convicted.<sup>114</sup> Among the convicts were both *tigers* and *flies*, terms respectively referring to Xi’s powerful factional rivals in the center and low-level public servants in the localities.<sup>115</sup> The move effectively put an end to the decades-old political fragmentation of China’s authoritarian system, as officials across China have been subdued by the continuing campaign, “fearful lest the monitoring eye of Beijing come scrutinizing past abuses of power.”<sup>116</sup> The anti-corruption crackdown significantly reduced local officials’ powers and discretion and signaled that the center would no

111. See Gabriella Montinola, Yingyi Qian & Barry R Weingast, *Federalism, Chinese Style: The Political Basis for Economic Success in China*, 48 *WORLD POL.* 50 (1995); YONGNIAN ZHENG, *DE FACTO FEDERALISM IN CHINA: REFORMS AND DYNAMICS OF CENTRAL-LOCAL RELATIONS* (2007).

112. See Diana Fu, *Fragmented Control: Governing Contentious Labor Organizations in China*, 30 *GOVERNANCE* 445, 446 (2017) (arguing Chinese politics was “characterized by disjointed decision making below the top level of authority and ‘deep jurisdictional cleavages’ between bureaucracies”); see also KENNETH LIEBERTHAL & MICHEL OKSENBERG, *POLICY MAKING IN CHINA: LEADERS, STRUCTURES, AND PROCESSES* (1988).

113. Fu, *supra* note 112, at 446; see also LIEBERTHAL & OKSENBERG, *supra* note 112.

114. Andrew Wedeman, *China’s Corruption Crackdown: War Without End?*, 116 *CURR. HIST.* 210, 210 (2017).

115. *Id.* at 212–13; Tania Branigan, *Xi Jinping vows to fight “tigers” and “flies” in anti-corruption drive*, *GUARDIAN* (Jan. 22, 2013), <https://www.theguardian.com/world/2013/jan/22/xi-jinping-tigers-flies-corruption> [<https://perma.cc/B6XY-D7LD>].

116. John A. Donaldson, *China’s Administrative Hierarchy*, in *ASSESSING THE BALANCE OF POWER IN CENTRAL-LOCAL RELATIONS IN CHINA* 105, 127 (John A. Donaldson ed., 2017).

longer tolerate non-compliance with its key priorities.<sup>117</sup> For example, local governments once had final say in environmental policies, often prioritizing economic development over environmental goals; in recent years, however, the central government has significantly centralized the enforcement mechanisms and begun to hold local officials criminally liable for oversights, resulting in “considerable improvements in many domains such as air pollution control, renewable energies and electric vehicles.”<sup>118</sup>

As part of this trend, local courts have little choice but to comply with the judicial reform plans repeatedly endorsed by the central government and Xi Jinping himself. During the interviews, multiple judges confirmed that there was heavy political pressure from higher courts and the central government to implement the judicial reform plans in a timely and faithful manner, with no regard to oppositions from local court leaders.<sup>119</sup> The implementation of the accountability reforms is by no means alone in this sense. Besides the judicial reforms, the Xi Jinping administration also launched a campaign to promote the autonomy of the courts vis-à-vis the local governments and Party apparatuses, which is another embeddedness issue that has been haunting the Chinese judiciary for decades.<sup>120</sup> According to interviewed judges and lawyers, although the dependency problem is far from being solved, local officials’ willingness to intervene in court cases has decreased considerably since 2013 due to the fear of “getting caught.”<sup>121</sup> One judge even reported that a local officer was removed from his position for exerting pressure on the court during an

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117. Kostka & Nahm, *supra* note 28, at 568; *see also* Donaldson, *supra* note 116, at 126.

118. Genia Kostka & Chunman Zhang, *Tightening the Grip: Environmental Governance under Xi Jinping*, 27 *ENVTL. POL.* 769, 773–78 (2018).

119. *See, e.g.*, Interview with JA10, Judge & Div. Chief of 1st Civil Division, Basic People’s Court, in Zhejiang, China (June 7, 2018); Interview with JC10, *supra* note 45.

120. Scholars have generally found the Chinese courts to be highly dependent upon local government and local Party apparatus, at least prior to the launching of the recent judicial reforms. For a more detailed analysis about the issue, *see* Ting Gong, *Dependent Judiciary and Unaccountable Judges: Judicial Corruption in Contemporary China*, 4 *CHINA REV.* 33 (2004); Xin He, *Maintaining Stability by Law: Protest-Supported Housing Demolition Litigation and Social Change in China*, 39 *L. & SOC. INQUIRY* 849, 859 (2014); Ling Li, *The Chinese Communist Party and People’s Courts: Judicial Dependence in China*, 64 *AM. J. COMP. L.* 37, 71 (2016); Suli Zhu, *Political Parties in China’s Judiciary*, 17 *DUKE J. COMP. & INT’L L.* 533, 540-41 (2007); Wang, *supra* note 34.

121. *See e.g.*, Interview with LC06, Partner, Anonymous Law Firm, in Yunnan, China (July 12, 2018); Interview with JC09, Judge & Div. Chief of the Admin. Div., Basic People’s Court, in Yunnan, China (July 11, 2018).

administrative litigation involving his agency.<sup>122</sup> Indeed, many judges complained that the local governments' increasing unwillingness to actively get involved in socially impactful cases (such as cases involving housing demolition) is hurting the courts' ability to mitigate the social conflicts underlying these cases.<sup>123</sup>

Such developments echo the view that embeddedness analysis is only the intermediate level in a multi-layered structure. According to Granovetter, embeddedness in social networks serves as a "middle ground between larger cultural and political and economic phenomena at the macro level of institutions and individuals at the other side . . . through which all these connections were flowing back and forth."<sup>124</sup> Therefore, it is impossible to accurately predict the result of large-scale social or political projects without paying sufficient attention to changes on the macroscopic level. Some of the more pessimistic views about the reforms overemphasize social networks while overlooking the political macrostructure: Xi Jinping administration's power consolidation has put tremendous political pressure on local courts to earnestly carry out central directives, which leads to the steadfast implementation of the judicial reform plans. This causal link perfectly illustrates Granovetter's point on embeddedness: broad political changes can have dramatic effects on the operations of local social networks, and consequently on the behaviors of individuals embedded in them.

## VII. CONCLUSION

Drawing on evidence from fieldwork in courts and law firms, this Article examines the implementation and impact of the judicial accountability reforms under Xi Jinping. For the most part, these reforms were implemented across the regions investigated, and they have largely eliminated the case approval system, under which a court opinion drafted by a judge or judicial panel must be co-signed by a court leader before taking effect. As part of the reforms, the adjudication committees, which consist of court leaders and were previously used to determine important cases in lieu of frontline judges, are now also utilized much less frequently. Instead, many courts have established "conferences of professional judges" on different subjects

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122. Interview with JC09, *supra* note 121.

123. *E.g.*, Interview with JA04, *supra* note 86; Interview with JB03, *supra* note 78.

124. Krippner et al., *supra* note 27, at 116.

of law to provide judges with advice on difficult cases. Unlike the directives provided through the case-approval and adjudication-committee procedures, the advice of the conferences is non-binding, and judges themselves remain fully responsible for their cases. The reforms have also introduced a system of recording “interference with cases by insiders of judicial organs,” which while rarely utilized, further discourages court leaders from intervening in cases handled by frontline judges.

Most interviewed judges and lawyers recognized that these reforms have reduced external influence on courts cases, especially in the vast majority of regular cases that do not involve extraordinarily high monetary or political interests. While this has led to a less corrupt and law-based adjudication process across regions, interviewees also acknowledged that court leaders can still use informal influence over their subordinates to interfere with cases. Such interference, however, is mostly limited to cases with high economic or political stakes. However, the reforms have also increased the rates of similar cases treated differently and opinions containing legal errors because the old approval process can no longer function as a check.

In addition to their effects on the judiciary’s functioning, these reforms are likely to have broader implications for China’s judicial politics, particularly the relationship between courts and local governments (and/or local Communist Party apparatus). The accountability reforms have weakened the traditional chain of command that enabled local officials to convey their preferences about court outcomes to frontline judges. According to Li, the typical intervention process previously worked like this: a government or Party leader would give instructions to a court leader, and the court leader would relay the instructions down the chain until they reached a frontline judge, who would then implement them.<sup>125</sup> Because frontline judges were merely considered agents of their superiors, they would normally not be held accountable for carrying out these instructions.<sup>126</sup> By eliminating the case approval system and limiting the use of adjudication committees, the accountability reforms make it considerably harder for court leaders to dictate the outcomes of cases handled by frontline judges, thus undermining the link between officials and court cases. That said, it is likely that government and

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125. Li, *supra* note 14, at 854–64.

126. *Id.* at 871.

Party officials can still control cases that involve extraordinarily large economic or political stakes, as even following the reforms, most such cases fall into the jurisdiction of the adjudication committees.

In sum, although far from the all-around success claimed by the Supreme People's Court,<sup>127</sup> the accountability reforms have made considerable inroads towards promoting judges' autonomy and accountability—at least for the time being. This conclusion defies the prediction that local embeddedness would substantially hamper the implementation of the reforms. This Article does, however, confirm some of the bases for those predictions. For example, it validates Zhu's claim about the advantages of the vertical hierarchy,<sup>128</sup> as the accountability reforms have indeed created a problem with low-quality opinions and inconsistent rulings in local courts. The study also shows that the reforms have substantially undermined many judges' and court leaders' means to shirk responsibility and their opportunities for corruption, which unavoidably contributes to the unpopularity of the reforms within the judiciary. However, these obstacles only make the reforms' largely steadfast implementation seem all the more significant.

Interestingly, what enables the accountability reforms to overcome the seemingly impenetrable local embeddedness is the regime's increasingly monolithic nature. If not for the sweeping anti-corruption campaign and the subsequent centralization of political power, many reform measures will likely be disregarded in practice, especially in more rural and underdeveloped regions. Here lies one of the great ironies surrounding the Chinese judiciary: as shown by the *turn against law* under the politically fragmented—and consequently more liberal—Hu Jintao administration<sup>129</sup> and the progress of the recent reforms, the enhancement of the courts' power and autonomy does not seem to depend on the liberalization of the political system, but rather on the power consolidation within the already authoritarian government. This seemingly paradoxical relationship compels researchers to reevaluate the diverse roles contemporary authoritarian regimes play in shaping judicial behaviors.

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127. SUPREME PEOPLE'S COURT OF CHINA, *supra* note 40, at 4.

128. Zhu, *Investigation*, *supra* note 21 at 336–337; Zhu, *Knowledge*, *supra* note 21 at 102–103.

129. Carl F. Minzner, *China's Turn Against Law*, 59 AM. J. COMP. L. 935 (2011).

